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# PUBLIC LAND REVIEW

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS  
OF THE  
COMMITTEE ON  
INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
EIGHTY-EIGHTH CONGRESS  
FIRST SESSION



ON

**S. 41**

TO AUTHORIZE PUBLIC LAND STATES TO SELECT CERTAIN  
PUBLIC LANDS IN EXCHANGE FOR LANDS TAKEN FOR  
MILITARY PURPOSES

**S. 1598**

TO AUTHORIZE ACCEPTANCE OF A GIFT OF LAND TO  
PROMOTE THE PURPOSES OF THE TAYLOR GRAZING ACT

**PART 2**

AUGUST 6, 1963

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



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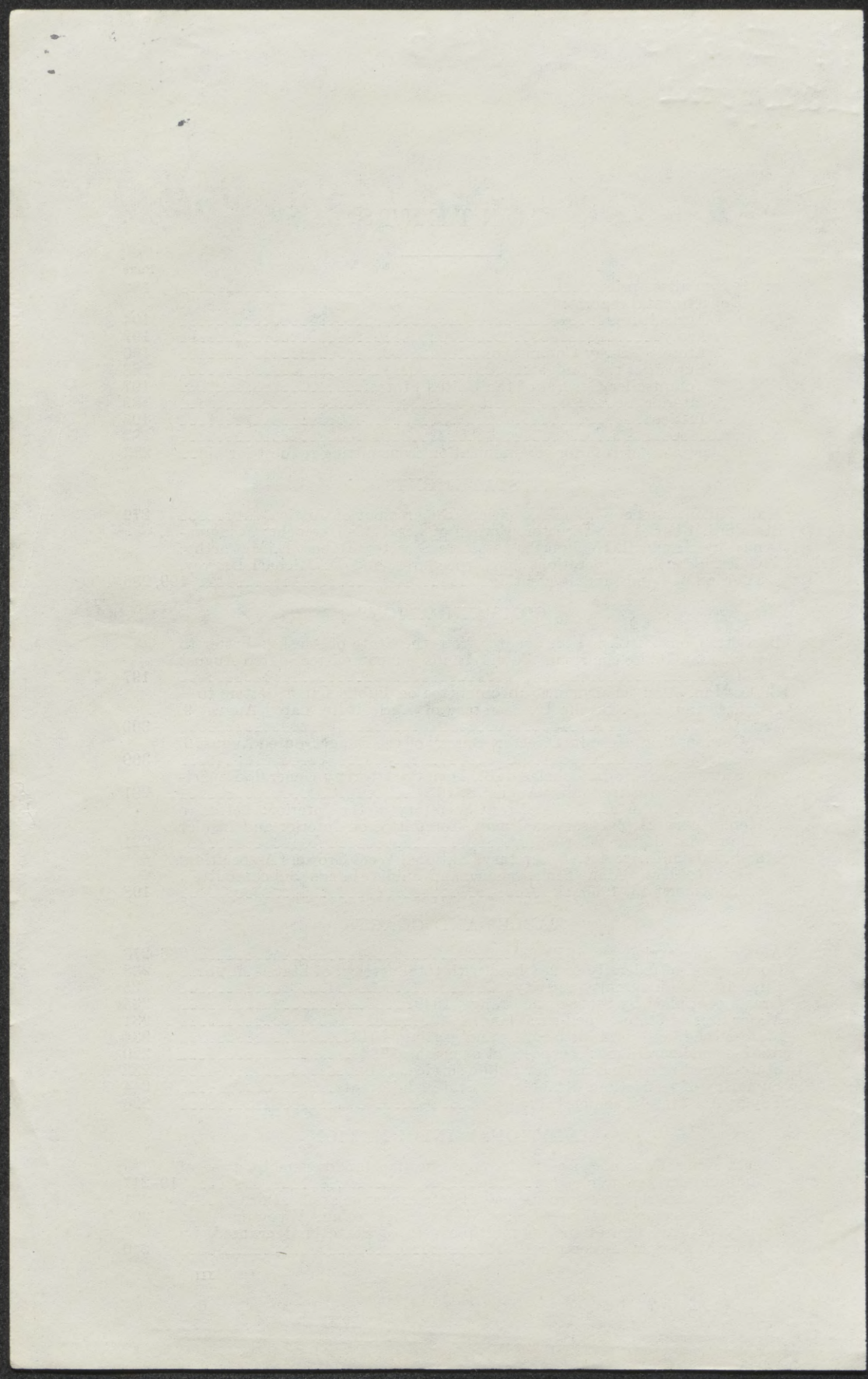
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## PUBLIC LAND REVIEW

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TUESDAY, AUGUST 6, 1963

U.S. SENATE,  
SUBCOMMITTEE ON PUBLIC LANDS OF THE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:10 a.m., in room 3110, New Senate Office Building, Senator Alan Bible presiding.

Present: Senators Bible, Anderson, Church, Gruening, Moss, Metcalf, Allott, Jordan of Idaho, and Simpson.

Also present: Stewart French, chief counsel, and Robert E. Wolf, professional staff member.

Senator BIBLE. The subcommittee will come to order.

This is the time that has been regularly set with notice of a hearing on two bills.

The first is Senate bill 41 introduced by Senator Anderson on behalf of himself and others on January 14.

At this place, Mr. Reporter, in the record we will incorporate the committee print of S. 41 showing the 14 amendments of the Department of the Interior.

(The committee print of S. 41 appears on pp. 182-188.)

Senator BIBLE. We have the official reports of the Bureau of the Budget, the Department of the Interior, the Department of the Army, the Department of Agriculture, the Department of Justice, Atomic Energy Commission, and the Comptroller General of the United States.

I am pleased to note that all of these reports have been received early. I am particularly happy to note that the Interior Department, which has the main interest, has filed a report several days in advance of the hearing so that those of us interested in the bill could read the report before we actually came into the hearing room. This is as it should be and I hope this practice will continue.

The hearing we are having this morning on this bill, S. 41, which I just introduced to make a part of the record, together with the accompanying departmental reports, and the departmental reports speak for themselves.

## [COMMITTEE PRINT NO. 11

AUGUST 2, 1963

(FOR COMMITTEE USE ONLY)

(With amendments proposed by the Department of the Interior in their letter of July 29, 1963)

88TH CONGRESS  
1ST SESSION

**S. 41**

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**IN THE SENATE OF THE UNITED STATES**

JANUARY 14 (legislative day, JANUARY 9), 1963

Mr. ANDERSON (for himself, Mr. BENNETT, Mr. JACKSON, Mr. YOUNG of North Dakota, Mr. MUNDT, Mr. BIBLE, Mr. MCGEE, Mr. BARTLETT, Mr. KUCHEL, and Mr. MOSS) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

[Omit the part struck through and insert the part printed in italic]

---

**A BILL**

To authorize public land States to select certain public lands in exchange for land taken by the United States for military and other uses, and for other purposes.

- 1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That (a) notwithstanding any other provision of law, any  
4 public land State, acting through its duly authorized agent,  
5 may in exchange for any land or interest in land, either min-  
6 eral or nonmineral, which is owned by the State and located

1 within the boundaries of an existing military reservation,  
2 elect, in lieu of receiving monetary payment therefor, to  
3 select other surveyed, unreserved, ~~or~~ *and* unappropriated  
4 public lands or interests in *such* lands, either mineral or non-  
5 mineral, belonging to the United States and located within  
6 the boundaries of the State, which are of equal value.

7 (b) In making such selection, the State shall give writ-  
8 ten notice of such election to the Secretary of the Interior,  
9 to the acquiring agency, and to the United States attorney  
10 for the judicial district wherein the land taken or the major  
11 portion thereof lies within one year from and after the effec-  
12 tive date of this Act.

13 SEC. 2. (a) Notwithstanding any other provision of law,  
14 the State, acting through its duly authorized agent, may in  
15 exchange for any land or interest in land, either mineral  
16 or nonmineral, which is owned by the State and is taken by  
17 the United States in condemnation proceedings after the  
18 date of enactment of this Act for military or other public  
19 use, elect, in lieu of receiving monetary payment therefor,  
20 to select and receive other surveyed, unreserved, and un-  
21 appropriated public lands or interest in *such* lands, either  
22 mineral or nonmineral, belonging to the United States and  
23 located within the boundaries of the State, which are of  
24 equal value.

25 (b) In making such election, the State shall give

1 written notice of such election to the Secretary of the In-  
2 terior, to the acquiring agency, and to the United States  
3 attorney for the judicial district wherein the land taken or  
4 the major portion thereof lies, within ninety days of receipt  
5 of such taking by the United States.

6       SEC. 2. ~~Any lands lying within the State of New Mexico~~  
7 ~~which have heretofore been withdrawn by Executive Orders~~  
8 ~~Numbered 6123, dated May 23, 1933, Numbered 6276,~~  
9 ~~dated September 8, 1933, and Numbered 6583, dated Feb-~~  
10 ~~ruary 3, 1934, pursuant to the Act of June 15, 1926 (44~~  
11 ~~Stat. 746), and which are in excess of the needs for which~~  
12 ~~such withdrawals were made, shall be available for selection~~  
13 ~~by the State of New Mexico, under the provisions of this~~  
14 ~~Act, and such withdrawal orders shall not be revoked or~~  
15 ~~rescinded without the consent of the State of New Mexico.~~

16       SEC. 3. (a) *No exchange shall be approved by the Sec-*  
17 *retary of the Interior under section 1 or section 2 of this*  
18 *Act unless he first determines that the selected lands or in-*  
19 *terests in lands are proper for disposition under this Act,*  
20 *considering such factors as, but not limited to, Federal pro-*  
21 *gram requirements, sound land use and conservation prin-*  
22 *ciples, and effective management of public lands.*

23       (b) *The value of the offered and selected lands, in any*  
24 *exchange under section 1 of this Act, shall be determined*  
25 *by the Secretary of the Interior as of the date of the filing*

## 4

1 of the list, lists or exchange proposal, specified in section 4  
2 of this Act, with the Secretary of the Interior.

3 (c) In exchanges under section 2 of this Act, the value  
4 of the offered land shall be determined by the Secretary of  
5 the Interior as of the date the United States acquires title  
6 to the offered lands, or takes possession of the offered lands,  
7 whichever occurs first. The value of the selected lands shall  
8 be determined by the Secretary of the Interior as of the date  
9 of the filing of the list, lists, or exchange proposal, specified  
10 in section 4 of this Act.

11 SEC. 4. ~~Whenever the State elects~~ (a) *Within one year*  
12 *after the State gives written notice of its election to proceed*  
13 *under the provisions of this Act, it shall submit to the Sec-*  
14 *retary of the Interior and the United States attorney for the*  
15 *judicial district wherein the land taken or the major portion*  
16 *thereof lies, a list or lists of the lands taken by the United*  
17 *States and a list or lists of the public lands selected by the*  
18 *State, and the Secretary of the Interior, if he finds that the*  
19 *selected lands, or interests therein, are proper for disposi-*  
20 *tion under the terms and criteria of this Act, shall, within*  
21 *ninety days of receipt of such a list or lists, as soon as prac-*  
22 *ticable provide for the examination of such lands. Upon the*  
23 *completion of such examination, the* *The* Secretary of the  
24 Interior shall notify the State in writing, as to ~~whether the~~  
25 ~~Department of the Interior considers the base and selected~~

1 lands to be of equal value *his determinations*. In case a  
2 dispute arises between the Department of the Interior and  
3 the State as to the relative value of the lands, the State and  
4 the Department of the Interior shall attempt to settle such  
5 dispute by agreement or arbitration. In the event such dis-  
6 pute cannot be settled within six months from the date of  
7 submission of the State's list, either the Secretary of the  
8 Interior or the State may, after written notice to the other,  
9 refer the dispute to the United States district court for the  
10 judicial district wherein the land taken or the major portion  
11 thereof lies for settlement. In such a case the court shall  
12 hear evidence and ascertain the fair market values of the  
13 base and selected lands in the same manner as land values  
14 are ascertained in ordinary condemnation proceedings and  
15 shall make the necessary adjustments by additions or dele-  
16 tions to the lists.

17       (b) *If the State fails to timely file the lists required by*  
18 *this section, the State shall be deemed to waive all exchange*  
19 *rights under this Act and shall be awarded monetary com-*  
20 *pensation in any pending condemnation proceedings. If the*  
21 *list or lists of the selected lands do not satisfy the requirements*  
22 *of this Act, the Secretary of the Interior shall afford the*  
23 *State an opportunity to submit an acceptable proposal. If*  
24 *the State fails to submit a proposal within the time allowed*  
25 *by the Secretary of the Interior, or if the further proposal does*

1 *not satisfy the terms and criteria of this Act as determined*  
2 *by the Secretary of the Interior, the State shall not have any*  
3 *further exchange rights under this Act, but shall be awarded*  
4 *monetary compensation in any pending condemnation*  
5 *proceedings.*

6 *(c) The issuance of a patent pursuant to this Act shall*  
7 *constitute full satisfaction for the offered lands and the Secre-*  
8 *tary of the Interior is authorized to cause appropriate nota-*  
9 *tions to be made on court and other records reflecting satis-*  
10 *faction of such claims.*

11 **SEC. 5.** Nothing contained in this Act shall be con-  
12 structed to prohibit any State from exchanging any of its  
13 condemned lands under any other applicable public law  
14 authorizing exchanges; however, when any such exchange  
15 is made pursuant to the provisions of the Taylor Grazing  
16 Act, being the Act of June 28, 1934 (48 Stat. 1269), the  
17 base lands and the selected lands need not lie within the  
18 same grazing district.

19 **SEC. 6 5:** The Secretary of Defense or the head of any  
20 other acquiring agency of the United States Government,  
21 out of any appropriations made available to them for acqui-  
22 sition of land, shall reimburse ~~the State and~~ the Secretary  
23 of the Interior for all necessary expenses incurred by ~~them~~  
24 *him* in the negotiating and consummating of State exchanges

1 pursuant to existing laws or pursuant to the provisions of  
2 this Act.

3       *SEC. 6. Where the lands or interests in lands offered in*  
4 *exchange for public lands or interests have a value less than*  
5 *the value of the selected public lands or interests, the exchange*  
6 *may be completed upon payment to the Secretary of the dif-*  
7 *ference in values, or the submittal of a cash deposit or a per-*  
8 *formance bond in an amount at least equal to the difference in*  
9 *values assuring that additional lands acceptable to the Secre-*  
10 *tary of the Interior and at least equal to the difference in values*  
11 *will be conveyed to the Government within a time certain to*  
12 *be specified by the Secretary of the Interior.*

13       *SEC. 7. The Secretary of the Interior is authorized to*  
14 *issue rules and regulations to effectuate the provisions of this*  
15 *Act.*

(The departmental reports referred to follow:)

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., July 29, 1963.

HON. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs,*  
*U.S. Senate, 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. 41, "To authorize public land States to select certain public lands in exchange for land taken by the United States for military and other uses, and for other purposes."

S. 41 would authorize any public land State, in lieu of receiving monetary payment therefor, to select an equal value of certain public lands of the United States in exchange for State land within existing military reservations or taken by the United States in condemnation proceedings. Thus the bill would enable certain States to choose reimbursement in kind in those cases where it was in the State's interest to do so. While recognizing the need which States may have for land, the right which would be conferred upon them by S. 41 needs to be made subject to a determination by the Federal Government as to the propriety of the selection. The report which the Secretary of the Interior is submitting speaks to this point.

This report also notes that exchange procedures are often protracted and probably would not afford a State as expeditious a settlement as would the payment of monetary damages. Thus, the administrative complexities that would result from enactment of this bill would probably result in more cumbersome

procedures. A more simple and expeditious approach is embodied in S. 1600, now pending before your committee. Under that bill, public bodies would be permitted to purchase public lands. If S. 1600 were enacted, the States could use the proceeds from any land taken to immediately acquire other land, thus providing a more expeditious procedure than that embodied in S. 41.

In view of the foregoing, the Bureau of the Budget believes the enactment of S. 1600 would be preferable to the enactment of S. 41, even in amended form.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

---

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., July 29, 1963.*

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

DEAR SENATOR JACKSON: This is in reply to your committee's request for the views of this Department on S. 41, a bill to authorize public land States to select certain public lands in exchange for land taken by the United States for military and other uses, and for other purposes.

We would not object to the enactment of S. 41, if amended as set forth below:

Section 1 of this bill would permit any public land State to select surveyed, unreserved, or unappropriated public lands or interests in lands (both mineral and nonmineral) in exchange for lands or interests in lands owned by the State within the boundaries of an existing military reservation. The State would be permitted to undertake this exchange in lieu of accepting a money payment for the lost land. In order to obtain land under section 1 of S. 41 a State would have to give notice of its intention to make such a selection to the Secretary of the Interior, the acquiring agency, and the local U.S. attorney within 1 year after the date of approval of the bill.

Section 2 would permit a State to choose surveyed, unreserved, unappropriated lands and interests in lands in exchange for any State lands taken by the United States in condemnation proceedings after the date of approval of S. 41. The State would have to give notice of its intention to make such a selection within 90 days after receipt of written notice of the taking by the United States.

Section 3 provides that there would be available for selection under sections 1 and 2 any lands withdrawn by Executive Orders No. 6143 (inadvertently cited in the bill as 6123), of May 23, 1933, No. 6276 of September 8, 1933, and No. 6583 of February 3, 1934, which are in excess of the needs for which those withdrawals were made. Section 3 would also require the continuance of the withdrawals even after they have served their purpose, unless the State of New Mexico consented to the revocation.

Section 4 would establish the procedure under which the selections would be made. If there should be an insoluble disagreement between a State and the Department of the Interior on the comparative value of the lands involved in an exchange under section 1 or section 2, the matter would be settled by the U.S. district court for the judicial district in which the lands are situated.

Section 5 provides that existing statutes permitting the exchange of lands will remain unchanged, except that in exchanges under section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269, 1272), as amended (43 U.S.C. 315g), between a State and the United States the base lands and the selected lands would not have to be situated within the same grazing district.

Section 6 would require the Secretary of Defense or the head of any other acquiring agency of the United States to reimburse a State and this Department for their expenses in making the exchanges permitted by S. 41.

We believe that the bill requires amendment since it excludes consideration of the guiding principles of public land management. The only criterion provided in S. 41 for determining the propriety of an exchange is whether the lands involved are of equal value. No consideration is given to the very important question of whether the programs of the Federal Government might require the lands which a State wished to acquire. This is at variance with the policy expressed in the Taylor Grazing Act which permits an exchange where the taking of lands within a grazing district by a State will not interfere with the administration or the value of the remaining land in that district. Section 4 could also prove harmful

to Federal programs in requiring the Secretary of the Interior to provide for the examination of the lands selected by a State within 90 days from the time a State submits a list of the lands it wishes to obtain. This would compel the Department to give first priority to the study of such selections, without regard to the delays which might consequently ensue to other programs. Moreover, the mandate in section 4 that the Secretary appraise the selected lands after receipt of the list or lists of selected lands from the State does not take into account that the selections (1) may not be "surveyed, unreserved, and unappropriated public lands"; and (2) may be needed for Federal program requirements, or are otherwise improper for disposition in the light of sound land use, conservation, and management principles. Moreover, the language in section 4 that "whenever the State elects to proceed under the provisions of this act \* \* \* could result in open end (as to time) selection claims to the public lands. Finally, we do not believe it would be appropriate to leave disputes as to the comparative values of the lands to be exchanged to the courts. We believe that with respect to exchanges under section 1, the values of the offered and selected lands should be determined as of the time of the filing of the exchange proposal including such lands. Proposed amendments are set forth below which would meet these comments.

Section 2 would be applicable to lands in the future taken by the United States through condemnation. In this respect S. 41 would be different from the Taylor Grazing Act since under the latter there may have to be an abandonment, or other adjustment of some type, of the condemnation proceedings before the State may proceed with the exchange. We do not object to legislation which would make it clear that a State may engage in exchanges despite the fact that State lands have been included in a declaration of taking by a Federal agency, if this Department can determine whether the selected lands are needed for Federal purposes and are otherwise suitable for disposition and exchanges are made based on the fair market value criterion. The latter would minimize the mixing of the complexities of condemnation damages with normal exchange procedures. We envisage that, under section 2, the fair market value of the offered lands would be determined as of the date the United States acquires title to, or takes possession of, the offered lands, whichever occurs first. Under section 2, the value of the selected lands would be determined as of the time of the filing of the list or lists embodying the selection.

With respect to exchanges under section 1 of the bill, it is contemplated that if an exchange proposal should fail to be consummated, and any further exchange proposal should be submitted, all the lands included in the subsequent proposal would be valued as of the date of the filing of the subsequent proposal. As to exchanges proposed under section 2 of the bill, the value of the selected lands would be determined as of the time of the filing of the most recent list or lists selecting such lands.

The withdrawals cited in section 3 are temporary withdrawals, although they have been in existence for more than 25 years. They were made for the purpose of assisting the State of New Mexico in making exchange selections under the act of June 16, 1926 (44 Stat. 746). They were made in the days before the Taylor Grazing Act, and the lands subject to them are now to a large extent being managed as parts of grazing districts. In 1950 the State of New Mexico consented to the revocation of these Executive orders and expressed its willingness to accept in exchange lands in northeastern New Mexico. These exchanges for the most part were completed. Since that time, the commissioner of public lands for the State has objected to the revocation of the withdrawals until the completion of the exchanges under the 1926 act. No revocations have been made except with the consent of the State, despite the fact that various private groups have urged that such revocations be made. We do not believe that preferred treatment of one State is justified.

We believe that section 5 should be deleted. Exchange statutes, including section 8 of the Taylor Grazing Act, as amended, 43 U.S.C. 315g, do not readily lend themselves to encompassing condemned land as base land, as made manifest by the provisions of S. 41 and our proposed amendments thereto. The recommended modification of section 8 of the Taylor Grazing Act, as amended, 43 U.S.C. 315g, as embodied in section 5 of S. 41 is included in H.R. 5862, culminating from an administration proposal.

Section 6 would require the agencies acquiring land on behalf of the United States to reimburse a State and the Secretary of the Interior for expenses incurred by them in the negotiation and consummation of exchanges both under

S. 41 and existing laws. We do not see why a State should be reimbursed for expenses incurred in an exchange which it chooses in preference to a monetary payment.

We recognize that the exchange procedures are often protracted and probably would not afford a State as expeditious a settlement of its claim as would the payment of monetary damages. Nevertheless, there may be circumstances in which a State might elect to acquire land in lieu of cash as payment.

If the Congress finds that there is need for the legislation, we would not object to enactment of S. 41, if amended as follows:

1. On page 2, line 1, substitute the word "and" for "or" and on page 2, lines 2 and 19, insert the word "such" between the words "in" and "lands". These proposed amendments would make clear that the selected lands would have to be unappropriated lands.

2. On page 3, delete lines 3 to 12, inclusive, and substitute therefor the following:

"Sec. 3. (a) No exchange shall be approved by the Secretary of the Interior under section 1 or section 2 of this Act unless he first determines that the selected lands or interests in lands are proper for disposition under this Act, considering such factors as, but not limited to, Federal program requirements, sound land use and conservation principles, and effective management of public lands.

"(b) The value of the offered and selected lands, in any exchange under section 1 of this Act, shall be determined by the Secretary of the Interior as of the date of the filing of the list, lists or exchange proposal, specified in section 4 of this Act, with the Secretary of the Interior.

"(c) In exchanges under section 2 of this Act, the value of the offered land shall be determined by the Secretary of the Interior as of the date the United States acquires title to the offered lands, or takes possession of the offered lands, whichever occurs first. The value of the selected lands shall be determined by the Secretary of the Interior as of the date of the filing of the list, lists, or exchange proposal, specified in section 4 of this Act."

3. On page 3, line 13, substitute for "Whenever the State elects" the following: "(a) Within one year after the State gives written notice of its election".

4. On page 3, line 19, insert after "Interior" the following: ", if he finds that the selected lands, or interests therein, are proper for disposition under the terms and criteria of this Act".

5. On page 3, lines 19 and 20, substitute "as soon as practicable" for "within ninety days of receipt of such a list or lists".

6. On page 3, lines 21 and 22, delete "Upon the completion of such examination," and change "the" to upper case.

7. On page 3, lines 23 and 24, substitute for the words "whether the Department of the Interior considers the base and selected lands to be of equal value" the following: "his determinations".

8. On page 3, delete line 25, and on page 4, delete lines 1 to 14, inclusive, and substitute therefor the following:

"(b) If the State fails to timely file the lists required by this section, the State shall be deemed to waive all exchange rights under this Act and shall be awarded monetary compensation in any pending condemnation proceedings. If the list or lists of the selected lands do not satisfy the requirements of this Act, the Secretary of the Interior shall afford the State an opportunity to submit an acceptable proposal. If the State fails to submit a proposal within the time allowed by the Secretary of the Interior, or if the further proposal does not satisfy the terms and criteria of this Act as determined by the Secretary of the Interior, the State shall not have any further exchange rights under this Act, but shall be awarded monetary compensation in any pending condemnation proceedings.

"(c) The issuance of a patent pursuant to this Act shall constitute full satisfaction for the offered lands and the Secretary of the Interior is authorized to cause appropriate notations to be made on court and other records reflecting satisfaction of such claims."

The provisions in proposed amendment numbered 8 are designed to insure finality of action and to enable the State to get its compensation, either in land or in money, in a reasonable period of time. By the same token, it will permit the Federal Government to close its books on such transactions.

9. On page 4, delete lines 15 to 22, inclusive, and renumber the following sections accordingly.

10. On Page 5, line 1, strike the words "the State and".

11. On page 5, line 2, substitute the word "him" for the word "them".

12. On page 5, line 4, delete the words "existing laws or pursuant to".

13. Since a State may select public lands of a greater value than those used as base, we believe that it would be appropriate to authorize payment or other action by the State to equalize the values. Accordingly, we suggest that a new section be added to the bill to read as follows:

"Sec. 6. Where the lands or interests in lands offered in exchange for public lands or interests have a value less than the value of the selected public lands or interests, the exchange may be completed upon payment to the Secretary of the difference in values, or the submittal of a cash deposit or a performance bond in an amount at least equal to the difference in values assuring that additional lands acceptable to the Secretary of the Interior and at least equal to the difference in values will be conveyed to the Government within a time certain to be specified by the Secretary of the Interior."

14. Add a new section reading as follows:

"Sec. 7. The Secretary of the Interior is authorized to issue rules and regulations to effectuate the provisions of this Act."

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,

JOHN A. CARVER, Jr.,  
*Assistant Secretary of the Interior.*

DEPARTMENT OF THE ARMY,  
*Washington, D.C., July 29, 1963.*

HON. CLINTON P. ANDERSON,  
*Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 41, 88th Congress, a bill to authorize public land States to select certain public lands in exchange for land taken by the United States for military and other uses, and for other purposes. The Secretary of Defense has delegated to the Department of the Army the responsibility for reporting the views of the Department of Defense thereon.

The purpose of the bill is to authorize public land States to obtain from the United States public domain lands in exchange for State lands now within a military reservation or hereafter acquired by the Federal Government for military or other public purposes. The procedure for the exchange would permit the State to file with the Secretary of the Interior and the U.S. attorney lists of lands taken and those selected for exchange. The Secretary of the Interior would then arrange for examination of the land within 90 days and notify the State whether or not the value is considered equal. Differences of opinion concerning value would be settled by U.S. district courts, which would be empowered to make adjustments in the lists. The acquiring agency would be required to reimburse the State and the Secretary of the Interior for expenses incurred in the exchange.

The Department of the Army on behalf of the Department of Defense is opposed to enactment of this legislation at this time.

From time to time individual States have indicated to the military departments that, while they desire to cooperate in the establishment or expansion of essential military installations, it would be preferable from their standpoint to receive land in exchange for State-owned land needed for military use instead of receiving a money payment representing the value of the land involved. There have also been situations where private industry has indicated a preference to obtain an exchange of land rather than payment in dollars for land being acquired for military purposes. Since S. 41 is not designed to further the management of public lands, there appears to be no reason to limit the bill to the public land States.

The fifth amendment to the Constitution of the United States provides that no "private property [shall] be taken for public use, without just compensation." In the acquisition of land by the United States the courts have interpreted this constitutional guarantee, which has not been implemented by general legislation, to require the Government to pay market value of the property taken and that, in the absence of specific statutory authority, other losses and damages are not compensable. In those instances where market value is not ascertainable, other yardsticks, usually involving improved properties that are not bought and sold in the open market, are provided. But in each case the determination of value involves a money payment without any responsibility on the acquiring agency to replace in kind that which is taken.

It is recognized that there are occasions when current procedures may still not fully compensate a landowner or tenant affected by a project and that some owners may therefore suffer an additional loss. Some of these losses are intangible and, therefore, not susceptible of determination without indulging in speculation. However, these factors are found in all governmental acquisitions and are not peculiar to the acquisition of land from the public land States.

The Department of Defense is interested in equal treatment of all of the States and their citizens and believes that, if at all possible, it is desirable to establish uniformity in all land acquisitions. Therefore, although the Department is concerned with the hardships that may be suffered by the public land States or any other State, group, or individual, it believes that the manifold problems imposed on those affected by U.S. projects should be reviewed in the interest of establishing a uniform policy that can be consistently followed by all Federal agencies. As the outcome of recently increasing congressional interest in these problems, the Select Subcommittee on Real Property Acquisition was created by the Committee on Public Works of the House of Representatives on August 24, 1961, for the purpose of making a comprehensive study of laws, practices, and procedures involved in real property acquisition by the Federal, State, and local governments for Federal and federally assisted programs. The Department of the Army, on behalf of the Department of Defense, therefore recommends that action on the bill to authorize the public land States to receive land in exchange for State land required for Federal purposes be deferred pending completion of and recommendations resulting from this study.

Should your committee nonetheless determine that it would be in the national interest to consider S. 41 at this time, in advance of a review of the adequacy of compensation generally, it is suggested that particular attention be given to (1) the equitable basis for considering separately action involving only the public land States; (2) the historical basis for inclusion of an exchange authority in the Taylor Grazing Act to permit the blocking out of Federal and State lands for management of our resources; (3) whether or not a State should be authorized to obtain an exchange of lands for lands condemned by the United States since the determination of just compensation is then a matter solely within the jurisdiction of the court; and (4) whether or not the time limitations for selection of lands and reaching agreement are reasonable. As to some of these questions, as well as others that may be involved, it is believed that the Secretary of the Interior is in a better position to advise the committee as to the procedural aspects and the impact that enactment would have on the administration of the public land laws generally.

The fiscal effect of this measure cannot be ascertained, but the cost of affected projects would be decreased by cost of land and increased by the amount required to be reimbursed to the Secretary of the Interior and the States for expenses incurred or to be incurred in connection with any exchange.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

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

Sincerely yours,

CYRUS R. VANCE, *Secretary of the Army.*

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., July 30, 1963.

HON. CLINTON P. ANDERSON,  
Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request of January 29, 1963, for our report on S. 41, a bill to authorize public land States to select certain public lands in exchange for land taken by the United States for military and other uses, and for other purposes.

We recommend that S. 41 not be enacted unless amended as hereafter suggested. The bill would—

1. Authorize any public land State, in lieu of receiving monetary payment therefor, to select an equal value of surveyed, unreserved, and unappropriated public lands of the United States, either mineral or nonmineral, in exchange for State land (a) within the boundaries of existing military reservations, or (b) taken by the United States in condemnation proceedings for military or other public use.

2. Provide that notice of selections shall be filed with the Secretary of the Interior and the appropriate U.S. attorney; that the Secretary of the Interior shall examine the lands within 90 days; and that disagreements between the State and Interior as to relative values of lands involved would be settled by agreement or by appropriate U.S. district court.

3. Require the Secretary of Defense or head of any other acquiring agency of the United States, out of appropriations available for land acquisition, to reimburse the State and the Interior Department for all necessary expenses incurred by them in exchanges pursuant to the bill or pursuant to any other law.

Where the United States acquires land by condemnation for military and other public uses, the traditional method of compensation has been in the form of money rather than in kind. We believe that such compensation is fair and equitable, and recommend that it not be departed from in the manner which would be provided for by the bill.

Exchange of national forest, national grassland, and land-utilization project lands are made with States under several existing laws, including the act of March 20, 1922 (42 Stat. 465) as amended, section 32 of the Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 522, 525), and the act of March 3, 1925 (43 Stat. 1215). Such exchanges have mutual advantages to the States and the Federal Government and are made on the basis of mutual agreement. In such exchanges, the States have borne their expenses under their laws and procedures and this Department has borne those expenses necessary to discharge its functions. Similarly, the Department of the Interior has met the costs of performing its functions. This has been a mutually satisfactory arrangement and we see no reason to require the Federal Government to bear the States' costs, or this Department to reimburse the Department of the Interior for its costs, on such transactions.

We therefore recommend that, if favorable consideration is given to the bill, the following amendments should be made:

Page 2, delete all of section 2 beginning with line 11 through line 2 on page 3.

Page 5, line 4, delete the words "pursuant to existing laws or."

It is also recommended for the purpose of clarity that in line 1 on page 2, the word "or" be changed to "and." On page 3, line 5, the Executive order of May 23, 1933, is referred to as Numbered 6123 rather than 6143.

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,

CHARLES MURPHY, *Acting Secretary.*

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., August 5, 1963.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the bill (S. 41) to authorize public land States to select certain public lands in exchange for land taken by the United States for military and other uses, and for other purposes.

The bill would provide that any public land State which owns land located within the boundaries of an existing military reservation may elect in lieu of payment therefor, to select other unreserved or unappropriated lands of equal value owned by the United States within the State. A similar option also would be provided with respect to future acquisitions of land by the United States for military or other purposes. The provisions of the bill also would apply to certain public lands in the State of New Mexico which were withdrawn pursuant to specified Executive orders, and which are in excess of the needs for which such withdrawals were made. The bill would prohibit the revoking or rescinding without the consent of the State of New Mexico of the Executive orders (one of which is incorrectly identified as 6123, instead of 6143) by which these lands were withdrawn.

In exercising its option under the bill a State would be required to give written notice thereof to Federal authorities and submit lists of the lands taken by the Government and of the lands selected in exchange therefor; the Secretary of the Interior would determine the relative valuation of the lands, and disagreements would be subject to arbitration; disputes not settled within 6 months could be referred to the appropriate U.S. district court which, after ascertaining the valuation of the lands as in ordinary condemnation proceedings, would make necessary adjustments to the lists.

The bill provides that nothing therein contained shall be construed to prohibit any State from exchanging any of its condemned lands under any other applicable public law authorizing exchanges; however, when any such exchange is made pursuant to the provisions of the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315, et seq.), the base lands and the selected lands need not lie within the same grazing district. The acquiring agency of the Federal Government would be required to reimburse the State for expenses incurred in effecting an exchange of lands under the provisions of the bill or under the provisions of any existing laws.

The subject of this legislation is not a matter for which the Department of Justice has primary responsibility and accordingly we make no recommendation as to its enactment. There are, however, certain undesirable features of the bill to which attention is invited.

Several aspects of this bill appear to be undesirable from the point of view of the United States. First, in exercising the option provided by the bill the States would have all the discretion in making selections of land; the only function of the Secretary of the Interior would be to question whether the lands were of equal value. Second, except that a State might bind itself through an agreement to arbitrate, it is possible that at any stage of the proceedings, the State could elect to take the usual monetary "just compensation" under the Constitution in lieu of a proposal for exchange which it found undesirable, thereby giving advantage to States in every transaction. Requiring the Federal Government to pay to the States the costs of effecting an exchange transaction, under existing laws, as well as under this bill, would place a burden upon the United States not contemplated in the enactment of previous exchange legislation and inconsistent with the principles of just compensation. Requiring procurement of the consent of the State of New Mexico to changes in the status of vast areas of public lands in that State would be an extraordinary departure from precedent and might adversely affect the valuation of such lands. Also, no provision is made as to who is to determine what lands in the State of New Mexico are excess to the needs for which such withdrawals were made. It is our view that the bill would permit an unwarranted interference with the intelligent management by the United States of its lands.

Section 4 of the bill provides that in the event a dispute between the Department of the Interior and a State as to the relative values of lands cannot be settled within 6 months from the date of submission of the State's list, either

the Secretary of the Interior or the State may refer the dispute to the appropriate U.S. district court for settlement. The court, after ascertaining the valuation of the lands as in ordinary condemnation proceedings, would make the necessary adjustments in the lists. The question to be submitted to the court appears to be one for administrative determination and not a justiciable matter within the jurisdiction of an article III court. The Constitution limits the jurisdiction of these courts to legal controversies in which the parties are to be bound by the court's decision. This being a constitutional restriction, Congress is without authority to confer the contemplated jurisdiction on the district court.

Finally, authorizing exchanges under the Taylor Grazing Act of lands not in the same grazing district violates the principles of that act and for that reason is not desirable.

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

Sincerely yours,

NICHOLAS DEB. KATZENBACH,  
*Deputy Attorney General.*

U.S. ATOMIC ENERGY COMMISSION,  
*Washington, D.C., August 1, 1963.*

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

DEAR SENATOR JACKSON: This is in response to Senator Anderson's request for the Atomic Energy Commission's report on S. 41, a bill "To authorize public land States to select certain public lands in exchange for lands taken by the United States for military and other uses, and for other purposes.

As we understand this bill it would authorize public land States to elect to receive "surveyed, unreserved or unappropriated public lands \* \* \* belonging to the United States and located within the boundaries of the State, \* \* \*" in lieu of monetary payment for land "which is owned by the State and located within the boundaries of an existing military reservation" or land which is taken by the United States in condemnation proceedings for military or other public use. Public lands to be received by a State under this bill must be "of equal value" to the lands for which they are exchanged. The Secretary of the Interior is authorized to negotiate with States for the exchange of public lands pursuant to this bill, and agencies of the United States which acquire land shall reimburse the States and the Secretary of the Interior for "all necessary expenses incurred by them in the negotiating and consummating of State exchanges pursuant to existing laws or pursuant to the provisions of this Act."

We do not believe that our agency is primarily qualified to discuss the overall financial and legal effect of this bill upon Federal-State relationships with respect to public land acquisition and retention. Accordingly, we are limiting our comments on this bill to what we conceive to be its effect upon the AEC.

In this connection, we assume that it is not the purpose of this bill to affect public lands or interests in land currently under AEC jurisdiction or control, and we think that by definition none of such lands or interest in lands "are surveyed, unreserved, and unappropriated" within the meaning of this bill.<sup>1</sup> If this assumption is not correct we would want to be apprised of this fact in order to present further comments.

With respect to section 6 of the bill, we suggest that acquiring agencies not be required to utilize their appropriations to reimburse States and the Secretary of the Interior for expenses in connection with negotiating and consummating exchanges of public land. Such a requirement would completely divorce acquiring agencies from control over their own funds, and we believe that a better solution to this problem would be for the Congress to appropriate funds directly to the Secretary of the Interior for such matters.

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,

R. E. HOLLINGSWORTH, *Deputy General Manager.*

<sup>1</sup> It would appear that use of the word "or" on line 1 of p. 2 of this bill is an inadvertence and that the word "and" should be inserted in lieu thereof. See line 18 of p. 2.

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, June 4, 1963.*

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

DEAR MR. CHAIRMAN: Your letter of March 12, 1963, requests our comments on S. 41.

The bill would authorize public land States to select certain public domain lands in exchange for land taken by the United States for military and other uses. The exchange would be accomplished by the filing by the State with the Secretary of the Interior and the U.S. attorney for the judicial district wherein the major portion of the land is taken is located, a list or lists of the lands taken by the United States and the public lands selected in exchange. Settlement of disputes as to the relative value of the lands would be authorized by agreement or arbitration and in the event of failure to reach a settlement the dispute then would be referred to the appropriate U.S. district court. The Secretary of Defense or the head of any other acquiring agency would be required to reimburse the State and the Secretary of the Interior for all necessary expenses incurred by them in negotiating and consummating the exchange.

Similar bills were introduced in the 85th (H.R. 11866), 86th (S. 992; H.R. 5510 and H.R. 5513), and 87th (S. 111) Congresses, but no action was taken thereon.

The power of the United States to acquire and hold land which is needed for the use of the Government in the execution of any of its powers is unquestioned and when property cannot be acquired by voluntary arrangements with its owner it may be taken against his will by the United States in the exercise of its power of eminent domain, the only limitation being the payment of just compensation. The fact that the land is owned by a State is no barrier to its condemnation by the United States. Whether the land is acquired through eminent domain procedures or by voluntary arrangements the acquisition requires the payment of a monetary consideration by the United States either on the basis of the purchase price or just compensation without any obligation on the United States to substitute other land owned by it.

We are not aware of the need or justification for according public land States preferential treatment over other States owning lands acquired or to be acquired by the United States and it is suggested that the Secretary of the Interior be requested to furnish his views as to the effect of such legislation upon the administration of the public land laws. Also, we suggest that the bill or its legislative history should make it clear whether the requirements of 10 U.S.C. 2662 are intended to apply to the lands selected for exchange.

We offer no recommendations on the overall merits of the bill as it appears to involve a matter of policy within the province of the Congress to decide.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

Senator BIBLE. I also place in the record a letter from Senator Bartlett on S. 41 and at this point I will insert other communications the committee may receive.

(The letters are as follows:)

U.S. SENATE,  
 COMMITTEE ON APPROPRIATIONS,  
*August 5, 1963.*

HON. ALAN BIBLE  
*Chairman, Public Lands Subcommittee, Senate Interior and Insular Affairs  
 Committee, Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for your letter of August 2, announcing the hearing scheduled for August 6, on S. 41, of which I am a cosponsor. You enclosed several departmental reports, that of the Bureau of the Budget, indicating its preference for the enactment of S. 1600 over S. 41; that of the Department of the Interior, recommending 14 amendments; that of the Department of the Army for the Department of Defense, opposing enactment of S. 41; and that of the Comptroller General offering no recommendations but questioning the need or justification for the proposals contemplated in S. 41.

In view of the general opposition raised to enactment of S. 41 I would hope the subcommittee will have the testimony of departmental witnesses printed. It would be beneficial to me and Alaska State officials to have the objections and recommendations of the agencies in documentary form for study purposes.

I would be pleased to submit a statement for the record in behalf of S. 41 but I do not feel that I will be able to do so until I have had the opportunity of studying the complete testimony of departmental witnesses. Should the hearing record still be open at that time I would be happy to submit my findings.

Sincerely yours,

E. L. BARTLETT.

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NATIONAL WOOL GROWERS ASSOCIATION,  
Salt Lake City, Utah, August 13, 1963.

Re S. 41 and S. 1598.

HON. ALAN BIBLE

*Chairman, Public Lands Subcommittee, Senate Committee on Interior and Insular Affairs, Washington, D.C.*

DEAR SENATOR BIBLE: We had intended to submit a statement for the record of the hearings on the above bills and therefore wired you to this effect on August 5. However, upon a reading of the two bills we feel that we need further information as to their intent and application before we can file a statement for the hearing record. For example, we would like to know future uses to be made of exchanged land; whether a grazing permittee would be compensated if the range he has been using for several years is involved in the exchange; and regulations that will apply to condemnation proceedings.

We would like to endorse the suggestion of the American National Cattlemen's Association in their August 7 letter to you that, if possible, the hearing record to date be made available to our association and other similar groups so that we might have the benefit of viewing the record before formulating a statement.

We would also like to request that, if possible, these two bills be included for consideration at hearings in the West which we understand are contemplated for this coming fall.

Very best personal regards.

Sincerely,

EDWIN E. MARSH, *Executive Secretary.*

Senator BIBLE. The second bill, which is part of our hearing this morning, being S. 1598, a bill which was submitted by the Secretary of the Interior and recommended by him which would amend the exchange provisions of the Taylor Grazing Act.

On both of these bills the subcommittee wants to consider not only the bills themselves, and their effect upon the particular subject areas to which they are addressed but also where the legislation fits in the overall review this subcommittee is in the process of making.

I am sure we would be interested in knowing the effect that enactment of S. 41 might have, for example, on the operation of the Taylor Grazing Act.

In addition we will be interested in the effect this legislation could have on the BLM's land disposal and land management programs.

For S. 1598 the subcommittee will want a full explanation for the need of the bill and the extent to which that is consistent with the other exchange authorities which other Federal agencies have.

I might say this is one of a series of hearings which we contemplate in this very complicated and complex problem of the land laws of the Congress.

The Interior Department has presented to us three separate pieces of legislation which they believe are priority items. The first in this series are the exchange bills on which we are having hearings this morning—S. 41 by Senator Anderson and others and next S. 1598. The Department of the Interior proposed amendments for the ex-

change procedures provided in section 8 of the Taylor Grazing Act. The second series of hearings will be on the public sales bills, S. 1599, S. 1600, and S. 1601. The House has had some rather thorough hearings and I understand the administration bill—the companion to S. 1600—is in the process of being marked up. This committee has no present intention of proceeding until it sees exactly what the House does.

Then we have a third series of bills on multiple use, and we will move into that area at some future date. I know of the great interest of the Senators from Utah and Wyoming (Senators Moss and McGee) in this particular field. I have assured them that at an early date we will get to this series.

Senator Anderson, did you have a statement to make?

Senator ANDERSON. No, except to say that the question of S. 41 is an old story in our part of the country.

The Interior Department just sits as judge and jury, makes up its own mind and renders its verdict and the State has to like it whether it wants to or not.

Senator BIBLE. Senator Gruening?

Senator GRUENING. No comment.

Senator BIBLE. Senator Moss, any comment or observation?

Senator MOSS. I have none at this time.

Senator BIBLE. Senator Simpson?

Senator SIMPSON. None, except to say I concur in what the Senator from New Mexico said. The same thing applies to Wyoming.

Senator BIBLE. The first witness on S. 41 is the new Director of the Bureau of Land Management.

I am very happy to welcome him to this committee. I believe this is the first official appearance before this committee since he has been named as the new Director of the Bureau of Land Management, Mr. Stoddard.

We are very happy to have you. Come forward with any other witnesses you might have with you from the Department.

**STATEMENT OF CHARLES H. STODDARD, DIRECTOR, BUREAU OF LAND MANAGEMENT; ACCOMPANIED BY HAROLD R. HOCHMUTH, ASSOCIATE DIRECTOR; ROBERT E. McCARTHY, CHIEF, BRANCH OF OPERATIONS AND PROCEDURES; AND D. MICHAEL HARVEY, DIVISION OF LANDS AND RECREATION**

Mr. STODDARD. Thank you, Mr. Chairman.

Senator BIBLE. We will print your prepared statement here and then we can take it up a part at a time.

(The prepared statement follows:)

**PREPARED STATEMENT OF CHARLES S. STODDARD, DIRECTOR, BUREAU OF LAND MANAGEMENT**

S. 41 would provide the public land States with an alternative to acceptance of money damages where State lands were taken by the United States in condemnation proceedings. This alternative would be a right, subject to certain conditions, to select and receive public lands in exchange for the lands taken. S. 41 would also give the public land States a right to select and receive public lands in exchange for State lands located within the boundaries of existing military reservations.

I will not attempt to cover in detail all the points raised in the Department's July 29 report to Chairman Jackson on this bill. I will discuss briefly some of the reasons for the Department's position.

We believe that S. 41 requires amendment because it does not take into consideration some of the basic principles of public land management. The only criterion provided in S. 41 for determining the propriety of an exchange is whether the lands involved are of equal value. No consideration is given to the very important question of whether the programs of the Federal Government might require the lands which a State wished to acquire. This is at variance with the policy expressed in the Taylor Grazing Act which permits an exchange only where the taking of lands within a grazing district by a State will not interfere with the administration or the value of the remaining land in that district.

Section 4 of S. 41 could also prove harmful to Federal programs in requiring the Secretary of the Interior to provide for the examination of the lands selected by a State within 90 days from the time a State submits a list of the lands it wishes to obtain. This would compel the Department to give first priority to the study of such selections, without regard to the delays which might consequently ensue to other programs.

The mandate in section 4 that the Secretary appraise the selected lands after receipt of the list or lists of selected lands from the State does not take into account that the selections (1) may not be "surveyed, unreserved, and unappropriated public lands"; and (2) may be needed for Federal program requirements, or are otherwise improper for disposition in the light of sound land use, conservation, and management principles. Moreover, the language in section 4 that "whenever the State elects to proceed under the provisions of this act \* \* \*" could result in open-end (as to time) selection claims to the public lands. We do not believe it would be appropriate to leave disputes as to the comparative values of the lands to be exchanged to the courts. We believe that with respect to exchanges under section 1, the values of the offered and selected lands should be determined as of the time of the filing of the exchange proposal including such lands. The Department report contains proposed amendments which would resolve those problems.

Section 2 would be applicable to lands taken in the future by the United States through condemnation. In this respect S. 41 would be different from the Taylor Grazing Act since under the latter there may have to be an abandonment, or other adjustment of some type, of the condemnation proceedings before the State may proceed with the exchange. We do not object to legislation which would make it clear that a State may engage in exchanges despite the fact that State lands have been included in a declaration of taking by a Federal agency.

The withdrawals cited in section 3 are temporary withdrawals, although they have been in existence for more than 25 years. They were made for the purpose of assisting the State of New Mexico in making exchange selections under the act of June 16, 1926 (44 Stat. 746). They were made in the days before the Taylor Grazing Act, and the lands subject to them are now to a large extent being managed as parts of grazing districts. In 1950 the State of New Mexico consented to the revocation of these Executive orders and expressed its willingness to accept in exchange lands in northeastern New Mexico. These exchanges for the most part were completed. Since that time, the commissioner of public lands for the State has objected to the revocation of the withdrawals until the completion of the exchanges under the 1926 act. No revocations have been made except with the consent of the State, despite the fact that various private groups have urged that such revocations be made. We do not believe that preferred treatment of one State is justified.

We believe that section 5 should be deleted. Exchange statutes, including section 8 of the Taylor Grazing Act (43 U.S.C. 315g) do not readily lend themselves to encompassing condemned land as base land, as made manifest by the provisions of S. 41 and our proposed amendments thereto.

Section 6 would require the agencies acquiring land on behalf of the United States to reimburse a State and the Secretary of the Interior for expenses incurred by them in the negotiation and consummation of exchanges both under S. 41 and existing laws. We do not see why a State should be reimbursed for expenses incurred in an exchange which it chooses in preference to a monetary payment.

We will be glad to discuss any of the points raised in the Department's report and to try to answer any questions the committee wishes to consider.

Mr. STODDARD. I would like to have Harold Hochmuth, Associate Director up here with me and Mr. Harvey and Mr. McCarthy of the Division of Lands, who are familiar with some of the detailed aspects of both of the bills under consideration.

Senator BIBLE. Will you reidentify those?

Mr. STODDARD. This is Harold Hochmuth, Associate Director. This is Mr. McCarthy and Mr. Harvey, Division of Lands.

Senator BIBLE. I know the rest but Mr. Harvey is a new face to me.

Senator ANDERSON. Will you tell us what the responsibilities are of these individuals testifying?

Senator BIBLE. Mr. Stoddard we know is the Director of the Bureau of Land Management, and Mr. Hochmuth is the Associate Director, but what are the responsibilities of the two other men?

Mr. STODDARD. Mr. McCarthy is Chief of the Branch of Operations and Procedure, Division of Lands and Recreation.

Senator BIBLE. And Mr. Harvey?

Mr. HARVEY. I work with Mr. McCarthy.

Senator BIBLE. You are an assistant of Mr. McCarthy in the Division of Lands.

We have already made a part of the record your official report and statement and I notice you suggest some 14 amendments.

Thank you, gentlemen, you may proceed.

Senator ANDERSON. Before he starts, would you say the 14 amendments sufficiently kill the bill or do you need more?

Mr. STODDARD. I wouldn't say we need any more.

Senator ANDERSON. I wouldn't, either.

Mr. STODDARD. With your permission, I will read my statement and then make myself available and also the members of the staff, to questions of the committee.

S. 41 would provide the public land States with an alternative to acceptance of money damages where State lands were taken by the United States in condemnation proceedings. This alternative would be a right, subject to certain conditions, to select and receive public lands in exchange for the lands taken.

S. 41 would also give the public land States a right to select and receive public lands in exchange for State lands located within the boundaries of existing military reservations.

I will not attempt to cover in detail all the points raised in the Department's July 29 report to Chairman Jackson on this bill. I will discuss briefly some of the reasons for the Department's position.

We believe that S. 41 requires amendment because it does not take into consideration some of the basic principles of public land management. The only criterion provided in S. 41 for determining the propriety of an exchange is whether the lands involved are of equal value. No consideration is given to the very important question of whether the programs of the Federal Government might require the lands which a State wished to acquire.

In fact, it could require dispositions that would make BLM's already difficult job of managing and disposing of the public lands next to impossible in a particular area. This is at variance with the policy expressed in the Taylor Grazing Act which permits an exchange only where the taking of lands within a grazing district by a State will

not interfere with the administration or the value of the remaining land in that district.

Senator BIBLE. I would suggest, Mr. Stoddard, as you go along with your statement there might be questions, your statements suggest some questions that someone might want to put to you and I think it would be helpful to the committee and to its determination that we permit questions as we go along.

Senator Anderson has a question on these last two sentences.

Mr. STODDARD. All right, sir.

Senator ANDERSON. I wonder if you would reverse those words, how it would strike you. "No consideration is given to the very important question of whether the programs of the Federal Government might require the lands which a State wished to acquire." That is, in the trade.

Would you also turn around and say that no consideration is now given by your present policy to the very important question of whether programs of the Federal Government to confiscate the land interferes with the State program?

Mr. STODDARD. I think there is a lack of a working relationship and systematic working relationship between the Federal Government and the States on these.

Senator ANDERSON. You have never heard of a case in which the Federal Government pays any attention to what the State wants with reference to land?

Mr. STODDARD. Well, I have heard of some cases where they paid attention, but have been overruled, particularly in the military field.

Senator ANDERSON. You mean listen and then proceed to overrule them, I agree with that, that is a customary practice.

You don't believe there should be some right for the State as with the Federal Government. Why should not the BLM take into account the interference with State programs that occurs when State land is taken by another Federal agency? Why shouldn't that apply to the Federal Government when it goes to take State land?

Why shouldn't it be barred from taking State land where it interferes with the State's program? Why shouldn't that be taken into consideration?

Mr. STODDARD. I think it definitely should.

Senator ANDERSON. It does?

Mr. STODDARD. No, I say I think it should be taken into consideration. It should be a two-way arrangement; and we don't have a working arrangement whereby a systematic classification of land and the consideration of the issues involved would be the sort of overall governing situation in which these decisions were made. They are sort of made on an individual basis, individual case at a time, which really doesn't add up to any total rational land program.

Senator ANDERSON. I introduced this bill once before and the Department was opposed to it.

Now, the Department favors it if it can kill it by amendments. Therefore, you don't seem to have much interest in it. The State land officer said to me, "We are at the complete mercy of the Bureau of Land Management when it attempts to exchange land taken for military purposes."

The Department sits as judge and jury and prevents the State from making any exchanges unless it is to the complete advantage of the Government regardless of how much it might hinder the State in its land pattern operation of public lands.

Don't you think that is the wrong attitude?

Mr. STODDARD. I think perhaps we can best look at the problem that faces both the State and the Federal Government in examining the land pattern, the land ownership pattern, of your own State, Senator Anderson.

Senator ANDERSON. But you complain, because the pattern that the State wants to establish and would be established by this bill, conflicts with the Taylor Grazing Act.

The States complain because they don't think that is fair or just to interfere with their patterns of management.

Mr. STODDARD. Well, let me say what the problem of the Bureau has been in this connection.

Successful land management acreages are reasonably well blocked. They have boundaries on them, you can put them on a map, you can develop a long-range management program, you can plan for a long time in the future so that the land can produce products and services that are needed in the long run.

Senator ANDERSON. Does that apply to the Federal Government only; couldn't it apply to the State?

Mr. STODDARD. In any successful land management agency.

Senator ANDERSON. When the Federal Government wants to get land for a military agency they go ahead and do so. Then when the State wants to exchange they say, "Why should we bother with you? We have the land, we will give you money."

Mr. STODDARD. I am not in position to speak for the military agencies. I know that has been the general procedure and of course, they have taken Federal lands as well as State lands.

Senator ANDERSON. Knowing that, I am just expressing the hope that the Federal Government in the operation of the Bureau of Land Management would try to restore to the States the same relative position they had before; namely, if it had a good working pattern and the military came in and upset it they would allow the State to establish a good working pattern again.

But that is not in your calculations and that is what you object to in my bill, isn't it?

Mr. STODDARD. Well, the only cohesive situation that we have with respect to the management of the public lands has been within the grazing districts in the West, and as you know the land management pattern is extremely scattered and diverse, and very difficult to administer even under present conditions, and the Bureau is constantly being subjected to criticism for mismanagement of land which it really has no adequate way of managing because of the scattered pattern, and the tenure situation with which we are faced.

Senator ANDERSON. I am not criticizing the way you are handling land. I just want to know why you won't reverse what you put in this sentence and say that consideration ought to be given to whether the program of the State government requires the land which the Federal Government is seeking to acquire.

If it does and the Federal Government still has to have it for military purposes then the State ought to be made whole in some way, not just standing around and saying, "We won't trade with you; we don't have to. We are the judge, we are the jury, you have to do what we say."

Isn't that so? Hasn't that been the attitude toward the State land office in New Mexico and, I assume, Wyoming? Isn't that right?

Mr. STODDARD. I think we have lacked some authority with respect to exchange of land which would make it possible to do the blocking up and develop a rational program of administration; that we don't have, and I think this has been one of the things which has resulted in this sort of a stalemate which you very aptly describe.

Senator ANDERSON. But you are complaining here because no consideration is given to the Federal programs, and the States complain because no consideration is given to the State programs. Is one worse than the other?

Mr. STODDARD. No. We are both caught in the same trap.

Senator ANDERSON. If this bill passes it might correct the situation but you refuse.

Mr. STODDARD. What I am saying essentially is that this does—while it makes an effort to try to correct this situation, it creates other problems which could make the administration of the public lands even more difficult, and I think there are ways of accomplishing this same and without creating some of these additional problems.

This is essentially what I am trying to say.

Senator ANDERSON. I am going to stop questioning and listen. But if you have had that program at any time, why in the world haven't we had it over these years while we have been complaining about this? While we have been talking about this for a long, long time, nobody has ever expressed any willingness to see the States' point of view. What they say, is, "We are the judge, we are the jury, we will render a verdict and we will carry it out no matter what you say."

Mr. STODDARD. That isn't my own feeling about it. Both the Federal Government and the individual States could work out a rational system of exchange in blocking and consolidation which would improve the land administration programs of both, and this is what I would like to see, and any legislation that we work on would work in this direction, so I don't think there is really any difference on our goals and objectives.

I think maybe we have got to make some further analysis of just how we might go about it.

Senator ANDERSON. You are quite correct. We do have the same goal if that is your desire. I am not trying to stop the Federal Government from acquiring the land but the very thing you complain about here is the very thing you are doing with the State. You say this is at variance with the Taylor Grazing Act which permits an exchange only where the taking of lands within a grazing district by a State will not interfere with the administration or the value of the remaining land in that district.

Why don't you apply that to yourself, why just apply it to the State?

That is all I am trying to say. You haven't done it thus far you will have to admit.

Go ahead.

Mr. STODDARD. Mr. Chairman, when I finish taking a section or discussion of a section here perhaps we will halt for further questioning if this is your wish.

Senator BIBLE. I think that when you get to know this committee better these questions will suggest themselves as the committee goes along, and if they desire to interrupt you, I am sure they will. So you may proceed.

Mr. STODDARD. Section 4 of S. 41 could also prove harmful to Federal programs in requiring the Secretary of the Interior to provide for the examination of the lands selected by a State within 90 days from the time a State submits a list of the lands it wishes to obtain.

This would compel the Department to give first priority to the study of such selections, without regard to the delays which might consequently ensue to other programs.

The mandate in section 4 that the Secretary appraise the selected lands after receipt of the list or lists of selected lands from the State does not take into account that the selections (1) may not be "surveyed, unreserved, and unappropriated public lands," and (2) may be needed for Federal program requirements, or are otherwise improper for disposition in the light of sound land use, conservation, and management principles.

Moreover, the language in section 4 that "whenever the State elects to proceed under the provisions of this Act \* \* \*" could result in open-end (as to time) selection claims to the public lands. We do not believe it would be appropriate to leave disputes as to the comparative values of the lands to be exchanged to the courts.

We believe that with respect to exchanges under section 1, the values of the offered and selected lands should be determined as of the time of the filing of the exchange proposal including such lands. The Department report contains proposed amendments which would resolve those problems.

Section 2 would be applicable to lands taken in the future by the United States through condemnation. In this respect S. 41 would be different from the Taylor Grazing Act since under the latter there may have to be an abandonment, or other adjustment of some type, of the condemnation proceedings before the State may proceed with the exchange. We do not object to legislation which would make it clear that a State may engage in exchanges despite the fact that State lands have been included in a declaration of taking by a Federal agency.

Senator ANDERSON. Could I interrupt you there? "We do not believe it would be appropriate to leave disputes as to the comparative value of the land to the courts," you say.

Why don't you trust the courts?

Mr. STODDARD. Well, the problem that we have with respect to the determination of values is a situation where—it isn't that we don't trust the courts, this isn't the point. It would drag this more and more litigation on interminably and hold up decisionmaking with respect to the land values that would be involved, and the Bureau is already so, frankly, bogged down in hundreds and hundreds of specific cases, this would just simply add more of that kind of work and we thought that we could arrive at some sort of a mutual agreement with respect to values without having to resort to the courts.

Senator ANDERSON. If you are bogged down and this relieves you of some work and puts it on the courts, why aren't you better off?

Mr. STODDARD. We would have to keep records of all of the actions that would be referred to the courts for a long period of time.

Senator ANDERSON. Don't you have to anyhow?

Mr. STODDARD. Sir?

Senator ANDERSON. Don't you have to do so anyhow? You don't just exchange lands without regard to value, do you?

Mr. STODDARD. No. The record would be kept. There would be an additional party involved in your action.

Senator ANDERSON. If you refer the mere question of value to the court, why does that add to your burden? It will add to the burden of the court. But it relieves you of the burden of valuation. You want to retain that because just a minute ago you insisted upon being judge, jury and executioner. You won't trust the courts.

Mr. STODDARD. We would put ourselves in position of any other landowner engaging in a sale of this sort, that in making the decision on values, our appraiser would come out with a figure that would be what we would assume to be reasonable from the Federal standpoint.

Mr. HOCHMUTH, do you have any comments on this?

Senator ANDERSON. I only want to say to you if you want an example, Mr. Wood, who is my administrative assistant, was in the State land office at Santa Fe and the State had an exchange of forest land with the Department of Interior, and they worked with them for 10 years and got nowhere because they couldn't agree on value. Do you think the court would be slower than that?

Mr. STODDARD. I doubt it.

Senator ANDERSON. I doubt it, too. That is why I don't understand why you object to the use of the court. But let him go ahead and explain it.

Mr. HOCHMUTH. This would not preclude a final disposition of that in the courts on the suggestion Mr. Stoddard makes, but the way the bill is written it would go to the courts immediately without any administrative determination prior to that time as to values.

Senator ANDERSON. There is a witness from the Department of Justice who will testify as to why they oppose this.

Senator METCALF. Mr. Chairman.

Senator BIBLE. Senator from Montana.

Senator METCALF. There is an example in the powerline rights-of-way, whereby arbitration is established, each party selects a party and these two agree on someone and if they can't agree, a Federal judge chooses the third man to complete the three-man board which sets valuation, and their decision is binding.

What would you think of that?

Mr. STODDARD. This would probably be a more effective way of getting the decision made in cases of disagreements. In other words, you could set up a special tribunal just for this purpose and refer your cases as fast as they came up for decision.

Senator METCALF. We wouldn't set up a special tribunal, but you would have, in a sense it would be, a board or a commission, a group—I bring that up because there is precedent in that class of cases for this kind of a board.

Senator ANDERSON. He wants to call your attention to the fact that the original bill provided exactly what you are talking about.

In the case where a dispute arises between the Department of Interior and the State as to the relevant value of the land the State and the Department of Interior shall attempt to settle such dispute by agreement or arbitration. Only when they couldn't agree, they go to court.

Now, you tell us we should take out the element of going to court because it ought to be settled by arbitration, yet you want to take that section out of the bill. I don't follow you.

Mr. STODDARD. I didn't say that. I said this might be preferable, this arrangement, but I would rather see actual negotiation between the State and the Federal Government be handled on a direct basis without having to get a third party into the situation.

Senator ANDERSON. Well, do you mind taking it to court when those parties can't agree? That is all this provides in the original bill. There ought to be some place to go when you can't agree.

Ten years we had a little argument down in New Mexico and couldn't get anywhere. Why? Because we couldn't take it into court when the Bureau of Land Management said, "We won't deal with you, we will do as we please." The State struggled for 10 long years with it and couldn't get anywhere.

Now, after 10 years it ought to be possible for somebody to have the right to petition to some other body to take it into court, and this provision of the bill provided, in the committee print, provided exactly that, that they settle, try to settle, by agreement or arbitration and that hasn't come out and now you say you do not believe it would be appropriate to have disputes as to the value of the land left to the courts.

I believe that is a good case. Naturally they are going to try to settle it reasonably, and nobody is going to go to court ab initio, to start it off with, are those the words? I can't talk lawyer's language, but I know what they mean. And every time they do it costs somebody money. So they wouldn't go to court initially. They would only wait until they found they couldn't agree.

What I want to find out is what is the experience of the Bureau of Land Management after you fail to reach an agreement? You say it is unwise to trust the court. What is the purpose of that reasoning?

Mr. STODDARD. Frankly, I can't speak for the Bureau of Land Management because I have only been with the Bureau for 2 months and many of these specific cases are ones I have not had experience with.

I will ask Mr. Hochmuth, if you have got something to contribute—

Mr. HOCHMUTH. Mr. Chairman, there are many instances where we have no difficulty on agreement, there is negotiation; and there are other instances where there are definite differences as to value.

This comes on State exchanges as well as private exchanges. But I would say that the large percentage, 80 or 90 percent of the cases don't have that at all.

Senator ANDERSON. I am not arguing that question. I am only saying when you get to a dispute, what shakes your confidence in going to court? Can you answer that?

Mr. HOCHMUTH. There is nothing to prevent going into court and litigating it.

Senator ANDERSON (reading):

We do not believe it would be appropriate to leave disputes as to comparative values of the exchange of lands to the courts.

You want that in the Bureau of Land Management? If you don't have it there you can't be judge and jury and executioner. That is why you are opposed to it, isn't that right?

Mr. HOCHMUTH. I can't quite say that, Mr. Anderson.

Senator ANDERSON. I only say that the experience of the State of New Mexico would clearly indicate that. I don't know what other States have done. Maybe 85 percent of their cases get settled but ours don't and I don't believe that is the fault of the State.

Here are two very fine past Governors of States. I don't know what their experience has been, but I don't believe it is any different from the rest of us.

Mr. HOCHMUTH. Mr. Anderson, I might point to this map of the State of New Mexico, and you will notice the yellow areas are the State lands. The State mostly had lands which were four sections per township, and all those yellow areas are areas that have been blocked out either by condemnation or exchange.

In the northeastern section of New Mexico are lands where we have consummated selections and exchanges with New Mexico over the years since 1926.

So, I think it has been fairly successful. Now, there have been some cases that have been difficult but it is not a question of value alone that prevents our doing some of those, and I think some of the exchanges that have been so bad timewise, have been a case of selecting or wanting to exchange on lands where there are mining claims and everything else, where it is almost impossible in the end to get a value, to get an equal value consideration on them, because we have to take lands out, and we have to add lands in the exchange, and we have to subtract.

Senator BIBLE. Well, didn't I correctly understand you to say, Mr. Hochmuth, that parties here could go to court in any event? Isn't this what you said, or did I misunderstand you?

Mr. HOCHMUTH. They may after the final determination by the appellate process has been made by the Secretary of the Interior.

I believe in some of these cases it has taken so long to get up the line because of all these other things that have interfered.

Senator BIBLE. I understand. When they exhaust their administrative remedies then you recognize that they have a right to go to court. I am wondering why you would object to this language which attempts to shorten up this long-drawn-out administrative procedure that has taken in many cases many years, and then permits them to get into court?

Senator Anderson's language first requires them to settle it by agreement or arbitration, and in the event they can't do it within 6 months then they have the right to get into court.

Aren't you arriving at really the same independent result? You say they can do it now. Why do you object to that?

Senator ANDERSON. The Department of Justice will clarify that.

Senator BIBLE. We will have other witnesses and maybe this is the Department of Justice response to the Bureau of Land Management.

Senator CHURCH. Mr. Chairman.

Senator BIBLE. The Senator from Idaho.

Senator CHURCH. We have a problem which has just come up in Idaho that I would like to present to the committee and then ask these gentlemen if the bill, as it is now drafted, would constitute an answer and if not, what changes would have to be made.

The problem is this: The Federal Government has commenced the construction of a large dam and reservoir in Idaho, called the Bruces Eddy Dam.

It is going to be necessary to acquire the land behind the dam for the reservoir and included in that area are 4,000 acres of State timberland.

Now, the State has taken up this matter with the Corps of Engineers, and the Corps of Engineers has told the State that the Federal Government will pay the monetary value for this land. That the State may either sell the timber under forced sale conditions, which will doubtlessly depress the price, or the State may sell the land based upon a value which takes into account the costs of constructing access roads, and this is remote land, the costs of which will greatly reduce the amount of money to be paid to the State for the timber.

Well, the State feels that the practical effect of this will be to reduce the payment to the point where it is practically meaningless, and the State would like to take this 4,000 acres and make an exchange with the Federal Government so that they may have 4,000 acres of timberland to replace the land that the Federal Government will take.

Now, it seems to me that the State has a pretty good case under the circumstances and my first question is whether the bill, as it is now drafted, if it were passed, enacted into law, would permit the State to make a selection of 4,000 acres of Federal timberland in exchange for the State land, and if so, whether that selection would be restricted to BLM timberland or whether it could make the selection out of national forest timberland.

Mr. STODDARD. The answer to the first part of your question, is it would have to be of equal value rather than of equal acreage.

Senator CHURCH. I understand.

It would be land of equal value. Yes. But could the State make its selection out of the national forest land under this bill?

Mr. STODDARD. The bill is restricted to public domain lands.

Senator CHURCH. Public domain lands?

Mr. STODDARD. Yes.

Senator CHURCH. As I understand that, the State would then be restricted to BLM timberland, is that correct?

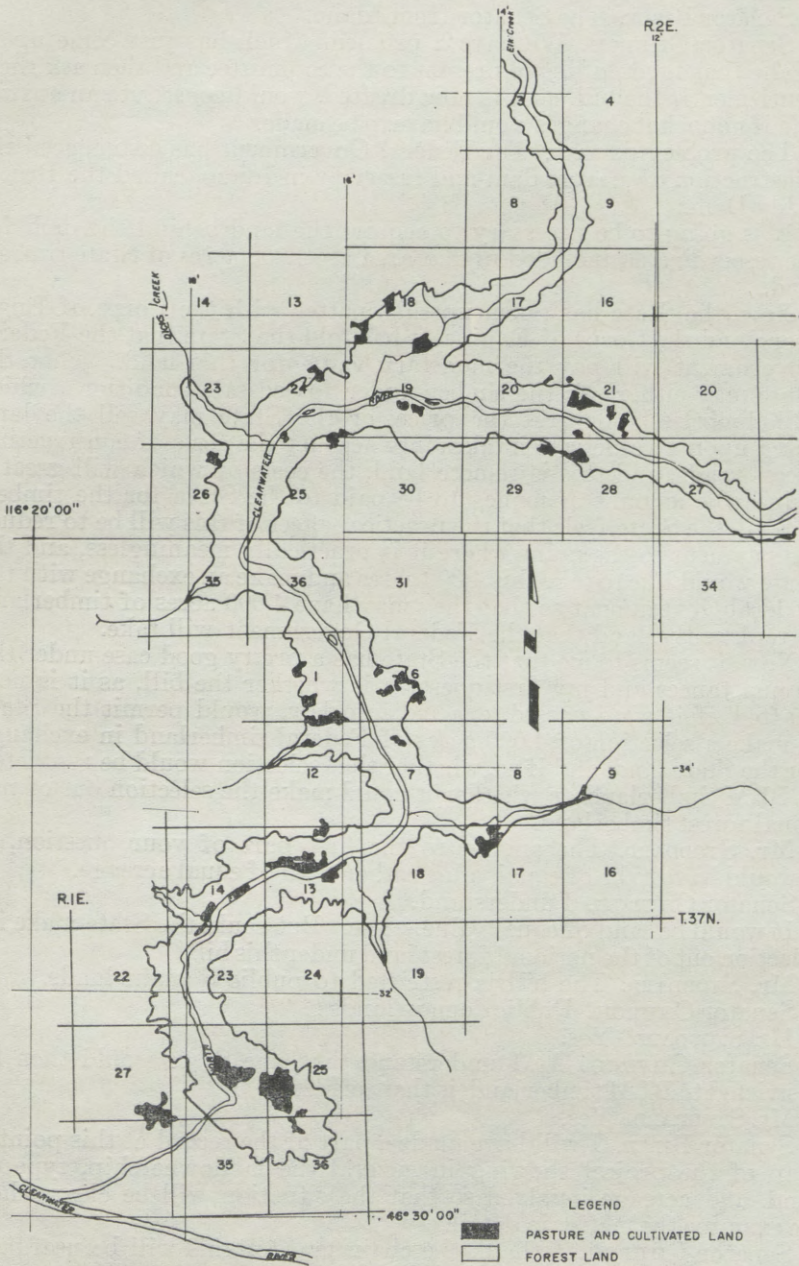
Mr. STODDARD. Yes.

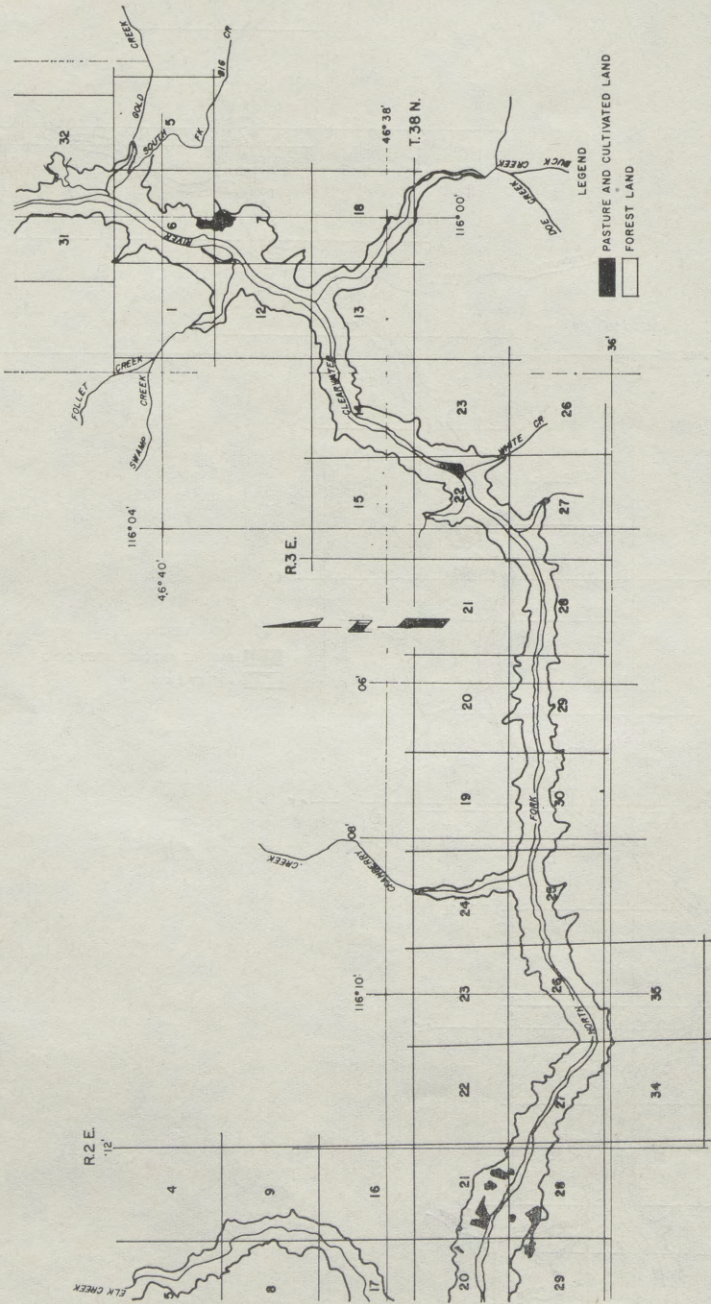
Senator BIBLE. I will have made a part of the record at this point a map of the project showing in general the landownership, type of land, and acreage involved so that the situation will be clear when we examine the matter in detail.

Senator CHURCH. I thank the chairman, for this will be useful.

(The maps referred to are as follows:)

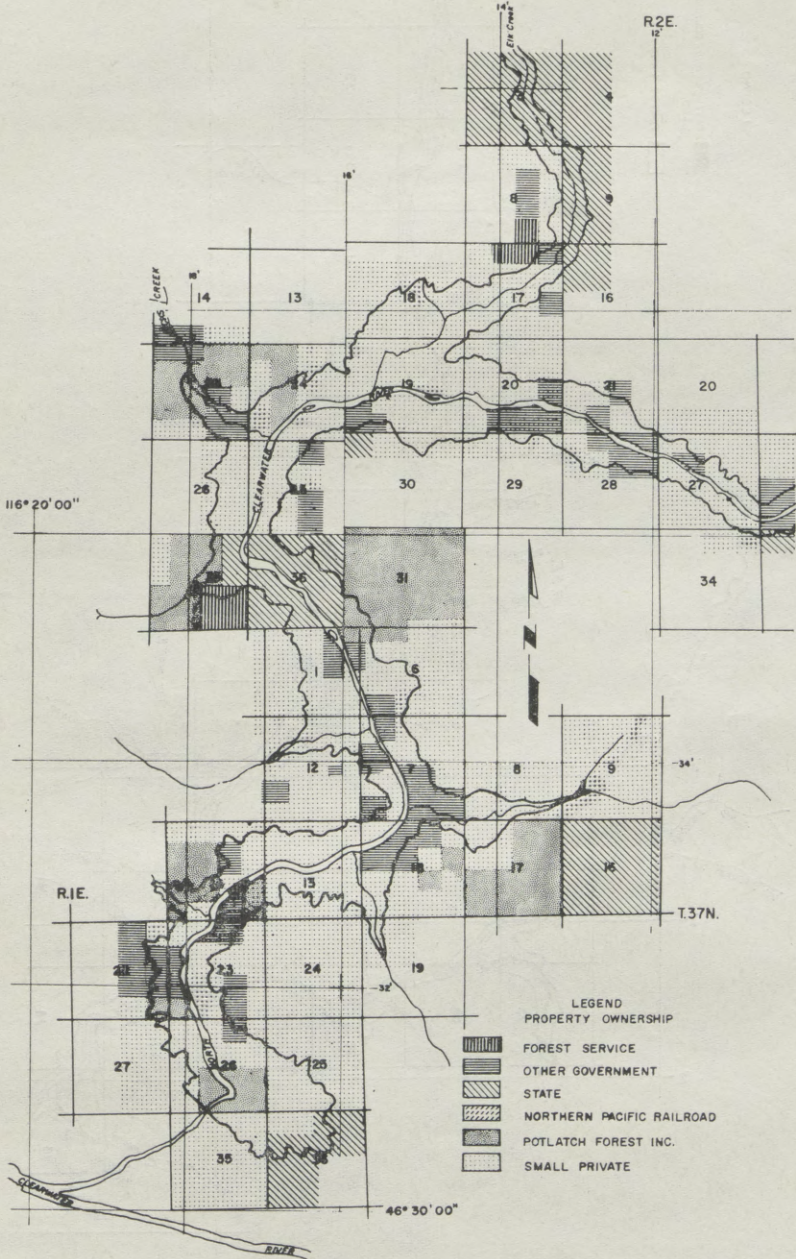
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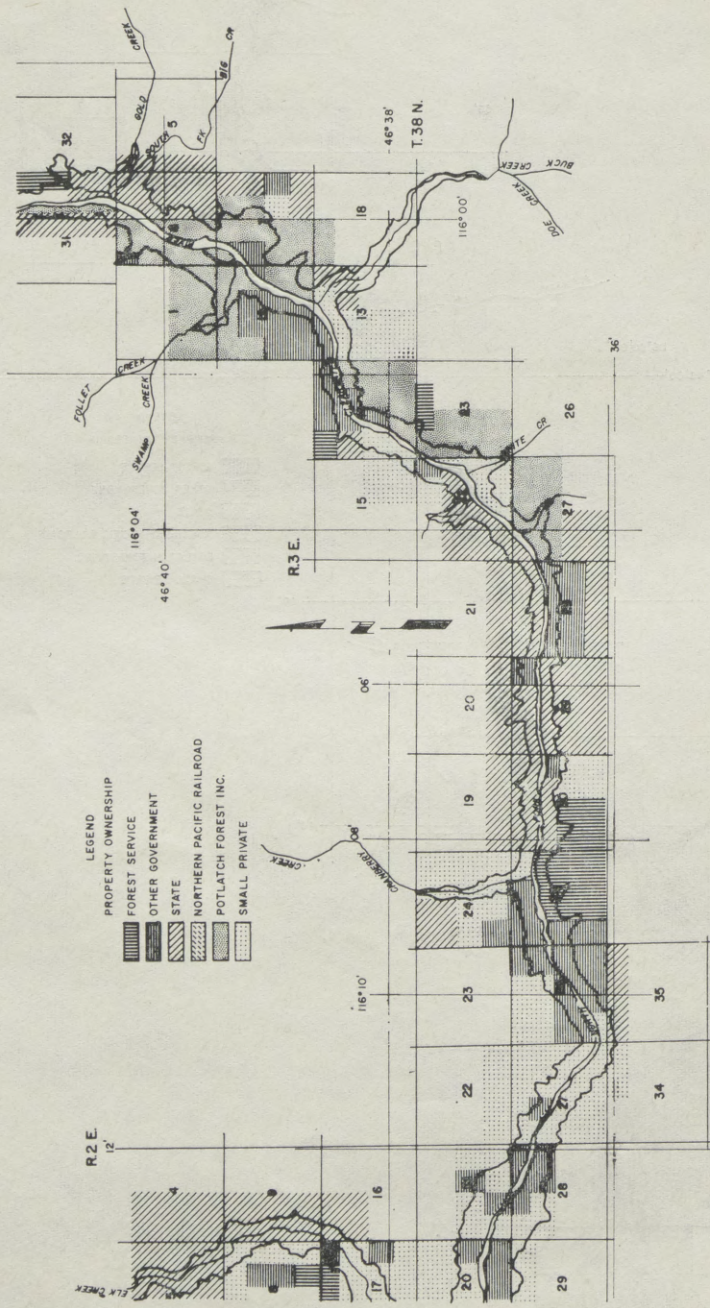


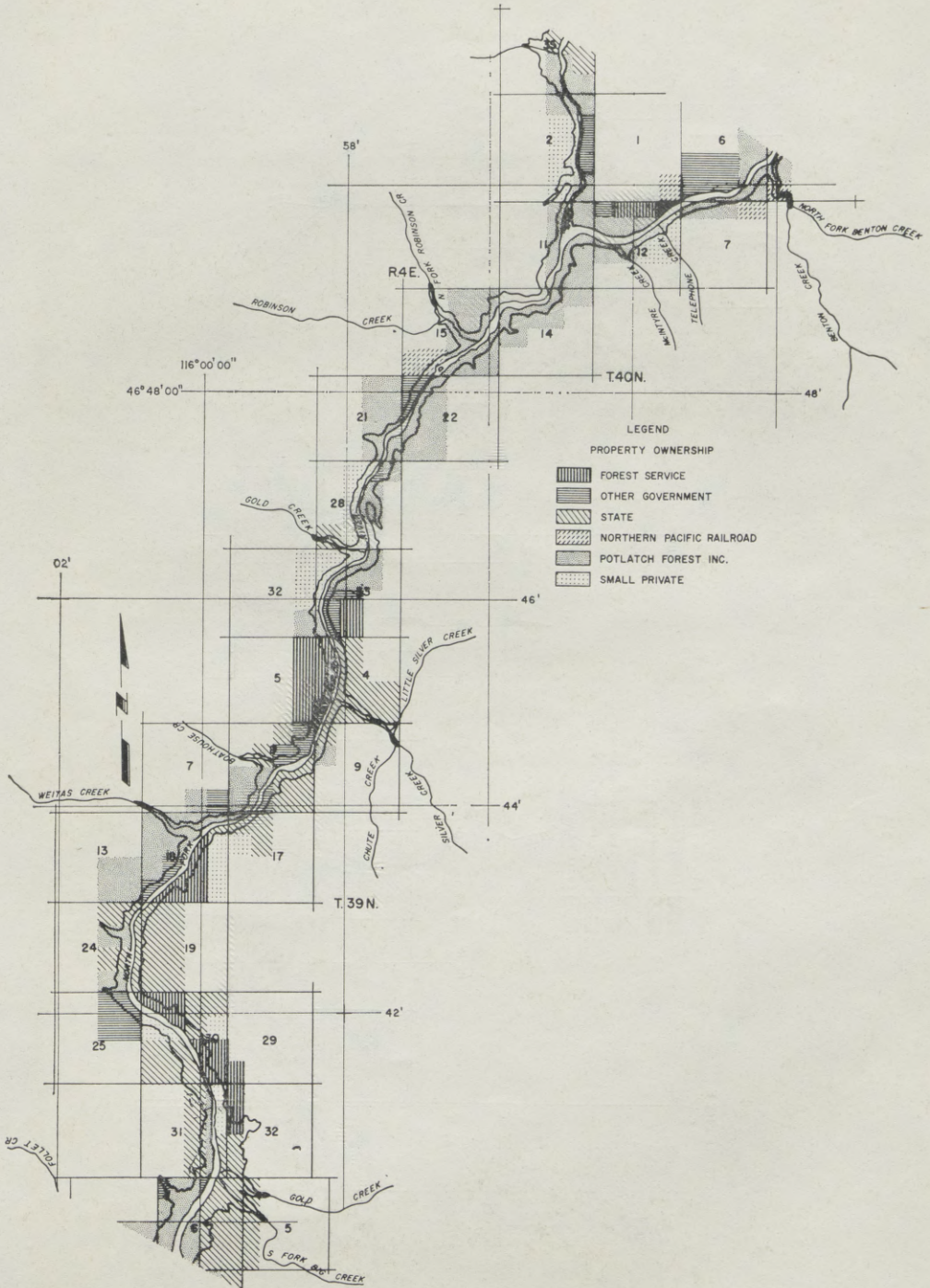


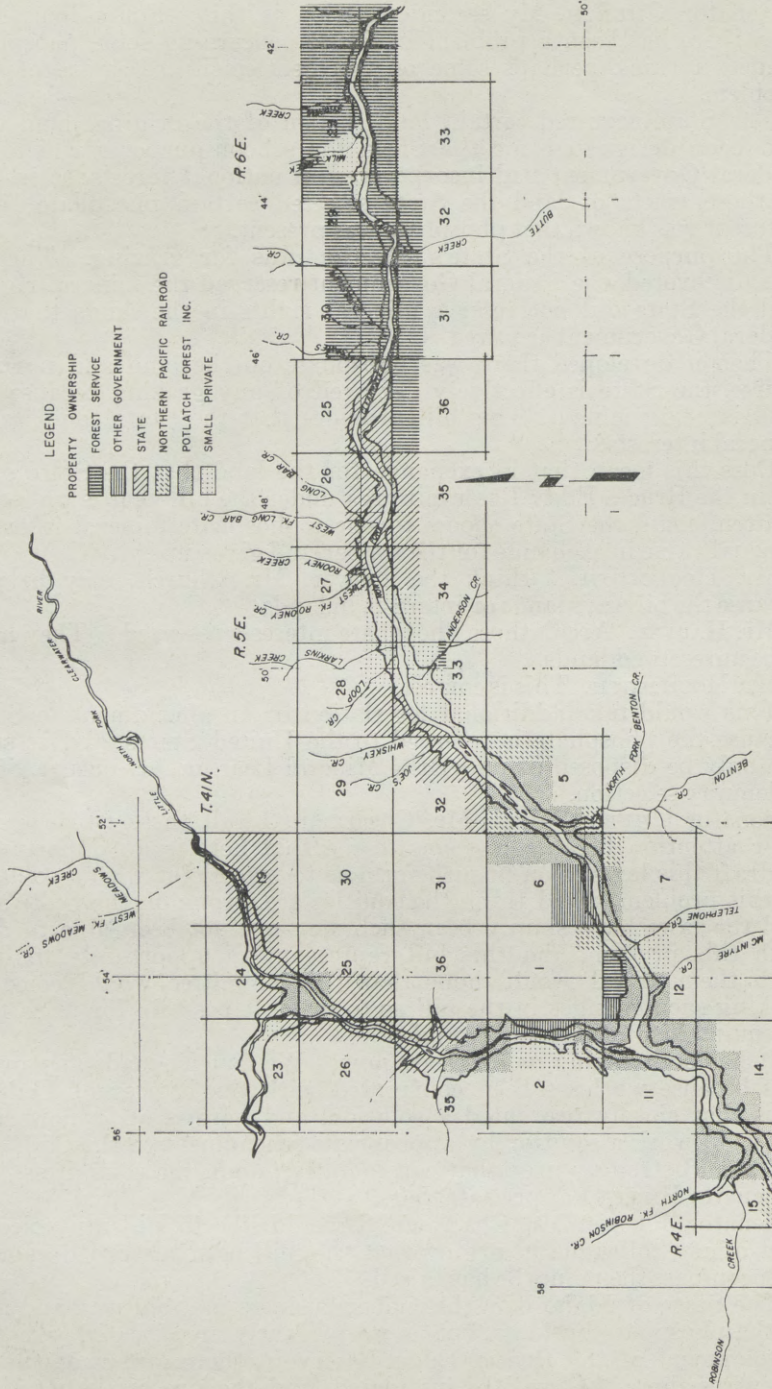












Senator CHURCH. My second question is this: For a long time now there has been a problem in Idaho concerning some phosphate lands. I think perhaps some of you gentlemen are aware of this problem.

The State acquired certain land in lieu of the original land that had been designated for the State for school purposes which the Federal Government had incorporated in national forests, so in lieu of those tracts of land the State selected certain phosphate lands before it was known that phosphate was present.

The purpose of the State's selection was for grazing. Then it was discovered, the Federal Government reserved the mineral rights, and the State did not reserve mineral rights in the lands that the Federal Government acquired.

Then it developed there was phosphate on the land and now, of course, the State is effectively deprived of any grazing because the land is being mined. This bill provides that the State could select mineral interests.

Does this mean that in exchange for the land that the State gave up in the Bruces Eddy Reservoir area under the bill as it is presently written, could the State choose to select phosphate mineral interests of equal value in exchange for the timberland given up?

Mr. HOCHMUTH. I think the answer, Mr. Church, may be yes, because the bill says lands or interests in lands.

Mr. HARVEY. Aren't those phosphate interests reserved? They have to be unreserved lands.

Mr. HOCHMUTH. This is correct.

This would take additional legislation or an amendment to S. 41 because the phosphate is reserved to the United States, and as such can only be disposed of under the Mineral Leasing Act or as a State indemnity selection.

Senator CHURCH. Well, Mr. Chairman, I call these two cases to your attention because it seems to me that here is an opportunity to draft this legislation in such form as to provide us with a solution to this problem, and I think the equities are strong on the State side and the laws have simply been such we have not been able to deal with this problem and this bill represents an opportunity to deal with them and I would hope that the committee would consider making such changes in the bill as to make it possible for us to find an equitable solution to this problem.

It has been vexing us for years now. We haven't made any progress because we have been confronted with the barrier of Federal laws that simply prevented a solution, and here is an opportunity for us to work a solution by appropriate amendment to this bill.

I would strongly urge that consideration upon the committee.

Senator BIBLE. I appreciate that.

Senator JORDAN. Mr. Chairman, I would like to add my voice to that of my colleague in urging that this bill be made broad enough to encompass the points he has raised.

The State of Idaho is in the timber business in a big way and also in the phosphate business, but as we presently are situated with the development of the Bruces Eddy Reservoir, there are great timber resources there that will be inundated, and the process is not clear to us whether we can get equal value for those timberlands and in

the case of our phosphate properties the Federal Government ends up with the phosphate on the land traded and the lands traded for and we think the State has a strong case in trying to establish some way to recover some of those mineral rights, and I would hope we could make this bill cover that situation.

Mr. STODDARD. Mr. Chairman—

Senator JORDAN. Thank you, Mr. Chairman.

Senator BIBLE. Mr. Stoddard.

Mr. STODDARD. We will check out—this is a fairly technical matter and if our response is not in accord with the specific facts in Idaho we will check this out and submit an additional statement to the committee.

One of the problems in Idaho has been that the State has not had the authority for exchange, and this has only come about, I think, within the last year or so and this alters some of the historical situations that developed.

Senator CHURCH. We would appreciate it if we could have a careful statement of the situation in Idaho and how this bill as presently drafted affects it and what changes would have to be made if the committee desired to make this bill a vehicle for the solution of those problems.

Mr. STODDARD. Yes, sir, we will be very glad to do it.

Senator BIBLE. You have the questions posed by Senator Church very clearly in mind as to the forest lands and the phosphate lands, and I wish you would reexamine the questions and take them up with your lawyers and then the record is going to be kept open for some time anyway to allow the submission of statements.

(The information requested is as follows:)

Question. How could S. 41 be used to allow the State of Idaho to select timberlands in lieu of the approximately 4,000 acres of State timberland to be lost at Bruce's Eddy Dam?

Answer. If S. 41 were enacted as introduced and if the State lands were taken by the United States in condemnation proceedings after the date of enactment, the State could select surveyed, unreserved, and unappropriated public lands or interests in lands of equal value to the State lands. In the context of the bill, the fact that land is affected by Executive Order 6910 of November 26, 1934, as amended, or section 1 of the Taylor Grazing Act, would not bar its disposal thereunder. However, lands in special withdrawals, e.g., reclamation, wildlife refuges, national forests, power site withdrawals, could not be disposed of.

The same would be true under S. 41 if amended as recommended by the Department except that the Secretary would have to determine that the selected lands were proper for disposition under the bill, considering such factors as, but not limited to, Federal program requirements, sound land use and conservation principles, and effective management of public lands.

There are approximately 372,000 acres of commercial timberland administered by the Bureau of Land Management in Idaho.

Question. If S. 41 were enacted, could the State of Idaho select the phosphate presently reserved to the United States in certain lands owned by the State in exchange for the State lands to be lost at Bruce's Eddy?

Answer. These phosphates, which we understand that the State is desirous of acquiring, are in special reservations established between 1908 and 1914 by Executive order. When the reservations were established the lands were still in the public domain. In 1913 special legislation was passed which permitted the State of Idaho to select under the indemnity laws these public lands, subject to a phosphate reservation to the United States. (See act of February 27, 1913, 37 Stat. 687.) The State subsequently selected over 117,000 acres subject to this reservation. Under S. 41, as introduced, such "interests" would be deemed

to be "reserved" and could not be selected by the State of Idaho. A further limitation would be imposed by our suggested amendment of the word "such" on page 2 of S. 41, which would limit selections to interests in public lands.

Question. How could S. 41 be amended to allow the selection of these phosphate reserves?

Answer. Delete on page 2, lines 1 and 2 and 18 and 19 the words "unreserved, or unappropriated" and "or interests in lands" and add a new section to S. 41 reading as follows:

"SEC. — As used in this Act, the term 'public lands' means (a) any public lands which are withdrawn by Executive Order Numbered 6910 dated November 26, 1934, as amended, or by Executive Order Numbered 6964 dated February 5, 1935, as amended, or pursuant to section 1 of the Act of June 28, 1934 (43 Stat. 1269), as amended (43 U.S.C. 315), and not otherwise reserved, or which are vacant, unappropriated, and unreserved public lands in Alaska, and (b) any retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals."

Senator BIBLE. You may proceed, Mr. Stoddard. I think you were about the middle of page 2.

Mr. STODDARD. The withdrawals cited in section 3 are temporary withdrawals, although they have been in existence for more than 25 years. They were made for the purpose of assisting the State of New Mexico in making exchange selections under the act of June 16, 1926 (44 Stat. 746). They were made in the days before the Taylor Grazing Act, and the lands subject to them are now to a large extent being managed as parts of grazing districts.

In 1950 the State of New Mexico consented to the revocation of these Executive orders and expressed its willingness to accept in exchange lands in northeastern New Mexico.

These exchanges for the most part were completed. Since that time, the commissioner of public lands for the State has objected to the revocation of the withdrawals until the completion of the exchanges under the 1926 act.

No revocations have been made except with the consent of the State, despite the fact that various private groups have urged that such revocations be made. We do not believe that preferred treatment of one State is justified.

We believe that section 5 should be deleted. Exchange statutes, including section 8 of the Taylor Grazing Act (43 U.S.C. 315g) do not readily lend themselves to encompassing condemned land as base land, as made manifest by the provisions of S. 41 and our proposed amendments thereto.

Section 6 would require the agencies acquiring land on behalf of the United States to reimburse a State and the Secretary of the Interior for expenses incurred by them in the negotiation and consummation of exchanges both under S. 41 and existing laws. We do not see why a State should be reimbursed for expenses incurred in an exchange which it chooses in preference to a monetary payment.

If we are to apply sound conservation principles in public land management, continuity of tenure is essential. We believe that S. 41 could result in instability of tenure and tend to disrupt established conservation activity on the public domain.

We will be glad to discuss any of the points raised in the Department's report and to try to answer any questions the committee wishes to consider.

Senator BIBLE. I think your last sentence has been partly taken care of.

I appreciate your statement, Mr. Stoddard. At this point, I would like to make part of the hearing record a letter dated June 20 from Assistant Secretary Carver reporting on the status of State selection applications.

(The letter referred to follows:)

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., June 20, 1963.

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

DEAR MR. CHAIRMAN: On April 4 we were visited by a group representing the Legislative Committee of the Western States Land Commissioners Association. The group expressed concern over the processing of State selections in several States. Some adverse comments were also made concerning the processing of State exchange applications. We subsequently asked the State directors of the Bureau of Land Management to submit a progress and background report concerning casework processing of State applications.

To supplement our April 24 letter to you concerning the lieu selection program of the State of Washington, we are enclosing a summary of our State directors' reports.

Sincerely yours,

JOHN A. CARVER, Jr.,  
*Assistant Secretary of the Interior.*

#### REPORT AS OF MAY 1963

##### ARIZONA

In 1958, many State selection applications were submitted, after a long period of few filings. By April 23, 1963, a total of 44 indemnity clear lists involving 477 State selection applications were approved. Total acreage amounted to 218,070. As of April 10, 1963, a total of 63 applications was pending for 26,816 acres. Of these, 28 have been approved, 20 are on appeal (18 involve the question of reservation of oil and gas), and 15 are in the early stages of processing. As of March 12, 1963, there were approximately 97,300 acres of indemnity base land outside national forests, for which no selection applications had been filed.

Over 60 school section patents have been issued to the State. Of the 15 school section patent applications pending as of April 23, 1963, 10 were filed in March 1963, and one other is on appeal. The four remaining applications are in various stages of adjudication. Most applications and patents cover only one section. The State has indicated that it will file school section applications at the rate of approximately 50 per year.

There have been only four State exchange applications filed in recent years.

##### CALIFORNIA

As of April 26, 1963, there were 16 pending State selection applications. Of these seven are on appeal to the Director, seven are in early stages of processing, and two have been approved. Unsatisfied selection rights amount to less than 3,000 acres.

Of 18 pending State exchange applications 10 are on appeal, 6 await field reports, and 2 have been approved. In the past, conflicts, inequality of values, mining claims, etc., have greatly hindered expeditions processing of exchange applications. Only 4 of the 22 exchange applications filed in the Sacramento Land Office since 1953 have gone to patent.

## COLORADO

No State selection applications were filed between 1940 and 1959. Only 12 have been filed since 1959, for a total of 4,946 acres. Of these, three are being published, two have been withdrawn, two were rejected, four are in various stages of processing, and one is on appeal. Since the passage of Public Law 85-771, the State Land Board has made little response to our inquiries concerning lieu selections. However, the board has been furnished detailed lists of lands restored by recent public land orders not affected by withdrawals, classification, etc.

Five State exchange applications have been made since 1950. A total of four have been completed and one is in publication. The selected acreage in these applications amounts to 37,364 and offered acreage to 32,274. Joint preliminary examination regarding C-093687 (now in publication) worked well and resulted in a substantially complete application which was promptly processed. This procedure will be followed as far as possible for subsequent filings.

The State claims only 2,300 acres in school indemnity selections in addition to that included in pending applications.

## IDAHO

Since 1930, 41,907 acres have been clear listed for State selection. There has been no year-by-year consistency in the number of filings. As of July 1, 1954, there were 41 pending applications for State selection. Only 19 new cases have been received since then, and only 16 cases have been reactivated (none since fiscal year 1957). All but one case have been closed. This case, filed February 5, 1963, is the first application for State selection since April 1961. Completion of the field report and recommendations is expected by July 1, 1963. An additional 60 days will be required for advertising in the land office. The State land department apparently wishes to file selections only when choice tracts become available. The land office is presently making a detailed study and review of the entire selection program in an effort to arrive at the acreage which the State is still entitled to select.

Until this year, the State land department lacked authority to exchange school lands. A new State law now permits it and the State has informally indicated that it will use this legislation extensively in the future. The State has not been requesting patents for school sections in place.

## MONTANA

As of April 24, 1963, there were three pending State selection applications. Two indemnity selections filed on September 30, 1932, have been unapprovable because of protests and mineral classifications. One filed June 8, 1951, was partially rejected. The State has been negotiating for additional selected land for each of these cases. Recently the State filed amendments withdrawing base land equal to the selected land involved, which should soon result in the issuance of clear lists.

The State made one application for patents to all school lands in place. That was filed June 12, 1942. Fifteen patents were issued through February 1963, and the final eight were mailed to the State in early April 1963, completing this work.

The State has no authority to make exchanges. Previous enabling legislation failed to pass.

## NEVADA

State selections in Nevada are made under several different laws. The act of June 8, 1926 (44 Stat. 708) authorizes 30,000 acres, of which 29,000 have been patented. One of the two pending applications is in publication. The other involves land in the Las Vegas District where many invalid mining claims are located. A detailed field examination is being conducted.

The act of July 4, 1866 (14 Stat. 85) authorizes 46,080 acres of which 45,759 have been patented. One application has been delayed by amendments to selected lands and the failure of the State to submit required supporting documents and affidavits.

The act of August 4, 1841 (5 Stat. 453), authorizes 500,000 acres, of which 100 acres remain. An application was filed July 24, 1962, for 78.5 acres. The field report of September 4, 1962, was incomplete and additional information is being obtained.

Nevada does not make exchanges under section 8 of the Taylor Grazing Act, nor does it seek school section patents.

#### NEW MEXICO

Of 133 pending State selection applications, 53 have been clear listed for a total of 8,216 acres. Fifty-nine of the 133 were filed in early 1950, and the remainder in mid-1952. There have been several causes of delay in processing:

1. 43 CFR 160.12 requires compensation to grazing lessees for range improvements. The State has no statutory authority to make such cash payments. It also objected, in 1954, to contacting all lessees involved to attempt to secure waivers of compensation. The field solicitor issued an opinion of December 14, 1955, holding that New Mexico Senate bill 30 of 1955 satisfied the requirements of the regulations.

2. The act of July 11, 1956, granted title to additional school section lands in place. This changed the validity of the offered base land in many of the pending selections. Where the base was found valid, the selections were approved.

3. On March 5, 1959, the State requested suspension of all action on all pending selection applications until the Public Land Commissioner determined the mineral character of the base lands. This suspension was lifted on 80 cases in April and June 1959.

4. In some cases, the State has had difficulties with respect to certificates of nonencumbrance from certain counties. Upon receipt of a solicitor's opinion of February 5, 1963, regarding interpretation of "land lost prior to survey" in the 1958 act, an intensified program of adjudication of the then 114 pending cases was begun. As of this report, 27 awaited certificates of nonencumbrance from the State, 25 awaited decisions authorizing publication, 20 of 22 on appeal to the Director were involved in an extension of time to July 1, 1963, and 31 cases had been rejected (15 had been closed). Five cases were in Washington, D.C., for advice on the State's refusal to offer additional base land in lieu of erroneously accepted base from prior clear lists. The other four cases involved relinquishment of State land for the Navajo Dam project and awaited completion of action on that relinquishment.

The land office awaits deeds and certificates of nonencumbrance for 2 State exchange applications involving a total of 3,244 acres. A third case needs further appraisal work. The 46 remaining State exchange applications are a "package" involving the Apache National Forest. Mineral examinations have been scheduled for 9 of the 46 as the result of a USGS report of February 6, 1963.

As of March 2, 1962, 270 school section patents had issued covering 3,464,675 acres. Only 7 applications are pending. Four of these are being closed by decision, two are in final stages of adjudication, and one should soon go to patent.

#### OREGON

Of the 27 State selection applications filed between June 1950 and September 1958, 7 were rejected or withdrawn involving 3,520 acres and 20 were clear listed for 10,953 acres. Thirteen applications were filed March 9, 1961, for 8,033 acres and 1 on August 14, 1962, for 77 acres. The lands embraced in these latter 14 applications are in conflict with management programs. A decision is expected to be issued by July 1, 1963.

Of the 48 State exchange applications filed between January 1950 and May 1952, 11 were rejected or withdrawn involving 135,650 acres and 35 were patented for 141,517 acres. Initial appraisal work has been completed for the remaining 2 applications, which involve 14,965 acres in the so-called Boardman area. The State must now make certain amendments regarding the offered lands. A final offer in the near future could result in completion of an appraisal by January 1, 1964. The State plans to apply for an additional 12,000 acres in the area.

## UTAH

Only 280 acres were clear listed for State selection from 1956 through 1960. Activity was generally slight until passage of Public Law 85-771 in 1958. There were 70 filings in fiscal year 1958, 214 in fiscal year 1959, 179 in fiscal year 1960, 77 in fiscal year 1961, and 142 since fiscal year 1961. Since January 1, 1963, 38,000 acres have been clear listed.

As of April 26, 1963, there were 174 pending State selection applications amounting to 105,000 acres. Of these, 52 involving 31,000 acres are on appeal before the Secretary. The remainder are in various stages of adjudication of which 31 were filed after January 1, 1963. Many others were filed in 1962 and involve mineral or other conflicts. Status maps and other information have been furnished the State to facilitate its selection program.

There were 8 pending exchange applications amounting to 16,781 acres as of April 26, 1963. Four await classification, two need title data, and two are in publication.

As of April 26, 1963, patents were expected to be issued soon for two of the four pending quantity grant applications. The other two should now be in publication. Total acreage applied for is 347.

Most of the 257 confirming patent applications on hand as of April 26, 1963, are awaiting land office action. Of these, 148 were filed since November 1962.

There are 14 applications pending under the Recreation and Public Purposes Act for 23,000 acres. Seven each were filed by the State Park Commission and Fish and Game Department. One is on appeal, one will soon be patented, one is in publication, two have been granted an extension of time for payment, and the other nine are in various stages of processing.

## WASHINGTON

There was little State selection activity from 1933 through 1958, with approval of only 9 clear lists for the transfer of about 4,300 acres. The State reactivated its selection program in 1954. Since that time, 638 applications have been filed and 139,493 acres have been transferred to the State as follows:

Date transferred:	<i>Acreage</i>
Fiscal year 1958-----	4, 651
Fiscal year 1959-----	9, 693
Fiscal year 1960-----	25, 740
Fiscal year 1961-----	30, 154
Fiscal year 1962-----	46, 749
Fiscal year 1963 (as of April 24)-----	22, 506

Forty-two applications for selection were pending as of April 24, 1963, involving about 20,214 acres. Action on about 15,000 acres has been deferred until a determination is made on the question whether nonexistent base land was used in previous clear lists. The remaining applications are being processed. The State has requested that action on two of the remaining cases be deferred; one case is being delayed because of a contest, and one case needs a mineral examination.

The State has filed 179 applications for school section patents to sections 16 and 36 under the act of June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871). Further action awaits receipt of USGS reports.

No applications to exchange lands have been filed in the State of Washington.

## WYOMING

Few State selection applications were filed in recent years prior to January 1962. Since that time about 5,154 acres have been claimed by the State for losses due to natural deficiencies. The State is apparently entitled to select an

additional 10,000 acres. The land office has checked proposed lists submitted by the State in order to expedite action on applications to be filed.

The most recent State exchange patent was issued January 5, 1956. The Glendo-Keyhole application, in connection with the Bureau of Reclamation's Glendo Reservoir, was withdrawn by the State in 1962 after 5 years of negotiations. One other application, filed April 18, 1963, is scheduled for classification by July 15, 1963.

Senator BIBLE. It seems to me that this fits in particularly well right at this point in the hearing, and I notice insofar as my own State is concerned that the statement is to the effect that the State does not make exchanges under section 8 of the Taylor Grazing Act nor does it seek school selection patents.

I would like to have that amplified and explained.

I think an early and sound selection was made by the State of Nevada, but to round out the record I think it could be done.

(The information requested is as follows:)

Answer to Senator Bible's request to enlarge upon the statement made in the Department's June 20 letter to Chairman Jackson on the current status of lieu selections and State exchanges that Nevada does not make exchanges under section 8 of the Taylor Grazing Act, nor does it seek school section patents.

Answer. A table showing the number of Taylor Act State exchanges during the last 11 fiscal years is enclosed. Nevada has made some Taylor Act exchanges in the past, but apparently has not chosen to do so during the last 5 years.

Nevada received a quantity grant of public land in lieu of the school sections in each township granted to most of the other public land States. The clear lists which the State received on its approved selections under this grant serve as muniments of title and no patent is required.

A table indicating current State indemnity selection activity is also enclosed.

*Current State indemnity selection activity*

State	Best estimates of total remaining acreage due State for school land selection pursuant to 43 U.S.C. 851-852	Total acres involved in pending State indemnity selection applications as of June 30, 1963
Arizona .....	1 97,300	26,800
California .....	17,528	3,145
Colorado .....	2,300	2,042
Idaho .....	30,000	354
Montana .....	16,000	1,500
Nevada .....	(2)	None
New Mexico .....	23,000	18,700
Oregon .....	8,410	8,400
Utah .....	465,000	191,000
Washington .....	3 21,000	20,200
Wyoming .....	15,000	5,000
Total .....	4 695,538	277,141

<sup>1</sup> Includes 40,000 acres in question.

<sup>2</sup> Negligible.

<sup>3</sup> Includes 15,000 acres in question.

<sup>4</sup> Includes 55,000 acres in question.





Senator BIBLE. Then I would like to have you furnish for the record tables showing the ownership of State lands for the various public States, and State lands in other non-public-land States.

(The information requested is as follows:)

Enclosed is a copy of a U.S. Department of Agriculture publication, "Federal and State Rural Lands, 1950." Table 23, beginning on page 90, contains a State-by-State breakdown of State-owned rural land. This is the most up-to-date information that we have at present. The subcommittee indicated that it may contact the various States for current information. Study Report No. 2 of the Outdoor Recreation Resources Review Commission contains a list of designated recreation areas in each State. We believe that the enclosed table would more closely approximate the total area owned by the States than the ORRRC table.

(Tables 23-27 are reproduced in the hearing record. The publication itself is retained in the committee files.)

TABLE 23.—State-owned rural land: Purposes of ownership by geographic divisions, 1949<sup>1</sup>  
[Number of acres]

State	Land held for specific public uses							Total	Land with-out use designation <sup>7</sup>	Total State-owned
	Forests <sup>2</sup>	Parks <sup>3</sup>	Wildlife reserves <sup>4</sup>	Institutional sites <sup>5</sup>	Miscellaneous other uses <sup>6</sup>	Total				
Alabama.....	110,692	31,465	13,881	102,061	1,609	259,708	61,196	320,904		
Arizona.....	15,245	3,265	3,265	3,265	—	9,890,028	9,890,028	9,940,478		
Arkansas.....	22,040	15,245	22,040	2,043	—	41,450	350,000	393,041		
California.....	16,779	24,155	24,155	2,043	—	43,041	2,119,233	2,931,929		
Colorado.....	543,899	166,643	166,643	15,500	8,280	812,696	47,148	3,180,819		
Connecticut.....	31,648	31,648	31,648	15,500	—	47,148	3,133,671	3,180,819		
Delaware.....	5,847	5,847	5,847	12,670	4,350	158,960	—	158,960		
Florida.....	4,192	2	4,380	9,003	—	9,477	—	9,477		
Georgia.....	25,903	46,961	71,420	46,010	136,562	326,846	747,510	1,074,356		
Idaho.....	39,077	33,922	16,649	16,649	—	89,648	—	89,648		
Illinois.....	50,000	8,249	13,421	13,421	—	93,990	2,867,500	2,961,490		
Indiana.....	10,163	29,364	30,871	30,101	—	100,559	—	100,559		
Iowa.....	96,249	43,851	19,140	38,812	—	198,052	—	198,052		
Kansas.....	14,582	23,910	17,252	15,549	—	71,293	477	71,770		
Kentucky.....	5,600	32,285	6,300	15,820	581	60,586	—	60,586		
Louisiana.....	3,624	11,411	3,048	27,981	—	46,064	—	46,064		
Maine.....	8,045	11,521	250,000	14,626	13	284,205	—	284,205		
Maryland.....	21,643	159,353	1,750	1,750	—	182,746	—	182,746		
Massachusetts.....	78,190	4,602	3,271	3,271	—	109,241	—	109,241		
Michigan.....	171,433	18,364	2,322	6,867	2,964	202,000	123	202,000		
Minnesota.....	3,640,126	144,467	571,219	37,891	—	4,403,157	—	4,403,157		
Mississippi.....	2,002,425	83,346	1,312,778	49,851	80	154,611	—	154,611		
Missouri.....	23,626	66,294	66,294	29,664	146	262,007	—	262,007		
Montana.....	118,170	58,139	56,488	21,715	—	700,811	—	700,811		
Nebraska.....	473,109	2,963	203,024	21,715	—	19,863	—	19,863		
Nevada.....	—	9,065	5,897	10,798	—	20,780	—	20,780		
New Hampshire.....	11,488	11,488	5,897	3,395	—	58,120	—	58,120		
New Jersey.....	8,490	45,481	1,184	2,965	—	58,120	—	58,120		
New Mexico.....	87,337	18,382	54,738	11,681	—	172,138	—	172,138		
New York.....	3,201	77,145	68,124	148,470	—	1,355,000	—	1,355,000		
North Carolina.....	2,896,428	166,901	15,468	3,106,945	—	3,106,945	—	3,106,945		
North Dakota.....	114,866	34,142	139,609	44,648	—	333,265	—	333,265		
Ohio.....	3,536	3,536	12,749	9,213	—	1,807,065	—	1,807,065		
Oklahoma.....	130,904	56,161	27,575	25,447	—	240,087	—	240,087		
Oregon.....	46,938	146,203	146,203	239,965	—	930,283	—	930,283		
Pennsylvania.....	664,944	63,900	26,982	18,524	—	1,605,361	—	1,605,361		
Rhode Island.....	1,730,520	195,649	881,555	15,886	—	2,824,942	—	2,824,942		
	532	6,877	114	1,976	1,332	9,588	—	9,588		

See footnotes at end of table.

TABLE 23.—State-owned rural land: Purposes of ownership by geographic divisions, 1949<sup>1</sup>—Continued  
 [Number of acres]

State	Land held for specific public uses						Total	Land with-out use designation <sup>7</sup>	Total State-owned
	Forests <sup>2</sup>	Parks <sup>3</sup>	Wildlife reserves <sup>4</sup>	Institutional sites <sup>5</sup>	Miscellaneous other uses <sup>6</sup>	Total			
South Carolina.....	133,216	44,803	6,427	13,900	-----	194,346	816,831	1,011,177	
South Dakota.....	17,067	70,338	1,174	2,172	-----	90,751	2,434,226	2,524,977	
Tennessee.....	114,222	69,938	94,940	70,291	-----	349,391	3,279,868	3,629,259	
Texas.....	6,696	57,85	70,327	16,204	458	151,254	3,128,614	3,279,868	
Utah.....	-----	85	65,354	7,123	-----	72,562	2,954,454	3,027,016	
Vermont.....	72,498	6,368	-----	2,209	-----	81,075	-----	81,075	
Virginia.....	1,801	25,224	13,346	45,422	3,537	89,330	-----	89,330	
Washington.....	620,243	56,452	94,597	13,082	221	784,595	2,157,440	2,942,044	
West Virginia.....	64,288	28,175	26,796	18,456	9,937	147,652	-----	147,652	
Wisconsin.....	273,168	15,847	67,820	13,404	-----	371,278	159,921	531,199	
Wyoming.....	-----	1,356	6,514	5,141	-----	13,011	3,633,788	3,646,799	
United States.....	14,021,688	2,384,597	4,760,870	1,064,967	171,198	22,403,320	57,943,952	80,347,272	

<sup>1</sup> Does not include highway and road rights-of-way.

<sup>2</sup> Land in organized forests. Does not include forest and woodland in parks, wildlife reserves, and other special-use areas, or land not specifically transferred to forestry management from land-grant and tax-forfeited holdings.

<sup>3</sup> Does not include State park and recreational developments on leased land.

<sup>4</sup> Does not include cooperative reserves on Federal land and State reserves on leased privately owned land.

<sup>5</sup> These data are incomplete for some States.

<sup>6</sup> Includes National Guard camps and rifle ranges, fairgrounds, airports, radio stations, flood-control areas, and watershed-protection areas.

<sup>7</sup> Consists largely of State grant and tax-forfeited land. About 43.9 million acres of this land are used for agricultural purposes.

Source: Compiled by Bureau of Agricultural Economics from data supplied by the administering agencies.

TABLE 24.—Major uses of State-owned rural land, by States and geographic divisions, 1949

[In thousands of acres]

Division and State	Farming and grazing <sup>1</sup>	Forest land not grazed <sup>2</sup>	Special public services <sup>3</sup>	All other land <sup>4</sup>	Total State-owned land
<b>Northeast:</b>					
Maine.....		22	161		183
New Hampshire.....		9	49		58
Vermont.....	2	73	6		81
Massachusetts.....	3	171	28		202
Rhode Island.....	1	1	8		10
Connecticut.....	1	122	36		159
New York.....	6	2,897	204		3,107
New Jersey.....	6	91	75		172
Pennsylvania.....	6	1,730	1,089		2,825
Delaware.....	1	4	5		10
Maryland.....	2	78	29		109
Total.....	28	5,198	1,690		6,916
<b>Lake States:</b>					
Michigan.....	6	3,640	757		4,403
Wisconsin.....	12	423	86	10	531
Minnesota.....	11	2,597	1,435	1,464	5,507
Total.....	29	6,660	2,278	1,474	10,441
<b>Corn Belt:</b>					
Ohio.....	17	130	93		240
Indiana.....	25	109	64		198
Illinois.....	26	10	64		100
Iowa.....	11	15	46		72
Missouri.....	22	127	122	3	274
Total.....	101	391	389	3	884
<b>Appalachian:</b>					
Virginia.....	8	2	79		89
West Virginia.....	8	64	75		147
North Carolina.....	11	115	207		333
Kentucky.....	10	9	27		46
Tennessee.....	6	114	229		349
Total.....	43	304	617		964
<b>Southeast:</b>					
Alabama.....	1	169	148	3	321
Georgia.....	7	39	44		90
Florida.....	60	584	241	189	1,074
South Carolina.....	6	133	57	815	1,011
Total.....	74	925	490	1,007	2,496
<b>Mississippi Delta:</b>					
Arkansas.....		350	43		393
Louisiana.....		8	276		284
Mississippi.....	9	44	102		155
Total.....	9	402	421		832
<b>Southern Plains:</b>					
Oklahoma.....	838		219	113	1,170
Texas.....	2,760	18	129	373	3,280
Total.....	3,598	18	348	486	4,450
<b>Northern Plains:</b>					
North Dakota.....	1,814		6		1,820
South Dakota.....	2,402	17	72	34	2,525
Nebraska.....	1,637		16	6	1,659
Kansas.....	8	6	47		61
Total.....	5,861	23	141	40	6,065

See footnotes at end of table.

TABLE 24.—Major uses of State-owned rural land, by States and geographic divisions, 1949—Continued

[In thousands of acres]

Division and State	Farming and grazing <sup>1</sup>	Forest land not grazed <sup>2</sup>	Special public services <sup>3</sup>	All other land <sup>4</sup>	Total State-owned land
Mountain:					
Montana.....	4,798	493	207	-----	5,498
Idaho.....	2,147	757	33	24	2,961
Wyoming.....	3,270	6	7	364	3,647
Colorado.....	3,044	93	44	-----	3,181
New Mexico.....	11,341	3	81	78	11,503
Arizona.....	8,734	750	39	418	9,941
Utah.....	1,928	226	66	807	3,027
Nevada.....	37	-----	19	2	58
Total.....	35,299	2,328	496	1,693	39,816
Pacific:					
Washington.....	780	620	159	1,383	2,942
Oregon.....	505	745	96	263	1,609
California.....	154	94	730	1,944	2,932
Total.....	1,449	1,459	985	3,590	7,483
U.S. total.....	46,491	17,708	7,855	8,293	80,347

<sup>1</sup> Includes land leased out for farming and grazing and land used by the State in institutional farms, experiment stations, etc.

<sup>2</sup> Does not include forest and woodland used primarily for grazing or for special purposes such as parks, fish and game refuges, and institutional sites.

<sup>3</sup> Does not include land used primarily for agricultural production. Includes an undetermined acreage of forest and wood land some of which has commercial value.

<sup>4</sup> Consists largely of idle and waste land, including State grant and tax-forfeited land not under lease and with no reported use. Some of this land may have been used in trespass for grazing.

Source: Compiled by Bureau of Agricultural Economics from data supplied by administering agencies.

TABLE 25.—State-owned rural land used for public services, by States and geographic divisions, 1949 <sup>1</sup>

[In thousands of acres]

Division and State	Parks <sup>2</sup>	Fish and game reserves <sup>3</sup>	Institutional sites <sup>4</sup>	Miscellaneous other uses <sup>5</sup>	Total
Northeast:					
Maine.....	159	-----	2	-----	161
New Hampshire.....	46	1	3	-----	50
Vermont.....	6	-----	-----	-----	6
Massachusetts.....	18	2	4	3	27
Rhode Island.....	7	-----	1	-----	8
Connecticut.....	16	5	10	4	35
New York.....	167	28	9	-----	204
New Jersey.....	18	55	2	-----	75
Pennsylvania.....	196	882	10	1	1,089
Delaware.....	-----	4	-----	-----	4
Maryland.....	5	23	2	-----	30
Total.....	638	1,000	43	8	1,689
Lake States:					
Michigan.....	145	571	41	-----	757
Wisconsin.....	16	68	3	-----	87
Minnesota.....	83	1,313	39	-----	1,435
Total.....	244	1,952	83	-----	2,279
Corn Belt:					
Ohio.....	56	28	9	-----	93
Indiana.....	44	19	1	-----	64
Illinois.....	28	31	5	-----	64
Iowa.....	24	17	5	-----	46
Missouri.....	58	51	13	-----	122
Total.....	210	146	33	-----	389

See footnotes at end of table.

TABLE 25.—*State-owned rural land used for public services, by States and geographic divisions, 1949*<sup>1</sup>—Continued

[In thousands of acres]

Division and State	Parks <sup>2</sup>	Fish and game reserves <sup>3</sup>	Institutional sites <sup>4</sup>	Miscellaneous other uses <sup>5</sup>	Total
<b>Appalachian:</b>					
Virginia.....	25	13	37	4	79
West Virginia.....	28	27	10	10	75
North Carolina.....	34	140	33	-----	207
Kentucky.....	11	3	13	-----	27
Tennessee.....	70	95	64	-----	229
Total.....	168	278	157	14	617
<b>Southeast:</b>					
Alabama.....	32	14	101	2	149
Georgia.....	34	-----	10	-----	44
Florida.....	47	72	46	76	241
South Carolina.....	45	7	6	-----	58
Total.....	158	93	163	78	492
<b>Mississippi Delta:</b>					
Arkansas.....	17	24	2	-----	43
Louisiana.....	12	250	14	-----	276
Mississippi.....	11	66	25	-----	102
Total.....	40	340	41	-----	421
<b>Southern Plains:</b>					
Oklahoma.....	47	146	25	-----	218
Texas.....	42	70	16	1	129
Total.....	89	216	41	1	347
<b>Northern Plains:</b>					
North Dakota.....	4	-----	2	-----	6
South Dakota.....	70	1	1	-----	72
Nebraska.....	9	-----	7	-----	16
Kansas.....	32	6	9	-----	47
Total.....	115	7	19	-----	141
<b>Mountain:</b>					
Montana.....	3	203	1	-----	207
Idaho.....	8	22	3	-----	33
Wyoming.....	1	-----	5	-----	6
Colorado.....	-----	32	12	-----	44
New Mexico.....	3	77	1	-----	81
Arizona.....	15	23	-----	-----	38
Utah.....	-----	65	-----	-----	65
Nevada.....	12	6	2	-----	20
Total.....	42	428	24	-----	494
<b>Pacific:</b>					
Washington.....	56	93	10	-----	159
Oregon.....	64	27	5	-----	96
California.....	544	167	14	6	731
Total.....	664	287	29	6	986
U.S. total.....	2,368	4,747	633	107	7,855

<sup>1</sup> Does not include land used primarily for farming and grazing. Includes an undetermined acreage of forest and wood land, some of which has commercial value.

<sup>2</sup> Does not include State park and recreational developments on leased land.

<sup>3</sup> Does not include cooperative reserves on Federal land and State reserves on leased privately owned land.

<sup>4</sup> These data are incomplete for some States.

<sup>5</sup> Includes National Guard camps and rifle ranges, fairgrounds, airports, radio stations, flood-control areas and watershed-protection areas. Because of rounding of figures agency totals do not always add to State totals.

TABLE 26.—*State-owned land used for farming and grazing, by States and geographic divisions, 1949*<sup>1</sup>

[Number of acres]

Division and State	Farming	Grazing	Total
<b>Northeast:</b>			
Maine.....			
New Hampshire.....	162	165	327
Vermont.....	1,159	1,050	2,209
Massachusetts.....	1,720	979	2,699
Rhode Island.....	715	90	805
Connecticut.....	908	455	1,363
New York.....	4,113	2,054	6,167
New Jersey.....	4,988	1,134	6,122
Pennsylvania.....	4,517	1,377	5,894
Delaware.....	416	133	549
Maryland.....	1,282	341	1,623
Total.....	19,980	7,778	27,758
<b>Lake States:</b>			
Michigan.....	5,120	903	6,023
Wisconsin.....	10,362	1,175	11,537
Minnesota.....	10,390	350	10,740
Total.....	25,872	2,428	28,300
<b>Corn Belt:</b>			
Ohio.....	12,175	4,412	16,587
Indiana.....	13,521	11,535	25,056
Illinois.....	13,425	12,451	25,876
Iowa.....	7,407	3,222	10,629
Missouri.....	20,131	2,275	22,406
Total.....	66,659	33,895	100,554
<b>Appalachian:</b>			
Virginia.....	6,533	2,131	8,664
West Virginia.....	2,740	5,653	8,393
North Carolina.....	9,361	1,903	11,264
Kentucky.....	3,319	6,900	9,919
Tennessee.....	5,754		5,754
Total.....	27,707	16,287	43,994
<b>Southeast:</b>			
Alabama.....	1,140		1,140
Georgia.....	5,422	1,500	6,922
Florida.....	320	60,000	60,320
South Carolina.....	3,587	1,884	5,471
Total.....	10,469	63,384	73,853
<b>Mississippi Delta:</b>			
Arkansas.....			
Louisiana.....	74	105	179
Mississippi.....	4,000	5,000	9,000
Total.....	4,074	5,105	9,179
<b>Southern Plains:</b>			
Oklahoma.....	573,063	265,378	838,441
Texas.....		2,760,365	2,760,365
Total.....	573,063	3,025,743	3,598,806
<b>Northern plains:</b>			
North Dakota.....	184,174	1,630,115	1,814,289
South Dakota.....	12,406	2,389,858	2,402,264
Nebraska.....	1,885	1,635,061	1,636,946
Kansas.....	4,673	2,874	7,547
Total.....	203,138	5,657,908	5,861,046

See footnotes at end of table.

TABLE 26.—*State-owned land used for farming and grazing, by States and geographic divisions, 1949*<sup>1</sup>—Continued

[Number of acres]

Division and State	Farming	Grazing	Total
<b>Mountain:</b>			
Montana.....	678,162	4,119,229	4,797,391
Idaho.....	110,662	2,036,216	2,146,878
Wyoming.....	20,000	3,250,000	3,270,000
Colorado.....	139,409	2,905,131	3,044,540
New Mexico.....	76,250	11,265,403	11,341,653
Arizona.....	284,469	8,449,228	8,733,697
Utah.....	46,125	1,882,235	1,928,360
Nevada.....	336	36,090	36,426
Total.....	1,355,413	33,943,532	35,298,945
<b>Pacific:</b>			
Washington.....	112,812	666,856	779,668
Oregon.....	2,942	501,508	504,450
California.....	10,025	154,371	164,396
Total.....	125,779	1,322,735	1,448,514
United States.....	2,412,154	44,078,795	46,490,949

<sup>1</sup> Includes land leased out for farming and grazing and land used for institutional farms, experiment stations, wildlife-feeding areas, etc.

TABLE 27.—*Grazing supplied by State-owned range, by States and geographic divisions, 1949*

Division and State	Acres grazed <sup>1</sup>	Animal-unit months of grazing <sup>2</sup>
	Acres	Units
<b>Northeast:</b>		
Maine.....		8
New Hampshire.....	165	
Vermont.....	1,050	457
Massachusetts.....	979	979
Rhode Island.....	90	180
Connecticut.....	455	455
New York.....	2,054	734
New Jersey.....	1,134	1,134
Pennsylvania.....	1,377	1,530
Delaware.....	133	95
Maryland.....	341	379
Total.....	7,778	5,951
<b>Lake States:</b>		
Michigan.....	903	226
Wisconsin.....	1,175	43
Minnesota.....	350	27
Total.....	2,428	296
<b>Corn Belt:</b>		
Ohio.....	4,412	4,412
Indiana.....	11,535	8,873
Illinois.....	12,451	10,376
Iowa.....	3,222	1,074
Missouri.....	2,275	102
Total.....	33,895	24,837
<b>Appalachian:</b>		
Virginia.....	2,131	710
West Virginia.....	5,653	377
North Carolina.....	1,903	80
Kentucky.....	6,600	180
Tennessee.....		
Total.....	16,287	1,347

See footnotes at end of table.

TABLE 27.—Grazing supplied by State-owned range, by States and geographic divisions, 1949—Continued

Division and State	Acres grazed <sup>1</sup>	Animal-unit months of grazing <sup>2</sup>
	Acres	Xmits
<b>Southeast:</b>		
Alabama.....		
Georgia.....	1,500	57
Florida.....	60,000	6,452
South Carolina.....	1,884	165
Total.....	63,384	6,674
<b>Mississippi Delta:</b>		
Arkansas.....		
Louisiana.....	105	11
Mississippi.....	5,000	255
Total.....	5,105	266
<b>Southern Plains:</b>		
Oklahoma.....	265,378	115,206
Texas.....	2,760,365	467,858
Total.....	3,025,743	583,064
<b>Northern Plains:</b>		
North Dakota.....	1,630,115	465,747
South Dakota.....	2,389,858	597,464
Nebraska.....	1,635,061	441,908
Kansas.....	2,874	737
Total.....	5,657,908	1,505,856
<b>Mountain:</b>		
Montana.....	4,119,229	735,577
Idaho.....	2,036,216	248,319
Wyoming.....	3,250,000	524,194
Colorado.....	2,905,131	453,927
New Mexico.....	11,265,403	1,609,343
Arizona.....	8,449,228	880,128
Utah.....	1,882,235	261,422
Nevada.....	36,090	2,136
Total.....	33,943,532	4,715,046
<b>Pacific:</b>		
Washington.....	666,856	74,928
Oregon.....	501,508	41,107
California.....	154,371	16,250
Total.....	1,322,735	132,285
<b>United States total.....</b>	<b>44,078,795</b>	<b>6,975,622</b>

<sup>1</sup>Includes land on which grazing is authorized by permits or leases and land used for grazing by State institutions. Does not include unauthorized or trespass grazing.

<sup>2</sup>Estimated. The estimates were made for States and areas on the basis of available statistics on grazing uses of comparable federally owned range and generalized information with respect to the vegetative cover and grazing capacity of the various range areas. No allowance is made in these estimates for trespass grazing.

Source: Compiled by Bureau of Agricultural Economics from data supplied by administering agencies.

Senator BIBLE. Then, I don't know if this is the period of time that is easily accesible or not but I would think it would be helpful to the committee if you could give to us for the last 10 years to what extent the Federal Government has acquired State lands. I think a 10-year period is sufficiently long, if this is not available and too great an effort.

(COMMITTEE NOTE.—Data not available from Federal sources.)

Mr. HOCHMUTH. Mr. Chairman, may I go back to the first of your two requests?

Senator BIBLE. Yes.

Mr. HOCHMUTH. It may be difficult for us to get a table showing the ownership of State lands both in the public land States and in the nonpublic land States.

Senator BIBLE. In other words, what you are saying is we may have to look to the State to supply this.

Mr. HOCHMUTH. Yes, sir.

Senator BIBLE. And you don't have a cross table or they don't furnish you with any reports that would indicate that?

Mr. STODDARD. I think we can get a rough estimate together within a reasonable time, Mr. Chairman.

Senator ANDERSON. I would suggest this, Senator Bible.

If they can't furnish it, all the committee has to do is write to the States involved and get the answer from the public land States. The State of New Mexico could tell you how much public land is owned, so could the State of Nevada.

Senator BIBLE. Yes; I just thought this would be readily available to you somewhere in the Bureau of Land Management.

Senator ANDERSON. In the Bureau of Outdoor Recreation of the Department of Interior there is a tabulation. I have seen something of that nature.

Mr. STODDARD. I think there are sources, and if there are certain kinds of State lands that may be omitted we will write directly to the States to get it.

Senator BIBLE. It occurs to me that with all of the statistics we keep that should be readily available.

Mr. STODDARD. This is an example of the gap that exists between the Federal and some of the State governments on these matters.

Senator ANDERSON. I could make a very nasty remark.

Senator BIBLE. If it is available, furnish it.

Mr. STODDARD. We will try to get it.

(The information requested is printed on p. 238.)

Senator BIBLE. Now, you are able to furnish over a period of the last 10 years, the extent to which the Federal Government has acquired State lands, I assume that is within your responsibility.

Mr. STODDARD. You are considering military lands, GSA lands as well as lands for conservation purposes. This would be the whole thing.

Senator BIBLE. This is correct. The total Government acquisition of State land over the last 10 years.

(The information requested is as follows:)

Table 4, on page 45, of the enclosed GSA Inventory Report on Real Property owned by the United States, indicates that as of June 30, 1962, the Federal Government owned a total of 51.4 million acres of nonpublic domain land. A similar GSA inventory indicates that as of June 30, 1955, nonpublic domain lands owned by the Federal Government totaled 50.7 million acres. We do not know of any available tabulations showing actual acquisitions and dispositions on a year-by-year or State-by-State basis for any one agency, nor for the entire Federal Government. Table 4 is reproduced and the publication is retained in committee files.

TABLE 4.—Comparison of federally owned land with total acreage of States

State	Acreage owned by the Federal Government			Acreage not owned by Federal Government	Total acreage of State <sup>1</sup>	Percent owned by Government <sup>2</sup>
	Public domain	Acquired by other methods	Total			
Alabama.....	61,419.9	1,021,252.3	1,082,672.2	31,595,727.8	32,678,400	3.313
Alaska.....	365,052,672.2	16,613.1	365,069,285.3	412,314.7	365,481,600	99.887
Arizona.....	32,241,895.6	296,305.0	32,538,200.6	40,149,799.4	72,688,000	44.764
Arkansas.....	1,073,307.4	1,951,981.7	3,025,289.1	30,574,070.9	33,599,360	9.004
California.....	42,619,513.5	1,993,614.8	44,613,128.3	55,993,591.7	100,206,720	44.521
Colorado.....	22,971,436.2	942,193.8	23,913,630.0	42,572,130.0	66,485,760	35.968
Connecticut.....	0	6,713.8	6,713.8	3,128,646.2	3,135,360	.214
Delaware.....	0	31,562.3	31,562.3	1,234,357.7	1,265,920	2.493
District of Columbia.....	0	11,283.7	11,283.7	27,756.3	39,040	28.903
Florida.....	321,833.5	3,005,114.3	3,326,947.8	31,394,282.4	34,721,280	9.582
Georgia.....	0	2,034,062.6	2,034,062.6	35,261,297.4	37,295,360	5.454
Hawaii.....	0	233,035.0	233,035.0	3,872,565.0	4,105,600	5.676
Idaho.....	33,458,255.5	737,012.9	34,195,268.4	18,737,851.6	52,933,120	64.601
Illinois.....	531.2	437,176.7	437,707.9	35,357,492.1	35,795,200	1.223
Indiana.....	320.0	346,913.6	347,233.6	22,811,166.4	23,158,400	1.499
Iowa.....	340.7	142,671.1	143,011.8	35,717,468.2	35,860,480	.399
Kansas.....	26,674.8	401,548.3	428,223.1	52,082,496.9	52,510,720	.815
Kentucky.....	0	1,067,377.1	1,067,377.1	24,444,942.9	25,512,320	4.184
Louisiana.....	26,338.0	1,021,493.2	1,047,831.2	27,820,008.8	28,867,840	3.630
Maine.....	0	129,865.3	129,865.3	19,717,814.7	19,847,680	.654
Maryland.....	0	182,063.6	182,063.6	6,137,296.4	6,319,360	2.881
Massachusetts.....	0	58,321.3	58,321.3	4,976,558.7	5,034,880	1.158
Michigan.....	290,099.2	2,958,207.9	3,248,307.1	33,243,852.9	36,492,160	8.901
Minnesota.....	1,425,985.3	1,915,095.4	3,341,080.7	47,864,679.3	51,205,760	6.525
Mississippi.....	6,809.6	1,505,063.0	1,511,872.6	28,710,847.4	30,222,720	5.002
Missouri.....	3,069.8	1,692,691.4	1,695,761.2	42,552,558.8	44,248,320	3.832
Montana.....	25,252,552.0	2,427,213.6	27,679,765.6	65,591,274.9	93,271,040	29.677
Nebraska.....	250,188.0	451,299.2	701,487.2	48,330,192.8	49,031,680	1.431
Nevada.....	59,834,418.2	212,895.3	60,047,313.5	10,217,006.5	70,264,320	85.459
New Hampshire.....	0	703,679.3	703,679.3	5,065,280.7	5,768,960	12.198
New Jersey.....	0	100,521.4	100,521.4	4,712,918.6	4,813,440	2.088
New Mexico.....	25,909,236.9	1,240,863.5	27,150,100.4	50,616,299.6	77,766,400	34.912
New York.....	0	223,935.5	223,935.5	30,457,024.5	30,680,960	.730
North Carolina.....	0	1,899,994.4	1,899,994.4	29,502,885.6	31,402,880	6.050
North Dakota.....	211,169.8	1,795,166.7	2,006,336.5	42,446,143.5	44,452,480	4.513
Ohio.....	114.9	209,907.6	210,022.5	26,012,057.5	26,222,080	.801
Oklahoma.....	175,225.2	1,031,951.9	1,207,177.1	42,880,502.9	44,087,680	2.738
Oregon.....	30,454,340.3	1,514,698.2	31,969,038.5	29,629,681.5	61,598,720	51.899
Pennsylvania.....	0	559,721.7	559,721.7	28,244,758.3	28,804,480	1.943
Rhode Island.....	0	7,645.9	7,645.9	669,474.1	677,120	1.129
South Carolina.....	0	1,127,321.9	1,127,321.9	18,246,758.1	19,374,080	5.819
South Dakota.....	1,604,182.2	1,786,476.3	3,390,658.5	45,491,261.5	48,881,920	6.936
Tennessee.....	0	1,560,812.9	1,560,812.9	25,176,867.1	26,727,680	5.802
Texas.....	0	2,735,515.4	2,735,515.4	165,482,084.6	168,217,600	1.626
Utah.....	35,596,053.3	428,179.8	36,024,233.1	16,672,726.9	52,696,960	68.361
Vermont.....	0	254,573.1	254,573.1	5,682,066.9	5,936,640	4.288
Virginia.....	0	2,133,319.0	2,133,319.0	23,363,001.0	25,496,320	8.367
Washington.....	11,099,094.4	1,485,956.1	12,585,050.5	30,108,709.5	42,693,760	29.477
West Virginia.....	0	953,105.5	953,105.5	14,457,454.5	15,410,560	6.185
Wisconsin.....	19,716.6	1,762,691.3	1,782,407.9	33,228,792.1	35,011,200	5.091
Wyoming.....	29,386,279.3	687,040.9	30,073,320.2	32,269,719.8	62,343,040	48.238
Total.....	719,373,123.5	51,423,719.6	770,796,843.1	1,500,546,516.9	2,271,343,360	33.936

<sup>1</sup> Source: U.S. Census of Population: 1960 Final Report PC (1)-1A, table 12.

<sup>2</sup> Excludes trust properties.

Senator BIBLE. Third, what are the prospects over the next several years for Federal acquisition of State-owned lands?

Mr. STODDARD. Well, all I can do is to speculate, about the same position that—I think the committee, perhaps you men have a better idea than we do, just a value judgment on this.

I think military lands, and NASA lands are probably pretty well laid out and determined by now.

Senator BIBLE. How about your own department?

Do you plan on acquiring State-owned land in the foreseeable future?

Mr. STODDARD. National parks and wildlife refuges are about the only land which would be under present authorizations or prospective authorizations.

As you know, the wetland purchase program is contemplating purchasing relatively small key tracts. I think they have in mind getting a total, some years ago it was 4½ million acres.

Senator BIBLE. I will limit the question to your own department.

Mr. STODDARD. Yes.

Senator BIBLE. Indicate, if you can, what your thinking is as to the acquisition of State land by Department of Interior.

Mr. STODDARD. These are State-owned lands themselves.

Senator BIBLE. State-owned land.

Mr. STODDARD. I think they would be relatively limited, relatively limited. But we will try to get some idea of what the different bureaus are projecting in terms of some of their thinking, and I think the opposite is more likely to take place—that the States will acquire more lands for recreation purposes particularly in the East.

Senator BIBLE. What will be the nature of those lands, private lands, is this true?

Mr. STODDARD. For recreational purposes, State parks and key seashore areas, this sort of thing.

(The information requested is as follows:)

We have been unable to locate any figures on this. Almost all Department of the Interior acquisitions are part of specific projects such as reclamation dam and reservoir sites, or national parks. These projects are planned on the basis of the most suitable site and are approved by the Congress before any lands are acquired.

Senator BIBLE. Now, for the various public land States, to what extent are they able to or are they foreclosed from utilizing S. 41 due to State laws?

Mr. STODDARD. This we would have to do some research on because of the differences in State laws and our experience with them.

(The information requested is as follows:)

A cursory examination of the laws for the various Western States indicates that all the public land States now have authority to exchange State-owned lands for other lands, including public domain. It is possible that some complications might arise where the State lands have been taken in condemnation proceedings. In that situation, title to the taken lands would no longer be in the State. Whether or not they could then select Federal lands under the terms of S. 41 would depend on State law. The committee may wish to ask the States to submit a more detailed statement.

Senator BIBLE. I don't know whether this item is available to you, but to what extent are the public land States required to hold their public lands, to what extent are the States either managing or disposing of public lands? This goes to a situation that has been called to my attention in the State of Washington, as I understand it, where they are by constitutional prohibition, I believe, required to hold the State lands in perpetuity and to lease them and they are not to alienate them.

I understand there are certain either constitutional or statutory provisions by the States. I don't know whether this is available to you or not.

Mr. Hochmuth?

Mr. HOCHMUTH. Mr. Chairman, much of that goes back to the enabling act of the public land States and it does vary, one, under the enabling act and, two, under the State act. We have a partial summary of that now. There was a study made by the former land commissioner of New Mexico while he was employed in the Department of the Interior. We can submit that as a partial thing.

Senator BIBLE. Just if it covers the broad purposes of this committee. I don't want you to go into a broad research problem.

(The information requested is as follows:)

Where the States are managing their public lands, are they leasing or selling the resources so as to realize an annual or intermittent income?

Senator BIBLE. Now, where the States manage the public lands, are they leasing or selling lands so as to increase their income?

If it is, furnish it for the record if it is not too much of a problem.

(The information requested is as follows:)

The legal limitations on the use and management of State lands in the public land States vary greatly from State to State. So do the land management programs carried on by those States. The enclosed report of a study made for BLM by Mr. Murray Morgan, former commissioner of State lands, New Mexico, contains a good deal of general information about these matters. It also contains more detailed summaries of legal authority and State land programs in Arizona, Colorado, New Mexico, and Utah.

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Washington, D.C., May 11, 1962.

Information Memo No. L. & R. 4—expires December 31, 1962.

To: All State directors.

From: Director.

Subject: State grant lands study.

During the months of November and December, Mr. Murray Morgan, former commissioner of State lands, New Mexico, under a temporary appointment, made a study for the Bureau of the grants of land made to States for schools and other purposes.

In particular the grants of land made to the States of Arizona, Colorado, New Mexico, and Utah were reviewed and a report was submitted by Mr. Morgan. The State programs relating to these lands were also studied.

Because much of the factual information developed by Mr. Morgan will be of special interest to the States reviewed and as the information developed is of general interest we have selected from Mr. Morgan's study several sections which we have reproduced for your information.

For those States not covered by this report it would be appropriate for you to contact your local State land offices and prepare a similar report on the State grant programs.

The information developed appears to be timely for special reference was made to State lands on page 139 of the ORRC report in Outdoor Recreation for America.

KARL S. LANDSTROM, *Director*.

#### A STUDY OF LEGAL LIMITATIONS ON MULTIPLE USES OF STATE GRANT LANDS

By Murray Morgan,<sup>1</sup> December 1961

##### I. THE LAND-GRANT PROGRAMS AND THEIR BUILT-IN OBSTACLES TO EXTENSION OF MULTIPLE USE TO GENERAL PUBLIC PURPOSES

The land administration procedures of the several States which still retain a considerable portion of their original territorial and statehood land grants from Congress appear to vary in as great a degree as do the individual restrictions and covenants that accompanied the grants to these States.

<sup>1</sup>A report made to the Bureau of Land Management by Mr. Murray Morgan, formerly the State lands commissioner of the State of New Mexico.

Even where more than one State was admitted under the same enabling act, the conditions imposed in the land grants to these States varied as certain conditions within the new States themselves probably varied, or as the wishes of citizens of those new States might have varied.

Probably the most common covenant, expressed or implied, which accompanied land grants to the States or territories, was the provision that, in connection with the common school grants of the 16th and 36th section of each township, permanent funds were to be established to receive the deposits of proceeds from the lands contained in these sections, and that these permanent funds were to remain inviolate and perpetual, for the benefit of the common schools and for no other purpose.

Another covenant, common to many of the granting acts, is the admonition, expressed in various terms, that the lands are to be held, appropriated, and disposed of exclusively for the purposes designated in connection with each individual grant. In some cases the acts prescribe the exact methods to be followed in any disposition of the granted lands, and, in other acts, the wisdom of the State legislature was relied upon to devise the methods of disposal, with, however, a faithful separation of beneficiary interest, in strict compliance with the terms of the grants.

Congress, in granting lands to the States through the medium of enabling acts, took a number of precautions to insure that its will would be carried out in connection with the administration and disposition of the lands. Among the stipulations expressed in the acts and used to secure the lands and their proceeds against improper dissipation into private hands or to purposes foreign to the intentions of Congress were the provisions that: (1) the lands must never be disposed of except at public sale; (2) that the lands must never be sold or leased at less than true value; (3) that the lands were to be administered exclusively for the purposes for which they were granted; (4) that the lands be held in trust by the grantee States for no other than the purposes named; (5) that there be established permanent funds, to be kept inviolate, and for the deposit of proceeds and receipts from the sale and use of the land under the various grants; (6) that the lands be not sold at less than a minimum price named in the acts; (7) that there be a limit to the amount of acreage to be conveyed to any single private interest; (8) that the Attorney General of the United States be charged with the duty of enforcing each and every covenant and restriction attaching to the grants.

While the Congress did not employ all of these safeguards in any one of the acts, some were used and expressed in combination in all of the acts which made any donation of lands to the States.

The enabling acts for the States of Arizona, Colorado, Idaho, Montana, New Mexico, Washington, North Dakota, and South Dakota, for example, provide that none of the granted lands shall ever be sold other than at a "public sale." In some instances the term "public auction" is used, and either term appears to have the same meaning among State land administrators—except that in the case of "public auctions" oral bids are generally taken, while in the case of a "public sale" sealed bids may be provided for in the rules of sale.

Where a public sale is required by the granting act, the States have usually responded with similar provisions expressed in their State constitutions, or have provided for this procedure merely by general acceptance of the terms and conditions attaching to the grants. Colorado's constitution is silent on the manner of disposing of the State lands, but the State law dealing with the matter is in conformity with the provisions of the enabling act with reference to common school lands.

There is a strong admonition expressed in the enabling acts of North and South Dakota, Washington, New Mexico, Montana, and Arizona that no lands granted to these States shall ever be sold or leased at less than true value. This would appear to call for diligent appraisal. The constitutions of Colorado and Idaho call for sales and leases at maximum amounts that can be obtained in all such transactions, while the constitutions of Arizona, Montana, New Mexico, and Washington appear to view sale or leasing at less than true value as constituting a breach of trust. Colorado law also expresses a strong admonition to the State board of land commissioners to lease and sell at no less than maximum value obtainable. California law also directs that full value return be obtained in all State land transactions.

The enabling acts of Arizona, California, Colorado, Idaho, New Mexico, Utah, and Wyoming included among the conditions of the grants the requirement that the lands be held, appropriated, administered, and disposed of exclusively for

the purposes for which the grants were made. The provision that the granted lands are held in trust for the purposes for which the grants were made was expressed in the enabling act for Arizona and New Mexico, and also acknowledged in the constitutions of these two States and also in those of California, Colorado, Idaho, Oregon, Montana, Utah, and Washington. Where the theory of trust is attached to the administration of the granted lands, it would appear that the laws of trust must prevail in all transactions involving the granted lands, and that any disposition of such lands be under only those terms that would return the highest benefit and good to the beneficiary.

All States which received in place sections of lands in lieu of such in place sections, appear to have established permanent school funds for the deposit of proceeds from these lands, and hold them inviolate to produce revenue for the schools. Where the establishment of permanent funds are not specifically directed in the granting acts, they are quite commonly provided for either by law or in the State's own constitution. Many of the States have established permanent funds for all nonrecurring proceeds from the lands, and where established, these funds are held in trust to the same extent as the lands themselves.

With the apparent purpose of either preventing or at least retarding any disposition of the granted lands into private hands without full compensatory return to the beneficiary purposes, Congress named minimum selling prices for the lands granted to Arizona, Colorado, Idaho, Montana, New Mexico, Washington, Wyoming, and North and South Dakota. These minimum values vary with the different acts, but where minimum selling prices are stipulated, no exceptions are provided.

Two States, Arizona and Idaho, by their respective constitutions, have established limitations in the sales of State-granted lands to individuals. In the case of Arizona, her constitution allows the sale of no more than 100 acres of irrigable land nor more than 640 acres of grazing lands to any one individual. Idaho, by her constitution, limits to any one individual, the sale of 320 acres of common school land, and 160 acres of the land granted to the university. Oregon provides, also, by statute, for an acreage limitation in sales to individuals. The Idaho constitution limits the sale of State school lands to 100 sections in any calendar year.

In the cases of Arizona and New Mexico, Congress placed an extra safeguard around the granted lands by specifically providing that it would be the duty of the U.S. Attorney General to enforce the provisions of the granting act applying to those two States.

It would appear, from the strong and varied restrictive covenants attaching to the lands granted to the various States, that Congress intended no multiple uses of the land, except under those conditions that would bring an optimum of revenue to the purposes and institutions which had been favored in the grants.

The provision that no land be disposed of except at public sale, or public auction, would imply that State agencies, themselves, having to do with providing land for public purposes, would have to compete for the State trust lands on the open market. Only Congress can initiate any action to relax this restriction in behalf of agencies seeking to acquire trust lands.

In the enabling acts of some States, long-term leasing or leasing without limitation of term is treated as a sale, and the public sale or auction requirement is expressed in either State's constitution or provided by law, for any leases for terms exceeding a stipulated number of years, varying by States. Here, again, a total absence of concession to transactions between State agencies is found on examination of constitutions and laws in which this matter is dealt with. In acquiring lands for public purpose programs, the administering agency would ordinarily require tenancy for more than 5, 10, or even 20 years, for proper long-range planning, and in the use of public funds for development.

The frequently found requirement that granted lands be never disposed of at less than true value can be satisfied only by public auction, with competitive bidding, or by diligent appraisal as to the highest price the land will demand on the open market. Sale in all cases is presumed here to mean the conveyance by legal instrument of land from the custody of the trustee agency to the custody of any other agent or owner, public or private, for a consideration, and regardless of whether the land should continue in State ownership. The requirement for the payment of true value of the lands can probably be satisfied in inter-agency transfers by the appraisal method, where there is no specific requirement for public sale or auction.

The California Legislature has simplified the transfer of lands from one department to another by providing (sec. 13110 Ann. Calif. Codes) that the

director of the statement of finance shall have the power to make such transfers in his discretion and at a price he deems to be correct. The provision makes no exception for the granted lands which, as stated in the California constitution, are held in trust for certain named purposes or institutions.

Where, in the enabling acts granting the lands, it is expressly required that the lands be administered exclusively for the purposes for which the grants were made, it would appear that conveyance of the lands at less than true value would constitute a breach of trust and violations of conditions of granting, in that the receiving agency or party would be the recipient of an unintended subsidy out of the grant, and would, therefore, be sharing in the benefits of the grant. If it is intended or desired that this benefit sharing be authorized in certain instances, then such cases would have to be provided for by congressional act amending the terms of most of the granting acts. Any such variation of the original purposes of the grants, however, is not to be recommended here.

Where, as in the Arizona and New Mexico enabling act, it is clearly expressed that the lands and the proceeds from them are to be held by the State in trust for the various named beneficiaries, it would be necessary for Congress to provide exceptions where any diversion of land or fund benefits is contemplated. Otherwise, it would appear that the imposition of the conditions of trust would require that the lands and their proceeds must be held inviolable. The ordinary obligations of trust would also attach to any permanent funds defined and provided for in any of the granting acts or in any of the State constitutions.

Some States have ventured into the field of multiple use extending to public purposes which do not directly enhance the incomes of the land's beneficiaries.

California, in article I, section 25, of her constitution, provides that "The people shall have the right to fish upon and from the public lands of the State and in the waters thereof \* \* \*." Since there is no value set for this privilege to fishermen, there is no consideration reaching the beneficiary accounts.

However, in New Mexico, the use of the trust lands for hunting and fishing is considered to have a value, and the State land commissioner, as trustee, issues a right-of-way easement across the trust lands to the State game and fish department, for the use of the hunters and fishermen who pay for their privileges partially through the purchase of licenses.

California goes further in the matter of devoting the trust lands to some degree of public use, and without specified compensation to the land beneficiaries, by providing by law (6201.3 Ann. Calif. Codes, vol. 56) that the lands commission (trustees of the granted lands) may grant easements and rights-of-way to the department of public works to or over any of the public lands of the State for the purpose of rights-of-way for highways and for use in protecting highways from damage or destruction by natural forces.

The California Code, also (in 6210.4) retains the right of public access to navigable streams and navigable lakes in all sales of State lands which are fronting upon or near such waters. Nor does the State compensate the trust for this reservation and public use.

Title 63-11-3 of the Utah Code takes recognition of any natural wonders of prehistoric relics that might be discovered on State or Federal land, and provides that on discovery the State parks and recreation commission shall take charge of the site of such wonders or relics, and provides for their preservation and protection. The thus holding of the lands for the protection of ancient relics and natural wonders does not appear to contemplate the remuneration of the land's beneficiary for such occupancy and implied withdrawal from revenue-producing uses.

The supreme courts of both New Mexico and Arizona have dealt with the conveyance of trust lands by the trustee agency to the State or its political subdivisions for highway uses. The New Mexico court, in the case *State ex. rel. Highway Commission v. Walker*, provided a procedure whereby the land would be conveyed for this purpose without the use of public auction process, but did require that the trust be compensated at an appraised value of not less than \$10 per acre. (The court appears to have set this figure as an arbitrary one.)

On the other hand, the Arizona Supreme Court in its ruling required no compensation for the beneficiary associated with the land being taken for highway uses, but otherwise ruled in effect as did the New Mexico court that the Congress could not have intended that the public auction process be followed in transferring the lands for highway use. In the Arizona case (*Grossetta v. Choate* (1938), 51, Ariz. 248, 75 P. 2d 1031) the court found that such transfers could be provided for by the legislature since there was no direct prohibition in the enabling act.

## Summary of restrictions attaching to State land grants

State	Sell only at public auction <sup>1</sup>	Sell, lease at not less than true value	Administer exclusively for purposes as granted	Trust terms expressed in—	Concessions to other State agencies	Provisions for permanent fund from lands	Minimum sale price set by—	Acresage limitation in sales set by—	U. S. attorney to enforce conditions of grant
Arizona.....	1, 2	1, 2	1, 2	1, 2	Highway department only	1, 2	1, 2	2	1
California.....	3	3	1	2	Several, see text.	1, 2	3	3	-----
Colorado.....	1, 3	2, 3	1, 2	2	-----	1, 2	1, 2	2, 3	-----
Idaho.....	1, 2	2	1, 2	2	-----	1, 2	1, 2	-----	-----
Montana.....	1, 2	1, 2	2	2	-----	1	1, 2	-----	-----
New Mexico.....	1, 2	1, 2	1, 2	1, 2	Highway department only	1, 2	1, 2	-----	1
Oregon.....	2, 3	1, 3	2, 3	2, 3	As provided by law.	2, 3	1, 2	-----	-----
Utah.....	2, 3	3	1, 2	2	do.	1, 2	3	-----	-----
Washington.....	1, 2	1, 2	-----	2	-----	1, 1	1, 2	-----	-----
Wyoming.....	1, 2	1, 2	1, 2	-----	-----	1, 2	1, 2	-----	-----

<sup>1</sup> Explanation: 1—As required by granting act. 2—As required by State constitution. 3—As required by State law. \* With exceptions.

## II. CLOSEUP OF STATE LAND PROGRAMS WITHIN THE CONFINES OF FEDERAL COVENANTS

## ARIZONA

Arizona received over 10 $\frac{1}{4}$  million acres of land through preliminary territorial grants, the statehood grants and also the small grants since statehood.

In making these grants to the State, Congress imposed strong conditions and restrictions as safeguards against the diversion of the lands or their proceeds to benefits and causes other than those specifically set forth in the granting acts. In accepting those conditions, restrictions and covenants with relation to the land grants, the people of Arizona, in adopting their constitution, added to the safeguards, by repetition of much of the restraining language, and further provided these conditions in law.

In making the grants, Congress imposed the conditions that the State would make no conveyances of the land except at public auction, and only after extensive notice by advertising of such proposed conveyance; that the proceeds of the lands be held in trust to the same extent as the lands themselves, for the sole benefit of the purposes and institutions identified with the various tracts from which the proceeds may be derived, and that separate funds be established for each of the beneficiaries, to be held in trust by the State with no commingling or intermingling of the funds or benefits.

In adopting the enabling act for the State of Arizona, Congress imposed the conditions that the proceeds from the sale of the land or the sale of the natural products thereof would be acceded to the several perpetual or permanent funds, to be invested in safe, interest-bearing securities, and that such funds would remain inviolate in the matter of any diversion of such moneys to other cause or purpose.

The enabling act and subsequent provisions of the Arizona constitution and statutes allow leasing of the lands for various purposes for limited periods, and the use of such recurring income for the operating expenses of the various beneficiary institutions. The income from the lands is thus divided into two classes: (1) the nonrecurring income composed of the proceeds of land sales, of the natural products and mineral royalties, and (2) the recurring income derived from term leases.

The common schools are the beneficiary of the territorial and statehood grants which comprised the lands of four numbered sections of each township, or equal acreage where such sections were previously appropriated. The total acreage thus granted for common school benefit was 8,311,929.89 acres. Of this acreage, 641,000 acres are the numbered sections, 2, 16, 32, and 36, within the national forest of the State, which are administered by the U.S. Forest Service. The proceeds from these enclosed sections, from annual leasing, is distributed to the schools in the same manner as if administered by the State. The State is prohibited from selling the lands within the national forests and can only change them for lands of equal value in the unreserved and unappropriated public domain. The common school grants at this time are almost entirely satisfied either by patent or clear listing of lands which indemnify the lands lost by prior appropriation.

Other lands held by the State of Arizona in trust for the various institutions which were recognized in the enabling act were in the total sum of 2,446,000 acres. These lands have been almost entirely selected. Named for the benefits of these various quantity grants are 12 distinct purposes and institutions within the State government.

The State's trusteeship of the granted lands is vested by statute in a State land department through which is administered all lands granted by the general government to the State, and such other lands as may be designated by statute or the constitution to be administered by this department.

The chief executive officer of the land department is the commissioner, who is appointed by the Government for a 6-year term, and who may be removed only for cause and after a public hearing. The commissioner's appointment is subject to finalization by senate confirmation.

Also a part of the State land department is the board of appeals, composed of three members, appointed by the Governor and subject to confirmation by the senate. The board, meeting twice each month, reviews and rules upon land sales approved by the commissioner and his classifications and appraisals. The board of appeals may overrule the commissioner.

Under the terms of the granting acts, the State land commissioner would appear to be confined in his purposes to the production of revenues from the trust lands, with all land transactions pointing to this result. The enabling act covenants that none of the granted lands shall ever be sold or leased at less than their true value.

The State of Arizona at present has in force a conservative policy with relation to the sale of lands. This policy appears to be expressed in the many sale restraints that are to be found in the constitution, the statutes, and the commissioner's rules, as promulgated by himself and his board of appeals.

The constitution limits the sale of land to any individual, partnership, or corporation to 160 acres of agricultural and 640 acres of grazing land.

In the nearly 50 years of State land department administration, less than 1 million acres of the granted lands have been sold. As of June 30, 1961, there were either under patent from the State or under certificates of purchase, a total of 912,600 acres. In these sales, the State has retained one-sixteenth of the mineral interest.

The policy of the State at present appears to be to place only those tracts up for sale where in the judgment of the commissioner the maximum of value has been reached. These are the lands that lend themselves to a high state of development in the settled areas. In the past year, the State land department sold, in all, 7,140.94 acres, at a total selling price of \$2,193,039.

Arizona law prohibits the sale of any of the lands granted to the State hospital for disabled miners, and the sale of any lands known to contain metals, minerals, oil or gas in paying quantities or the sale of any lands in vicinities where such products are being produced. Also withheld from sale by law are those State lands chiefly valuable for the production of saw timber.

Multiple uses of the State's lands are carried on under a program of surface and mineral leasing. The land laws and commissioner's rules would appear to permit the leasing of the various tracts for as many purposes, simultaneously, as will produce the optimum of revenue, and where conflicts in occupancy will not be created.

One of the widest uses of the State's land is for grazing, and usually all of the available acreage is under grazing lease. For the year ending June 30, 1961, a total of 8,680,403 acres were under lease for grazing, for which a total annual rental of \$526,386 was paid.

For the same period, 215,919 acres were under lease for agriculture, for an annual rental of \$408,256.

Other surface leasing, to the extent of 73,669 acres, is shown to produce about \$106,000 per year. In this category are some rather extensive leases to other departments of the State government.

The 400 acres under lease for homesites produce annual rental of about \$3,000.

Something over 50,000 acres are under lease for general mining from which annual revenue is shown to be just over \$40,000.

An increase in exploration for oil and gas has resulted in the leasing of 1,654,000 acres for this purpose, to produce an income of \$408,250 from this source for the 1960-61 fiscal year.

Nearly 50,000 acres were under 5-year renewable right-of-way easements during the 1960-61 fiscal year, producing over \$17,000 for the year.

The year's report showed 33 acres under special use permit for a total of \$5,870.

The U.S. Government was using, during the year, a total of 86,290 acres of land, for defense and other purposes, for which an annual rental of \$5,309 was paid to the State.

The total paid in rental and penalties for all uses of State land during the fiscal year ending June 30, 1961, was \$1,637,337. This money was distributed during the year to the beneficiary purposes and institutions identified with the various tracts from which the revenues were derived, for current expenses.

In addition to these current revenues, interest on certificates of sale was in the total sum of \$543,371. This revenue, also, was distributed for the current expenses of the beneficiary institutions.

Permanent funds established by the State treasurer out of proceeds from the sale of lands and the natural products thereof and also all mineral royalties paid to the State, received an accretion in 1960-61 of \$1,068,870 from all of these sources. Most of this sum consisted of principal payments on land sale contracts.

Conversion of the State's granted lands to other than revenue-producing uses has been under extensive discussion in the State of Arizona for the past several years. Efforts of the advocates for public recreation have been reflected in some recently proposed legislation. Public hearings have been held relative to the availability of the trust lands for public uses and conveyances of the trust lands to public purposes without the necessity for the public auction procedure. The incumbent land commissioner, Mr. Obed M. Lassen, has testified before legislative committees that an amendment to Arizona's enabling act (and constitution) is needed before State, county and municipal agencies may acquire title to State trust lands without public bidding.

The Arizona Supreme Court has apparently opened the way for one deviation from the provision of the enabling act calling for sale of trust lands by public auction. In the case of *Crossetta v. Choate* (1938 51 Ariz. 248.75 P2d 1031) the court ruled that it was not contemplated in the enabling act that State granted lands conveyed to the State highway department for rights-of-way and highway construction should be deemed to be under a sale where public auction is required, and further that the enabling act does not expressly prohibit such a transfer. Proponents of the conveyance of granted lands to other agencies of the State or to its political subdivisions, for public purposes, have pointed to this ruling as leading the way to general intergovernmental transfers.

As this report is being written, the legal department of the Arizona State land office is preparing an action seeking a review of this decision, on the theory that this procedure as authorized by the court for the transfer of trust lands to highway purposes constitutes an enchantment to one department of the Government, not favored as a grantee, at the expense of an institution or purpose designated to enjoy the fullest benefits from the granted lands.

The commissioner, Mr. Lassen, states that he would prefer that no amendment be made to the enabling act, which would relax any of the positive safeguards which protect the benefits to the named beneficiaries of the grants. He believes that these safeguards serve to the best interests of the beneficiaries of the grants in preventing any dissipation of the lands into private hands or diversion to uses not in the best interests of the beneficiaries of the grants. Mr. Lassen further expressed the opinion that to place the matter of disposition of the lands in the legislature might lead to some advantages to special interests, whereas such advantages under the present provisions of the enabling act are unlikely.

Mr. Lassen conceded that the State's interests might be well served if provision were made by enabling act amendment for the conveyance to other State agencies for public purposes at appraised value and without public auction. However, Mr. Lassen said that this change would likely not be entirely to the satisfaction of the public recreation advocates who apparently prefer conversion to public purposes without remuneration to the trust.

Proposals to acquire State lands for public purposes with or without remuneration to the land's beneficiary, appear to originate in municipalities and counties, rather than through other State agencies.

The Arizona legislature, while proposing (but not adopting) liberal terms for the diversion of trust lands to public purposes, has continued a law in force which confines the State parks department to the acquisition of no more than 160 acres of land during any single year. However, the State land department does, from time to time, issue leases to other departments of the State, after the land has been reclassified to the applied for use, and at an annual rental of 4 percent of the appraised value of the land. The rental is based upon this percentage figure as being just less than the amount that would be gained under a certificate of sale and just more than that which would be gained if the proceeds of the sale in the amount of the appraised value were placed in one of the permanent funds and invested in interest-bearing securities.

Recreation leases are conveyed by the land department to other departments of the State government and to political subdivisions and to nonprofit organizations in the same manner as commercial leases.

The commissioner issued such leases after reaching a decision that a better purpose would be served in leasing the land for recreation than for other uses, and on the further determination that the use of the land for recreational purposes would not depress the value of adjoining State lands.

Under one statute of the State (37.441, 442, 443, A.R.S.) application may be made by State agencies to the governor for a lease on State lands, and if approved by the governor, the land commissioner is obliged to appraise the land, set the rental and issue the lease.

The State Department of Game and Fish at the present time holds a lease on State trust lands comprising 5,200 acres, which, in connection with private and Federal lands, are used as a habitat for buffalo and antelope. The game department, in this acquisition, bought a cattle ranch and converted the lands to a buffalo and antelope refuge. There is no multiple use on this land as there is on other lands controlled by this department.

Other lands leased by the State department of game and fish from the State land department, are put to primary uses such as water fowl nesting and feeding grounds, and for shooting ranges. These lands are also held open to grazing.

#### COLORADO

The adoption of Colorado's enabling act of March 3, 1875, and the admission of this State to the Union by the Presidential proclamation of August 1, 1876, saw the first conveyance of lands by grants from the Federal Government to this new State. By the terms of this act, Colorado received the following land grants:

1. Two sections (16 and 36), or their equal, of nonmineral land of each surveyed township within the described boundaries of the new State, for the support of the common schools.
2. Fifty sections, proceeds, and income from which were to be dedicated to the erection of necessary public buildings, these lands to be selected at the direction of the legislature with the approval of the President.
3. Fifty sections to be selected as above and administered for the erection of a penitentiary.
4. Seventy-two sections to be selected and administered in the same manner as other quantity grants, for the support of a State university.
5. Six sections of land adjoining and contiguous to each of no more than 12 unappropriated and unclaimed salt springs within the State. Five of such springs were ultimately found and claimed for the State along with the adjoining lands. These lands were to be disposed of as directed by the legislature.

The terms of two acts passed by Congress prior to the entry of Colorado into the Union also granted lands to that State.

The Morrill Act of July 2, 1862, gave to the State of Colorado, as to certain other States previously admitted, 30,000 acres of land for each of two Senators and one Representative in Congress, for the support of a college of agricultural and mechanical arts, and granted the authority to use a portion of the proceeds of this granted land for the establishment of an experimental station for agricultural research and training.

The act of the 27th Congress, session I, under which certain States were granted 500,000 acres of land was extended to the benefit of the new State of Colorado. Under this act, the land selected was to be used for the establishment and support of internal improvements, named to include roads, railways, bridges, canals, improvement of water courses, and drainage of swamps.

Excluded from each and every one of these grants were lands known at the time of selection to be mineral in character.

All of the granting acts appeared to contemplate early liquidation of the granted lands with the exception of those designated for the support of the common schools. However, the record indicates that the State of Colorado has never adopted a land disposal program, and considerable lands identified with each of the several grants yet remain in State ownership.

Taken from the biennial report of the Colorado Board of Land Commissioners for the fiscal period ending June 30, 1960, the following table shows the amount of land granted or authorized to be selected under the various acts of Congress, the amount of acreage actually received or selected, and the amount at that time remaining in State ownership. The aggregate amounts of land in some cases had been augmented to some degree by various exchanges between the State and Federal Government. Acreage sold since the biennial report was prepared has been in small amounts, and at the rate of less than 10,000 acres per year.

Beneficiary of grant	Extent of grant	Actually selected (acres)	Remaining (acres)
Common schools.....	2 sections each township.....	3, 783, 204.95	2, 748, 088.40
Public buildings.....	50 sections.....	31, 904.62	4, 477.32
Penitentiary.....	do.....	31, 985.49	8, 491.20
University.....	72 sections.....	45, 844.43	4, 225.96
Salt springs for legislative purposes.....	(Qualified) 30 sections.....	18, 830.22	15, 088.60
A. & M. college.....	90,000 acres.....	89, 999.58	26, 519.87
Internal improvements.....	500,000 acres.....	507, 775.77	167, 684.55
Total.....	.....	4, 509, 545.06	2, 974, 575.90

In granting the lands to Colorado, Congress imposed inflexible conditions as to directing the purposes of each grant, and providing for the disposition of the lands. Only in the case of the lands granted in connection with the salt springs did Congress rely upon the judgment of the State legislature to provide for the manner of the disposition of the lands and the proceeds therefrom.

Congress provided in the Colorado enabling act that no common school lands be sold except at public auction, and further provided that permanent funds be established out of the proceeds received from the sale of such lands. The Morrill Act also provided that such a permanent fund be established to the credit of the College of Agriculture & Mechanical Arts out of the proceeds of the sale of the lands granted to that institution, with the exception that 10 percent of such proceeds might be used for the purchase of land for an agricultural experimental station. Congress, in each instance, provided that these permanent funds were to be maintained inviolate and that all interest and dividend proceeds from the investment of these funds must be devoted to no other agency, institution, or purpose other than those identified with the lands from which the funds were derived.

The Colorado constitution accepted the terms and conditions attaching to all grants pronounced in the enabling act and further provided for the establishment and investment of a permanent fund for the common schools as Congress had directed.

By law, the Colorado Legislature has restated the provisions for the establishment of a common school permanent fund, and has also required the establishment of such a fund for the deposit of proceeds from the sale of lands granted to the university. Also, by law, the Colorado General Assembly has extended the provisions of the Morrill Act by requiring that all proceeds, both recurring and nonrecurring, from the leasing and sale of lands granted under that act, be placed in a permanent fund for investment to the benefit of the College of Agriculture & Mechanical Arts.

Within the provisions of the granting acts, the Colorado General Assembly also provided for the current disposition of all proceeds from lands other than those named above.

Proceeds from lands granted for public buildings are used in current budgets for capitol extensions and improvements.

Proceeds from the leasing and sale of penitentiary lands are used in the current budgets of that institution.

Proceeds from the sale and leasing of lands granted as contiguous to salt springs are used in the current budgets of the department of parks and recreation, as also are the moneys received out of the sale and leasing of lands granted for internal improvements.

#### *Administration*

The Colorado constitution originally designated the board of education and the Governor to comprise a board of land commissioners to select, plat, classify, and appraise all lands granted to the State by the General Government and keep records of reclassification. The land administration of the State was thus conducted until the adoption in 1911 of the present version of article IX of the State constitution which in section 9 of this article, provided for a revision in the State board of land commissioners, as follows: "The State board of land commissioners shall be composed of three persons to be appointed by the Governor, with the consent of the senate, who shall have the direction, control, and disposition of the public lands of the State under such regulations as are and may be prescribed by law \* \* \*."

Section 10 of this article provides that "It shall be the duty of the State board of land commissioners to provide for the location, protection, sale or other disposition of all the lands heretofore, or which may be hereafter granted to the State by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. \* \* \* The general assembly shall, at the earliest practicable period, provide by law that several grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust subject to disposal, for the use and benefit of the respective objects for which the grants of land were made, and the general assembly shall provide for the sale of lands from time to time, and for the faithful application of the proceeds thereof in accordance with the terms of said grants."

In addition to the functions of the State board of land commissioners as outlined in the constitution, the general assembly, by law, has authorized the board to exchange any of the granted lands with the U.S. Government.

It would appear, from the restrictions attached to the granted land by Federal act, by State constitution and by State legislative acts, the board can agree to no conveyance of the land that does not result in the highest possible return to the beneficiary, or to lease the land in any manner or for any purpose that does not produce the maximum of yield. The board's leasing and sale program, therefore, calls for the soundest prudence to gain the maximum of return from all transactions, and to offer no use of the land that does not produce this kind of return to the beneficiary institution. The fact that the constitution and laws of the State refer to these lands as "public lands" in no way offers a basis for the use of the lands by other agencies of the State for public purposes, where such use is not compensated for to the maximum degree. This appears to mean, and it is so construed by the administering board members, that the land shall yield maximum income to the trust when used for highways, parks, schools, or any other public purposes the same as if it were let or sold to private enterprise. No free use of the lands whatsoever is granted by the land board.

To the end that there shall be no commingling of the benefits from the lands, the board of land commissioners hold separate and distinct the lands of the various beneficiaries, in issuing leases and advertising tracts for sale, so that no tract offered in a single lease or a single sale shall be identified with more than one beneficiary. All receipts are likewise kept distinct as to beneficiary identity.

#### *Income sources*

Income from the trust lands is divided into four general categories which find their origin in the many and varied transactions of the board of land commissioners: (1) from land sales; (2) from multiple surface uses, such as grazing leases, leases for parks and recreation, leases for game management, rights-of-way for public and private purposes, timber contracts and leases for commercial uses; (3) multiple and separate leases for the extraction of oil and gas, precious minerals, common minerals and for coal, salt or other specified mineral products; and (4) interest from the investments of the permanent school fund in farm mortgages, bonds of the United States, the State and its political subdivisions. Also emanating from the permanent school fund investment is the income from certain farm lands taken by the State under foreclosure, which are either sold or leased under the supervision of the State board of land commissioners.<sup>2</sup>

Income from the granted lands from all sources except for the land sale proceeds, mineral royalties and sale of "irreplaceable assets" was calculated (on November 16, 1961) at \$68,243,740, for the entire period since 1877. Deposits into the common school permanent fund from the sale of lands, less minerals, and from royalties and the sale of irreplaceable assets of the land, as of the same date above, came to a total of \$25,751,250.

The Colorado Board of Land Commissioners offers land for sale under a conservative program, usually with less than 10,000 acres being offered during any one calendar year, and usually under conditions where the highest market price would appear to prevail for the land under application for purchase.

Sales are at public auction, with all the minerals reserved to the State. The successful bidder may choose to pay cash for the land or receive a purchase contract, under which he makes a minimum down payment of 25 percent of the bid price, with the balance payable in semiannual installments extending over

<sup>2</sup> Only the permanent funds of the common schools are administered and invested by the land board. Other permanent funds are administered and invested by the governing authorities of the beneficiary institutions.

a maximum period of 33 years, with interest at the rate of 6 percent per annum on deferred principal payments.

During the fiscal year ending June 30, 1960, the date of the last published annual report, a total of \$603,856 was paid in principal on State land purchase contracts, and \$119,072.66 was paid in interest.

The most important revenues in the leasing field were derived from oil and gas leases and from the various types of surface lease.

At the end of the fiscal year, on June 30, 1960, 1,704,525 acres of the trust lands of Colorado were under oil and gas lease, and brought a total of \$1,231,654.13 in revenue for the year, or nearly \$1 per acre. Since the State holds in perpetuity all minerals in the trust lands and since most of the oil and gas leases are for lands chiefly in eastern Colorado, where oil and gas explorations are believed to be in their infancy, this income should continue at the present or at a greater rate for a period far beyond the foreseeable future.

Leases for all common and precious minerals for the fiscal year ending June 30, 1960, produced total revenue of \$23,979.10 for the 54,370 acres under this type of lease, or under 50 cents per acre.

Coal leases produced less revenue per acre than other mining, for the above fiscal period, or \$2,717.70 for the 33,035.15 acres under that type of lease.

Most of the surface of lands still remaining in the fee ownership of the State were under some type of surface lease or right-of-way conveyance at the time of this study. The greatest amount of income to the Department from surface leases was derived from grazing, which is the principal use made of the State lands. Good revenues, at a greater rate per acre for grazing were produced from agricultural leases. Other surface leases were to the U.S. Military Establishment, for commercial uses of individuals, and for use as parks, public recreation, etc., in small tracts. All surface lease income for the 1960 fiscal year was in the aggregate amount of \$1,304,654.31, for the 2,868,748.83 acres under such leases. This would indicate an annual return from surface use of the trust lands of more than 50 cents per acre per year, average.

The sale of right-of-way easements, on a lineal rather than an acreage basis, also was the source of some revenue during the 1960 fiscal year. This was \$8,712.39 for that year, but \$10,000 less than for the year previous.

Timber sales, likewise, produced only half the revenue for the 1960 fiscal year that they did in 1959, or \$30,746.09, against \$60,076.06.

Mineral royalties from the State's trust lands contribute chiefly to the permanent funds of the common schools, since most of the mineral acres held by the State, or some 3,700,000 acres of the total 4,500,000 acres are held for the support of the common schools. About \$1 million per year are presently being added to the common school permanent fund from this source. These royalties were paid on the basis of production of oil and gas, metal ores, other precious minerals, coal, sand and gravel.

The common school permanent fund was nearing the \$26 million mark as the end of 1961 approached, and, invested by the board of land commissioners in bonds of the United States, the State of Colorado and its political subdivisions, in various Government-insured loans, and in farm loans, the fund was producing a yield of about 3.2 percent per year. The fund, and subsequently the yield, will increase as further sales of common school lands are held, and as more royalties are produced from the mineral development of the lands.

#### NEW MEXICO

Under the terms of five different acts of Congress, adopted over a period of some 34 years, New Mexico, both as a State and as a territory, received land grants out of the national public domain of a total of 12,487,685.46 acres for various State purposes.

The grants included chiefly the 8,464,000 acres representing four sections of each township within the limits of the territory and State as defined by the Organic Act, for the support of the common schools. Where such sections were not available, by reason of previous appropriation, or where they were short in the survey, the grant was indemnified with selections elsewhere in the State, from public domain lands not known at the time of selection to be mineral in character, and which were also unencumbered.

Several "quantity" grants were specified in the various acts for the support of other purposes and institutions needed for the operation of the State or territorial government.

The granting acts, in chronological sequence, were as follows:

1. The Ferguson Act of June 21, 1898, passed in anticipation of a statehood act, in which preliminary grants of two sections (16 and 36) in each township of the territory, or their equal, were made, for the support of a common school system, as were token grants to various territorial institutions to be established, and for other territorial purposes.

2. The statehood enabling act of June 20, 1910, which provided for the establishment of a State government and also which made additional grants of 2 more sections (2 and 32) of each township, or their equal, plus additional grants for the support of other institutions and State purposes. The act described all covenants and restrictions with relation to the leasing and other disposition of the granted lands, prohibiting any diversion of the proceeds or benefits to any purpose other than those for which the several grants were made. The act at the same time made it the duty of the U.S. Attorney General to enforce all covenants and restrictions attached to the several grants.

3. The act of May 28, 1928 (S. 2535, ch. 812) granting 250,000 additional acres of land for reimbursement of the counties of Grant, Luna, Hidalgo, and Santa Fe and the town of Silver City and the city of Santa Fe for payments made on invalid railroad bonds.

4. The act of March 31, 1932 (S. 1590, vol. 47, pt. 1), which granted 76,000 acres of land to be selected for the support of the Eastern New Mexico Normal School (now the New Mexico Eastern University).

5. An act of Congress, February 18, 1909 (clause 150, sec. 1, 35 Stat. 638) extending the terms of the Carey Act of August 18, 1894, to New Mexico. The 4,743.23 acres patented on March 17, 1922, to the State by the United States were, by act of the 1939 State legislature, devoted to the support of the Carrie Tingley Crippled Children's Hospital, subsequent to the issuance of a quitclaim deed to the lands by the United States. This quitclaim deed was authorized and directed by an act of Congress approved August 24, 1937, in which it was sought to remove so far as New Mexico was concerned, any conditions attaching to the lands conveyed to the State under the Carey Act. (There are currently some strong doubts expressed in legal circles of the State as to whether proper procedure was taken in removing all restrictions as to Carey Act lands from the language of the enabling act for New Mexico and the State's constitution.)

The State has, from time to time, added to the amounts of land held in the various grants, through the medium of exchange with agencies of the Federal Government. The exchanges, made variously under the authority of the Taylor Grazing Act of 1934 and the New Mexico Forest Exchange Act of 1926, have necessarily added to the acreage dedicated to the various institutions, since approval of the governing boards of those institutions must first be obtained before such exchanges can be consummated, and the boards usually decline approval of the exchange unless some acreage gain is realized by the State. The exchanges are made on an equal-value basis, subject to government appraisal of both base and selected lands.

The State of New Mexico is fortunate in that its selections of land under the quantity grants and also those selections which were made to indemnify the lost school sections were, at the time of the selections, not known to be mineral in character, but later yielded vast quantities of gas, oil, potash, some coal, uranium, and metal ores, as well as common minerals and other subsurface products.

The people of New Mexico, in adopting a constitution, accepted the terms of the enabling act and the covenants attaching to the various land grants, and to implement the land covenants, established a trusteeship for their control and management. This trusteeship is vested in a commissioner of public lands, created by the constitution, and replacing the surveyor-general who had been the land administrator during the days of the territory.

It was provided in the constitution that the commissioner of public lands would be elected by the people and serve as an officer of the executive department of the State with these certain described duties: "To select, locate, classify, and have the direction, control, care, and disposition of all public lands, under the provisions of the act of Congress relating thereto and such regulations as may be prescribed by law."

The covenants and restrictions had been outlined in the enabling act and extended to all grants previously, presently, and in the future to be made. Subsequent land grants, as listed above, referred to the enabling act for all restrictions and covenants, and imposed them on the new grants.

In essence the covenants and restrictions were, and are, as follows :

(a) Lands and all funds derived therefrom were declared to be held in trust. It was further provided that income from the various lands was to be held in separate funds and that each beneficiary was to be credited with the income from the lands which had been appropriated to it. There could, and can, be no commingling of funds.

(b) Lands cannot be encumbered or mortgaged.

(c) All sales of land or the natural products thereof are to be made after prescribed advertising and only at public auction.

(d) Before any land or their natural products can be sold, they must be appraised, and cannot be sold for less than their true value. In no event can lands be sold for less than \$5 per acre if they lie east of the line between rangers 18 and 19 east, New Mexico, principal meridian and for not less than \$3 per acre if they lie west of that line. Irrigated lands may not be sold for less than \$25 per acre.

(e) Leases, other than for minerals, cannot be for a longer period than 5 years without having been submitted to public bidding. This provision at first referred to all leases, but a later amendment of the enabling act, through the action of Congress, the State legislature, and the electorate of New Mexico, authorized the legislature to prescribe rules and limitations for mineral leasing.

(f) Permanent funds were to be provided for each beneficiary of land grants, and into these funds were to be paid the respective proceeds from the sale of lands, from the sale of natural products, such as timber, out of the disposition of irreplaceable assets of the land and other nonrecurring income such as royalties from oil and gas, minerals and other products severed and saved from the soil and subsurface of the lands. Other income, such as that from leasing, rights-of-way, etc., of a recurring nature, were to be distributed periodically for the current operating expenses of the various beneficiary institutions identified with the tracts from which the revenues were derived.

(g) Any lease, sale, or contract relating to use or disposition contrary to these covenants and restrictions is held to be absolutely void, and any loss of funds, income, or diminishing of the land or its values in violation of the restrictions and covenants must be compensated by the State. The U.S. Attorney General is charged with the enforcement of these provisions.

In several suits relating to the sale or leasing of State lands, either where the decision of the commissioner has been attacked, or where the litigants have been contending for their respective alleged rights, the courts have held, in effect, that it is the duty of the commissioner to lease and sell the lands to the highest possible advantage to the beneficiary institutions, and that such must be his first consideration in all of the transactions of his office.

Leases on State lands take many forms, and to realize the greatest amount of revenue possible from this source, the commissioner finds it expedient to issue the maximum number of conveyances possible on all tracts, so long as conflicts in use will not occur. It would appear, from the restrictions and covenants attaching to the land grants, along with court interpretations, that the commissioner is permitted to grant no conveyance or uses of any of the trust lands that does not produce income at the highest market rate.

Implementing the statutory direction with relation to trust land administration, the commissioner is authorized to, and does, promulgate rules for all leases, right-of-way easements, and sales. These rules, after being properly posted and filed in the library of the State supreme court, have the force of law, and are upheld in the courts so long as they are not in conflict with outstanding statutes.

Income from the trust lands reached an alltime high during the fiscal year ending June 30, 1957, during which period over \$28 million was collected from all sources. Since that time, the revenues have still been averaging somewhat in excess of \$2 million per month.

At the close of business on June 30, 1961, a total of \$333,460,559.61 had come to the land office as proceeds from the trust lands from all leasing, sales, and royalties, including the miscellaneous fees in connection with land office operations since its establishment in 1900. Of this total amount, \$193,926,074.52 was from land sales, mineral royalties and sale of natural and irreplaceable products, and \$139,534,485.39 was from leasing and other recurring type income. At the close of the calendar 1961, the distributions to the various permanent funds of the State were at the rate of about \$1,500,000 per month, indicating at the end of the calendar year, the total permanent fund accounts would be in excess of \$200 million.

In the leasing field, grazing leases led by far all other types of conveyance in the class of surface uses. These leases cover over 10½ million acres of the State's trust lands, which constitutes practically all of the lands classified for this use. The leases had their origin in prior applications, and are held by the current lessees for not to exceed 5-year periods, with preferential, but not absolute, right of renewal. Rates are fixed at the beginning of each lease period and are based upon maximum carrying capacity estimates, and subject to reduction only at the discretion of the land commissioner in the event of extreme drought and loss of forage. The leases are not subject to arbitrary cancellation, and no such right is reserved by the commissioner, except for violation by the lessee of the lease terms, as viewed by the land commissioner.

Minimum leasing rates, corresponding to animal unit carrying capacity, is set by act of the legislature. The commissioner may, in his discretion, set the rates above that statutory figure. The current rate for grazing leases, approximately 1 cent per acre per head of carrying capacity per section, is producing revenue at the current rate of about \$1 million per year.

Other income from surface uses is produced from a single easement to the State department of game and fish, covering all lands under grazing leases for their use in game management and for hunting and fishing, from the various water leases, from right-of-way easements, and from commercial leases.

Oil and gas leases lead the field of mineral exploitation and currently produce revenue at the rate of about \$6 million per year, depending upon the activity in exploration, and the amounts bidden as bonuses in the regular monthly oil and gas lease auctions. Of the 12,700,000 mineral acres held by the State, 9,450,000 acres are under oil and gas leases. Other mineral leases, including general mining, coal, potash, sand and gravel, and other common minerals produce in the neighborhood of \$100,000 per year in rentals.

The legislature, under article XXIV of the State constitution, is authorized to provide for the leasing of State lands for mineral exploration and production. Under this authority, the legislature has provided oil and gas leases shall be issued for primary terms of 5 years at minimum rates to be determined by the commissioner of public lands. The leases may be held and renewed for another 5 years at double the primary rate, or by the payment of the royalty consideration if there is production. If there is no production from the demised premises at the end of two 5-year periods, then the lease expires of its own terms, and the land described in the lease is again open for a new lease to be offered to the public at the highest bid offered in a regular monthly oil and gas lease sale. As of June 30, 1961, 740,000 acres of the State's oil and gas lands were being held under leases by production.

General mining leases are for a term of 5 years, divided into a primary term of 3 years and a secondary term of 2 years. The minimum rate for the primary term is set by the legislature at 5 cents per acre and for the secondary term at 50 cents per acre. These leases, without production, may be extended from year to year at the discretion of the commissioner, at the rate of \$3 per acre, per year, until they are either relinquished by the lessee, or production royalty is being paid.

Leasing for sand and gravel and other minerals of a common nature are at rates set by the commissioner, and with a royalty consideration at not less than 10 cents per cubic yard.

Leasing for potash and coal are provided in separate statutes, with minimum rental and royalty rates established by law. These leases may be extended in the discretion of the commissioner.

Rights-of-way are issued on an acreage basis, and at not less than \$10 per acre, or at the appraised value of the land, whichever is higher.

Commercial leases are issued from time to time for 5-year periods, with preferential, but not absolute, right of renewal, and at rental rates established by the commissioner by negotiation.

Land sales are being held with increasing frequency during the past few years, and during the first 10 months of 1961, 176,370 acres had been sold, for a total price of \$3,552,926, reflecting a per-acre selling price of something over \$20. Most of the land sold was under classification for grazing, and has continued in that use after sale, according to a survey of the State land office. In 1960, a total of 125,100 acres were sold by the State land office, at an average selling price of \$10 per acre. In 1959, 50,576 acres were sold, for an average price of \$19.20 per acre. Previous to these years, sales were chiefly confined to smaller acreages with higher selling price averages, because of a greater demand for business property.

Lands are sold at public auction after advertising, and the successful bidder has the option of paying cash, or taking a contract with payment of 5 percent of the selling price down and with deferment of further principal payments for up to 30 years. Interest on deferred principal payments is at the rate of 4 percent per year. This arrangement returns about the same amount of revenue to the State as if the proceeds of the sale were paid in cash and invested as permanent fund moneys.

Royalty income from oil and gas production on State lands is at present the greatest single source of revenue from the trust lands. Revenue from this source alone exceeded \$17 million during the past fiscal year, representing one-eighth of the value of the production from 6,111 oil and gas wells located on State land.

Other mineral royalties were received from the trust lands in lesser amounts, and were in the aggregate sum of just less than \$50,000 for the past fiscal year.

Timber sales and sales of any other natural products are to the extent of only a few thousand dollars per year. Much of the State's timberlands have now been cut over, and because of the extremely arid conditions of the State, a new crop is not likely to mature for another hundred years or more. Since the State's timber holdings are not extensive enough to support an adequate management program, and since the land commissioners can use for administration and management only a small share of those funds derived from leasing and recurring income, it has been the tendency of present and past commissioners to seek exchanges of timbered lands for lands of equal value elsewhere in the public domain. This type of exchange is authorized under the New Mexico Forest Exchange Act of 1926.

A major source of revenue to the State's beneficiary institutions which are named in the land grant acts, are from the various permanent funds, derived from land income, and now amounting to a total of about \$200 million. Invested in the bonds of the State and its political subdivisions, in U.S. Government securities and those guaranteed by the U.S. Government, and also in certain qualifying corporate securities, the permanent funds are producing annual revenue at the rate of about 3.38 percent of the amount invested, or about \$7,500,000 per year.

#### *Multiple use of State land*

Under the multiple leasing program of the New Mexico State Land Office, a single tract of land could conceivably be leased for nearly a dozen separate uses, simultaneously, but under strict interpretation of the Federal statutes, State constitution and laws of the State, the commissioner must receive a consideration for the specified beneficiary for each separate use made of the land. There can be no free-use permits if such use be of value, for free use would diminish the return to the beneficiary. Such diminishment would seem to be prohibited by the State's enabling act.

It would appear, however, that the New Mexico Supreme Court (*State ex. rel. Highway Commission v. Walker*, 61 N. M. 374, also 301 P. 2d 317) has provided for the method of the transfer of any lands or materials from the commissioner of public lands to the highway department. In this ruling the court held that compensation must be paid by the highway department for any lands taken for highway rights-of-way or materials and that rights-of-way across State trust lands could be obtained by the highway department at not less than true value or at the (arbitrary) figure of \$10 per acre, whichever is greater, and that all materials must be paid for at fair market value. The court did not treat the highway right-of-way matter in the light of a sale, but did observe that the Congress, in granting the trust lands and prohibiting their sale at public auction, could not have contemplated that method of conveyance in the transfer of lands for highway purposes, and the public auction provision, therefore, did not apply. Supposedly, a right-of-way easement would contemplate, also, the use of nonmineral fill materials.

The highway case seemed to have set a precedence for all land office transactions with respect to other departments and agencies of the State Government, to the extent that it is assumed that leasing and sales to these other State agencies shall be on a true-value basis as to individuals. Condemnations for certain purposes by the U.S. Government, are presumed to escape the public auction requirement, under court usages.

The strict covenants as to the disposition of any of the trust lands have brought about some awkward situations in New Mexico. There was, for example, the case where certain historical and archaeological societies sought to have

protected certain artifacts and relics of prehistoric man which had been discovered on State trust land. In order to protect the sometimes delicate relics, the land commissioner might find it necessary to withdraw the land from all uses not connected with the excavations of the archaeological artifacts, and by so doing would be divesting the land beneficiary of any and all remuneration from the sale of the land or its leasing for the recovery of valuable mineral deposits. The land commissioner would be prohibited from selling the land by any method other than public auction, and under no circumstances, under provisions of the State constitution, is he authorized to convey the mineral estate with the surface estate, except under condemnation by the U.S. Government. Dedicating any of the trust lands to the preservation of archaeological or historical artifacts would, therefore, seem impossible under strict adherence to the terms of the granting acts and the subsequent provisions of the State constitution and laws of the State, unless the beneficiary were remunerated to the fullest extent of any and all value of the land taken and reserved.

#### UTAH

Grants of land to the State of Utah, under her enabling act, and subsequent measures of Congress totaled approximately 7,455,436 acres, and included acreages equaling 4 sections of each township for the support of the common schools, and floating or quantity grants to 11 other State purposes and institutions.

The granting acts provided that the lands were to be "held, appropriated and disposed of exclusively for the purposes herein mentioned, in the manner which the legislature may provide."

In the granting acts, Congress required that the State establish permanent funds for all educational purposes to which the land grants were being made, and that moneys to be derived from the sale of these lands and other nonrecurring income from the lands, be deposited in the respective permanent funds. The principal of these funds, it was provided, was to be invested in interest-bearing securities, the proceeds of which were to be applied to the operating expenses of the several institutions identified with those permanent funds.

The enabling act also provided, as in other States, that 5 percent of the proceeds from the sale of Federal lands within the State also be deposited in the permanent fund of the common schools.

In accepting and reconfirming these provisions for permanent funds, the constitution of the State of Utah went further and provided that permanent funds be established without exception for each of the land-grant accounts provided for by the enabling act.

The lands granted to the State of Utah are administered by a land board which has been created by statute. Five members of the board are appointed for 6-year staggered terms by the Governor, with the consent of the senate, and cannot be removed except for cause.

The State superintendent of public instruction is an ex officio and the sixth member of the land board. The board, with the approval of the Governor, appoints an executive director as its administrative officer, for, likewise, a term of 6 years.

The board promulgates all rules within the limits provided by law, and has broad powers in making determinations as to the leasing and other disposition of State lands.

Since the beginning of its land administration, the State of Utah has disposed of about one-half of the acreage granted to it for the various purposes. Since 1919, all minerals have been reserved to the State in all sales of State lands.

The sale of State lands is processed under various procedures as prescribed by law. The legislature has provided generally, that common school lands shall be sold at public auction after appraisal and advertising. However, there are some variations from this requirement. If there are no bidders after all steps required by law have been taken in the offering at public auction, a tract of common school lands, the board may reappraise the offered tract, and then sell it in a private, negotiated transaction at not less than the amount at which the same tract had just been offered at public auction.

By a special statute, the State land board, with the approval of the Governor, may sell any tract of State land to another department of the State, for various public or quasi-public uses, at an appraised price. Presumably, the land is not conveyed to another department at less than its true value, in order that no

part of its value may be diverted from the purpose for which the land was granted.

In the case of the quantity grants, the land board is authorized to make selections from the public domain against the quantities granted for the various purposes, on application of any qualifying resident of Utah. The land, when patented to the State by the Bureau of Land Management is, in turn, conveyed under State patent, to the individual, at a negotiated price.

No individual is allowed by law the purchase of more than four sections of the State's lands.

The Utah legislature may make changes from time to time in the matter of directing the sale or leasing of the State lands, for neither the granting acts nor the Utah constitution provided any restraints over the disposition of the lands, other than to provide for the faithful application of the proceeds of the lands to the purposes for which the grants were made. Since no purposes other than those named in the granting acts are to be allowed to share any of the benefits of the grants, it would appear that all proceeds emanating from the land transactions would necessarily represent true value in any consideration named in connection with such transactions. Any lesser consideration in such transactions would appear to constitute a subsidy and, therefore, a diminishing return to an intended purpose.

Utah laws and State land board regulations provide for leasing in two general categories, i.e., mineral and nonmineral. The nonmineral leases would apply to any and all surface uses, while the mineral leases provide for the extractions of mineral products from surface and subsurface sources.

Currently under control of the State land board, and subject to leasing for any of the prescribed uses, are some 3,250,000 acres of land of the original grants. In addition, the State retains the mineral interest in all State lands sold since 1919, and these also are the source of additional mineral revenue.

Mineral leases and royalties return approximately \$1½ million per year at the present rate.

From surface leases and right-of-way easements, the State realizes around \$125,000 per year, and other income to the State land office which had its origin in land transactions are from the investments of the permanent funds, which also are under the control and direction of the land board.

Interest on the various investments and from land sale contracts bring annual income in the neighborhood of \$350,000 per year.

As of the present time, there has been deposited in the permanent funds, as proceeds from land sales, royalties and sale of natural products, about \$10,500,000 which is being invested for an annual return of about 4-percent of the principal.

Multiple use of State land is limited to the various types of mineral and nonmineral leases that may be in force simultaneously on a single tract of land where conflicts in occupancy and use would not occur. The State land board, in issuing a nonmineral lease, reserves the right to issue mineral leases of various kinds, and to provide for the extraction of any and all minerals while the same tract is under a nonmineral lease.

Leases to other departments of the State government are under the same terms that are open to individuals. However, some priority is given other State departments, at the expiration of existing leases, or when the land is reclassified for higher-value uses.

Principal other State departments leasing the State's land which are under the administration of the land board, are the State department of parks and recreation, and the State department of game and fish.

Leases are also made from time to time to political subdivisions of the State, but without concessions in rental rate or length of term.

Senator BIBLE. Now, if a State were to select land under S. 41, and the land was currently under lease to a rancher, what would happen to a grazing permit on BLM land in some of our typical Western States? Does this extinguish the grazing permit granted by the State?

Mr. HOCHMUTH. Unless the State would enter into an agreement with BLM for the management of the land and the collection of the grazing fees. This would, in effect, extinguish the grazing rights or the grazing allotment you would have.

(The information requested is as follows:)

When the selection was approved and the land transferred out of Federal ownership, any existing grazing lease, license, or permit would be terminated. Where lands subject to a grazing lease under the provisions of section 15 of the Taylor Act, as amended (43 U.S.C. 315n) are patented to a State as part of an exchange under section 8 (43 U.S.C. 315g), the patent is subject to the outstanding lease (43 U.S.C. 315p). The rights of the grazing user would then be determined under the laws and administrative procedures of the State involved.

For example, New Mexico law gives a preference right to a State grazing lease to Taylor Act grazing users. (See New Mexico Statutes Annotated 7-8-31 et seq.) Wyoming law provides a preference right to any lease applicants having actual and necessary use for the land and who are the owners, lessees, or lawful occupants of adjoining lands. (See Wyoming Statutes Annotated 36-66). Nevada law provides for grazing leases but does not seem to grant any preference right to applicants who had Federal grazing privileges. (See Nevada Revised Statutes 322.050.)

Senator ANDERSON. I can only speak for the State of New Mexico. But doesn't the State of New Mexico offer to extend to the purchaser the same lease he has to the Federal Government?

Mr. HOCHMUTH. That is my understanding.

Senator ANDERSON. Why do you say it extinguishes his right?

Mr. HOCHMUTH. Well, in Federal law, when the title transfers to the State we can't make grazing allotments to the State, but if the State comes back to us and says, "Will you administer this grazing allotment under the arrangement that you had before," then we can go ahead to do it but it takes an additional or a change in an agreement to do this.

Senator ANDERSON. The State has always made that offer to you.

I would like to have you tell me a little bit about this objection you have to section 6. The title of this bill deals with authorizing the public land States to select certain public lands in exchange for land taken by the United States for military purposes and so forth, and when the Department of Defense goes out and takes land you provide that they shall reimburse the Secretary of Interior for its expenses but not the State.

Why just the Secretary of Interior? The Department of Defense in its acquisition had money allotted to it for the acquisition, Interior goes out and makes surveys, the State goes out and makes surveys and you provide in the bill that Interior shall be reimbursed so its appropriation won't be hurt. But the State land commissioner he has to pay for it out of his State funds. Will you tell me why?

Mr. STODDARD. Yes.

Because the wish by the State to get, to take lands rather than to take monetary compensation for the lands that are being transferred for Federal purposes, this is on the State's initiative, and—

Senator ANDERSON. Wait a minute.

It starts off with the Federal Government's initiative, doesn't it? It is the Department of Defense that started it in the first place, wasn't it?

Mr. STODDARD. Well—

Senator ANDERSON. Well, wasn't it?

Mr. STODDARD. Yes, sir; it was.

Senator ANDERSON. Well, yes. So why say it is the State's initiative?

Mr. STODDARD. Well, because the State is taking additional initiative to get land rather than take monetary compensation.

Senator ANDERSON. There are lots of people that way. If somebody takes one piece of land from you they want to get another one. You would be surprised as to how many ranchers in the area where big military requests are made, have gone over and taken other ranches. There is nothing fundamentally wrong with that, is there?

Mr. STODDARD. Well, this comes to a situation where the Interior really gets stuck with the Defense Department bill, and I think to argue really from the standpoint of our own costs—

Senator ANDERSON. You mean this is purely a Bureau argument. You don't want to have to pay it for the Department of Defense.

Mr. STODDARD. Well—

Senator ANDERSON. Is it wrong for the State to have the same feeling?

Mr. STODDARD. I imagine not. But you can see that this would require quite an expense on the part of Interior which unless there was some way of handling it budgetwise we would have to sacrifice on other programs.

Senator ANDERSON. Well, if what you said is correct, and I know it is, doesn't it throw the same sort of a burden on the State?

Mr. STODDARD. Yes, sir; it would.

Senator ANDERSON. What is wrong with the Department of Defense taking care of the State's burden; why does it take care of the Department of the Interior? What is fair about that?

Mr. STODDARD. Well, this is a matter of judgment. I mean, if a private individual goes and buys other land he has to pay for the costs. We are using essentially an analogous argument here, if a private individual had his lands taken away by eminent domain and would seek to buy some additional lands with the money, that he would have to pay the costs of, the legal costs involved in, the transfer.

Senator BIBLE. Has the Department of the Interior acquired any State land from Nevada recently?

Mr. STODDARD. Not to our knowledge.

Senator BIBLE. Any further questions by the Senator from New Mexico?

Senator ANDERSON. No.

Senator BIBLE. The Senator from Colorado?

Senator ALLOTT. I have no questions.

Senator JORDAN. I have no questions.

Senator MOSS. I have no questions.

Senator SIMPSON. Mr. Chairman, just one thing. I want to go back to the nub of this entire controversy and especially the bill before us.

Mr. Stoddard, the Bureau's amendments to section 4 principally and the addition of subsection (b), is merely a repetition of what has already been done by the Department of the Interior, Bureau of Land Management, all these years, and I want to press you on this again.

Why do you object to the courts entering into these disputes after arbitration and after there is no prospect of getting together?

Mr. STODDARD. I think there is a gentleman from the Department of Justice here and I believe they have been involved in this determination, Senator, and I think whatever I have said on the subject you

have already heard and maybe additional contribution would probably be more likely—

Senator SIMPSON. Don't you think, Mr. Stoddard, that the amendments of your Department to this bill as emphasized in your statement totally neutralize the bill that has been presented by Mr. Anderson and his colleagues?

Mr. STODDARD. Well, the problem that we have with this bill as it was originally written is pretty well exemplified in this map here, that the initiative and the decision with respect to the choice of the lands falls upon the State.

Now, this means that the badly scattered and broken up management units, if you want to even call them that, that the Bureau administers will be further fragmented and it just makes our land management job even more difficult.

Senator SIMPSON. I am not conversant with that situation in New Mexico but from what you talked about it seemed to me you usurped the prerogative there at the outset and States attempted to have equity done the State and it has just been a prolonged procedure and a delay.

In other words, you couldn't outwit them so you outweighed them.

Senator ANDERSON. Would the Senator from Wyoming yield?

The actual pieces, those pieces of land in the northeastern corner of the State are fragmented pieces and you couldn't administer them, and since you couldn't administer them you are willing to trade them.

When the State wanted to raid something in the southwestern part of the State you said, "Nothing doing."

You were willing to give up pieces in the northeastern portion of the State which is the drought bowl; I remember distinctly the drought of 1933 or 1934 whenever it was, they had a lot of fragmented land and they were ready and willing to give that up.

When the States tried to put together the type of thing he is talking about, a land pattern where they could concentrate in the southwestern portion, they said, "Nothing doing. We just don't trade that way."

Mr. STODDARD. Well, basically the problem is, if you gentlemen won't mind my taking a minute here—

Senator BIBLE. No, that is all right.

Mr. STODDARD. We have an extremely difficult job of administering these scattered lands and what we would like to look forward to in the long run would be some sort of a consolidation whereby we could develop some management units and get a strong management program underway, and this means a classification of the lands, which ones are most likely to stay in Federal ownership because of physical and economic characteristics, which ones are intermingled with private lands or close to cities and logically would go over into private ownership so that we could get some rational system for exchanging back and forth with the States, with private owners and so on.

I am just talking off the cuff, speaking from a background of land management over a period of years, not Bureau of Land Management but in the field in general.

We have an extremely difficult and in some cases almost impossible situation of trying to do anything where we have such a highly scattered group.

Senator SIMPSON. Don't you think the State has the same problem and don't you believe you should help them in the land patterns and land plan?

Mr. STODDARD. Yes, sir, absolutely.

It needs to be worked out jointly, some sort of a system of working classification, so that we could come out in the long run with some sensible pattern to the land management problem that we face.

And unless the legislation that we are thinking about works in this sort of a direction we are just hampered by additional problems of even more scattered situations.

Senator SIMPSON. I think that is what this bill tried to help you out with and that is what surprised me that you amended it out of existence.

Mr. STODDARD. Well, the amendments essentially are designed to make it possible for us to try to determine which areas—

Senator SIMPSON. Your amendments merely go back to the old procedure. There is nothing new in what you are doing there. You merely inserted the old procedure in this bill in order to kill it.

Mr. STODDARD. No, sir, no, sir. We have tried to amend it in such a way that it would make it possible for us to use some initiative in working with the States to achieve this kind of a classification of the land before the transfers were made which would just simply break up our management.

Senator SIMPSON. Are you familiar with the public land States, Mr. Stoddard?

Mr. STODDARD. Yes, sir.

Senator SIMPSON. Are you from a public land State?

Mr. STODDARD. I am from a public land State which has gone through a whole cycle; I am from Wisconsin, and our land went from the Federal Government over to the private owners. There was logging in the northern part of the State where my home is—it was logged, it was burned, settlers were brought in, and they tried to farm the land, and the soil was too poor and the growing season was too short, and we ended up with what was described back in the early 1930's as a new public domain. We had millions of acres of tax delinquent land.

The way in which the problem has been solved there, and it has been pretty well solved, is that the States or the State and the counties took over this cutoff land, set up a system of zoning, set up county forests and State forests and there are also national forests of acquired land, and worked out block units, developed management plants, put in fire protection, spent money and a considerable amount of money in reforestation and State—

Senator SIMPSON. State or Federal Government?

Mr. STODDARD. Well, there was a lot of money involved in the thirties under the various public works programs.

Senator SIMPSON. How much of your land is federally owned, do you know, in your State?

Mr. STODDARD. Yes, there are about  $1\frac{3}{4}$  million acres. There are about 2 million acres of county-owned land and there are about 9 million acres of State land.

Senator SIMPSON. What does that  $1\frac{3}{4}$  million acres constitute in that land area percentage-wise?

Mr. STODDARD. Publicly owned land in the northern part of the State represents about two-thirds of all the forest land there.

Senator SIMPSON. I didn't ask you that.

What is the proportion of the total Federal area to all of the State of Wisconsin?

Mr. STODDARD. There are 12 million acres of public-owned land.

Senator SIMPSON. What is the proportion?

Mr. STODDARD. I think there are about 35 million acres in the total State of which over 30 percent is public land, Federal, State and county combined.

Senator SIMPSON. Are you a land management graduate?

Mr. STODDARD. I am trained in forestry, yes, sir, and I took additional work in land economics and land policy at the University of Wisconsin.

Senator SIMPSON. You have only been in this 2 months?

Mr. STODDARD. Yes.

Senator SIMPSON. Well, I can readily understand the situation. That is all.

Senator BIBLE. Further questions?

Senator ANDERSON. One further question.

You keep talking about the breaking up the land pattern. Would you state for the record whether the State of New Mexico in any of its attempts to exchange land tried to break up the land pattern of conservation it ever had? Have you ever heard that?

Mr. STODDARD. No, sir, I didn't mean that.

Senator ANDERSON. You keep talking about that because you keep talking about "You want to keep the State from breaking up our land pattern."

They have never tried to do that. They have only scattered them when they couldn't administer it the way you are talking about. And that is what you say every time.

Mr. STODDARD. I am sure I didn't mean to imply that, that there was a deliberate effort to break it up. This is a normal attitude that a State administrator would have. He would attempt to get the best parts of the public land for the State and this would mean you pick phosphate land here and timberland here and so on without respect to its relationship to management units.

Senator ANDERSON. You say that would be the normal pattern but it hasn't been the pattern. Every land commissioner we have had has tried to take this in sufficiently large land so we could have a well-established land pattern. They haven't done what you are talking about, and if you look at every application for exchange that I know anything about you will find there wasn't anything like that at all.

They tried to get blocks of land but it didn't do them any good.

Senator BIBLE. Further questions?

Senator from Utah.

Senator Moss. You speak of land pattern. Does the BLM have a zoning worked out, sort of a zoning of the public lands at this time?

Mr. STODDARD. We do have, Senator Moss, a program of land inventory and evaluation that we are working on. It is called the master unit system. This is an effort to try to look at the physical, geographic and economic characteristics of the land in terms of what its

management problems are, what kinds of conservation measures need to apply, what can be the long run best use for that land, so far as it's possible to look ahead, so that management plans can be worked out and the land can be administered successfully.

This also includes which lands would logically be disposed of, which lands are deteriorating and need considerable investment on them, and this sort of thing.

We don't have it perfected or finished yet. We have been working on it by bits and pieces. I am just in the process——

Senator MOSS. Is there a timetable on it when we would have it completed?

Mr. STODDARD. I think 1967 is the final date for the detailed studies. I am hoping we can bring that up, get more of a horseback quesstimate on the basis of experience with these lands in terms of, say, within 18 months, something like that. This would be more of a preliminary type of determination. But we do have some areas that are reasonably well blocked. We have some that are partially scattered and some that are very scattered, and this situation is one that lends itself to a land use classification effort that the Bureau has not engaged in up until now, but I think we need very badly in order to be able to answer some of the kinds of questions that come up.

Senator MOSS. Thank you.

Senator BIBLE. Senator from Montana.

Further questions?

Senator ANDERSON. One final question.

Senator BIBLE. The Senator from New Mexico.

Senator ANDERSON. The Chairman has asked for a number of things which I think are very proper.

Would it be proper for BLM to submit a résumé of what the State of New Mexico has tried to do in this exchange pattern so we have a chance to consult with the State and with you folks and see how far away you are?

Mr. STODDARD. Certainly, a historical record——

Senator ANDERSON. I am informed by the land commissioners and I don't pretend to know where every forest section is in the State, I have been informed by them they have tried to do the very thing you are talking about, to establish a land pattern and get sufficient quantities of land with a similar pattern but they just don't make any headway.

Now, that either is true or it isn't. Submit a résumé of what the State is trying to do and we will be able to find out whether the State's story is right or your story is right.

(The information requested is printed on p. 265. However, the detailed analysis requested by Senator Anderson is not included.)

Mr. STODDARD. We will be glad to do that, sir. I might say——

Senator SIMPSON. Will the Senator yield?

Senator ANDERSON. Certainly.

Senator SIMPSON. I would like the jury to look into that situation because we have a situation in Wyoming where often times the lands are segregated from many of your Federal lands, many of your BLM, and the forest land but it would fit perfectly with respect to Wyoming and its land problem, but yet we can't make a deal with them.

That has happened all over the West and as a newcomer in the Department, God help you, young man, I hope you can do something

about it because it leaves a bad public image all over the West, and in these land States.

We just can't deal with the BLM. It refuses to deal. It won't even give us an opportunity to get those lands and exchange them and when we are ready, able and willing.

Mr. STODDARD. I might say in connection with Senator Moss' question a minute ago with respect to this classification program, that my intention is that we do not try to do it all as a Federal activity, that we work with the States in this classification effort, we work with the counties and the communities that are involved, so that we can get some feeling of participation and decisionmaking on the part of the local people who know the land or the history of the land and have had a lot of experience with it.

This is going to take some doing, but I don't know how else we can do it. There is very good experience in working with communities in land classification efforts, not in the West but in the northern Lake States area, and this may be helpful in doing it.

We do have a provision of our land classification program, part 296 of the Federal code, that does provide specifically for this and our job now is to implement it.

Senator BIBLE. The Senator from Idaho.

Senator JORDAN. Just one question.

Would you know what the present policy of the Bureau of Land Management is with respect to land acquisitions or disposition? Is it your policy to acquire more lands, to dispose of some lands or to maintain the status quo?

Mr. STODDARD. Well, we have no authority for acquiring. We do for exchange. But over the years, as you know, we haven't—there is a net outgoing total of land from the Bureau's acreage for which it is responsible.

Everybody wants BLM lands, you are going to set up a national park, you are going to have a reservoir or this or that, and BLM is the great reservoir of land for all these other purposes, and we are left with the problem of trying to administer the ragtag end, and it is not a situation that lends itself to a very systematic management program.

Mr. HOCHMUTH. May I explain that a little bit, knowing a little bit of the statistics? We have averaged in the last few years about a half million acres a year in direct sale, direct transfer of land out of public ownership. The projections through 1980 I think are around 5 million acres which will go out of public ownership by the operation of the public land laws.

I would like to extend one other statement to Mr. Simpson. Three weeks ago I spent a whole week with all the various Western States land commissioners at Los Angeles, and I had a long discussion with your land commissioner, and I was a little surprised when he told me that cooperation was of the best in the State now and that outside of perhaps one exchange which was involved in a reservoir project where there was some difference of value, but that, too, has now been solved.

Senator SIMPSON. Our land commissioner has been there about the same length of time as Mr. Stoddard.

Mr. HOCHMUTH. He was a new appointee.

Senator SIMPSON. And probably doesn't know some of the past history.

Mr. HOCHMUTH. I am surprised because we have not been aware of any substantial problems in the State of Wyoming.

Senator SIMPSON. I could sit down outside with you and tell you about the Snake River.

Mr. HOCHMUTH. This is another problem. This is title to land and not as part of this problem of exchange. This is the legal problem of the title to the riverbed.

Senator SIMPSON. I commend it to you, and I am not objecting to that cooperation. We need it more than we have had in the past, I can assure you.

Mr. HOCHMUTH. Thank you.

Senator BIBLE. The Senator from Colorado.

Senator ALLOTT. I wonder, Mr. Stoddard, I have not been involved in direct questions of this kind recently. We have a man in Colorado by the name of Mr. Lowell Puckett who is with BLM, a very competent man, and I have always found him very cooperative to work with. But I would appreciate it if you would at least put in the record a short synopsis similar to what the Senator from New Mexico asked for in order that we may have—those of us who are from public land States—in order that we may have some idea of the recent problems involved.

Ten years ago I was involved in some of these things which were probably one of the most frustrating activities that I ever had in my life in trying to work out exchanges, and if you have any recent history of exchanges or attempts to exchange in Colorado, I would appreciate having a short synopsis of those, at least so that we can identify them, and see if we can solve them because I must say that in all fairness to Mr. Puckett that he has been extremely cooperative but I do also know that this problem is a recurring problem.

I only wish that the Bureau of Land Management would turn over all this land to the States and then I think we would get along fine.

I say that with my tongue in my cheek, of course.

Mr. HOCHMUTH. We will be glad to do that.

(The information requested is as follows:)

#### COLORADO

Five State exchange applications have been made since 1950. Four have been completed and one is in process of completion. The selected acreage in these applications amounts to 37,364 and the offered acreage to 32,374. Joint preliminary examination on the application currently being processed worked well and resulted in a substantially complete application which could be processed promptly. This procedure will be followed as far as possible for subsequent filings.

#### NEW MEXICO

There are presently 49 State exchange applications pending in New Mexico. The land office awaits deeds and certificates of nonencumbrance for two applications involving a total of 3,244 acres. A third case needs further appraisal work. The 46 remaining applications are a "package" involving the Apache National Forest. Mineral examinations have been scheduled for 9 of the 46 as the result of a U.S. Geological Survey report of February 6, 1963.

## WYOMING

The most recent State exchange patent was issued January 5, 1956. The Glendo-Keyhole application, in connection with the Bureau of Reclamation's Glendo Reservoir, was withdrawn by the State in 1962, after 5 years of negotiations. One other application, filed in April 1963, is presently being processed.

(The following tables are from Public Lands Statistics:)

TABLE 35.—Area of land exchanges, fiscal year 1953

Type of exchange and State	Number of exchanges	Acreage received	Acreage patented
National forest exchanges: <sup>1</sup>			
Arizona.....	8	4,033.23	3,958.82
California.....	8	3,239.70	1,597.84
Colorado.....	8	2,051.48	1,881.62
Idaho.....	1	160.00	6.44
Minnesota.....	4	1,280.00	733.66
Montana.....	2	104.56	78.27
New Mexico.....	1	630.86	640.00
Oregon.....	7	2,838.24	2,294.48
South Dakota.....	2	383.78	354.67
Washington.....	1	9,481.01	2,455.92
Total forest exchanges.....	42	<sup>2</sup> 24,202.86	<sup>2</sup> 14,001.72
"O & C" exchanges: <sup>3</sup> Oregon.....	11	1,346.73	1,151.09
Submarginal land exchanges: <sup>4</sup>			
North Dakota.....	3	5,721.60	1,407.84
Wyoming.....	1	960.00	80.00
Total submarginal exchanges.....	4	6,681.60	1,487.84
Taylor Act private exchanges: <sup>5</sup>			
Arizona.....	9	10,098.37	6,403.09
California.....	11	15,529.63	6,068.95
Colorado.....	4	880.00	828.94
Idaho.....	11	7,080.87	5,532.07
Michigan.....	1	40.00	40.00
Nebraska.....	1	280.00	280.00
Nevada.....	9	85,842.92	35,780.34
New Mexico.....	2	1,840.42	163.38
Oregon.....	24	9,053.46	8,518.82
Utah.....	23	11,194.98	9,124.81
Wyoming.....	1	200.00	200.00
Total private exchanges.....	96	142,040.65	72,940.40
Taylor Act State exchanges: <sup>6</sup>			
Arizona.....	7	34,656.67	35,540.83
California.....	1	80.00	80.00
Colorado.....	1	17,983.08	17,942.60
Nevada.....	( <sup>6</sup> )	200.00	180.00
New Mexico.....	1	1,821.36	7,447.09
North Dakota.....	2	760.00	760.00
Wyoming.....	1	2,400.00	2,408.49
Total State exchanges.....	15	57,901.11	64,359.01
Grand total.....	168	232,172.95	153,940.06

<sup>1</sup> Act of Mar. 20, 1922 (42 Stat. 465).

<sup>2</sup> In addition, permits to cut national forest timber were approved. Title to a total of 40,206 acres was accepted by the United States in land-for-land and land-for-timber national forest exchanges during the year.

<sup>3</sup> Act of July 31, 1939 (53 Stat. 1144).

<sup>4</sup> Act of June 22, 1937 (50 Stat. 522).

<sup>5</sup> Act of June 28, 1934 (48 Stat. 1269, 43 U.S.C. 315).

<sup>6</sup> Includes 1 equal-area exchange (160 acres) under the act of June 8, 1926 (44 Stat. 708).

TABLE 35.—Area of land exchanges, fiscal year 1954

Type of exchange and State	Number of exchanges	Acreage received	Acreage patented
National forest exchanges: <sup>1</sup>			
Arizona.....	3	1,587.50	697.10
California.....	4	1,410.27	468.62
Colorado.....	2	241.14	75.00
Montana.....	5	4,237.78	3,199.43
New Mexico.....	3	357.50	310.00
Oregon.....	4	2,758.46	2,617.64
South Dakota.....	1	82.64	46.54
Washington.....	1	27.25	40.00
Total forest exchanges.....	23	<sup>2</sup> 10,702.54	<sup>2</sup> 7,454.33
National park exchanges: <sup>3</sup> Montana.....	1	1.88	.34
"O & C" exchanges: <sup>4</sup> Oregon.....	1	320.00	261.64
Reclamation exchanges: <sup>5</sup> Arizona.....	5	90.00	90.00
Submarginal land exchanges: <sup>6</sup>			
Colorado.....	1	788.69	40.00
North Dakota.....	1	320.00	342.40
Total submarginal exchanges.....	2	1,108.69	382.40
Taylor Act private exchanges: <sup>7</sup>			
Arizona.....	13	67,644.06	49,985.76
California.....	6	590.00	587.69
Colorado.....	6	2,306.60	2,346.50
Idaho.....	28	8,235.60	7,841.48
Montana.....	6	2,680.00	2,440.81
Nevada.....	7	7,209.78	6,941.98
New Mexico.....	4	8,738.30	12,068.81
North Dakota.....	1	80.00	160.00
Oregon.....	34	22,726.07	21,936.31
Utah.....	25	27,683.15	29,212.77
Wyoming.....	6	712.37	760.00
Total private exchanges.....	136	148,605.93	134,282.11
Taylor Act State exchanges: <sup>7</sup>			
Arizona.....	1	3,239.80	3,217.40
California.....	1	38,424.11	38,421.84
Nevada.....	2	200.00	200.00
New Mexico.....			<sup>8</sup> 40.00
Total State exchanges.....	4	41,863.91	41,879.24
Grand total.....	172	202,692.95	184,350.06

<sup>1</sup> Act of Mar. 20, 1922 (42 Stat. 465).<sup>2</sup> In addition, permits to cut national forest timber were approved. Title to a total of 46,330 acres was accepted by the United States in land-for-land and land-for-timber national forest exchanges during the year.<sup>3</sup> Act of Aug. 8, 1946 (60 Stat. 949).<sup>4</sup> Act of July 31, 1939 (53 Stat. 1144).<sup>5</sup> Sec. 2 of the act of June 13, 1949 (63 Stat. 172).<sup>6</sup> Act of July 22, 1937 (50 Stat. 522).<sup>7</sup> Act of June 28, 1934 (48 Stat. 1269).<sup>8</sup> Land received in exchange previously reported. Area in supplemental patent not included in former patent.

TABLE 35.—Area of land exchanges, fiscal year 1955

Type of exchange and State	Number of exchanges	Acreage received	Acreage patented
<b>Indian reservation exchanges: <sup>1</sup></b>			
Arizona.....	1	80.00	64.37
Utah.....	2	4,261.48	2,700.64
Total Indian exchanges.....	3	4,341.48	2,765.01
<b>National forest exchanges: <sup>2</sup></b>			
Arizona.....	2	320.00	195.92
California.....	5	2,666.98	3,279.59
Colorado.....	3	1,258.43	974.54
Idaho.....	3	485.00	400.62
Minnesota.....	1	40.00	3.19
Montana.....	1	1,524.47	1,594.95
Nevada.....	1	4,124.99	4,158.33
New Mexico.....	16	104,709.38	205,066.40
South Dakota.....	2	220.00	151.50
Utah.....	2	541.93	535.00
Wyoming.....	1	280.00	280.00
Total forest exchanges.....	37	<sup>3</sup> 116,171.18	<sup>3</sup> 217,240.04
"O & C" exchanges: <sup>4</sup> Oregon.....	4	279.88	371.95
<b>Reclamation exchanges: <sup>5</sup></b>			
Arizona.....	2	60.00	60.00
California.....	1	160.00	160.00
Total reclamation exchanges.....	3	220.00	220.00
<b>Submarginal land exchanges: <sup>6</sup></b>			
North Dakota.....	3	3,426.92	631.57
South Dakota.....	1	634.80	160.00
Total submarginal exchanges.....	4	4,061.72	791.57
<b>Taylor Act private exchanges: <sup>7</sup></b>			
Arizona.....	6	20,820.94	6,470.68
California.....	5	1,666.54	2,840.75
Colorado.....	7	2,875.34	2,536.37
Idaho.....	25	7,400.44	8,744.31
Montana.....	7	2,759.04	2,029.81
Nevada.....	2	40.79	1,561.23
New Mexico.....	4	4,440.01	3,308.27
Oregon.....	12	19,589.66	18,073.66
Utah.....	16	16,677.68	7,185.50
Wyoming.....	6	1,363.03	1,861.49
Total private exchanges.....	90	77,633.47	54,612.07
<b>Taylor Act State exchanges: <sup>7</sup></b>			
California.....	4	3,367.40	3,280.00
Nevada.....	3	2,480.00	1,525.00
Oregon.....	3	2,060.00	1,855.85
Wyoming.....	1	122.85	80.00
Total State exchanges.....	11	8,030.25	6,740.85
Grand total.....	152	210,737.98	282,741.49

<sup>1</sup> Act of May 23, 1930 (46 Stat. 378), as amended; and act of Mar. 1, 1933 (47 Stat. 1418).<sup>2</sup> Act of Mar. 20, 1922 (42 Stat. 465), as amended; act of July 10, 1930 (46 Stat. 1020); and act of June 15, 1926 (44 Stat. 746).<sup>3</sup> In addition, permits to cut national forest timber were approved. Title to a total of 15,541 acres was accepted by the United States in land-for-land and land-for-timber national forest exchanges during the year.<sup>4</sup> Act of July 31, 1939 (53 Stat. 1144).<sup>5</sup> Acts of July 13, 1949 (63 Stat. 172); and Aug. 13, 1953 (67 Stat. 566).<sup>6</sup> Act of July 22, 1937 (50 Stat. 522).<sup>7</sup> Act of June 28, 1934 (48 Stat. 1269).

TABLE 35.—Area of land exchanges, fiscal year 1956 (by area and type of exchange)

Area	Type of exchange	Number of ex- changes	Acreage received	Acreage patented
NATIONAL FOREST EXCHANGES <sup>1</sup>				
1	California.....	2	1, 013. 56	600. 00
	Oregon.....	4	2, 556. 40	1, 871. 15
	Total area 1.....	6	3, 569. 96	2, 471. 15
2	Arizona.....	6	3, 702. 51	990. 16
	Idaho.....	2	592. 14	122. 28
	Nevada.....	1	80. 00	160. 00
	Total area 2.....	9	4, 374. 65	1, 272. 44
3	Colorado.....	5	1, 420. 89	1, 239. 81
	Montana.....	5	33, 892. 67	9, 076. 72
	New Mexico.....	1	8, 587. 90	31, 659. 16
	Total area 3.....	11	43, 901. 46	41, 975. 69
	Eastern States office:			
	Michigan.....	1	2. 70	33. 35
	Minnesota.....	1	117. 08	57. 75
	Total Eastern States office.....	2	119. 78	91. 10
	Total national forest exchanges.....	28	<sup>2</sup> 51, 965. 85	<sup>2</sup> 45, 810. 38
NATIONAL WILDLIFE REFUGE EXCHANGES <sup>3</sup>				
3	Montana.....	1	. 66	83. 86
"O AND C" EXCHANGES <sup>4</sup>				
1	Oregon.....	2	230. 00	209. 34
RECLAMATION EXCHANGES <sup>5</sup>				
1	California.....	5	520. 00	440. 00
2	Idaho.....	16	1, 956. 04	1, 956. 04
3	Montana.....	7	900. 00	900. 00
	Wyoming.....	1	281. 33	281. 33
	Total area 3.....	8	1, 181. 33	1, 181. 33
	Total reclamation exchanges.....	29	3, 657. 37	3, 577. 37
STATE EXCHANGES				
2	Nevada <sup>6</sup> .....	1	441. 72	441. 72
	Eastern States office: Michigan <sup>7</sup> .....	2	500. 80	687. 80
	Total State exchanges.....	3	942. 52	1, 129. 52
SUBMARGINAL LAND EXCHANGES <sup>8</sup>				
2	Utah.....	1	7, 040. 72	4, 685. 14
3	Montana.....	1	640. 00	160. 00
	South Dakota.....	2	2, 119. 47	297. 00
	Total area 3.....	3	2, 759. 47	457. 00
	Total submarginal land exchanges.....	4	9, 800. 19	5, 142. 14

See footnotes at end of table.

TABLE 35.—Area of land exchanges, fiscal year 1956 (by area and type of exchange)—Continued

Area	Type of exchange	Number of exchanges	Acreage received	Acreage patented
TAYLOR ACT PRIVATE EXCHANGES <sup>1</sup>				
1	California.....	5	765.90	1,031.19
	Oregon.....	5	1,760.92	1,680.43
	Total area 1.....	10	2,526.82	2,711.62
2	Arizona.....	15	16,749.57	9,124.33
	Idaho.....	5	3,750.00	3,007.85
	Nevada.....	9	5,518.09	4,727.71
	Utah.....	32	50,209.10	37,604.83
	Total area 2.....	61	76,226.76	54,464.72
3	Colorado.....	4	1,756.99	1,402.91
	Montana.....	3	560.45	1,078.11
	New Mexico.....	6	2,786.45	2,322.31
	Wyoming.....	2	720.00	675.77
	Total area 3.....	15	5,823.89	5,479.10
Eastern States offices: Michigan.....		1	160.00	160.00
Total private exchanges.....		87	84,737.47	62,815.44
TAYLOR ACT STATE EXCHANGES <sup>2</sup>				
1	California.....	1	632.40	627.00
	Oregon.....	15	39,177.99	38,840.40
Total area 1.....		16	39,810.39	39,467.40
2	Arizona.....	5	7,230.76	37,998.49
3	Montana.....	1	320.00	400.00
	Wyoming.....	1	160.00	156.71
Total area 3.....		2	480.00	556.71
Total State exchanges.....		23	47,521.15	78,022.60
Grand total.....		177	198,855.21	196,790.65

<sup>1</sup> Act of Mar. 20, 1922 (42 Stat. 465), as amended; act of July 10, 1930 (46 Stat. 1020), and act of June 22 1948 (62 Stat. 568).

<sup>2</sup> In addition, permits to cut national forest timber were approved. Title to a total of 53,915 acres was accepted by the United States in land-for-land and land-for-timber national forest exchanges during the year.

<sup>3</sup> Act of June 15, 1935 (49 Stat. 382).

<sup>4</sup> Act of July 31, 1939 (53 Stat. 1144).

<sup>5</sup> Act of Aug. 13, 1953 (67 Stat. 566).

<sup>6</sup> Act of June 8, 1926 (44 Stat. 708).

<sup>7</sup> Act of July 31, 1912 (37 Stat. 241).

<sup>8</sup> Act of July 22, 1937 (50 Stat. 522).

<sup>9</sup> Act of June 28, 1934 (48 Stat. 1269), as amended.

TABLE 34.—Area of land exchanges, fiscal year 1957 (by area and type of exchange)

Area	Type of exchange	Number of exchanges	Acreage received	Acreage patented
	NATIONAL FOREST EXCHANGES <sup>1</sup>			
1	California.....	5	2, 141. 57	1, 171. 49
	Oregon.....	3	1, 308. 00	458. 51
	Washington.....	1	275. 86	65. 86
	Total area 1.....	9	3, 725. 43	1, 695. 86
2	Arizona.....	5	2, 726. 60	769. 49
	Idaho.....	1	184. 76	30. 00
	Utah.....	3	3, 308. 58	3, 777. 80
	Total area 2.....	9	6, 219. 94	4, 577. 29
3	Colorado.....	7	1, 604. 10	1, 276. 41
	Montana.....	3	3, 571. 61	2, 157. 26
	New Mexico.....	3	608. 65	600. 00
	South Dakota.....	1	68. 25	51. 21
	Wyoming.....	1	160. 00	350. 00
	Total area 3.....	15	6, 012. 61	4, 434. 88
	Eastern States office: Michigan.....	2	208. 60	156. 84
	Total national forest exchanges.....	35	<sup>2</sup> 16, 166. 58	<sup>2</sup> 10, 864. 87
	NATIONAL WILDLIFE REFUGE EXCHANGES <sup>3</sup>			
	Eastern States office: Michigan.....	1	1, 699. 14	1, 157. 53
	"O & C" EXCHANGES <sup>4</sup>			
1	Oregon.....	2	440. 00	503. 20
	RECLAMATION EXCHANGES <sup>5</sup>			
1	California.....	1	80. 00	80. 00
2	Idaho.....	23	2, 782. 45	2, 782. 45
3	Wyoming.....	9	2, 246. 99	2, 581. 53
	Total reclamation exchanges.....	33	5, 109. 44	5, 443. 98
	STATE EXCHANGES <sup>6</sup>			
	Eastern States office: Michigan.....	2	640. 00	438. 20
	SURMARGINAL LAND EXCHANGES <sup>7</sup>			
2	Idaho.....	1	39. 74	46. 42
3	North Dakota.....	1	799. 84	40. 00
	Wyoming.....	1	960. 00	200. 00
	Total area 3.....	2	1, 759. 84	240. 00
	Total submarginal land exchanges.....	3	1, 799. 58	286. 42

See footnotes at end of table.

TABLE 34.—Area of land exchanges, fiscal year 1957 (by area and type of exchange)—Continued

Area	Type of exchange	Number of ex- changes	Acreage received	Acreage patented
TAYLOR ACT PRIVATE EXCHANGES <sup>8</sup>				
1	California.....	4	1,984.04	1,322.83
	Oregon.....	11	16,266.60	16,274.26
	Total area 1.....	15	18,250.64	17,597.09
2	Arizona.....	13	14,514.60	7,987.02
	Idaho.....	14	5,882.07	5,561.97
	Nevada.....	15	6,174.91	6,218.30
	Utah.....	41	44,859.05	39,850.30
	Total area 2.....	83	71,430.63	59,617.59
3	Colorado.....	11	2,321.98	2,246.43
	Montana.....	7	5,931.74	7,217.88
	New Mexico.....	4	1,560.00	1,257.82
	North Dakota.....	1	80.00	80.00
	Wyoming.....	3	596.89	600.00
Total area 3.....	26	10,490.61	11,402.13	
Total private exchanges.....		124	100,171.88	88,616.81
TAYLOR ACT STATE EXCHANGES <sup>8</sup>				
2	Arizona.....	8	7,021.60	6,642.87
Grand total.....		208	133,048.22	113,953.88

<sup>1</sup> Act of Mar. 20, 1922 (42 Stat. 465), as amended.<sup>2</sup> In addition, permits to cut national forest timber were approved. Title to a total of 28,916 acres was accepted by the United States in land-for-land and land-for-timber national forest exchanges during the year.<sup>3</sup> Act of June 15, 1935 (49 Stat. 382).<sup>4</sup> Act of July 31, 1939 (53 Stat. 1144).<sup>5</sup> Act of Aug. 13, 1953 (67 Stat. 566).<sup>6</sup> Act of July 31, 1912 (37 Stat. 241).<sup>7</sup> Act of July 22, 1937 (50 Stat. 522).<sup>8</sup> Act of June 28, 1934 (48 Stat. 1269), as amended.

TABLE 23.—Area of land exchanges, fiscal year 1958

Area	Type of exchange	Number of exchanges	Acreage received	Acreage patented
NATIONAL FOREST EXCHANGES <sup>1</sup>				
1	California.....	4	1,636.21	1,000.45
	Oregon.....	3	2,900.24	2,300.11
	Total area 1.....	7	4,536.45	3,300.56
2	Arizona.....	2	404.84	210.05
3	Colorado.....	3	500.00	882.07
	New Mexico.....	3	7,750.63	6,562.96
	Total area 3.....	6	8,250.63	7,445.03
	Eastern States office: Michigan.....	1	80.00	40.00
	Total forest exchanges.....	16	13,271.92	10,995.64
RECLAMATION EXCHANGES <sup>2</sup>				
1	Washington.....	1	80.00	80.00
2	Idaho.....	11	1,351.70	1,351.70
3	Wyoming.....	13	3,854.55	3,854.55
	Total reclamation exchanges.....	25	5,286.25	5,286.25
STATE EXCHANGES <sup>3</sup>				
2	Nevada.....	1	40.00	40.00
STATE EXCHANGES <sup>4</sup>				
	Eastern States land office: Michigan.....	1	1,626.70	1,637.37
SUBMARGINAL LAND EXCHANGES <sup>5</sup>				
1	Oregon.....	1	20.00	40.00
TAYLOR ACT PRIVATE EXCHANGES <sup>6</sup>				
1	California.....	4	10,451.10	3,810.31
	Oregon.....	14	6,743.40	6,773.63
	Total, area 1.....	18	17,194.50	10,583.94
2	Arizona.....	15	10,597.59	5,896.53
	Idaho.....	17	10,906.91	7,248.65
	Nevada.....	12	115,526.68	89,229.77
	Utah.....	16	8,459.94	10,568.14
	Total, area 2.....	60	145,491.12	112,943.09
3	Colorado.....	4	1,920.71	1,880.00
	Montana.....	4	4,590.97	4,283.67
	New Mexico.....	1	40.00	40.00
	Wyoming.....	6	1,318.15	871.77
	Total, area 3.....	15	7,869.83	7,075.44
	Total, private exchanges.....	93	170,555.45	130,602.47
TAYLOR ACT STATE EXCHANGES <sup>6</sup>				
1	California.....	2	560.00	560.00
	Oregon.....	3	18,062.00	7,781.31
	Total, area 1.....	5	19,222.00	8,341.31
2	Nevada.....	1	440.00	440.00
	Utah.....	2	2,560.00	2,325.53
	Total, area 2.....	3	3,000.00	2,765.53
3	Colorado.....	3	21,633.64	21,984.08
	New Mexico.....	1	6,039.68	6,402.26
	Total, area 3.....	4	27,673.32	28,386.34
	Total, Taylor Act State exchanges.....	12	49,895.32	39,483.18
	Grand total.....	149	240,695.64	188,094.91

<sup>1</sup> Act of Mar. 20, 1922 (42 Stat. 465) as amended. In addition, title to 15,381 acres was received by the United States in land-for-land and land-for-timber in national forest exchanges.

<sup>2</sup> Act of Aug. 13, 1953 (67 Stat. 566).

<sup>3</sup> Act of June 8, 1926 (44 Stat. 708).

<sup>4</sup> Act of July 31, 1912 (37 Stat. 241).

<sup>5</sup> Act of July 22, 1937 (50 Stat. 522).

<sup>6</sup> Act of June 28, 1934 (48 Stat. 1269), as amended.

TABLE 25.—*Land exchanges, 1959*

Area	State, type of exchange	Number	Area received	Area patented
NATIONAL FOREST EXCHANGES <sup>1</sup>				
1	California.....	2	Acres 437.43	Acres 1,337.46
	Oregon.....	2	142.76	125.00
	Washington.....	1	323.04	640.00
	Total area 1.....	5	903.23	2,102.46
2	Arizona.....	3	1,319.99	776.59
	Idaho.....	1	284.22	283.91
	Utah.....	2	804.00	740.00
	Total area 2.....	6	2,408.21	1,800.50
3	Colorado.....	5	1,285.98	1,763.44
	New Mexico.....	3	681.11	296.97
	Wyoming.....	1	2,433.71	2,293.37
	Total area 3.....	9	4,400.80	4,353.78
Eastern States office:				
	Arkansas.....	1	7,478.19	4,870.00
	Michigan.....	3	169.05	164.87
	Minnesota.....	1	7,826.47	7,676.73
	Total Eastern States.....	5	15,473.71	12,711.60
	Total forest exchanges.....	25	23,185.95	20,968.34
RECLAMATION EXCHANGES <sup>2</sup>				
2	Idaho.....	3	462.55	462.55
3	Wyoming.....	5	1,276.66	1,330.85
	Total reclamation exchanges.....	8	1,739.21	1,793.40
SURMARGINAL LAND EXCHANGES <sup>3</sup>				
3	South Dakota.....	1	1,181.59	40.00
TAYLOR ACT PRIVATE EXCHANGES <sup>4</sup>				
1	Washington.....	2	1,798.36	1,475.90
	California.....	3	2,160.00	2,359.24
	Oregon.....	7	12,042.83	12,048.78
	Total area 1.....	12	16,001.19	15,883.92
2	Arizona.....	19	72,590.76	23,217.85
	Idaho.....	20	7,575.49	7,163.15
	Nevada.....	18	25,068.44	11,790.35
	Utah.....	11	6,487.96	5,436.69
	Total area 2.....	68	111,722.65	47,608.04
3	Colorado.....	3	759.94	1,392.05
	Montana.....	5	9,633.77	168,691.78
	New Mexico.....	6	1,840.54	1,881.58
	Wyoming.....	2	480.00	480.00
	Total area 3.....	16	12,714.25	172,445.41
	Total Taylor Act private exchanges.....	96	140,438.09	235,937.37
TAYLOR ACT STATE EXCHANGES <sup>4</sup>				
1	California.....	1	5,120.00	4,573.95
2	Arizona.....	1	80.00	1,280.00
2	New Mexico.....	4	145,827.17	146,540.84
	Total Taylor Act State exchanges.....	6	151,027.17	152,394.79
	Grand total.....	136	317,572.01	411,133.90

<sup>1</sup> Authority: Act of Mar. 20, 1922 (42 Stat. 465) as amended.<sup>2</sup> Authority: Act of Aug. 13, 1953 (67 Stat. 566).<sup>3</sup> Authority: Act of July 22, 1937 (50 Stat. 522).<sup>4</sup> Authority: Act of June 28, 1934 (48 Stat. 1269) as amended.

TABLE 25.—Land exchanges, 1960

Area	State, type of exchange	Number	Area received	Area patented
NATIONAL FOREST EXCHANGES <sup>1</sup>				
1	California.....	5	1,186.70	1,127.10
	Oregon.....	5	4,843.53	980.00
	Total area 1.....	10	6,030.23	2,107.10
2	Arizona.....	2	524.84	50.00
	Idaho.....	2	549.12	580.00
	Nevada.....	1	1,280.00	1,280.00
	Total area 2.....	5	2,353.96	1,910.00
3	Colorado.....	7	2,402.34	4,582.07
	Montana.....	1	440.00	160.00
	Total area 3.....	8	2,842.34	4,742.07
	Eastern States office:			
	Michigan.....	1	200.00	40.42
	Minnesota <sup>2</sup> .....	3	440.00	323.19
	Total Eastern States office.....	4	640.00	363.61
	Total forest exchanges.....	27	11,866.53	9,122.78
RECLAMATION EXCHANGES <sup>3</sup>				
2	Idaho.....	1	170.72	170.72
3	Wyoming.....	2	325.58	631.92
	Total reclamation exchanges.....	3	496.30	802.64
SUBMARGINAL LAND EXCHANGES <sup>4</sup>				
3	South Dakota.....	2	783.54	680.00
	Eastern States office: Wisconsin.....	1	40.00	40.00
	Total submarginal land exchanges.....	3	823.54	720.00
TAYLOR ACT PRIVATE EXCHANGES <sup>5</sup>				
1	Oregon.....	3	1,180.00	908.63
2	Arizona.....	8	55,053.11	61,863.94
	Idaho.....	5	820.00	632.01
	Nevada.....	6	8,072.36	5,299.28
	Utah.....	5	4,794.86	5,256.00
	Total area 2.....	24	68,740.33	73,051.23
3	Colorado.....	4	466.62	354.71
	Montana.....	3	1,711.12	1,960.00
	New Mexico.....	1	160.00	1,280.00
	Wyoming.....	2	120.00	123.76
	Total area 3.....	10	2,457.74	3,618.47
	Total Taylor Act private exchanges.....	37	72,378.07	77,578.33
TAYLOR ACT STATE EXCHANGES <sup>6</sup>				
1	Oregon.....	1	71,758.05	71,528.13
3	Colorado.....	2	1,280.00	4,900.41
	Wyoming <sup>6</sup> .....	1		36.82
	Total area 3.....	3	1,280.00	4,937.23
	Total State exchanges.....	4	73,038.05	76,465.36
	Grand total.....	74	158,602.49	164,689.11

<sup>1</sup> Authority: Act of Mar. 20, 1922 (42 Stat. 465) as amended.<sup>2</sup> Includes 1 patent (40 acres received, 80 acres patented) act of Dec. 7, 1942 (56 Stat. 1042).<sup>3</sup> Authority: Act of Aug. 13, 1953 (67 Stat. 566).<sup>4</sup> Authority: Act of July 22, 1937 (50 Stat. 522).<sup>5</sup> Authority: Act of June 28, 1934 (48 Stat. 1269) as amended.<sup>6</sup> No land received, as this was a supplemental patent for additional land to previous patent which included the base land.

TABLE 25.—Land exchanges, 1961

Type of exchange by State	Number	Area received	Area patented
NATIONAL FOREST EXCHANGES <sup>1</sup>			
Western States:		<i>Acres</i>	<i>Acres</i>
Arizona.....	10	28,082.50	11,502.93
California.....	10	6,477.17	6,637.80
Colorado.....	1	140.29	4,046.78
Idaho.....	2	700.00	481.51
Nevada.....	1	160.00	200.00
New Mexico.....	1	800.83	986.82
Oregon.....	2	1,869.00	1,985.07
South Dakota.....	1	17.50	10.00
Wyoming.....	1	35.00	40.00
Total Western States.....	29	38,282.29	25,890.91
Other States:			
Florida.....	1	5.05	55.98
Michigan.....	2	777.92	120.00
Total other States.....	3	782.97	175.98
Total national forest exchanges.....	32	39,065.26	26,066.89
RECLAMATION AND EXCHANGES <sup>2</sup>			
Western States:			
Idaho.....	1	121.20	121.20
Wyoming.....	2	297.71	574.07
Total reclamation exchanges.....	3	418.91	695.27
SUBMARGINAL LAND EXCHANGES <sup>3</sup>			
Western States: Wyoming.....	4	1,720.00	990.68
O & C EXCHANGES <sup>4</sup>			
Western States: Oregon.....	1	40.00	80.00
STATE EXCHANGES <sup>5</sup>			
Western States: Nevada.....	1	40.00	40.00
TAYLOR ACT STATE EXCHANGES <sup>6</sup>			
Other States: Michigan.....	2	5,078.02	2,087.28
TAYLOR ACT PRIVATE EXCHANGES <sup>6</sup>			
Western States:			
California.....	2	1,280.00	1,281.59
Colorado.....	1	19.58	800.00
Idaho.....	12	2,639.78	2,424.43
Nevada.....	9	4,392.77	4,948.32
Oregon.....	3	1,199.75	2,120.34
Utah.....	1	76.94	80.00
Total private exchanges.....	28	9,608.82	11,654.68
Grand total.....	71	55,941.01	42,334.80

<sup>1</sup> Authority: Act of Mar. 20, 1922 (42 Stat. 465) as amended.<sup>2</sup> Authority: Act of Aug. 13, 1953 (67 Stat. 566).<sup>3</sup> Authority: Act of July 22, 1937 (50 Stat. 522).<sup>4</sup> Authority: Act of July 3, 1939 (53 Stat. 1144).<sup>5</sup> Authority: Act of June 8, 1926 (44 Stat. 708).<sup>6</sup> Authority: Act of June 28, 1934 (48 Stat. 1269) as amended.

TABLE 25.—Land exchanges, 1962

Type of exchange by State	Number	Area received	Area patented
NATIONAL FOREST EXCHANGES <sup>1</sup>			
Arizona.....	4	4,214.63	2,772.13
California.....	17	14,510.61	10,555.38
Colorado.....	3	1,423.26	8,321.92
Florida.....	1	50.00	40.76
Idaho.....	3	730.00	800.04
New Mexico.....	3	91,125.85	51,495.20
Oregon.....	3	709.14	273.66
South Dakota.....	2	485.40	146.71
Washington.....	2	78.98	94.91
Wyoming.....	1	120.00	120.00
Total forest exchanges.....	39	113,445.87	74,620.71
RECLAMATION EXCHANGES <sup>2</sup>			
Idaho.....	2	268.19	275.31
WILDLIFE EXCHANGES <sup>3</sup>			
Florida.....	2	26.97	2.81
STATE EXCHANGES <sup>4</sup>			
Nevada.....	3	1,309.34	1,309.34
TAYLOR ACT STATE EXCHANGES <sup>5</sup>			
California.....	2	14,890.00	14,858.81
Oregon.....	1	31,498.97	17,689.88
Total Taylor Act State exchanges.....	3	46,388.97	32,548.69
TAYLOR ACT PRIVATE EXCHANGES <sup>5</sup>			
Arizona.....	1	480.00	3,441.66
Colorado.....	2	1,159.32	1,151.92
Idaho.....	7	1,760.32	1,755.82
Montana.....	7	5,465.36	5,096.60
Nevada.....	15	14,461.48	13,592.68
New Mexico.....	5	1,369.80	1,160.00
Oregon.....	12	16,213.51	15,864.35
Utah.....	6	1,976.37	1,885.24
Wyoming.....	2	240.00	297.53
Total private exchanges.....	57	43,126.16	44,245.80
Grand total.....	106	204,565.50	153,002.66

<sup>1</sup> Authority: Act of Mar. 20, 1922 (42 Stat. 465), as amended.<sup>2</sup> Authority: Act of Aug. 13, 1953 (67 Stat. 566).<sup>3</sup> Authority: Act of Aug. 22, 1957 (71 Stat. 412).<sup>4</sup> Authority: Act of June 8, 1926 (44 Stat. 708).<sup>5</sup> Authority: Act of June 28, 1934 (48 Stat. 1269), as amended.

TABLE 25.—*Land exchanges, 1963*

Type of exchange by State	Number	Area received	Area patented
NATIONAL FOREST EXCHANGES <sup>1</sup>			
California.....	11	15,792.02	15,369.253
Colorado.....	5	648.72	540.22
Idaho.....	3	812.70	885.40
Michigan.....	1	48.35	41.72
Minnesota.....	1	85.86	88.75
Nevada.....	2	2,957.32	2,901.02
New Mexico.....	3	206.35	1,197.13
Oregon.....	3	408.16	177.85
Utah.....	1	1,841.72	1,716.12
Wyoming.....	1	240.00	240.00
Total forest exchanges.....	31	23,050.20	23,157.463
SUBMARGINAL LAND EXCHANGES <sup>2</sup>			
South Dakota.....	1	160.00	207.04
Wyoming.....	1	1,878.09	1,720.58
Total submarginal land exchanges.....	2	2,038.09	1,927.62
WILDLIFE EXCHANGES <sup>3</sup>			
Florida.....	1	49.88	40.00
STATE EXCHANGES			
Nevada <sup>4</sup> .....	3	1,687.21	1,687.21
New Mexico <sup>5</sup> .....	2	4,181.73	5,128.40
Total State exchanges.....	6	5,868.94	6,855.61
TAYLOR ACT STATE EXCHANGES <sup>6</sup>			
Michigan.....	5	3,536.12	2,198.28
Oregon.....	1	25,989.91	6,388.21
Total Taylor Act State exchanges.....	6	29,526.03	8,581.49
TAYLOR ACT PRIVATE EXCHANGES <sup>6</sup>			
Colorado.....	1	640.74	640.00
Idaho.....	9	5,152.89	4,233.95
Montana.....	1	958.35	860.58
Nevada.....	8	14,598.18	13,687.96
Oregon.....	12	3,880.00	3,498.49
Wyoming.....	7	1,860.04	2,618.71
Total Taylor Act private exchanges.....	38	27,090.20	25,539.69
Grand total.....	83	87,573.46	66,061.873

<sup>1</sup> Authority: Act of Mar. 20, 1922 (42 Stat. 465), as amended.<sup>2</sup> Authority: Act of July 22, 1937 (50 Stat. 522).<sup>3</sup> Authority: Act of Aug. 22, 1957 (71 Stat. 412).<sup>4</sup> Authority: Act of June 8, 1926 (44 Stat. 708).<sup>5</sup> Authority: Act of Aug. 13, 1949 (63 Stat. 604).<sup>6</sup> Authority: Act of June 28, 1934 (48 Stat. 269) as amended.

Senator BIBLE. Further questions?

The Senator from New Mexico.

Senator ANDERSON. I only want to say, Mr. Stoddard, it is apparent, from some of my comments or questions, I have not been to enthusiastic but I want to say I thought your answers were straightforward and fine and I am encouraged by the way you seem to feel and I trust we will have better solutions to some of our problems in the future.

Senator BIBLE. I appreciate your testimony, Mr. Stoddard, and the same general attitude that Senator Anderson has expressed and it has been helpful.

You indicated this is an area where you thought maybe we could get together and work the problems out.

These are the only questions we have of your group of men as representatives of the Bureau of Land Management.

We do have a gentleman here from the Department of Justice and since you have constantly referred to him insofar as striking out this language of section 4 is concerned I think it would be well to point some questions directly to him.

So you will be excused for the moment.

Senator SIMPSON. One thing I would like the record to disclose and I am sure that Mr. Stoddard wants it, too, the percentage of land federally owned which in the State of Wisconsin is 5.1 percent.

Mr. STODDARD. Pardon me?

Senator SIMPSON. Five and one-tenth percent.

Mr. STODDARD. Federally owned. I mean all publicly owned land. You see we have a lot of county and State land.

Senator SIMPSON. I asked about the Federal.

Mr. STODDARD. I am sorry.

Senator BIBLE. I think his answer did say all publicly owned land. I don't think he broke it down between Federal and State and county.

Senator SIMPSON. I misunderstood him. I asked for federally owned land.

Senator BIBLE. Thank you, gentlemen, you are excused from the hearing on this particular bill.

We will now call Mr. Hall.

Would you first identify yourself and your title and your responsibilities in the Department of Justice?

#### STATEMENT OF HULON HALL, ATTORNEY, LANDS DIVISION, DEPARTMENT OF JUSTICE

Mr. HALL. I will be happy to do that, Mr. Chairman.

My name is Hulon Hall. I am an attorney with the Lands Division of the Department of Justice. I believe counsel will tell you that I was invited to attend as an observer, Mr. Chairman, with the authority only to carry back such questions as you gentlemen cared to submit to the Department of Justice for our disposal.

I would, therefore, like to read the statement of the Deputy Attorney General and say reluctantly that I believe I have no more authority other than to rely on his statement.

Senator BIBLE. Is the statement the same as the official report?

Mr. HALL. Yes, sir.

Senator BIBLE. I think questions do suggest themselves but if you are not the witness that has been delegated to answer the questions, I don't know what—

Mr. HALL. I believe Mr. Wolf will bear out that—

Senator BIBLE. He said you were here in your role as an observer, and because of commitments of others in the Department they were unable to be at this particular hearing this morning.

Senator ANDERSON. Why don't we get a witness who is in a position to testify?

How do you do it? Do you have to subpoena somebody?

Mr. HALL. Well, Senator, I believe in all fairness the request came down only yesterday or the notice of the hearing only yesterday, and although that is not within an area of my responsibility, I believe it was a little short notice for them to come down.

Senator ANDERSON. Well, notice went on the 23d or 24th of July. How do you relate that to yesterday?

Mr. HALL. Well, that was my first knowledge of it, Senator Anderson.

Senator ANDERSON. That is another story. Your first knowledge.

Mr. HALL. Yes, sir.

Senator ANDERSON. What was the Department doing for the 2 weeks?

Mr. HALL. Well, Senator, I wasn't aware of when the Department got notice. As far as I knew I only got it yesterday because that is when I learned about it and I think their statement is dated yesterday.

Senator BIBLE. Well, I would think in the interests of time, as long as you are not in a position to give an answer on the opinion of Mr. Katzenbach, I would think the man we ought to hear from is Mr. Katzenbach who signed the opinion, and we are not going to complete this hearing today in any event, the record will be kept open for a reasonable length of time, and I think the best way to proceed is to continue the hearing and then have Mr. Katzenbach here on a certain day and we will give him notice of the hearing and the date of that hearing or we can direct the questions to him.

Mr. HALL. Yes, sir; I would be happy to—the chairman of the committee could see my own position in this matter.

Senator BIBLE. We understand that very well; there is no problem at all, Mr. Hall. I don't know, we might read—

Senator ANDERSON. I was going to suggest to the chairman of the subcommittee that you request the staff if there are questions they could be submitted to Mr. Katzenbach. I am particularly interested in knowing why the court is not an appropriate place to try a dispute between the Federal Government and the State.

I understand in the water litigation that was the proper place even though some of the people didn't like the outcome too well. I think they just disposed of a suit between Arizona and California that involved some Federal rights, Indian rights, and various other things, and it is difficult for a nonlawyer to know what is wrong with the Court passing on a claim between the State and the Federal Government.

Senator BIBLE. I think that is an excellent suggested course of procedure, and we will have the staff ask questions that are indicated as the result of the official position of the Department of Justice.

The Senator from Montana.

Senator METCALF. Mr. Chairman, the Deputy Attorney General's report from the Department of Justice also raises a constitutional question and I hope that someone will come up there and be prepared to tell us why Congress can't confer this authority on the court under article 3 of the Constitution. That is a rather surprising thing as far as I am concerned and I hope that somebody will be prepared to give us the cases, precedents, on it.

Senator BIBLE. I had particular reference to that. Mr. Katzenbach says this is not constitutional.

Mr. HALL. Yes, sir.

Senator ANDERSON. Is that an appropriate request that he give us citations to back up his claim?

Mr. HALL. I think that would be perfectly appropriate, Senator Anderson.

Senator BIBLE. I think there are a number of questions that are suggested as the result of the Department of Justice in the official opinion, and we will, in a short time, submit to the Department of Justice a number of questions as well as asking for an authority for the conclusions that are made in Mr. Katzenbach's report.

Mr. HALL. Yes, sir; thank you.

Senator BIBLE. Are there further questions, observations, or statements?

Thank you very much, Mr. Hall.

Mr. HALL. Thank you.

Senator BIBLE. At this point in the hearing we will include in the record a letter addressed to the Attorney General of the United States dated August 8.

(The letter referred to is as follows:)

AUGUST 8, 1963.

HON. NICHOLAS DEB. KATZENBACH,  
*Deputy Attorney General,  
Department of Justice,  
Washington, D.C.*

DEAR MR. KATZENBACH: On August 6, the Public Lands Subcommittee of the Senate Interior Committee held a hearing on S. 41, a bill sponsored by 10 Senators of both parties to authorize the public lands States to select lands in exchange for lands taken by the Federal Government, rather than being limited to accepting monetary compensation. This measure was referred to the Department of Justice on January 29, 1963, for comment and report. A reply was received over your signature under date of August 5.

Among the several questions raised in your August 5 report is the overriding one of your disapproval of a court determination of the question of the relative values of the lands to be exchanged, in the event the State and the Interior Department cannot agree. You raise the constitutional question of whether Congress could confer such jurisdiction on district courts.

Several of us on the committee are lawyers and we fail to perceive the exact nature of the constitutional difficulty. In making awards of money damages under present procedure the courts must make a determination of the value of the land taken. It would be no more of what you call an "administrative determination" for the court to arrive at a conclusion as to the value of the land sought to be obtained by the State in exchange than it is for the court to reach such a conclusion for an outright monetary award, with respect to the lands taken by the Federal Government.

There is a suggestion in the report that perhaps it is the matter of whether such an award would be binding on the State that is troublesome to your Department. Most of us who are sponsors of the bill believed that the language of the bill intended to make the court determination equally binding on both the State and the Federal Government. However, if you read the provision differently, we would be glad to consider your recommendation for amendatory language which would spell out that both parties would be equally bound.

In this connection, some of us are considering making the principles of the joint regulations of the Interior and Agriculture Departments with respect to powerline rights-of-way applicable to State-Federal value controversies which might arise under S. 41. In substance these regulations provide that if the Federal agency and the private utility seeking a right-of-way for power transmission lines across Federal lands cannot agree as to issues of fact, each party appoints an arbitrator, and these two select a third. In the event they cannot agree as to this third arbitrator, the chief judge of the appropriate court of appeals is authorized to appoint one. The panel's findings and awards are binding on both parties.

What would be the Department of Justice's position with respect to such a concept in S. 41, rather than the court referral? In this connection some of our members believe it would be preferable, when necessary, to have the third arbitrator selected by the judge of the U.S. district court having jurisdiction over

the capital of the State in which the lands are located. What would be your view on this point?

Another point in your letter that is questioned by the subcommittee is the objection concerning selection of land outside of the grazing district in which the taken lands lie. Surely it can be argued that the taking of land in a grazing district for a military or other Federal use is in itself inconsistent with grazing district principles. In any event, the delineation of grazing district boundaries is an administrative action, and such boundaries can be crossed and changed without violating the principles of the Taylor Grazing Act.

With respect to your first objection, that the initiative lies with the States with respect to selection, it should be borne in mind that it is the Federal Government that in fact makes the first move. There would be no discretion in the States unless and until the Federal Government moved to take State land, and the State has no discretion whatever with respect to the Federal taking of its land.

The same reasoning applies with respect to your objection as to costs: Incurrence of costs is of course the direct result of Federal, not State, action. However, in view of the suggestion that consideration be given to an arbitration procedure, your views on the usual method of assessing costs in similar situations is requested.

The subcommittee would appreciate a reconsideration by the Department of its positions, and a more detailed explanation thereof. Particularly those of us who are lawyers would appreciate a legal exposition of the Constitutional issue you raise, with apposite citations.

Sincerely yours,

ALAN BIBLE,

*Chairman, Public Lands Subcommittee.*

Senator BIBLE. The hearing on S. 41 will be continued subject to the call of the chairman.

We now will proceed to a hearing on S. 1598, a bill which amends section 8 of the Taylor Grazing Act of June 28, 1934.

This is an administration request to revise section 8 of the Taylor Grazing Act dealing with the exchange authority, by amending it in six specific ways which are outlined in the letter of transmittal transmitting the suggested legislation to me for introduction to the Congress.

(S. 1598 and letter referred to follow :)

[S. 1598, 88th Cong., 1st sess.]

A BILL To amend section 8 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315g)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, is further amended to read as follows:*

“(a) The Secretary of the Interior may, on behalf of the United States—

“(1) accept a gift of land or an interest in land when in his judgment the gift will promote the purposes of this Act, facilitate the administration of public lands, or otherwise will be in the public interest.

“(2) exchange for any lands or interests in lands which are privately owned, or which are owned by a State or political subdivision or instrumentality thereof, not to exceed an equal value of surveyed, unappropriated, and unreserved public lands or interest therein when in his judgment the exchange will be in the public interest: *Provided, That—*

“(A) if the lands or interests in lands offered in exchange for public lands have a value at least equal to two-thirds of the value of the public lands, the exchange may be completed upon payment to the Secretary of the difference in values, or the submittal of a cash deposit or a performance bond in an amount at least equal to the difference of values assuring that additional lands acceptable to the Secretary of the Interior and at least equal to the difference in values will be conveyed to the Government within a time certain to be specified by the Secretary of the Interior;

“(B) an exchange with a State or political subdivision or instrumentality thereof may be made only if the lands involved in the exchange are in the same State.

"(b) Subject to the provisions of subsection (a) (2) (A) of this section the Secretary of the Interior may exchange surveyed, unappropriated, and unreserved public lands or interests therein for lands or interests in lands of approximately equal value that are held by the United States in trust for an Indian or a tribe, band, or group of Indians, or that are owned by an Indian or a tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States, if the exchange is in the best interests of the Indian owner or owners and if the Indian owner or owners consent. The lands or interests in lands acquired by or on behalf of the Indian or Indian tribe, band, or group shall be held in the same status and be subject to the same laws and regulations that applied to the lands relinquished by the Indians.

"(c) Any lands or interests in lands acquired by the United States as a gift or through an exchange under subsection (a) of this section shall upon acceptance of title become public lands and shall become a part of any district established pursuant to this Act or any withdrawn or reserved area within which they are located, subject to all of the laws and regulations applicable thereto and any lands or interests in lands relinquished by an Indian or a tribe, band, or group of Indians pursuant to an exchange under subsection (b) of this section shall upon acceptance of the relinquishment become public lands and shall become a part of any district established pursuant to this Act, or any withdrawn or reserved area, other than an area withdrawn or reserved for a tribe, band, or group of Indians, within which they are located, subject to all of the laws and regulations applicable thereto.

"(d) Either party to an exchange under this section may reserve minerals, easements, or rights of use either for its own benefit, for the benefit of third parties, or for the benefit of the general public. Any such reservation, whether in lands conveyed to or by the United States, shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the Secretary of the Interior. When minerals are reserved in a conveyance by the United States, any person who prospectors for or acquires the right to mine and remove the reserved mineral deposits shall be liable to the surface owners according to their respective interests for any actual damage to the surface or to the improvements thereon resulting from prospecting, entering, or mining operations and said person shall, prior to entering, either obtain the surface owner's written consent, or file with the Secretary of the Interior a good and sufficient bond or undertaking to the United States in an amount acceptable to the Secretary for the use and benefit of the surface owner to secure payment of such damages as may be determined in an action brought on the bond or undertaking in a court of competent jurisdiction.

"(e) This section shall apply to all the public land States without exception."

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., April 12, 1963.

HON. LYNDON B. JOHNSON,  
*President of the Senate,*  
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill to amend section 8 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C., sec. 315g).

We recommend that the proposed bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The proposed bill would eliminate gaps in the Department's exchange authority, and would facilitate the consummation of such exchanges.

More specifically, the proposed bill would (1) authorize exchanges of interests in lands; (2) authorize the acceptance of cash in order to equalize values; (3) establish the same rules for both exchanges with States and exchanges with private individuals and give the Secretary more complete authority to determine whether State exchanges would be beneficial; (4) authorize Indians owning restricted lands to exchange them for public lands; (5) designate lands acquired through exchange as automatically a part of the withdrawn area within which they are located; and (6) make the exchange provisions applicable to Alaska.

The present statute has been construed as not permitting the exchange of interests in lands. Our experience has indicated that some exchanges, of

mutual benefit to the Government and to the exchange proponents, have been precluded by the limitation on authority. Our proposal explicitly provides for exchanges of such interests.

Under existing law, exchanges with private individuals can be consummated only if the value of the offered land is not less than the value of the selected land. Often such differences in value lead to extended negotiations and examinations at considerable cost to the Government. Not uncommonly, exchanges die because the exchange proponent is unable to offer additional lands to meet the value requirements. The bill would permit cash payment for not to exceed one-third of the value of the selected land or the filing of a bond or cash deposit to assure the conveyance of additional lands to the Government to make up for any difference in values.

Under existing law where a State exchange involves the selection of lands within a grazing district, the offered lands must lie within the same grazing district and be otherwise unreserved and unappropriated and the sole discretion vested in the Secretary is the determination of " \* \* \* whether the selected lands lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining land in such district for grazing purposes. \* \* \* " Where the selected lands in a State exchange application are not within a grazing district and are unappropriated and unreserved, the Secretary is directed by the statute " \* \* \* to proceed with such exchange at the earliest practicable date \* \* \* " and he is without authority to consider the impact of the proposed exchange upon good land tenure and use, the local economy and Federal land programs and interests. Under the proposed change he could consider those and similar factors to determine whether a State exchange truly would be beneficial.

The present statute provides that State exchanges can be made on one of two bases—equal value or equal acreage. The Secretary by regulation (43 CFR 147.2(b)) has authorized use of the equal value concept only. Equal acreage is not a sound criterion owing to the vast differences in land values, often depending on location only. The proposed bill would take cognizance of our present practice. Equal value is also the usual concept adopted by the Congress in measures having their own exchange provisions.

Another broadening feature of the proposed bill is the provision which would permit an Indian or Indian tribes owning restricted lands to exchange them for public lands. At the present time public lands are not available for exchange for Indian lands held, with restrictions against alienation, or title to which is in the United States in trust for the Indians, except insofar as authorized by special statutes operative only in limited areas. The proposed bill would extend the privileges of these special statutes to all Indian trust or restricted lands, but exchanges would be made only upon the request or with the consent of the Indian or Indians involved, and the land acquired by the Indians through such exchange would be clothed with all the privileges—and restrictions—as the lands surrendered by them. This provision would afford a greater measure of flexibility both to the Government and to Indians and Indian tribes. It is in part designed to avoid the need for future special legislation on the subject.

Under the present statute, lands acquired through exchange by the United States become a part of the grazing district within which they are situated. However, such lands do not automatically otherwise become a part of other reservations within which situated. Our proposal thus would obviate the issuance of public land orders to some extent. It would not be operative as to lands received by the United States in Indian exchanges in cases where they are situated within an area withdrawn for Indians.

Section 8 of the Taylor Grazing Act has been deemed to be inapplicable to Alaska. There are similar needs for exchange authority in Alaska as in other public land States. Our proposal explicitly provides that its provisions shall apply to all the public land States without exception.

The proposal omits the provisions of subsection (d) of section 8 relating to publication of exchanges. Experience has demonstrated that essentially internal work procedures embodied in statutes decrease their flexibility. They can be effectively instituted through regulation.

Also omitted is the provision that no fees shall be charged for exchanges. This provision was superseded by section 201 of the act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1361 et seq.) which states that, notwithstanding any other provision

of law, the Secretary may establish reasonable fees for processing applications relating to public lands under his jurisdiction.

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

Sincerely yours,

JOHN A. CARVER, Jr.,  
Assistant Secretary of the Interior.

A BILL To amend section 8 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C., sec. 315g)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 8 of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C., sec. 315g), as amended, is further amended to read as follows:

"(a) The Secretary of the Interior may, on behalf of the United States:

"(1) Accept a gift of land or an interest in land when in his judgment the gift will promote the purposes of this Act, facilitate the administration of public lands, or otherwise will be in the public interest.

"(2) Exchange for any lands or interests in lands which are privately owned, or which are owned by a State or political subdivision or instrumentality thereof, not to exceed an equal value of surveyed, unappropriated, and unreserved public lands or interest therein when in his judgment the exchange will be in the public interest: *Provided*, That

"(A) If the lands or interests in lands offered in exchange for public lands have a value at least equal to two-thirds of the value of the public lands, the exchange may be completed upon payment to the Secretary of the difference in values, or the submittal of a cash deposit or a performance bond in an amount at least equal to the difference of values assuring that additional lands acceptable to the Secretary of the Interior and at least equal to the difference in values will be conveyed to the Government within a time certain to be specified by the Secretary of the Interior.

"(B) An exchange with a State or political subdivision or instrumentality thereof may be made only if the lands involved in the exchange are in the same State.

"(b) Subject to the provisions of subsection (a) (2) (A) of this section the Secretary of the Interior may exchange surveyed, unappropriated, and unreserved public lands or interests therein for lands or interests in lands of approximately equal value that are held by the United States in trust for an Indian or a tribe, band, or group of Indians, or that are owned by an Indian or a tribe, band, or group of Indians subject to a restriction against alienation imposed by the United States, if the exchange is in the best interests of the Indian owner or owners and if the Indian owner or owners consent. The lands or interests in lands acquired by or on behalf of the Indian or Indian tribe, band, or group shall be held in the same status and be subject to the same laws and regulations that applied to the lands relinquished by the Indians.

"(c) Any lands or interests in lands acquired by the United States as a gift or through an exchange under subsection (a) of this section shall upon acceptance of title become public lands and shall become a part of any district established pursuant to this Act or any withdrawn or reserved area within which they are located, subject to all of the laws and regulations applicable thereto and any lands or interests in lands relinquished by an Indian or a tribe, band, or group of Indians pursuant to an exchange under subsection (b) of this section shall upon acceptance of the relinquishment become public lands and shall become a part of any district established pursuant to this Act, or any withdrawn or reserved area, other than an area withdrawn or reserved for a tribe, band, or group of Indians, within which they are located, subject to all of the laws and regulations applicable thereto.

"(d) Either party to an exchange under this section may reserve minerals, easements, or rights of use either for its own benefit, for the benefit of third parties, or for the benefit of the general public. Any such reservation, whether in lands conveyed to or by the United States, shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the Secretary of the Interior. When minerals are reserved in a conveyance by the United States, any person who prospects for or acquires the right to mine and remove the reserved mineral deposits shall be liable to the surface owners according to their respective interests for any actual

damage to the surface or to the improvements thereon resulting from prospecting, entering, or mining operations and said person shall, prior to entering, either obtain the surface owner's written consent, or file with the Secretary of the Interior a good and sufficient bond or undertaking to the United States in an amount acceptable to the Secretary for the use and benefit of the surface owner to secure payment of such damages as may be determined in an action brought on the bond or undertaking in a court of competent jurisdiction.

"(e) This section shall apply to all the public land States without exception."

Senator BIBLE. Our witnesses are the same as appeared on the last bit of legislation.

Gentlemen, would you like to come forward.

You may proceed, Mr. Stoddard.

**STATEMENT OF CHARLES H. STODDARD, DIRECTOR, BUREAU OF LAND MANAGEMENT; ACCOMPANIED BY HAROLD R. HOCHMUTH, ASSOCIATE DIRECTOR; ROBERT E. McCARTHY, CHIEF, BRANCH OF OPERATIONS AND PROCEDURES; D. MICHAEL HARVEY, DIVISION OF LANDS AND RECREATION; AND GRAHAM HOLMES, ASSISTANT COMMISSIONER FOR LEGISLATION, BUREAU OF INDIAN AFFAIRS**

Mr. STODDARD. I will read the statement.

Section 8 of the Taylor Grazing Act (43 U.S.C. 315g) contains the basic general authority under which the Secretary of the Interior is authorized under certain conditions to exchange public lands with States and private individuals. As originally enacted this authority was designed to permit these exchanges "when public interests will be benefited thereby" (48 Stat. 1272).

Since that time many exchanges have been made. However, many exchanges that would have benefited the public interests have been prevented or discouraged by the severe limitations contained in section 8. S. 1598 would facilitate the consummation of such exchanges. I would like to discuss briefly what we, as public land managers, regard as some of the shortcomings of the present exchange authority in section 8 together with the manner in which S. 1598 is designed to remedy those shortcomings.

The present statute has been construed as not permitting the exchange of interests in lands. Our experience has indicated that some exchanges, otherwise in the public interest, have been precluded by the absence of this authority. S. 1598 explicitly provides for exchanges of such interests.

Under existing law, exchanges with private individuals can be consummated only if they will benefit the public interest and if the value of the offered land is not less than the value of the selected land.

Often such differences in value lead to extended negotiations and examinations at considerable cost to the Government. Not uncommonly, exchanges die because the exchange proponent is unable to offer additional lands to meet the value requirements.

S. 1598 would permit cash payment not to exceed one-third of the value of the selected land or the filing of a bond of cash deposit to assure the conveyance of additional lands to the Government to make up for any difference in values.

Somewhat similar provisions were approved by Congress during the 87th Congress in the legislation authorizing the Point Reyes and Padre Island National Seashores.

Under existing law, where a State exchange involves the selection of lands within a grazing district, the offered lands must lie within the same grazing district and the selected lands must be otherwise unreserved and unappropriated and—

lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining land in such district for grazing purposes \* \* \*

Where the selected lands in a State exchange application are not within a grazing district and are unappropriated and unreserved, the Secretary is directed by the statute "to proceed with such exchange at the earliest practicable date," and he is without authority to consider the impact of the proposed exchange upon good land tenure and use, the local economy, and Federal programs.

Under S. 1598 he could consider those and similar factors to determine whether a proposed exchange with a State would benefit the public interest.

The present statute provides that State exchanges can be made on one of two bases—equal value or equal acreage. Our experience has indicated that equal acreage is not a sound criterion owing to the vast differences in land values, often depending on location only.

In light of this experience, the Secretary has authorized, by regulation, use of the equal value concept only. The bill would take cognizance of our present practice. Equal value is also the usual concept adopted by the Congress in measures having their own exchange provisions.

Another broadening feature of S. 1598 is the provision which would permit an Indian or Indian tribes owning restricted lands to exchange them for public lands. At the present time public lands are not available for exchange for Indian lands held, with restrictions against alienation, or title to which is in the United States in trust for the Indians, except insofar as authorized by special statutes operative only in limited areas.

The bill would extend the privileges of these special statutes to all Indian trust or restricted lands, but exchanges would be made only upon the request or with the consent of the Indian or Indians involved, and the land acquired by the Indians through such exchange would be clothed with all the privileges—and restrictions—as the land offered by them.

This provision would afford a greater measure of flexibility both to the Government and to Indians and Indian tribes. It is in part designed to avoid the need for future special legislation on the subject.

The Indian law and land law are loaded with specific pieces of legislation to take care of specific problems, you know better than I do, and this is an attempt to cut through this complex situation.

Under the present statute, lands acquired through exchange by the United States become a part of the grazing district within which they are situated.

S. 1598 would provide that such lands would become part of any withdrawn or reserved area in which they are located. Since this is

not the case under existing law, it thus would obviate the issuance of public land orders to some extent. It would not be operative as to lands received by the United States in Indian exchanges in cases where they are situated within an area withdrawn for Indians.

Section 8 of the Taylor Grazing Act has been deemed to be inapplicable to Alaska. There are similar needs for exchange authority in Alaska as in other public land States. Our proposal explicitly provides that its provisions shall apply to all the public land States without exception.

Section 8 is also one of the basic laws under which the Secretary of the Interior is authorized to accept gifts of land. S. 1598 would broaden this authority by allowing the Secretary to accept gifts of interests in lands, such as a right-of-way, as well as fee title. The bill provides that all gifts should promote the purposes of the Taylor Act, facilitate the administration of the public lands, or otherwise be in the public interest.

In summary, S. 1598 would (1) authorize exchanges of interests in lands; (2) authorize the acceptance of cash in order to equalize values; (3) establish the same rules for both exchanges with States and exchanges with private individuals and give the Secretary more complete authority to determine whether State exchanges would be beneficial; (4) authorize Indians owning restricted lands to exchange them for public lands; (5) designate lands acquired through exchange as automatically a part of the withdrawn area within which they are located; (6) make the exchange provisions applicable to Alaska; and (7) permit acceptance of gifts of interests in lands.

We believe that S. 1598 would make the exchange provisions of the Taylor Grazing Act a flexible, efficient, and economical instrument of public land management. It would permit the consummation of many exchanges beneficial to both the United States and the exchange proponent which cannot be made under existing law. We recommend that this subcommittee and the Senate approve S. 1598.

**Senator BIBLE.** I am curious about the purposals dealing with the Indian exchanges and I wonder if you would spell out a little more the detail exactly why the language in 1 (b) and (c) is needed insofar as Indian exchanges are concerned?

**Mr. STODDARD.** We have Mr. Holmes of the Bureau of Indian Affairs.

**Senator BIBLE.** We are very happy to have Mr. Holmes. Come forward.

**Mr. HOLMES.** My name is Graham Holmes and I am Assistant Commissioner for Legislation in the Bureau of Indian Affairs.

We don't have a specific example read today, but it is apparent from looking at the areas of Indian country, and areas of Taylor grazing lands that the question sooner or later will come up if consolidation arises so this provision has been included in this bill to cover this proposition at the time it arises.

Otherwise, we would run into a problem with authorities as we often do when it comes to dealing with Indian lands or Taylor grazing lands and as I say I don't have a specific example of the place or a time where a reservation, where this is applicable at this time. But it is apparent that it will be necessary if the general overall intent of this bill is carried out.

I would be glad to try to answer any questions that anyone has.

Senator BIBLE. If what you say is true, then how many exchanges are you planning within the Department of Interior that affect Indians?

Mr. HOLMES. We don't have any right at the minute under plans. Senator ANDERSON. Why do you have to have this section?

Mr. HOLMES. We don't. Actually, as I say, it is apparent when the Bureau of Lands Management comes down to adjusting their land patterns, their land ownership, it is apparent in many places it will run into Indian lands.

The Solicitor has held they don't have authority to exchange for Indian lands.

Therefore, this is for the Indian bill to carry out this purpose. As far as the Bureau of Indian Affairs is concerned, this is not our legislation, and we are not materially concerned, although we are interested in blocking up our lands for management purposes.

Senator BIBLE. How many acres roughly are involved in this particular section or sections? Maybe this is directed more to Mr. Stoddard than to you.

But you contemplate, I understand, firming up your land pattern to acquire certain lands by exchange that are now held by the Indians.

Now, how all embracing is this? Are we talking about a large acreage of land?

Mr. STODDARD. I have looked at maps which show some of the intermingled land situations where Indian lands and public lands are intermingled, and both the Indians—if there is allotted land or tribal lands—but both the Indians and the Bureau have difficulty in trying to arrive at some management arrangement because of the situation.

This would make it possible to do some of the blocking up so that there could be better systematic administration of the lands.

I know of two cases in the Southwest where there are problems of this sort, I know of a case in northern Minnesota where there is a problem of this sort. Where we have some Bureau of Land Management land and the Indians have land and some sort of an accommodation could be worked out if we had this authority.

Senator BIBLE. By whom would this be initiated? As I understand Mr. Holmes he says, (1) there is no need of Indian legislation and, (2) the Bureau of Indian Affairs is happy with the present arrangement of their land ownership and the Indian land ownership.

Now, by whom would this request be initiated? Would it be a request initiated by the Bureau of Land Management for the exchange?

Mr. HOLMES. I assume this is a Bureau of Land Management proposition that they would initiate the transfers, but looking at the map it is apparent that Indian lands will be sooner or later involved, and the Indian provision is included in here for basic authority for the transfers.

If they are going to include Indian land as I say it will be beneficial, then you have to have this authority in this act, because the Solicitor has held that authority does not now exist for the Bureau of Land Management to exchange public domain land for Indian land.

Senator BIBLE. As I understand section 1(a), the request is not initiated by the Bureau of Land Management but by Indians.

Is the applicant in this particular case the Bureau of Indian Affairs, an Indian or an Indian tribe or who is it?

Mr. HOLMES. I don't know.

Mr. STODDARD. It presumably would be the Indian tribe that would have to take the initiative in this case. The bill provides that the Indian tribe or the Indian individual that was on an allotted land would have to approve of any kind of proposed transaction before it would be underway.

So, I can't visualize any situation where the Indian tribe wouldn't really be the prime mover but maybe our people working with them would say now here is our situation, we can work out an exchange arrangement which would be better for both sides.

There is really no set procedures set forth other than having the tribe or the Indian individual make the approval of the proposal before it got started.

Senator BIBLE. It appears that this 1(b) indicates that you get the Indian owner or owners consent, but it doesn't seem to spell out, clearly to me at least, reading it rather hurriedly, that the request should be initiated by the Indian owner or the Indian tribe.

Is that the intent?

Mr. STODDARD. There is nothing here to prevent the initiative coming from the Indians themselves.

Senator BIBLE. I am sorry, I can't hear your answer, Mr. Stoddard.

Mr. STODDARD. I say there is nothing here to prevent the initiative coming from the Indians themselves. We really don't have any specific situations but there have been some in the past, as I understand it, where the present law makes this possible.

Senator ANDERSON. Where did this language come from? Who suggested it in the first place? If the Bureau of Indian Affairs didn't do it who suggested it?

I am not interested in trying to find a remedy for an illness that doesn't exist. You admit you are not sick but you want to get some medicine for it.

Mr. HOLMES. I don't believe it is correct to say that the situation doesn't exist.

As has been pointed out, if you block up——

Senator ANDERSON. Did the Bureau of Indian Affairs ask for this?

Mr. HOLMES. Not to my knowledge; no sir. But it is apparent—I can see why it was put in this bill—it is apparent that Indian land is mixed with public domain lands.

Senator ANDERSON. How much public land is there within Indian reservations?

(The information requested is as follows:)

The following list includes the acreage of public domain under the jurisdiction of the Bureau of Indian Affairs, as of June 30, 1961:

State:	Acres
Alaska-----	<sup>1</sup> 4, 072, 004
Arizona-----	<sup>2</sup> 22, 490
Idaho-----	<sup>2</sup> 330
Nebraska-----	<sup>2</sup> 153
Nevada-----	<sup>2</sup> 40
New Mexico-----	<sup>2</sup> 391
North Dakota-----	<sup>2</sup> 655
Total-----	4, 096, 103

<sup>1</sup> None of the acreage is within the boundaries of established reservations.

<sup>2</sup> There are no figures readily available which indicate what portion of these lands is within the boundaries of established reservations.

Mr. HOLMES. I don't know the acreage, but there are several instances particularly in the Pueblos in New Mexico where there is some mixing of lands.

Senator ANDERSON. Are you talking about the Church Rock Two Wells area?

Mr. HOLMES. No, sir; I don't think that the Church Rock Two Wells thing is involved in this at all.

Senator ANDERSON. What are you talking about?

Mr. HOLMES. There is an instance or two and I can show it on a map where there is Indian land, for certain with the Pueblos. It is not a large acreage. I think it is a fairly small acreage.

Senator ANDERSON. What do you mean "fairly small"?

Mr. HOLMES. I am not prepared to, as I say, give a specific example in acreage, but I can furnish, for the record, where it appears that Indian lands would be involved, if the committee is interested in that.

Senator ANDERSON. This legislation was requested by the administration. Why? That is all I am trying to find out; if no problem exists why do you try to remedy it?

Haven't you got enough problems without getting ones you don't have?

Mr. HOLMES. As I understand, the reason the Indian land part was put in because it was apparent without knowing today how many acres nor any particular place, it is apparent that Indian land and public domain land are intermixed.

Senator ANDERSON. Why do you say that, it is apparent. Apparent means you are able to look at it and see that it is. Where is that true?

Mr. HOLMES. Would you show it on the map there?

Mr. HOCHMUTH. This is a mixture of Indian lands and public domain lands in northwest New Mexico and, of course, that is just north of the Church Rock Two Wells area. In that area there is mixture.

Senator ANDERSON. You said it didn't apply to it. You had your finger on Church Rock Two Wells.

Mr. HOCHMUTH. There is mixture below the reservation here in the extreme western portion of the State.

Senator BIBLE. Has there been any request by the Indian owners or the Indian tribes to exchange Indian lands for public domain lands in this area?

Mr. HOLMES. I believe heretofore the Indians have requested legislation to give them the public domain lands rather than—

Senator ANDERSON. Yes, indeed to be given that public land—but not to exchange—

Mr. HOLMES. Yes, sir; but this bill is an exchange bill.

Senator ANDERSON. Yes. I know they have asked to be given the land, not to exchange it.

Mr. HOLMES. The same places the land might be blocked there by exchange, in the same places the Indians have been requesting that the land be given to them.

Senator ANDERSON. As a matter of fact, the Church Rock Two Wells bill was called an exchange bill, and I introduced it, but subsequently found out there wasn't a single acre being exchanged. It was just an exchange of title, exchange U.S. title to the Indian tribes.

Mr. HOLMES. I said a while ago, I don't think the Church Rock Two Wells thing is applicable in this situation.

Senator ANDERSON. Do you want to take this Church Rock Two Wells map and put your finger on it against the portion you had your finger on a minute ago?

Mr. HOLMES. There has been no exchange proposal submitted at the Church Rock Two Wells so far as I know.

Senator BIBLE. What we are trying to arrive at is what is the real necessity for putting in this provision for exchange of Indian land where it doesn't emanate except possibly from the Bureau of Land Management. The Senator from New Mexico is kind of curious as to how it got into the bill. It came from somewhere, where did it come from?

Mr. STODDARD. It came from the Department of the Interior, I am sure.

Senator ANDERSON. It was sent up by Mr. Carver, but who moved Mr. Carver. Somebody suggested it to him; came up and put it on his desk. Mr. Hochmuth, can't you tell us where it is?

Mr. HOCHMUTH. It came out of the Legislative Counsel.

Senator ANDERSON. Legislative Counsel. We have it at least part way.

Do you know who, in the Legislative Counsel, thought this up?

Mr. HOCHMUTH. I can't tell you who, except I know there are a number of individuals who worked on it, sir.

Senator ANDERSON. I am just trying to find out how the Department advocates something that somebody in the Legislative Counsel's office dreams up without discussing it with the Bureau of Indian Affairs and without discussing it with the tribes involved.

Mr. HOCHMUTH. I am sure, Mr. Anderson, it was discussed.

Senator ANDERSON. You are sure.

Therefore, why are you sure? Who did you see and hear it discussed with?

Mr. HOCHMUTH. Pardon, sir?

Senator ANDERSON. Did you hear a discussion of it?

Mr. HOCHMUTH. I was not personally involved in any discussion.

Senator ANDERSON. Then how are you sure?

Mr. HOCHMUTH. I know how closely those things are coordinated.

Senator SIMPSON. Will the Senator yield?

Who briefed Mr. Stoddard then? He has only been here 2 months. He shouldn't be on the spot here, but somebody in the Department surely must know. You have been there a long time. Who briefed Mr. Stoddard for this hearing this morning?

Mr. HOCHMUTH. I did, sir, and the staff.

Senator SIMPSON. You should be able to answer those questions then, Mr. Hochmuth.

Mr. HOCHMUTH. I believe I did, Mr. Simpson. I know where the bill was prepared. It was prepared in the Legislative Counsel's office of the Department of the Interior.

Senator SIMPSON. May I ask you did you take into consideration the bill introduced by the Senator from Idaho, Mr. Church, S. 1049, which has to do with Indian heirship lands, when you made such a ridiculous statement in this bill which you can't comply with, namely trying to get 100-percent consent from Indians? You just can't do

it. The Department has been confronted by that for years and years and yet you fly in the face of that axiom in the bill itself.

Senator ANDERSON. I appreciate what the Senator from Wyoming has said.

Senator SIMPSON. I thank the Senator from New Mexico.

Senator ANDERSON. My only interest is I would like to know whose idea it was?

Mr. STODDARD. I will get it for you.

Senator ANDERSON. Someone in the office of legislative counsel figured it out, now for what purpose and for whose benefit? If you don't have the problem and it hasn't been presented, it doesn't do any good to say at some future date this may arise. We have tried to deal with this area that he points out there in the bill that had to do with the Church Rock Two Wells area, and as I say, it was presented to me as an exchange.

I thought it was an exchange. I thought we were trying to trade lands of somewhat approximate value, and found it involved an outright gift to the Navajo government of 200,000-some acres and largely for the purpose of moving a lessee or lessees off the lands and putting the leasing of it in the hands of the Navajo Tribe and then I found out, I drove through the area and found, it was a very heavily timbered section and I asked, "Was this in the Church Rock Two Wells area?"

I was assured it was in desert land, but here was the timber. They couldn't move that off. I wondered who thinks these things up; that is all.

Mr. STODDARD. I will find out.

Senator BIBLE. Mr. Stoddard says he will find out, and supply the answer.

In your statement, Mr. Stoddard, you indicate as one of the reasons for the enactment of this particular legislation that they will establish the same rules for both exchanges with States, exchanges with private individuals, and give the Secretary more complete authority to determine whether State exchanges would be beneficial.

Now, we just completed a hearing, almost completed a hearing, on S. 41 by Senator Anderson where part of the problem was, we felt the Secretary had too much authority and that he didn't take into consideration what was of benefit to the State.

Does this run counter to what we are attempting to do in S. 41?

Mr. STODDARD. Well, one of the difficulties with respect to the authority that the Secretary has had, as I pointed out, is the matter of equal value and the differences in value, and this, of course, has caused many exchanges to get stuck.

It could be disagreements on the values involved but there are also differences in the amount that is put up for exchange, and the result is that there doesn't seem to be any way of providing for the difference, no cash arrangements can be provided for.

Senator BIBLE. That seems to be your point No. 2. You said: "Authorized acceptance of cash in order to equalize values," I think I can understand that. It doesn't appear to me that two and three are the same. Three is to establish the same rules both for exchanges of States and private individuals and give the Secretary more complete authority to determine whether State exchanges would be beneficial.

All I am trying to do is find out what No. 3 means, not what No. 2

means, I think I understand 2, but I am not sure I understand what you are driving at in No. 3.

Mr. STODDARD. This would be essentially the same question that came up in the S. 41 discussion, that is the decision here would be with respect to whether the State exchanges with the Federal Government would be beneficial primarily to the Federal Government, the points that Senator Anderson raised a few minutes ago, and the State presumably, it would depend upon the State to look after its decision whether it was beneficial to the State to make, to enter into such an exchange.

Senator BIBLE. Thank you.

Senator Anderson?

Senator ANDERSON. On the second page of the bill, top line dealing with interest in lands, exchanges for any land or interests in land which are privately owned.

What do you mean by "interests in lands, mineral interests"?

Mr. STODDARD. Yes, sir; that would be one.

Senator ANDERSON. Scenic values?

Mr. STODDARD. Would be covered. And also partial interests, divided interest in lands.

Senator ANDERSON. Also what?

Mr. STODDARD. Certain rights that might exist in the lands.

Senator ANDERSON. I am trying to find out what those might be, rights of access, do you think?

Mr. STODDARD. Rights of access, yes. That would be a very good one, also rights-of-way, and other types—

Senator ANDERSON. Could you trade a right-of-way for another right-of-way?

Why do you need this authority for trading interests of land? I can understand perfectly why you need the authority on equal value and not on equal acreage because I think every Secretary of the Interior has refused to deal with equal acreage, so eliminating that is a fine thing.

But when you start talking about trading interests in land, why do you need that authority? What has come up that requires you to have it?

Mr. STODDARD. Well, as you have probably observed in the West, there will be private land which will be blocking access to the public lands, and we are considering the possibility of some acquiring of public access through private lands to get into public lands, just as one of the possibilities.

Senator ANDERSON. This says, "exchange of interests in land," it does not say, "acquisition of interests."

Mr. STODDARD. Well, we would make right-of-way exchanges.

Senator ANDERSON. You have authority now to buy interests, haven't you?

Mr. STODDARD. To buy interests? No. We do have authority to exchange access rights on the Oregon and California lands but not on public lands.

Do we have authority to buy access rights?

Mr. HOCHMUTH. By condemnation.

Senator METCALF. You don't have to condemn it, you can acquire it.

Mr. HOCHMUTH. Senator Anderson, I believe this goes mostly to

the mineral title, where there are no known minerals, and minerals have been reserved, where the United States may own the mineral title but there are no known minerals, where the railroads consistently refused to sell the mineral title now they have sold it.

Senator ANDERSON. How wise they were.

Mr. HOCHMUTH. Now, they are wanting to trade or sell or people have bought the land from the railroad but they don't have the mineral title, or the railroad has the mineral title or the case where the United States sold the land but reserved the minerals. The stock-raising homestead act is a good example. The United States still retains the minerals but there are no known minerals and to get development on many of these lands the person should have complete fee title and this is one kind of exchange.

Senator ANDERSON. What sort of development?

Mr. HOCHMUTH. Much of it in Southwest, is suburban and commercial developments going on in the Southwest right now, in which developments are prevented because of the fact we can't sell the mineral interest and we can't exchange the mineral interests and there are no known minerals.

Senator ANDERSON. That puts quite a burden on the Secretary, doesn't it? He has to decide whether oil is likely to be found in the year 3000 in a certain area.

For instance in the Hopi Reservation in the opinion of some geologists, is the hottest mineral prospect in the Southwest but it is not developed. Who is going to gamble they won't find it there? I know some individuals who went into the Aneth area in the Navajo Reservation and took leases and abandoned them because they found out that it was absolutely dry but it isn't dry today.

You are proposing the Secretary have authority to trade those mineral deposits, those mineral reservations, exchange it, not sell it, for something else and he has to put his judgment up as to whether they are going to get oil first or uranium first or what you are going to do.

I don't know why you put that responsibility on him. Exchange of mineral rights is a peculiar proposal, I would think. It doesn't affect development at all, does it?

Where the Government has the reservation of the mineral right under the ground, don't people go ahead and build houses and everything, run ranches and everything else on land that has a reservation of mineral title?

Mr. HOCHMUTH. Well, as as to the locatable minerals it makes a great deal of difference. As to the leasable minerals the difference is less, of course, but this doesn't propose to exchange those minerals that are known, those lands, or interests in lands known, to be valuable for minerals.

We have a problem in the State of Arizona today where the State of Arizona does own—

Senator ANDERSON. That problem has led you into a subdivision area where the Federal Government has given leases on gravel which is permissible under the Minerals Act, right next to a fancy house.

We had to pass a special piece of legislation last year or the year before to stop the use of minerals.

Mr. HOCHMUTH. Mr. Anderson, that was not—

Senator ANDERSON. I wish you would give an example of the need to exchange these mineral rights, just a specific example. We have got boron here they want to trade for fluoride up there.

What are you trying to get to?

(The information requested is as follows:)

One specific case exists in California where the State has been offered as a gift the NE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$  of sec. 29, T. 20 S., R. 3 E., M.D.M., California, for use as part of Julia Pfeiffer Burns State Park. The lands (240 acres) are former public domain patented under the Stock Raising Homestead Act with reservation of all minerals to the United States together with the right to prospect for, mine, or remove the same. The attorney general of the State of California has ruled that the State cannot take title to property subject to mineral reservations "in which the right of surface entry is not under control of the State."

If the State could acquire the mineral interest reserved to the United States, then it could under State law accept the gift of the land. The U.S. Geological Survey reports that these lands are considered to be nonmineral in character. Under S. 1598, the State could offer State lands or interests in lands in exchange for the reserved mineral interest of the United States. Such an exchange is not possible under existing law.

Mr. HOCHMUTH. Again, for some land that is owned by the State of Arizona, the State owns the surface, there are no known minerals in the land and the United States has the mineral title, if I might use the term mineral title, at least it has the underlying title, and the State itself would like to exchange to get complete fee title.

Senator ANDERSON. Why do you want to exchange? Why do you want to trade it? What is better than to have the mineral title under the State land or Federal land, what is the difference?

Mr. HOCHMUTH. In this case it is of no great moment to the Federal Government about that, but it is of great importance to the State of Arizona, for instance.

Senator ANDERSON. Are they now asking for this exchange?

Mr. HOCHMUTH. Sir?

Senator ANDERSON. Is the State of Arizona asking for this exchange?

Mr. HOCHMUTH. The State of Arizona has requested some method whereby we may be able to transfer that title to them, and there is no way we can do it now and we are not particularly talking about leasable minerals, we are talking about the threat of mining law on those lands.

Senator ANDERSON. Didn't we cover that pretty well in the legislation which we passed?

Mr. HOCHMUTH. No, sir.

Senator ANDERSON. Where is this other area? Where is the area that is affected now, in addition to Arizona?

Mr. HOCHMUTH. I think most of it is in Maricopa and Mojave Counties, they are State lands. They were previously exchanged with the United States.

Senator ANDERSON. All I can say is if this is what the purpose of the legislation is, it ought to come in a little more frankly and try to deal with it, I think, than just come in with the language here. If there is a situation in Arizona, my guess is that Congress will try to rectify it. But to pass completely general legislation applicable to anywhere in the United States on exchanging of mineral rights down below the surface when you say there are no known minerals, there are a good many of us who have had a little experience in making

sure too soon there are no known minerals there. There are no known minerals in the area around Grants, N. Mex., which has now the largest supply of uranium in the country but people who had the original leases gave them up because there was no known minerals. But it turned out to be one woman had an income of nearly a million dollars a year from royalties alone. They found some minerals.

I think if you have an Arizona problem it might be desirable to bring it out just as is and let us deal with it just as we can deal with this equal acreage matter. I think we can deal with the equal acreage very quickly if you give us some language on it.

Mr. HOCHMUTH. Mr. Anderson, it deals with other than Arizona, it deals with other sections in southwestern Arizona. But the State land commissioner of Arizona has said, "How can you help us in, help in solving this problem?" It goes not only to the leasable minerals but it goes to the areas where the State didn't exchange because it didn't have the underlying title and the State does want to do something with it and the operation of the mining law still affects that mineral title although there are no known valuable minerals.

It goes to other kinds of interest in land.

Senator ANDERSON. What is the current policy of the Interior Department on allowance of selections or exchanges of mineral interests?

Mr. HOCHMUTH. Under the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124), lands withdrawn, classified or reported to be valuable" for any of the leasable minerals or included in a lease or permit, or application therefor, for any of such minerals (for example, oil gas, sodium, potash, coal) can be disposed of only if this Department determines that such disposition of the lands "will not unreasonably interfere with operations" under the Mineral Leasing Act, as amended (30 U.S.C. 181, *et seq.*). For example, in *State of California*, A-27805 (Feb. 19, 1959), the rejection of a State indemnity selection was approved where the lands are reportedly valuable for sodium, potash, and other minerals, are included in a potash lease, and where the disposal of the surface rights would interfere unreasonably with operations under the mineral leasing laws. Where a school indemnity selection application offers nonmineral base, or a non-school-indemnity selection is filed, and the selected land is deemed valuable or prospectively valuable for a leasable mineral, the selection is approved only subject to a reservation of such mineral to the United States.

In private exchanges under section 8 of the Taylor Grazing Act, as amended (43 U.S.C. 315g), it is generally preferred that neither the Government nor the exchange proponent reserves minerals. If conveyance of minerals by both parties is not possible, the reservation by both parties of all the mineral rights they own is acceptable. This situation can arise when one party does not own all the minerals. If the exchange cannot otherwise be consummated, both parties may reserve the same specified mineral or minerals, for example, oil and gas, conveying the remainder. This type of exchange is not preferred and will not be consummated unless the public interest would clearly be injured by rejection of the exchange offer.

With respect to State exchanges under section 8 of the Taylor Grazing Act, as amended (43 U.S.C. 315g), if an exchange proposal meets certain criteria of the law, including that relating to equal value

of the offered and selected lands, the Department, by the law, is "directed to proceed with such exchange at the earliest practicable date." This has been construed as a mandate to approve the exchange, if the statutory criteria have been satisfied, subject to provisions of other applicable laws, for example, the act of March 4, 1933, *supra*.

Senator BIBLE. Could I understand this a little more clearly?

If I understand what you are attempting to accomplish by this particular language, "Interests in land," the State of California, for example, would have a certain amount of State land. There will be a reservation of mineral rights to the U.S. Government on this land.

Do I understand it correctly up to that point, in the State of California?

Mr. HOCHMUTH. May I have that restated, I didn't quite get it.

Senator BIBLE. Now, all I am trying to do is find out what problem you are trying to solve by this particular language. I understood you to say that it applied not only in Arizona but it applied in California as well.

Now, going to California, I assume possibly the situation is this. The State of California has State land that they acquired by selection, and those State lands are held by them in fee subject to a reservation of a mineral right in the Federal Government.

Is that correct?

Mr. HOCHMUTH. No; I don't think that is correct. Most of them where the lands were exchanged by the Federal Government with the State in this case, and where both parties reserved the minerals.

Senator BIBLE. They weren't selected lands, they were exchanged lands.

Mr. HOCHMUTH. Mostly, yes.

Senator BIBLE. The exchanged lands placed the title in the State of California subject to a reservation of a mineral right in the Federal Government.

Mr. HOCHMUTH. Yes.

Senator BIBLE. So the sovereign State of California now is attempting to or wants to sell its State lands or dispose of the State lands and it can give title only to the surface rights but it can't give title to the mineral rights, and if I buy it from the State of California then I am in danger of having some location made for gold or silver or uranium or something of that kind under the mining rights?

Mr. HOCHMUTH. Yes, sir.

Senator BIBLE. Is that the type of a problem you are talking about?

Mr. HOCHMUTH. That is the type of a situation which is the major problem. There are others but there is the major problem.

Senator BIBLE. Well, it helps when we understand these problems.

Mr. HOCHMUTH. The chairman stated it very well.

Senator BIBLE. Senator from Montana.

Senator METCALF. The Senator from Idaho gave an example of phosphate. Would this take care of that problem that they have in Idaho? As I understood it, they had an exchange of State land and the Federal Government kept the mineral interests in the phosphate that they transferred and also got the mineral rights in the lands from the State.

Mr. HOCHMUTH. I believe this would include that situation that the Senator from Idaho referred to.

Mr. STODDARD. There would be authority.

Senator METCALF. There would be authority to alleviate that problem?

Mr. STODDARD. I might check that out precisely, but it would appear to me that this would give authority.

Senator METCALF. Now, how many exchanges did you have, say, last year under section 8 here? I mean about how much business do you do in exchanging lands?

Mr. HARVEY. Last year in total there were 60 exchanges completed. This is in fiscal 1962. We don't have the figures in for fiscal 1963 which just ended.

Senator METCALF. Give me a year for example.

Mr. HARVEY. Now the acreage there would be 90,000 acres received and 77,000 acres patented. This varies now greatly.

For example, 3 years ago there were—this is fiscal 1959—102 exchanges. The 10-year total is 932 exchanges, total of approximately a million and a half acres received and a million four hundred thousand acres patented.

Senator METCALF. With the passage of this bill do you anticipate this would accelerate—that you would have more exchanges?

Mr. HOCHMUTH. In my mind there is no question that it would accelerate.

Senator METCALF. How much, what volume do you anticipate?

Mr. HOCHMUTH. I would say it would double because of this one facet that we have been discussing, and that is how to equalize it, where the exchange proponent may have only 640 acres, and he needs exactly this 640 acres.

Senator METCALF. I think I understand that and understand the problem. And all of us would like to have both the Federal land and State land blocked out, and I would hope that these exchanges would accelerate.

It seems to me, however, that if the justification of the bill is largely in that phase of it, then I can't see justification for some of the other phases. It also seems to me that the bill doesn't go quite far enough; if it is advantageous to have them exchange BLM land, why shouldn't this apply also to forest service lands?

Do you see any reason why it shouldn't?

Mr. HOCHMUTH. I would say that they equally have the same problem.

Senator METCALF. This committee has jurisdiction over forest land acquired out of the public domain.

Senator BIBLE. Do we have a position from the Department of Agriculture on this?

Mr. WOLF. This is an administration request and it did not include any recommendations from the Department of Agriculture.

Senator BIBLE. I think it would be very well to solicit their suggestions because they are the Department chargeable with the responsibility of administration of forest lands.

But it seems to me if it is good for public domain under the Bureau of Land Management it should be good for Forest Service.

Senator METCALF. It seems to me the forest lands would have the same problems of equalization.

Mr. STODDARD. I think they have exchanges; that is right. This applies to the Taylor Grazing Act. They have exchange authority.

Senator BIBLE. Can they equalize the values as suggested?

Mr. STODDARD. Yes, sir; trade timber stumpage for land.

Senator BIBLE. Do they have a cash factor there in case the values are not equal?

Mr. STODDARD. That is my impression, but it should be checked.

Senator BIBLE. I would ask the staff to check that out. They may have a much better exchange mechanism built into the Forest Act than is built into the Taylor Grazing Act and section 8.

Senator METCALF. It would seem to me it would be well for us to have the staff do some work on it so that we would at least check out. They may have a better law than is suggested here or there should be some uniformity or maybe we should broaden this a little more.

Senator BIBLE. An excellent suggestion.

(The subcommittee chairman sent a letter to the Department of Agriculture and the Bureau of the Budget as follows. At time of printing no answer has been received.)

U.S. SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
August 9, 1963.

HON. KERMIT GORDON,  
*Director, Bureau of the Budget,*  
*Washington, D.C.*

HON. ORVILLE L. FREEMAN,  
*Secretary of Agriculture, Department of Agriculture,*  
*Washington, D.C.*

DEAR MR. SECRETARY: In hearings on S. 1598, a bill to amend section 8 of the Taylor Grazing Act of June 28, 1934, dealing with exchange authorities, question was raised in our subcommittee on whether certain provisions of that bill should be extended to include exchanges of other lands by agencies such as the Forest Service in the Department of Agriculture.

It is my understanding that the Forest Service has two authorities under which it makes exchanges—one being an act dealing with exchanges of national forest lands created from the public domain; the other, identical in intent, dealing with exchanges made of lands in national forests which are not of public domain origin.

The question raised in our committee was, if there is a justification for improving and coordinating exchange authorities in the Department of the Interior, would it also not be proper to have a uniform Federal legal authority. The committee would, therefore, wish to have the administration's position on the general issue of uniformity, along with any specific additional legislative recommendations you may have.

Cordially,

ALAN BIBLE,  
*Chairman, Subcommittee on Public Lands.*

Senator BIBLE. Any further questions?

Senator Simpson?

Senator SIMPSON. No.

Senator BIBLE. Yes; I very much appreciate your presence here this morning in testifying on both of these bills. I think a number of questions have been suggested to you; we have asked for considerable material.

The record will be kept open for 20 days and I hope you will conform in that time.

We will stand in recess.

(Whereupon, at 12:20 p.m., the committee recessed, subject to call of the Chair.)