GREAT SALT LAKE RELICTED LANDS

HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 3484

A BILL TO AMEND THE ACT OF JUNE 3, 1966 (PUBLIC LAW 89-441, 80 STAT. 192), RELATING TO THE GREAT SALT LAKE RELICTED LANDS

JUNE 20, 1966

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

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1966

71-500

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(This hearing held in executive session on June 20, 1966, and later released for publication.)

GREAT SALT LAKE RELICTED LANDS

MONDAY, JUNE 20, 1966

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

The committee met at 10 a.m., pursuant to notice, in room 3112, Senate Office Building, Senator Henry M. Jackson (chairman of the committee) presiding.

Present: Senators Jackson, Anderson, Moss, Burdick, Allott, and Jordan of Idaho.

Also present: Jerry T. Verkler, staff director, and Stewart French, chief counsel.

The Chairman. The committee will come to order.

The purpose of the meeting this morning is to consider S. 3484, which the Chair introduced in response to a letter sent to the President of the Senate dated June 8, calling for an amendment to the bill which was previously passed by the Congress and became Public Law 89–441, 80 Stat. 192.

The Chair was advised, as were others, that the President would have to veto the legislation, which later became public law as previously referred to, unless an amendment were to be adopted to section 6 of the legislation.

The Chair advised the White House that when the proposed amendment was sent up, the Chair would introduce it and do everything possible to see to it that it was enacted into law. It was on this basis that the President signed the legislation and approved it.

I understand that the White House was in touch with the chairman of the House Interior Committee. Just what understanding was had with reference to this matter, I do not know.

We have with us this morning Mr. Sam Hughes, the Deputy Director of the Bureau of the Budget, who will testify in connection with the pending measure, and advise us of the views of the executive branch on this.

The Chair will insert in the record at this point a copy of the bill, S. 3484, a copy of the letter of June 8, 1966, to the President of the Senate, and the letter of June 20, 1966, from the Solicitor of the Department of the Interior to the chairman of this committee.

(The documents referred to follow:)

[S. 3484, 89th Cong., 2d sess.]

A BILL To amend the Act of June 3, 1966 (Public Law 89–441, 80 Stat. 192), relating to the Great Salt Lake relicted lands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Act of June 3, 1966 (Public Law 89–441, 80 Stat. 192), is amended by deleting ", shall be deemed permits, licenses, and leases of the United States and shall be administered by the Secretary

in accordance with the terms and provisions thereof" and by substituting "shall not be binding on the United States unless within ninety days they are renegotiated to include such modified terms and conditions as the Secretary of the Interior deems appropriate."

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., June 8, 1966.

Hon. HUBERT H. HUMPHREY,
President of the Senate, Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill "To amend the Act of June 3, 1966 (P.L. 89–441, 80 Stat. 192), relating to the Great Salt Lake relicted lands."

We recommend that it be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The June 3 statute provided for the sale to the State of Utah of the federally owned relicted lands around the Great Salt Lake. During the interim between the conveyance to the State and the payment of the purchase price, the State is allowed to lease the lands, and if the title should revert to the United States because of a failure to pay the purchase price the United States would take the title subject to the State leases.

When the President approved the enrolled bill he asked for the prompt enactment of an amendment providing that if title to the land should revert to the United States the State executed leases would not be binding on the United States unless they are approved by the United States.

The enactment of the enclosed bill will carry out the President's request by providing for a renegotiation of such leases at the time the title reverts to include such modified terms and conditions as the Secretary of the Interior deems appropriate.

The Bureau of the Budget has advised that the enactment of the bill would be in accord with the President's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., June 20, 1966.

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

DEAR SENATOR JACKSON: By executive communication dated June 8, 1966, Secretary Udall transmitted a draft bill that has been introduced as S. 3484, "To amend the Act of June 3, 1966 (Public Law 89–441; 80 Stat. 192), relating to the Great Salt Lake relicted lands."

Immediately prior to House hearings on H.R. 15566 the following amendment to the bill was worked out between representatives of the Department and representatives of the lessees under existing State leases:

> On page 1, line 4, after "by" delete the rest of the sentence and substitute "changing the period at the end thereof to a comma and adding 'excepting for land rental rates which rates shall be subject to change based upon fair rental value as determined by the Secretary of the Interior and shall be subject to periodic review and appropriate modification by the Secretary of the Interior in accordance with rules and regulations of the Department of the Interior.' "

The Department endorses this amendment with one addition for purposes of clarification. The clarification is: after "review" insert "and appropriate modification". While we believe that the amendment as drafted means that the Secretary may make appropriate modifications in the rates after review in accordance with Departmental rules and regulations, in order to avoid any misunderstanding that meaning should be made explicit by stating that the rates shall be subject to review "and appropriate modification" by the Secretary.

With the foregoing clarification, we recommend that the amendment be adopted and enacted.

Although a further change in the language of the amendment is not needed, it should be pointed out that we understand the reference to changes in rental rates

to include changes either in amount or in method of computation. In other words, although rental rates must be based on fair rental value of the land, they may be computed at a fixed charge per acre, or as a percentage of income, or in any other commercially acceptable manner.

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

Sincerely yours,

FRANK J. BARRY, *Solicitor.*

The CHAIRMAN. We are delighted to have you with us, Mr. Hughes, and we would like to have your comments on the pending measure which the Chair introduced pursuant to the letter sent to the President of the Senate.

STATEMENTS OF PHILLIP S. HUGHES, DEPUTY DIRECTOR OF THE BUREAU OF THE BUDGET, AND FRANK J. BARRY, SOLICITOR OF THE DEPARTMENT OF THE INTERIOR

Mr. HUGHES. Thank you. I do not have a prepared statement.

Insofar as the reporting of the bill and so on is concerned, subsequent to the enactment and approval by the President of the bill, we would rest on the two letters, I believe of the Department of the Interior, which relate to this matter. The latest of these is dated June 20, and I believe the committee has a copy of that.

On the history of this measure, I think the résumé that the chairman gave is essentially in accord with the understanding that we have of the events.

The executive agencies collectively were seriously concerned with the provisions of section 6 of the bill, as the Congress had approved it, and consideration accordingly was given to disapproval of the measure.

The President's subsequent approval of the bill was based upon his assurance that the objectionable provisions of section 6 would be amended in order to permit the Federal interest to be adequately reflected both with respect to existing and future leases in the event the lands reverted to the Federal Government's ownership.

Senator ANDERSON. Could I ask a question? What are the objections the President had to this?

Mr. HUGHES. I think on the fine points of the law, Senator, it would be well if Solicitor Barry talked to it, but in general the problem centered on the fact that the legislation contemplated both with respect to new leases and certainly with respect to prior leases that the Federal Government would be bound by the terms of those leases including the rentals to be paid, even though it had been in no way a participant to the negotiation of the leases.

Senator ANDERSON. Was the language offensive in the bill as the Senate passed it?

Mr. HUGHES. No, sir; it was not when initially passed by the Senate. It was in the conference version.

The CHAIRMAN. It was in the House bill.

Mr. HUGHES. That is correct.

Our concern with respect to this language was heightened somewhat as our education progressed, I might say, by the fact that under the provisions of Utah law, the rentals paid are an offset against the royalties, so that the State's interest in this regard was almost fundamentally opposed to the Federal interest.

We felt that it would be very difficult for the State to adequately represent the Federal interest in these circumstances.

The CHAIRMAN. Could you relate the lease situation?

Mr. HUGHES. It might be helpful to point out that the Senate and House versions were widely different in the bill, and this permitted a considerable amount of latitude in the conference action.

The CHAIRMAN. I wonder, Mr. Barry, if you could relate the lease situation out there, in response to Senator Anderson's question? Those are the leases entered into by the State of Utah, which are the matters of the present legislation.

Mr. BARRY. I don't have copies of all of the leases so that I cannot give you a picture which would relate to all of the leases that the State has made to lands which are affected by the act as passed.

The ones that I examined were for, as I understand it, the principal developer of the brines of the State of Utah. This is with a group of individuals and companies which are called Bonneville-on-the-Hill.

The CHAIRMAN. Is this the name of the corporation?

Mr. BARRY. There is one corporation with that name, but the other interested parties share that name in the leases. They refer to themselves as "Bonneville-on-the-Hill." There are a number of individuals and several corporations. The National Lead Corp. is involved, and a company which is the Kearns Tribune Co. I believe it is a Utah corporation.

The CHAIRMAN. That is the newspaper publisher.

Mr. BARRY. It is probably that, and also, of course, the Bonneville-on-the-Hill Corp. There are two individuals. These leases provided as amended—they were subsequently amended—for 49-year options which could be exercised within the next few years by the companies, to rent the lands involved from the State for a period of 49 years, at a rental of 50 cents per acre per year for the entire term.

The effect of this would be, under the last paragraph of section 6 in the act, if the lands reverted to the United States—that is to say, if the State did not pay for the land and the title came back to the United States—the United States would be bound by those leases for a term of 49 years, with no control whatsoever over the rentals, notwithstanding the fact that the land might become quite valuable.

This was the matter that concerned us, although we were concerned only hypothetically until we became aware of actually what the leases actually provided.

The CHAIRMAN. The last paragraph of section 6 as signed into law, reads:

> In the event the conveyance authorized by section 2 of this Act becomes null and void, then any valid permits, licenses and leases issued by the State under the authority of this section shall be deemed permits, licenses and leases of the United States, and be administered by the Secretary in accordance with the terms of the provisions hereof.

It is this provision that you are addressing yourself to?

Mr. BARRY. Yes. At first we were concerned that this put a weapon or tool or some opportunity in the hands of the State to make leases which would be improvident under the terms that the United States makes leases, and we made our objections in our Department.

We made our appropriate objections to the enrolled bill, and then we undertook to find out what the leases actually provided because, of course, if they provided that there were renegotiation periods or some-

thing like that, our objection would not have any particular merit. But when we investigated the leases, we found that we were concerned with what the actual effect would be.

The leases which I have looked at provided for long terms with no renegotiation of rentals. Therefore, if the land comes back to the United States, it would come back burdened with a lease which would bind us to accept as a full rental no matter what the real rental value was, 50 cents per acre per year for 49 years.

Senator Moss. Do they all provide going to a dollar minimum in 10 years?

Mr. BARRY. No, not all of them, but some of them do. The larger areas involved in the Bonneville-on-the-Hill leases do not provide for a larger minimum.

Senator ANDERSON. That is an important question. You say it is one thing and he says it is another. Which is it?

Senator Moss. I can't speak for certainty because I haven't examined every lease, but my information was that this is a standard provision in the leases that are granted. You see, they are modeled on the Federal pattern of 50 cents an acre, when you lease wildcat land. The State has a minimum that goes to a dollar in any event after 10 years. Of course, it may be modified upward in any event by renegotiation. But I think that is somewhat beside the point now.

First let me explain that, although the ones we are most concerned with here are those who are going to extract metals from the brines—and they are the ones that all of the discussion centers about—what we are talking about on leases are people who lease that land for other things, for recreational purposes, and many other things on the mud flats around the lake.

So there are quite varying types of uses that are put on there. However, the big ones, the ones involved in this metal extraction, have now agreed that they can live with this language we have here, and so I don't know if it is too important to go through all of this again which has been argued so vigorously for the last year.

The CHAIRMAN. I must say, however, for the record, that I knew nothing about the provisions of the State leases, except as one member of the committee.

I think just for the record, Senator Moss, that in order to show the reason for the requested legislation, there is no need to go into great detail about all of these leases. But I do think that there should be a proper showing as to the need for this provision.

Senator Moss. Yes, that is true. There is one distinction, of course, that has to be kept clearly in mind, and this again affects these three large leases. They have a royalty agreement with the State for extracting salts from the brines, but in order to facilitate that and make it possible to extract the salts and get the salts out of there, they need some area for making evaporating ponds along the side of the lakes, and that is the only place that these mudflats come in.

They rent the land in order to make these shallow ponds in which they pump the water and let it evaporate so they can scoop up the salt. What we are talking about is simply the rental of these lands and it has nothing to do with the brines themselves.

The CHAIRMAN. The State has jurisdiction over the brine in the matter. There is no question about that part. The lands, however, could become quite valuable because they are adjacent to the area

where you extract the minerals and chemicals, as I understand it. This is the principal point.

Now, is there anything further on the leases, Mr. Barry?

Mr. BARRY. Not on the leases. I was going to ask if I could just correct the record on the statements made about the bills and versions that came out of the various bodies, if I may.

The CHAIRMAN. Yes.

Mr. BARRY. The Senate provided, as the conference bill did, that title passed immediately and that the title might revert to the United States if the contingency of nonpayment were to arise. However, the House bill provided as one of the conditions of the conveyance that the lands be paid for, so we didn't have the same problem as to whether we would be bound by leases if the lands reverted.

Only in the conference bill, which no executive officer was given an opportunity to comment on, was it provided that title would pass, and then if there was nonpayment it would revert to the United States.

Consequently, the language that was objectionable creates a problem only with respect to the bill that came out of the conference.

Senator Moss. To make the record complete, the title will pass but the State is bound to administer that in the manner of a trustee and pay all rentals over to the Federal Government until such time as there could be a failure, in which event then it would come back.

So it isn't just as though it were handed over to the State and they began to operate it and get all of the revenues. They just operate it as a trustee, paying the rentals to the Federal Government until they have completed their payment under the terms of the act, to acquire the full fee and resolve the trust.

The CHAIRMAN. The only problem before us, of course, stems from the possibility that the State, which has that right, should decide not to exercise its option within the 6-year period. Otherwise, there is no problem. But if the State should fail, the way it stands now, as I read the last paragraph of section 6, it is true that the Federal Government would be bound by these leases. These are leases which as of now the Federal Government takes the position are not in accord with the practices that the Federal Government follows in similar situations; is that a fair statement?

Mr. BARRY. That is correct.

The CHAIRMAN. All right, Mr. Hughes, did you wish to add anything?

Mr. HUGHES. I don't believe I have much further comment. Mr. Barry and others have been working with the interested lessees in an effort to develop language which would in our view, as well as the Department of Interior's view, adequately protect the Federal interest and at the same time meet the business requirements of both the existing and possible future lessees.

Mr. Barry, I think, appears to have gotten fairly close to a successful conclusion of this, and the language is before you for this committee in the June 20 letter.

The CHAIRMAN. Mr. Barry, I believe you have been involved directly in connection with the discussions with the industry representatives. I believe you have been in touch with Mr. Byron Mock, who represents them. I wonder if you would relate the situation as it now stands, starting with the bill which I introduced, S. 3484. As I understand it, in the bill that I introduced which is before you now,

the basic point of it starts on line 7, "shall not be binding," referring to the leases and permits and licenses.

Starting on line 7 it says—

shall not be binding upon the United States unless within ninety days they are renegotiated to include such modified terms and conditions as the Secretary of the Interior deems appropriate.

Now, it is my understanding that Mr. Mock, speaking for his clients, has indicated that this would jeopardize their financing arrangements. Am I correct?

Mr. BARRY. This is correct.

The CHAIRMAN. And that the language that has been worked out would be as follows—

Senator ANDERSON. Who worked it out?

The CHAIRMAN. It was between Mr. Barry, representing the Department of Interior, and Mr. Mock, representing the industry people who are directly affected in connection with the leases previously referred to.

So that this 90-day provision would go out.

Mr. BARRY. That is correct. The language in S. 3484 was objected to for the reason that it would conceivably permit the United States to interrupt the tenure of the companies who intend, apparently right away, to invest substantial sums in the development of these brines.

They felt that they could not get the financing. This is indicated to us by Mr. Mock. Mr. Larsen didn't mention it, but the Congressmen from Utah indicated that this would substantially affect their ability to get financing, since if the title might revert to the United States within 4 or 5 or 6 years, and the leases were entirely renegotiable, and if they didn't agree on a renegotiation, the leases apparently would not be binding upon the United States and they would lose all of their investment.

Now, this seemed to me, at least on the surface—and I have no reason to believe it isn't true in all respects—to be a fair analysis of the language that we had proposed as an amendment.

Accordingly, I discussed the matter with Mr. Mock, and he had language which we found objectionable for various reasons, and we arrived at the compromise language which is included in my letter to the Chairman on behalf of the Department, dated June 20, 1966.

The CHAIRMAN. Now, what is the difference between this language, referred to in your letter of June 20, and the language in the bill before us which I introduced?

Mr. BARRY. The difference is that it limits the issues upon which renegotiation could take place to the question of rentals, and the companies would be subject to having the rentals limited.

The CHAIRMAN. So the leases remain valid?

Mr. BARRY. For their full time, but periodically as indicated in this language, the Secretary of the Interior could review and modify the terms of the leases to reflect what the conditions were from time to time.

Senator ANDERSON. I think that I am lost a little bit. You said "harmful to the lessees." Are you responsible to the corporations or the country?

Mr. BARRY. The position that we are in right now is that if we don't secure an amendment that would incorporate some protection for the country, the country has lost as far as these lands are con-

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cerned. Because under the bill as it is now written the companies can make any kind of leases to which the State will agree or they could pick up their options for some 142,000 acres of land, which would create leases in which there was no provision requiring the Secretary of the Interior to agree. Then if the land came back to the United States we would be in a very difficult position.

We could take a harder line, Senator, than we are taking now, with respect to this language. But I think that it is too late for us to take the position that we should approve the leases today and if they are not satisfactory to us within 90 days from now, let us say, that they are terminated or something like that.

I am sure we could take a stronger line. But if we don't have an agreement that will be successful and pass through Congress, we might find ourselves without anything.

Senator ANDERSON. You mean the lessees would have so strong a lobby you couldn't pass the bill?

Mr. BARRY. I am sure it is possible that they could pick up their options to some 142,000 acres of land and if the bill hasn't been passed requiring that the new leases be subject to the approval of the Secretary of the Interior at the time they pick up their options, then the new leases would be binding upon the United States—unless we want to take away the lessees' rights and pay them for them.

Senator Moss. May I round that out a little? Nobody is mentioning the State in this. In the first place, the State is operating the lake as they have for 100 years and they operate it through a land board based on established rules and regulations that are published. Nobody goes around negotiating any kind of lease he wants to negotiate. He has to do it under the rules and regulations of the State. The State is as anxious as the Federal Government or anyone else to see that the maximum amount available can be realized by the people out of the brines of the lake or the rental of any of the mud flats that adjoin the lake.

The State intends—and on this I have a letter and the Governor has a telegram in the President's hands—to purchase these lands or purchase whatever interest the Federal Government may have in the lands. What we are talking about is just an ultimate contingency that is very, very remote.

The State is going to have the lands and it is only in the event this whole thing collapses, which nobody expects, that we are even talking about whether the Federal Government ought to be able to go in and have some kind of renegotiation on the rentals to the mud flats. It doesn't affect the brines or any of those contracts at all. It is just the rental of the mud flats.

So I think the record ought to be rounded out in that event.

The CHAIRMAN. Mr. Barry, could you explain to the committee what the rental arrangement would be if the Federal Government were issuing the leases? That is, based on present procedure or law.

Mr. BARRY. There is no law that applies precisely to this situation.

With respect to these mud flats, the United States doesn't have any authority to lease them, that is to say, with respect to the public lands. We don't have any general authority to lease except under the Mineral Leasing Act and the Acquired Lands Leasing Act. These would be public lands and consequently it would be the Mineral Leasing Act.

These are not leases, however, for the extraction of minerals from lands that are owned by the United States. These are rights to use the property for the beneficiation of the brines, which belong to somebody else.

The CHAIRMAN. What would be the rental rates, then?

Mr. BARRY. If it were under the Mineral Leasing Act, the minimum rental is 25 cents an acre, in noncompetitive leasing. But, of course, that is the minimum. We can fix it at whatever we feel the value of the lands would indicate we are entitled to. We lease some uplands immediately above there, which are not affected by this bill, to this Bonneville-on-the-Hill group, for 93 cents an acre—except for about 40 acres which straddle the railroad, and for which we charge them something like $5.82—some figure like that per acre per year.

These are special-use permits or right-of-way permits which are granted under the 1901 Act but are revocable at will.

We have indicated previously that at the time this bill was under consideration we could make the lands available to the companies under such permits. Congress elected to go ahead and pass the bill nevertheless, and the President to sign it, so presumably it is preferable that we proceed on a lease situation. We don't have any provisions for leasing.

Senator ANDERSON. Did the Senate bill have good language in it when the bill was passed?

Mr. BARRY. We expressed our views in a letter, I think it was April 25, to the Chairman, about the language in that bill, and we had objections to it.

Mr. VERKLER. Not on this point.

Mr. BARRY. No, because this point was not involved.

The CHAIRMAN. You required approval of all leases.

Mr. BARRY. That was not a ground for objection.

Senator ANDERSON. When the Senate passed the bill, this language was in the bill to take care of the point that you are raising.

Mr. BARRY. Yes, sir.

Senator ANDERSON. And we lost in conference.

Senator Moss. I don't think that that is quite right. It is section 5 which says pending the resolution of the amount of the compensation—this is the Senate-passed bill, No. 265—pending the resolution of the amount and manner and so on, this is for future leases.

The State could go ahead and issue permits on the terms and conditions acceptable to the Secretary of the Interior, and that is exactly what this says.

Mr. VERKLER. That is the last section of that act which said that in the event it did go wrong, all of these leases would be sanctioned by the Federal Government, but I think that all of them would be affected.

Senator Moss. That is:

> In the event title of the subject lands does not vest in the State of Utah, then any valid permits, licenses, and leases issued by the State under authority of this Act, shall be deemed permits, licenses, and leases of the United States and shall be administered by the Secretary in accordance with the terms and provisions thereof.

Mr. VERKLER. But the State attempted to, and I presume has, ratified all existing leases, so they would come under this provision of the act. Without that action all leases would have been subject to this act.

Senator Moss. It wasn't done for that reason. It was done because of the requirement that the State, by an act of its legislature, accept the terms and conditions involved, which they did.

Mr. VERKLER. In the same act of the legislature, in another section, they attempted to ratify all of the existing leases, which we didn't ask them to do. They did it on their own.

Now, the land board normally, as you say, issues leases, but this was the legislature by law ratifying these leases which were inconsistent, some of them, with Utah land leasing law.

That was part of the problem they ran into. But I agree with you, I think it is all worked out now.

The CHAIRMAN. What do you mean by "periodic review" in the language contained in your letter of June 20? What does this mean? I think this is very important.

Mr. BARRY. I received a letter from Mr. French, counsel for the committee, in which he asked what our views with respect to this periodic review would be, whether it would apply to anything except rentals.

This matter previously had been checked out by me within the Department. Our view is that it would be limited to rentals. We take the view that if we had these lands and statutory authority to rent them, we would rent the lands and give people long term leases consistent with the kind of investment that they would be required to make, and so forth.

Senator ANDERSON. Would it be done under competitive bidding?

Mr. BARRY. Yes, we probably would, unless Congress were to direct us otherwise. But in this situation now, of course, we can't even deal with that. We don't have that before us right now. The bill as it stands right now simply says that these leases will be binding.

Senator Moss. May I interject there? Competitive bidding is almost meaningless unless a person has a contract with the State to get those brines. These mud flats aren't worth one cent an acre. Nobody would bid anything for them. The only people who would bid are ones who have a right because they have made a contract with the State to get the brines out. That is the only thing that these lands are good for. There may be two or three people on the lake trying to do this, and they are the only ones who could compete, as the area is so extensive it is almost inconceivable that there would be any real competition in any kind of a competitive bidding for these mud flats.

Senator ALLOTT. What does "periodic review" mean? Does that mean annually, or semiannually, or biannually, or what?

Senator ANDERSON. Or every 49 years?

Mr. BARRY. I wouldn't want to make any statement about that. The only periodic reviews that are authorized under any act of Congress are under our coal land leases, and I think that that is every 20 years.

I would think that it probably would be not less often than every 5 years. I would presume that we would sit down with the companies we are talking about renegotiating what terms these would have—talk to them about it and see if we could work out something that was acceptable on all sides.

We believe that the rentals ought to be based in some degree on the revenues that are gained by the beneficiation of the brines, since the value of the land is directly related to the value of the brines.

Consequently, we would try to get language which wouldn't require renegotiation but would simply take the rentals that the United States would receive to what the gross revenues are from the beneficiation of the brines.

Senator ALLOTT. I just want to suggest that the word "periodic review" doesn't mean a thing.

Mr. VERKLER. In the letter of June 20, it adds "appropriate modification," which would be added.

Senator ALLOTT. Periodic review could be as Senator Anderson said, every 49 years or something like that, or periodic review could be annually.

Senator ANDERSON. Shouldn't we say which?

Senator ALLOTT. I think if you are going to do that, you ought to put something in there to indicate what "periodic review" is. I don't think that the two words mean anything.

The CHAIRMAN. Well, shouldn't they, Mr. Barry, review this as soon as they get into operation, to see what the real value is?

Senator ALLOTT. I would say at least biannually or at least every 5 years, or at least something. Otherwise, I don't think that the term means a thing. They could let this sit and never look at it again.

Senator Moss. It could be "not less than every 5 years." Something like that would be perfectly acceptable.

The CHAIRMAN. If you are limited to the question of the rental, it seems to me that the rental charge would relate directly to the value and that the Government's interest in this regard should be properly protected to make sure that there is a fair rental charge based on the value of the property to the owner.

Isn't that the whole point?

Mr. BARRY. Might I say that I agree that "periodic review" itself is meaningless in the sense that you don't indicate what the periods are to be. But the rest of the sentence provides that this will be in accordance with rules and regulations of the Department of the Interior and we haven't worked out a lot of these details, because actually what we are trying to do is to get this unscheduled bit of legislation through as soon as possible so we will know where to go from here.

I would hesitate to say that 5 years or 2 years or 1 year was acceptable until at least I had talked to some of the people down in the Bureau of Land Management who would have the responsibility of administering this.

Now, I don't intend to express any objection to having Congress say not less frequently than a year or 2 years or 5 years or whatever Congress elects to do. But we left it up to the Secretary to decide, because there are a lot of facts that we have to get. Probably they are already in the Department, but we have to put them together and think about them and talk to the companies to see what is sensible and reasonable, and possibly talk to the State land board people, and then to decide on what the period would be.

We might go a little too blindly at this point if we do not check it out.

Senator Moss. I would put in "not less than every 5 years" and if the rules and regulations make it a shorter period that is all right.

Senator ANDERSON. You used the figure of 25 cents an acre.

Mr. BARRY. I may be talking through my hat at this point, but, as I understand, on mineral leasing—noncompetitive leasing of

mineral lands where there has been no development—the lease rate is 25 cents an acre.

Senator ANDERSON. Let me read you this section:

All leases issued under this section shall be conditioned upon payment of a rental of not less than 50 cents per year.

I think that I put this language in, under something referring to Alaska.

Mr. BARRY. Perhaps it was 25 cents at sometime, but you know the problem that we have.

Senator Moss. They patterned that on 50 cents an acre.

Senator ANDERSON. Does the State have any competition relating to competitive leasing for the brines?

Senator Moss. There are competitive bid rates for the brines.

The CHAIRMAN. Do they provide for competitive bidding?

Senator Moss. I don't know that they ask for sealed bids, but they negotiate, as it were, the amount on the brines. It isn't a standard fixed amount in their rules and regulations.

The CHAIRMAN. It is not mandatory?

Senator Moss. No.

The CHAIRMAN. What did they do on these?

Senator ANDERSON. I thought they had given out the leases without a bit of competition; isn't that right?

Senator Moss. These leases on the flats; yes.

The CHAIRMAN. We are talking about the brines.

Senator Moss. Well, yes; they are negotiated rather than competitive. I guess that is what you would say. There are three big ones in there, and another one is Dow. That is a little doubtful.

The CHAIRMAN. Now, you mentioned the options that have not been exercised yet, Mr. Barry. This language, of course, has the effect of retroactivity, does it not, as to existing leases so it will take care of the options as well?

Mr. BARRY. That question turns to the effect of the State's act which was signed by the Governor, I think on the 6th, so that it is now the law of Utah, which purports to confirm and ratify the leases which are now in existence on these lands in accordance with their terms, as of the date of issuance.

The question is whether, first of all, that act of the legislature was effectively making new leases under the provisions of this section, that is to say, section 6.

Note that the language in section 6, which will continue to stand, says that:

The leases made by the State under the authority of this section.

That is to say, the leases have to be made after this act of June 3, 1966, was signed by the President.

Now, the question is whether ratification and confirmation as of the date of their issuance of the other leases amounts to the making of a lease under the authority of this section.

Senator Moss. The legislature acted before this bill was passed.

Mr. BARRY. But the act of the legislature was not effective until it was signed by the Governor, and the Governor was waiting for the President to sign before he signed the act of the legislature, and he signed it the next Monday.

So we may have a lawsuit over that, because we would take the position that the act of the legislature did not effectively reissue leases after the date of this act, because they made them as of the date of their original issuance.

There were other reasons to explain why the act of the legislature might be required under Utah law.

The CHAIRMAN. Well, in your judgment, would the proposed section contained in your letter to us of June 20, in the event of the failure of the State to elect to purchase the lands, give the Department of the Interior authority to do what it would hope to do in the proposed amendment both as to leases previously entered into, and the options that might be exercised?

Mr. BARRY. Yes; it would. Now, with respect to the options, notice that the language in section 6 talks about permits, licenses, and leases. That type of a right, that is, a permit, license or lease, is a right that includes the right of possession, all of the rights that a lessee or landholder has who owns a leasehold interest or a permit interest or the right to use land for a particular purpose.

The option to lease, however, is neither a permit nor a license nor a lease, and if any options are exercised the State is bound by those leases.

If today while we are talking the companies were to come up and say, "All right, we want to exercise our options to all of these lands," they would be issued leases after the passage of the act of June 3, 1966—which we are talking about amending—which would be binding upon the Secretary according to their terms, without the modified language that is included in the bill now before the committee.

The CHAIRMAN. And when the legislation before us is adopted, assuming that it is, it would apply?

Mr. BARRY. If they exercise the option, after this bill is passed, if it is passed and approved, then the leases that would be made by the exercise of the option would be subject to review in accordance with the provisions of the act now before the committee.

Senator ANDERSON, What is your opinion on the language you had in your letter and the language that you are now circulating?

Mr. VERKLER. This is the same. They have added "and appropriate modification," to make sure that periodic review means that you can modify it.

Senator ANDERSON. Is this different from what they sent over?

The CHAIRMAN. It is different from the original. Here is the original. The original language, as I interpret it, as provided in S. 3484, which is the original language, would go so far as to authorize the termination of the lease; am I right about that?

Mr. BARRY. Yes, S. 3484 would.

The CHAIRMAN. The one before us, in Mr. Barry's letter of June 20, would deal only with the question of the rental?

Mr. BARRY. Yes. Under the language which we originally recommended, if we negotiated for 90 days and were talking about some provision that had nothing to do with any real serious problem, but was one that we differed on and we wouldn't compromise, and the 90 days had run by and the leases would expire, I think this was something that would concern the companies very seriously.

The CHAIRMAN. In connection with "periodic review", I wonder if we can't have something in the report referring to periodic review, which would direct upon the Secretary to review it?

Senator MOSS. If we added the words "at least every five years", the Secretary, by his rules, might have something less but he would have to do it every 5 years.

The CHAIRMAN. What is your reaction to that?

Senator MOSS. After the words "periodic review" add the words "not less than every five years," or you might say "not longer than five years."

Mr. BARRY. Why don't we say "not less frequently than every five years"?

Mr. VERKLER. Then you wouldn't need "periodic", would you?

Senator ALLOTT. You don't need the word "periodic" in there, then.

The CHAIRMAN. That is right. So it would read—

shall be subject to review not less frequently than every five years, and appropriate modification by the Secretary of the Interior in accordance with the rules and regulations of the Department of the Interior.

Without objection, that amendment will be agreed to.

Senator MOSS. I move the adoption of the language as amended, as shown in the letter of June 20 from the Solicitor of the Department of the Interior.

The CHAIRMAN. That will be to S. 3484.

Senator MOSS. As amended, and I ask that S. 3484 be reported.

Senator ANDERSON. I am still trying to find out if the language in your letter is the same as the one submitted.

The CHAIRMAN. Let me read it to you and you can check it:

excepting for land rental rates which rate shall be subject to change based upon fair rental value as determined by the Secretary of Interior and shall be subject to periodic review and appropriate modification by the Secretary of the Interior in accordance with rules and regulations of the Department of Interior.

Senator ANDERSON. He says the Department endorses it, with one addition.

Mr. BARRY. That is the appropriate modification.

Senator ANDERSON. This is the letter you sent out, isn't that right?

Mr. BARRY. Yes, sir.

Senator ANDERSON. That letter contained "and appropriate modification," and the Department endorses it with one addition. What is the one addition?

Mr. BARRY. The language that I worked out with Mr. Mock did not include the words "and appropriate modification".

The CHAIRMAN. I think the ambiguity stems from the fact that in the paragraph above the proposed amendment you do have "and appropriate modification," you see, and in the following paragraph you refer to it as language to amend the above paragraph.

Senator MOSS. I have the exact language that you and Mock worked on, and that is right. It did not contain the words "and appropriate modification".

Senator ANDERSON. But your letter of the 20th does.

Mr. BARRY. I am guilty of having confused you, that is right.

Senator ANDERSON. What is the addition?

Mr. BARRY. There isn't any addition. I didn't intend in the block section that I quote to have the words "and appropriate modification",

and I suggest in the next paragraph that it be added. It was already there, and I can't offer any alibi, it was just that I didn't read it as carefully as I should have when I signed it.

Senator ANDERSON. There is a lot of money involved in this, and I wish it would be read carefully.

The CHAIRMAN. Let me read what we are agreeing on, on page 1, line 4, which applies to the present bill, and the House bill is the same, and you referred to the House bill in your letter to me.

But after "by", on the first page, on line 4, delete the rest of the sentence and change the period at the end thereof to a comma, and add—

excepting for land rental rates which rates shall be subject to change based upon the fair rental value as determined by the Secretary of the Interior and shall be subject to review not less frequently than every five years, and appropriate modification by the Secretary of the Interior in accordance with rules and regulations of the Department of the Interior.

Senator ALLOTT. It makes it much better language if you have appropriate modification, and then put your 5 years in there, after that point.

Senator Moss. I would accept that.

The Chairman. That is—

subject to review and appropriate modification not less frequently than every five years by the Secretary of Interior in accordance with rules and regulations of the Department of Interior.

That makes more grammatical sense.

Is there objection to the amendment being inserted after "modification", the amendment being "not less frequently than every 5 years"?

Without objection then, the amendment previously agreed to will follow after "modification".

Senator Moss. There is one thing I wanted to ask you about, Mr. Chairman. Is this an amendment referring to the bill, in talking about page 1, line 4, or the law, the public law?

That is the one I don't see, to make sure that it goes in the right place.

Senator ALLOTT. Here is the public law.

Senator Moss. It is page 1, line 4, they are talking about. That is referring to the amendment.

The CHAIRMAN. I will refer to the law on page 3, that is the conference report. That is the last paragraph there, starting on the third line, after "section", the effect of it will be as follows, the following shall be deleted:

shall be deemed permits, licenses and leases of the United States and shall be administered by the Secretary in accordance with the terms and provisions thereof.

That is out by this bill. That is deleted.

Mr. BARRY. No, it isn't out. No, all you did was change the period to a comma at the end of that bill, and added the language that has now been discussed.

Senator Moss. What we are proposing to do now is simply to take out the period at the end of the law and add a comma, and put this in, and that should be clear.

In other words, the language stands in the law as it is, but we are tacking on this clause here.

The CHAIRMAN. That is not what the letter says.

Mr. HUGHES. The letter is directed toward S. 3484, and you have to read the amendment and the letter in the context of S. 3484, which says section 6 of the act is amended by "changing the period at the end thereof," and you start with the language in the June 20 letter.

Senator Moss. You take out the word "deleting", in other words?

Mr. HUGHES. That is correct.

Senator Moss. I didn't get that "deleting" part there.

Mr. BARRY. What we are doing is deleting from S. 3484, and not from the act.

Senator Moss. The part where we start is on line 4, with the word "deleting," and take "deleting" out, and everything goes after that. That would be clear.

Mr. HUGHES. And substitute the language from the letter, which covers this changing of the period and the comma.

The CHAIRMAN. The language which will follow the statute, after "thereof," you strike the period and you put in a comma, which will read as follows:

excepting for land rental rates, which rates shall be subject to change based upon the fair rental value as determined by the Secretary of the Interior and shall be subject to review and appropriate modification not less frequently than every five years by the Secretary of Interior in accordance with the rules and regulations of the Department of Interior.

Senator Moss. I so move.

The CHAIRMAN. Is there agreement?

Mr. FRENCH. Solicitor Barry points out that under the language he might be required to modify every 5 years.

Mr. BARRY. Even though there wasn't any change in conditions.

Senator ALLOTT. It is only subject to review.

Senator Moss. And appropriate modification.

Senator ALLOTT. I have one other suggestion before we vote on the amendment. Turning to the letter of June 20, I think it would be wise to incorporate the language of the next to the last paragraph, so that we are clear—

although a further change in the language of the amendment is not needed it should be pointed out that we understand the reference to changes in rental rates to include changes either in amount or in method of computation.

In other words, although rental rates may be based on fair rental value of the land, they may be computed at a fixed charge per acre, as a percentage of income, or in any other commercially accepted manner.

Senator Moss. That is all right.

The CHAIRMAN. We will have that in the report.

All right, all in favor of the amendment say "aye"; opposed, "no".

It is carried.

Without objection, S. 3484 will be reported as modified by the previously adopted amendment.

Thank you, gentlemen.

(Whereupon, at 11:30 a.m., the committee adjourned.)

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