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AUTHORIZING SALE OF CERTAIN LANDS

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HEARING
 BEFORE THE
 SUBCOMMITTEE ON PUBLIC LANDS
 OF THE
 COMMITTEE ON
 INTERIOR AND INSULAR AFFAIRS
 UNITED STATES SENATE
 EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

S. 625

A BILL TO AUTHORIZE THE SALE OF ISOLATED
OR DISCONNECTED TRACTS OF LAND

JULY 9, 1965



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Committee on Interior and Insular Affairs

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BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

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AUTHORIZING SALE OF CERTAIN LANDS

FRIDAY, JULY 9, 1965

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 11:10 a.m., in room 3110, New Senate office Building, Senator Frank Church (chairman of the subcommittee) presiding.

Present: Senators Frank Church (Idaho), Ernest Gruening (Alaska), Frank E. Moss (Utah), Gordon Allott (Colorado), Paul Fannin (Arizona), and Milward L. Simpson (Wyoming).

Also present: Jerry T. Verkler, staff director; Porter Ward, professional staff member; Richard H. Little, minority counsel, and Crocker Price, assistant minority counsel.

Senator CHURCH. We will move now to the bill S. 625, introduced by Senator Simpson, to authorize sale of isolated or disconnected tracts of lands.

We will include the full text of the bill and the departmental reports concerning it in the record at this point.

(The documents referred to follow:)

[S. 625, 89th Cong., 1st sess.]

A BILL To authorize the sale of isolated or disconnected tracts of lands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso of section 2455 of the Revised Statutes, as amended (43 U.S.C. sec. 1171), is amended by adding after the words "which is mountainous or too rough for cultivation," the words "or which contains some land that can be put to cultivation but it is insufficient because of climatic, topographic, ecologic, soil or other factors to justify a classification as proper for disposal under the homestead or desert land laws," which will make the proviso read: "*Provided further,* That any legal subdivisions of the public land, not exceeding seven hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, or which contains some land that can be put to cultivation but it is insufficient because of climatic, topographic, ecologic, soil or other factors to justify a classification as proper for disposal under the homestead or desert land laws, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section."

SEC. 2. If the person who has been using the isolated or disconnected tracts of land purchases said land, all trespasses will be forgiven and waived.

AUTHORIZING SALE OF CERTAIN LANDS

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 9, 1965.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 625, a bill to authorize the sale of isolated or disconnected tracts of lands.

The purpose of the bill is to permit preference sale to adjacent owners or entrymen, under the 1958 Public Sale Law (Rev. Stat. 2455, as amended, 43 U.S.C. 1171) of public domain in tracts of 760 acres or less which contain some land suitable for cultivation, but which for various reasons cannot be classified for disposal under the desert land or homestead laws. The bill would also waive prior trespass on lands purchased by such parties.

The report which the Secretary of the Interior is submitting on S. 625 recommends that the bill be enacted if the waiver of trespass provision is omitted.

We concur in this recommendation. If so amended, the Bureau of the Budget would have no objection to enactment of the bill.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 8, 1965.

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

DEAR SENATOR JACKSON: This responds to your request for our views on S. 625, a bill to authorize the sale of isolated or disconnected tracts of lands.

We recommend that the bill be enacted if amended as set forth below.

S. 625 amends the Public Sale Law, Revised Statutes 2455, as amended, 43 U.S.C. 1171 (1958), to provide that legal subdivisions of the public land, not exceeding 760 acres, which contain some land which can be put to cultivation but is insufficient because of climatic, topographic, economic, soil or other factors to justify a classification as proper for disposal under the homestead or desert land laws, may be sold by the Secretary of the Interior upon the application of an adjoining landowner or a person who holds a valid entry of lands adjoining such tract. Section 2 of the bill provides that if the land which is sold under the public sale law has been utilized by the purchaser, his trespass against the United States will be forgiven and waived.

The public sale law now authorizes the Secretary to sell at public sale any isolated or disconnected tract of public land not exceeding 1,520 acres. It also authorizes the sale of legal subdivisions of the public land not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, upon the application of an adjoining landowner or a person who holds a valid entry of land adjoining such tract. In both situations, the law provides that for a period of not less than 30 days after the highest bid has been received, any owner or owners of such contiguous land have a preference right to buy the offered land at the highest bid price, but in no case is the adjacent landowner required to pay more than three times the appraised price of the land.

Isolated or disconnected tracts encompass parcels of land which are either completely surrounded on all sides by lands in private ownership or lands in permanent withdrawals, or a combination of both. The limitation as to the character of nonisolated lands that may be disposed of under the statute, has been construed by the Department to require that each subdivision of such land must be mountainous or too rough for cultivation in order to be subject to sale under the law. Moreover, the fact that land may be unsuitable for cultivation by reason of its salinity, poor soil, lack of water, alkalinity, etc., does not afford a sufficient basis for disposing of the land under the law.

The Public Land Sale Act, 78 Stat. 988 (1964), 43 U.S.C. 1421-1427 (supp. V, 1964), in part authorizes the Secretary of the Interior to sell lands "that have been classified for disposal in accordance with a determination that * * * (b) the lands are chiefly valuable for * * * agricultural (exclusive of lands chiefly

valuable for grazing and raising forage crops) * * * development." The Public Land Sale Act provides for the disposal of such land at public auction but contains no preference right provision for adjoining landowners. The authority granted by S. 625 would overlap, to some degree, the Secretary's existing authority under the 1964 statute. However, many of the lands which could be sold under S. 625 could not be considered "chiefly valuable" for agricultural use or development within the ambit of the 1964 law.

We understand that the bill is designed to afford relief to landowners who have fenced in with their lands tracts of Government land. Some of these situations may have arisen because the landowners encountered difficulties in determining the boundary lines of their holdings. We believe that most of the tracts so fenced in with private holdings and utilized with the agricultural operations on the privately owned lands are not sufficient in and of themselves to justify classification for disposal either under the homestead or desert land laws because they would not afford alone a sufficiently viable economic unit. We therefore have no objection to that portion of the bill which would make such lands subject to disposal under Revised Statute 2455, as amended.

We strongly object to section 2 of the bill which would waive prior trespass on the land by the purchaser thereof. We are unaware of any sound justification for such action. Your committee has strongly opposed waiver of trespass charges. Senate Report 1223, 86th Congress, 2d session, concerning H.R. 3676, culminating in the act of April 22, 1960 (74 Stat. 80), stated that failure—

"* * * to eliminate unauthorized uses or to transform them into an authorized status leads to the spread of unauthorized use, deprives the Treasury of current revenues and breeds disrespect for the property rights of the Government. Each Government employee has a duty of reporting trespass of public land, and the officers to whom it is reported have a duty of diligent action until the case is finally terminated.

* * * * *

"Anyone occupying and using without authority lands of the United States is liable in damages for the trespass use made of the land (*Utah Power & Light Company v. United States* (243 U.S. 389)). The measure of damages to the United States in cases of trespass on public lands is the measure generally applicable under the laws of the State in which the trespass is committed (*Mason et al. v. United States* (260 U.S. 545)).

"The committee expects that prompt action will be taken by the Department of the Interior and by the Department of Justice, if requested, to obtain the payment of amounts owed to the United States for past use." [Emphasis supplied.]

We also believe that the title of the bill should be changed. The bill does not authorize the sale of isolated or disconnected tracts of land—existing law already does so in 43 U.S.C. 1171. We are suggesting an appropriate title below.

To effectuate our recommendations, the following amendments are suggested:

1. Change the title to read "To authorize the sale of certain public lands."
2. Delete on page 2 of the bill lines 13 to 15, inclusive.

We also suggest that on page 2, line 4 of the bill the word "which" should be substituted for the word "it".

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,

D. OTIS BEASLEY,
Assistant Secretary of the Interior.

Senator CHURCH. I will defer to you, Senator Simpson, for such statement as you would like to make.

STATEMENT OF MILWARD L. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Thank you very much, Mr. Chairman. Shall I remain here?

Senator CHURCH. Please do.

Senator SIMPSON. I appreciate this. I have a very short statement, and I have some telegrams I would like to submit for the record. I will submit them at the conclusion of my statement.

Mr. Chairman, I appreciate the fact that you are holding a hearing to consider the bill I introduced which will bring relief to some Wyoming ranchers and farmers who have found that they have been farming lands owned by the U.S. Government. The bill that we are considering, S. 625, is a result of a cooperative effort made by the landowners in Sublette County, Wyo., the Bureau of Land Management officials living in Wyoming and the Bureau of Land Management officials here in Washington.

I might say that paragraph 2 of the bill is not in the Bureau bill. They are opposed to that section.

This problem has developed in Wyoming because in years gone by our pioneers and settlers had difficulty in laying out their homesteads and in fencing irrigable land. Often the settler would fence a unit of land which could be irrigated profitably, even though he might have known that a portion of that fenced-in area was Government land.

More often than not the Bureau of Land Management knew of this but, because no one's rights were being damaged by the action, did not correct the fence lines.

Now, after many years of this technical trespass, the Bureau of Land Management has been resurveying the lands and ordering the ranchers to build their fences on the boundary lines and pay damages for the back trespass.

For the most part, these lands are isolated or disconnected tracts of public land which are of little, if any, value to the U.S. Government. However, the loss of these agricultural lands to the individual ranches involved would be severe.

It has been agreed by the Bureau of Land Management officials and the landowners that the proper solution to the problem is for the ranchers to be given an opportunity to buy those isolated and disconnected areas which have been privately fenced in for so many years. Unfortunately, the Bureau of Land Management does not now have the authority to sell the land to the ranchers.

The purpose of my bill is to authorize the sale of these lands to the ranchers who are committing the "agricultural trespass."

It is important that Congress give early consideration and approval to this bill so that the Bureau of Land Management and these landowners can settle any differences that they might have so that the future plans may be made. I am grateful to this committee for considering the matter now. I am hopeful that it will be approved as soon as possible.

Mr. Chairman, these telegrams, I think, might well be read into the record.

Senator CHURCH. Very well.

Senator SIMPSON. I have one here from C. W. McMillan, the executive vice president of the National Cattlemen's Association, which says "The American National Cattlemen's Association heartily endorses S. 625 and urges its passage."

Another from Sherman D. Harmer, executive secretary, Utah Cattlemen's Association, in which he says, "The Utah Cattlemen's Association endorses all the provisions of S. 625 and particularly section 2."

Then a telegram from Dean Prosser, Jr., who has been before this committee on other occasions, executive secretary of Wyoming Stock Growers, which, by the way, is being honored tonight by the New-

comen Society of America, at a banquet in Cheyenne, which I unfortunately have to miss:

The Wyoming Stock Growers Association expresses its support of S. 625 regarding agricultural trespass. This situation has become a particular problem to many Wyoming ranchers and is in great need of positive action to prevent additional entangling circumstances regarding these lands, not only in Wyoming but also in many other Western States.

By resolution at the 1965 annual convention, the Wyoming Stock Growers Association gave unanimous support of S. 625. We urge its adoption.

Signed "Prosser."

A very interesting one from a person who is knowledgeable, a former speaker of the lower house of our State legislature, and very prominent cattleman and citizen of Wyoming, Joe L. Budd, and he puts this in pretty good perspective, I believe.

DEAR SENATOR: Due to my inability to appear at the hearings in support of S. 625 will you please present this statement in my behalf.

In the fall of 1963, the district grazier in the district notified 35 ranchers in this area that they were in trespass on approximately 800 acres of land. They were charged trespassing for 3 years, preceding the notice and would be allowed to use the land by paying a high annual rent.

This is the situation caused by lack of confirmation of second lines to valley boundaries and the time-honored custom of ranchers fencing on a straight line to facilitate the drifting of livestock from summer to winter ranges. Most of the land was fenced 60 to 70 years ago.

We have been advised by the BLM that there is no way they can sell this land to us under present laws, rules, and regulations. I wish to stress particularly the need for section 2, which provides for trespass forgiveness.

In the first place, in many instances the rancher was unaware of the trespass. Since these are small corners protruding into the valleys. Secondly, the trespass charges are exorbitant. This land would be sagebrush land with the carrying capacity of approximately 10 acres for AUM if it hadn't had the benefit of the ranchers water and care over the years.

There are already trespass charges of \$20 per acre on this land which would in itself be a fair price for land which has no water rights. In the event the land is made available for sale this trespass charge added to the appraised price will make the cost of this land unrealistically high.

It is to the advantage of both the Federal Government and the ranchers to make this land available for sale. It is ridiculous to saddle the Bureau with the responsibility of administering these small tracts ranging from 2 to 30 acres in size.

If this land had to be fenced on quarter lines it would be an extreme financial burden on the rancher and create corners that would upset the natural drift of livestock and hamper proper management and grazing of Federal land.

Please express my appreciation to the members of the committee for allowing this statement to be presented in my behalf. Passage of this bill would be of great benefit to the Federal Government and ranchers of this area and I wish to urge its passage as presented at the earliest possible date.

Sincerely,

JOE L. BUDD.

Senator SIMPSON. That concludes my statement, Mr. Chairman, save to say that a former Wyoming citizen is here, Jerry O'Callaghan, who as you know is chief of the legislative relations of the Bureau of Land Management, and I think we are in accord on the bill in all its respects save section 2.

Senator CHURCH. Fine. Mr. O'Callaghan?

**STATEMENT OF JERRY A. O'CALLAGHAN, CHIEF, OFFICE OF
LEGISLATION AND COOPERATIVE RELATIONS, BUREAU OF
LAND MANAGEMENT; ACCOMPANIED BY MICHAEL HARVEY**

Mr. O'CALLAGHAN. Mr. Chairman, I am once again accompanied by Mr. Mike Harvey. S. 625 amends section 2455 of the revised statutes, as amended, found in section 43 U.S.C. 1171, to provide that legal subdivisions of the public land, not exceeding 760 acres, which contain some land which can be put to cultivation but is insufficient because of climatic, topographic, economic, soil or other factors to justify a classification as proper for disposal under the homestead or desert land laws, may be sold by the Secretary of the Interior upon the application of an adjoining landowner or a person who holds a valid entry of lands adjoining such tract. Section 2 of the bill provides that if the land which is sold has been utilized by the purchaser, his trespass against the United States will be forgiven and waived.

Section 2455 now authorizes the Secretary to sell at public sale any isolated or disconnected tract of public land not exceeding 1,520 acres. It also authorizes the sale of legal subdivisions of the public land not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, upon the application of an adjoining landowner or a person who holds a valid entry of land adjoining such tract.

In both situations, the law provides that for a period of not less than 30 days after the highest bid has been received, any owner or owners of such contiguous land have a preference right to buy the offered land at the highest bid price.

The limitation as to the character of nonisolated lands that may be disposed of under the statute has been construed by the Department to require the greater part of each subdivision of such land must be mountainous or too rough for cultivation in order that the subdivision be subject to sale under the law.

Moreover, the fact that land may be unsuitable for cultivation by reason of its salinity, poor soil, lack of water, alkalinity, et cetera, does not afford a sufficient basis for disposing of the land under the law.

The Public Land Sale Act of September 19, 1964, in part authorized the Secretary of the Interior to sell lands—

that have been classified for disposal in accordance with a determination that * * * the lands are chiefly valuable for agricultural (exclusive of lands chiefly valuable for grazing and raising forage crops) * * * uses or development.

The Public Land Sale Act provides for the disposal of such land at public auction but contains no preference right provision for adjoining landowners.

The authority granted by S. 625 would overlap, to some degree, the Secretary's existing authority under the 1964 statute. However, many of the lands which could be sold under S. 625 could not be considered "chiefly valuable" for agricultural uses or development under the 1964 act.

We understand that the bill is designed to afford relief to landowners who have fenced in with their lands tracts of Government land. Some of these situations may have arisen because the landowners encountered difficulties in determining the boundary lines of their holdings.

We believe that most of the tracts so fenced in with private holdings and utilized with the agricultural operations on the privately owned lands are not sufficient in and of themselves to justify classification for disposal either under the homestead or desertland laws because they would not afford alone a sufficiently viable economic unit.

We therefore have no objection to that portion of the bill which would make such lands subject to disposal under Revised Statute 2455, as amended.

We strongly object to section 2 of the bill which would waive prior trespass on the land by the purchaser thereof. We are unaware of any sound justification for such action. This committee itself has strongly opposed waiver of trespass charges.

We also believe that the title of the bill should be changed. The bill does not authorize the sale of isolated or disconnected tracts of land—existing law already does so. We suggest the following amendments:

1. Change the title to read "To authorize the sale of certain public lands."

2. Delete section 2 of the bill.

And then there is a grammatical substitution. On page 2, line 4 of the bill, the word "which," should be substituted, in the Department's judgment, for the word "it."

We recommend that S. 625 be enacted if amended as suggested.

That concludes my statement, Mr. Chairman.

Senator CHURCH. What reason do you have for feeling that the Government will receive fair market value for these lands that this bill would authorize be sold?

Mr. O'CALLAGHAN. Mr. Chairman, we have appraisers, highly skilled appraisers. They are now stationed at our district offices. Upon an application of a rancher one of the first things that will be done will be for an appraiser to move out and view that land, and exercise all the practices called for by the appraisal profession.

Senator CHURCH. Do I understand, then, that the procedure of sale will first, call for an appraisal, and that the land in no case will be sold for less than the appraised value?

Mr. O'CALLAGHAN. Sir, actually, we make what we call a field examination, and part of that field examination is an appraisal, and the bill here very definitely states that it will be sold at the appraised value.

Senator CHURCH. Once that appraised value has been determined, then, I take it, the land involved will be put up for auction.

Mr. O'CALLAGHAN. That is true, sir.

Senator SIMPSON. With the preference right?

Senator CHURCH. With a preference right to a contiguous owner.

Mr. O'CALLAGHAN. Right. It will be an auction; that is, a public auction, and anyone can come in and bid, but no bid, of course, will be entertained below the appraised price.

Then at the highest bid, if it is not an adjoining owner, then the adjoining owner will have 30 days in order to meet the highest bid.

Senator CHURCH. I see.

Senator SIMPSON. Mr. Chairman, may I comment?

Senator CHURCH. Yes, sir.

Senator SIMPSON. Mr. O'Callaghan, who knows the State very well, and who has been in every nook and cranny of it, will probably

agree with me that we have little or no grazing land in Wyoming that exceeds an average value of about \$5 to \$15 an acre. Most of it would be land incapable of irrigation, and would run \$5 to \$7.50 an acre. If that matter comes up to auction, and the bids have to be at least the minimum set by the Bureau and their appraisers on the small tracts of land involved, we are going to get into a position where we get the age-old fight between people who are fighting over a piece of land, some of them contiguous, and some not, and I am hoping that we can make a clean-cut breakaway in this.

The Bureau has offered to waive the trespass back for a 3-year period, but if you add the 3-year trespass fees that they contemplate, \$20 an acre, we are going to be unrealistic from the standpoint of the purchase of the Government property by the landowners. They have both been at fault, I might point out, over the years. This is typical of our State—yours, too, I dare say—where they have gone into these valleys and mountains, and they have the fences to keep the cattle either in the summer range or the winter range, so I am hopeful that section 2 will be retained.

I think it is high time that in a case like this that the committee feels the good sense of the proposition will strike down the prejudice about the payment of trespass assessments provided in section 2.

I might add I am very grateful to be here before the committee and to be heard on this, and I am hopeful that the bill will be forwarded out to the full committee, and that you will not append those amendments made by the department.

Senator CHURCH. Do you know, Mr. O'Callaghan, whether in similar cases, this committee has ever approved a waiver of trespasses before?

Mr. O'CALLAGHAN. I am not familiar with any waivers, Mr. Chairman. The thing I am most familiar with is the quotation from a Senate report originating in this committee which was reproduced in this—

Senator SIMPSON. Excuse me, Jerry. Is that the excerpt contained in the department report?

Mr. O'CALLAGHAN. Yes; it is in the department report on page 2, at the bottom of page 2.

I might say, Mr. Chairman, that the principle the department operates under in trespass situations is that wherever it is possible to settle a trespass situation by putting the people in legal possession, that will be done.

Secondly, it is, of course, that as a precondition to the settlement, the trespass damages have to be assessed and agreement made for their payment.

Senator CHURCH. Well, now, how are these damages determined? I take it that the Bureau of Land Management establishes its figure.

Mr. HARVEY. That is correct. We use the measure of damages that is established by the law of the State in which we are operating, for the particular type of unauthorized use that has been made.

Senator CHURCH. Does the law of Wyoming prescribe what the trespass damages will be in a case of this sort?

Mr. HARVEY. Frankly, I am not sure whether it does. I don't believe it does.

Senator SIMPSON. No.

Senator CHURCH. Isn't that a case for factual determination in a court of law?

Senator SIMPSON. That is right.

Senator CHURCH. If damages were sought?

Mr. HARVEY. Well, there are many statutes, though, that establish standards of damages. Now the values would have to be arrived at through appraisal, undoubtedly, but the law would say that the damages shall be the fair market value of the material taken from the land.

Any actual dollar amounts, of course, would have to be worked out.

Senator CHURCH. I think maybe this record needs to show if there is any kind of governing criteria involved and it ought to be cited. If not, then the \$20 an acre that is now being assessed—is that correct?

Senator SIMPSON. I understand that is the figure. It is in Mr. Budd's testimony.

Mr. HARVEY. I understand that in Wyoming, our people have told me that what they are doing is judging this on the basis of the forage value that has been taken, where it is a grazing use made of the land, and there they have established the value per annum over unit month as \$2.

Senator SIMPSON. I might point out to the chairman there in answer to that this land wouldn't have been worth a lead nickel had it not been for the fact that these farmers, who were good conservationists up in that area, cultivated this land and made it valuable if there is any value attached to it. There wasn't any damage to the department.

They cultivated the lands and utilized them in a way that has increased the value, if there is any value to it, but the fact still remains that the Government did nothing with the land. They acquiesced in the fencing and they acquiesced in the agricultural development.

The statute of limitations would run on a lot of it, of course, if it were anyone but the Government who has an interest.

But I am hopeful that the Department may recede from its position of resisting that section 2, because this is a rather special case, and a rather special instance, and would resolve it permanently, once and for all.

We are having some difficulty north of there in the Jackson Hole country where the Bureau of Land Management has come in to determine the land which belongs to them with respect to the Snake River, which has been a very badly flooded area, and which has changed the lines, the property lines.

Senator CHURCH. Well, I think that the Senator makes a very good argument. At the same time, I am somewhat concerned at the precedent we might establish if we were to pass the bill in this particular form, and thus give notice to others that no trespass will necessarily lie in the use of Federal lands.

Senator SIMPSON. The only thing there, Mr. Chairman, I might point out, is that we are asking in this section that where it is sold to the contiguous owner, who has had it all these years, that the matter would not be in to any outsider, not to a third party. When you get into this auction, some of the wealthy people from the west coast have come into that area, and money is no particular object.

They use that operation, and charge it off to taxes. But I am talking about the fellows like Joe Budd and those other chaps, who have been on the land for over a century, or those who buy the land which is contiguous to their own property, and that is what this bill will enable them to do.

Senator CHURCH. Well, of course, as you point out, if the other party to this matter had not been the Government, these ranchers would have long ago acquired the title by adverse possession, without the necessity of paying anything for it.

Senator SIMPSON. That is right.

Senator CHURCH. So in that sense, I think the Senator makes a very good argument.

What is the reason for the 3-year cutoff? Why couldn't it as easily be 1 year as 3?

Mr. O'CALLAGHAN. I am not certain about that, Mr. Chairman. I think that it is just a judgment that it would be ridiculous, say, to go back to 1934, the date of the enactment of the Taylor Act, for instance. The 3 preceding years is a reasonable time.

If you go back much further than that, you are touching on the problem that you brought out here, the Government as a landowner has an exemption from the statute of limitations that other landowners don't have.

So I think it is a subjective judgment that 3 years is a reasonable period to assess a trespass action.

Senator CHURCH. In assessing these damages, based upon the grazing value of the land involved, is it true that this grazing value is in turn the result of cultivation and the custodianship of this land that has actually been exercised by the ranchers involved?

Mr. O'CALLAGHAN. As I understand it, sir, most of these lands are corners of meadows that were fenced in by the fence running possibly along section lines instead of the quarter section lines.

So water has been placed on the land by the efforts of the ranchers, and they have had the care that hay meadows receive, along with the patented hay meadowlands.

Senator SIMPSON. I might point out, Mr. Chairman, that I think the statement of Mr. O'Callaghan is right. They fence them in, then irrigate them, as I pointed out. Even to the taxes. They have been paying taxes on them for all these years.

Senator CHURCH. How did the question come up?

Senator SIMPSON. The question came up, I think, by virtue of Pearson's statements in respect to the Jackson Hole Valley along the Snake River, where they thought to exchange the land and divide the property right between the property owners and the Government, and this is just a continuation of that effort as I understand.

Most of our dealings have been with Pearson, the State director of the Bureau of Land Management.

Mr. O'CALLAGHAN. I am not certain of the exact circumstances in Wyoming, Mr. Chairman. I can say that the Bureau in the last 4 or 5 years has attempted to identify and then put in motion the steps necessary to remedy all the various kinds of trespass that were found on the public lands.

This is one particular kind, I might say, and so it is part of that effort at identifying trespass.

Senator CHURCH. I must say, I am a little undecided on the point, the trespass point. I can see where the Government would be fully

entitled to reclaim its right to the lands that belong to the Government, and then to charge whatever trespass it might seek for the unlawful use of the lands, but here is a situation where the Government in effect concedes that the land ought to go to the ranchers who have cultivated it and placed it under irrigation, who fenced it in with Government acquiescence.

The landowners are prepared to pay the fair market value for the land, which otherwise would have come to them by adverse possession, but for the Government's claim.

And then on top of that, the Government seeks to extract damages for the trespass, and furthermore, to base those damages upon the grazing values of the irrigated land.

I think that the equities here are, to say the least, not entirely on the Government's side.

Mr. O'CALLAGHAN. Well, these trespass situations are always unfortunate, and the Government, because of the long continuance of them, is not possibly in the best posture in the world. That's why we try to be reasonable about the collection of trespass damages.

Mr. Harvey has a comment.

Mr. HARVEY. I might add one thing. I think in a lot of these situations, we find ourselves sort of between the devil and the deep blue sea, with the ranchers, in these cases, understandably concerned that they will be charged for values that they themselves created, really, by increasing the yield on that land, where at the same time, the General Accounting Office is coming back to us, when we show collection, saying, "Well, you didn't collect the full value out here," if they detect that we didn't take into consideration the actual value of the land today. There have been instances where we have—not in this type of case, but in exchanges, for example—in effect legalized a trespass by transferring title to a piece of land that was occupied in trespass in exchange for some other land that the trespasser owned.

I can think of one in Nevada where we didn't take into consideration on the value of our land the buildings that the trespasser had put on the land, and the General Accounting Office came back to us and said, "You have made a terrible mistake." In fact, the House Committee on Government Operations also criticized us strongly and said when these buildings were put on Federal land they became the property of the Federal Government.

Senator CHURCH. All right, now in this case, certain improvements take place in the sense that the land has been cared for, cultivated, and irrigated.

Now when the fair market value which the Government will receive under this bill is determined, will that fair market value take into account the enhanced value that has come to the land by virtue of the irrigation and the cultivation and the custodianship of the ranchers?

Mr. HARVEY. I would say, Mr. Chairman, unless it was written into the legislation, that it would not; that we would have to do it that way. It would be the actual value of the land, as it stands on the ground the day it was sold.

Now this, I grant you, would seem to be in a sense unfair to the purchaser, because he is the one responsible for adding value.

Senator CHURCH. What I am saying is, you are going to get, as a part of your appraisal, the benefit of what the rancher has done to this land, and the water he has brought to it, are you not?

Mr. HARVEY. That is true.

Senator CHURCH. All right, and then on top of that, you are asking that trespass damages be assessed, based upon the enhanced value of the land that the rancher has himself brought about.

Mr. O'CALLAGHAN. Well, in that regard, Mr. Chairman, I think that the values there that we would be seeking in the trespass damages would be the landowners' share of the production of that land.

Senator SIMPSON. Actually, Mr. Chairman, there is no trespass. I join in the word, but there has never been a trespass, because they have done it with the acquiescence of the Department. I think the chairman has done much better than I in pointing out the equities in this matter, and I certainly appreciate the statement made. I think we have a problem here that is a matter of equity, and I think the Government wants to be on the side of equity.

Senator CHURCH. It seems to me that the Department of the Interior wants to be on the side of the Bureau of the Budget.

Mr. O'CALLAGHAN. I don't know that the cases are completely analagous, but there are certain features that are analagous in connection with the mining claims occupancy. The features that are analagous are that people sometimes to one and two generations, maybe even three generations, were occupying mining claims which may have been valid at one time and the Congress in the Church-Johnson Act gave us the tools for settling that, and one of the provisions in that was that the trespass had to be settled before the sales could be made.

Now it is not totally analagous to this situation in this regard: the mining claimants had to be there under this title of a mining claim. And there are no claims here that the people are using this land by any color of title.

Senator CHURCH. Do you have further questions, Senator Simpson?

Senator SIMPSON. I have none.

Senator CHURCH. I want to thank you very much, gentlemen.

(Whereupon, at 11:55 a.m., the subcommittee recessed, subject to call of the chair.)

