FLAMING GORGE NATIONAL RECREATION AREA

HEARING

BEFORE THE

SUBCOMMITTEE ON PARKS AND RECREATION

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 444

A BILL TO ESTABLISH THE FLAMING GORGE NATIONAL RECREATION AREA IN THE STATES OF UTAH AND WYOMING, AND FOR OTHER PURPOSES

OCTOBER 19, 1967

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FLAMING GORGE NATIONAL RECREATION AREA

THURSDAY, OCTOBER 19, 1967

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

The subcommittee met, pursuant to call, at 10 a.m., in room 3110, New Senate Office Building, Senator Frank E. Moss, presiding.

Present: Senators Frank E. Moss (Utah) and Clifford P. Hansen (Wyoming).

Also present: Senator Gale W. McGee (Wyoming), and Wallace F. Bennett (Utah).

Staff members present: Stewart French, chief counsel; Porter Ward and Mike Griswold, professional staff members, and Darryl Hart, assistant minority counsel.

Senator Moss. The subcommittee will come to order.

Senator Bible, the chairman of the subcommittee, is involved with work in the Appropriations Committee this morning and asked that I conduct the hearing.

I have a brief statement that the chairman was going to utilize in opening the hearing. I think I had better read that. It is very brief. This is Senator Bible's opening statement.

This is the time duly noticed and set for an open public hearing on S. 444, the bill to establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes.

This bill was introduced by Senator McGee, for himself and Senators Moss and Hansen, on January 12, 1967. Favorable reports have been received from the Department of the Interior and the Department of Agriculture, and the Bureau of the Budget has advised that enactment of the bill would be in accord with the President's program.

The proposed recreation area would include 201,253 acres of land and water. Of this total, 190,037 acres are in Federal ownership, 10,162 in private ownership, and 1,054 acres in State ownership.

Flaming Gorge Dam was completed in 1962, resulting in the formation of a clear-water lake which extends for more than 90 miles through steep and colorful canyon walls carved by the Green River in Utah and Wyoming.

Resources of the area are presently administered under a memorandum of agreement by the Bureau of Reclamation, National Park Service and the Department of Agriculture. The bill, S. 444, provides for administration of the recreation area by the Secretary of Agriculture.

The primary purpose of the national recreation area is set forth in section 1 of the bill. It is to provide for the "public outdoor recreation use and enjoyment of the Flaming Gorge Reservoir and surrounding

lands in the States of Utah and Wyoming and the conservation of scenic, scientific, historic and other values contributing to public enjoyment of such lands and waters."

I direct that at this point in the record there be included the text of the bill and the reports of the administrative departments, including the Bureau of the Budget.

(The data referred to follow:)

[S. 444, 90th Cong., 1st sess.]

A BILL To establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to provide in furtherance of the purposes of the Colorado River storage project, for the public outdoor recreation use and enjoyment of the Flaming Gorge Reservoir and surrounding lands in the States of Utah and Wyoming and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters, there is hereby established, subject to valid existing rights, the Flaming Gorge National Recreation Area in the States of Utah and Wyoming (hereinafter referred to as the "recreation area"). The boundaries of the recreation area shall be those shown on the map entitled "Proposed Flaming Gorge National Recreation Area," which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.

SEC. 2. The administration, protection, and development of the recreation area shall be by the Secretary of Agriculture (hereinafter called the Secretary) in accordance with the laws, rules, and regulations applicable to national forests, in a manner coordinated with the other purposes of the Colorado River storage project, and in such manner as in his judgment will best provide for (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of natural resources as in his judgment will promote or are compatible with, and do not significantly impair the purposes for which the recreation area is established: *Provided,* That lands or waters needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the Interior to the extent he determines to be required for such operation.

SEC. 3. Within six months after the effective date of this Act, the Secretary shall publish in the Federal Register a detailed description of the boundaries of the recreation area. Following such publication, the Secretary may make minor adjustments in the boundary of the recreation area by publication of the amended description thereof in the Federal Register: *Provided,* That the total acreage of the recreation area within the adjusted boundary does not exceed the acreage of the recreation area as shown on the map referred to in section 1 hereof.

SEC. 4. The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: *Provided,* That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

SEC. 5. The lands within the recreation area, subject to valid existing rights, are hereby withdrawn from location, entry, and patent under the United States mining laws. The Secretary of the Interior, under such regulations as he deems appropriate, may permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and he may permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 24, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significant adverse effects on the purposes of the Colorado River storage project and the Secretary of Agriculture finds that such disposition would not have significant adverse effects on the administration of the recreation area: *Provided,* That any lease or permit respecting such minerals in the recreation

area shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe.

All receipts derived from permits and leases issued under the authority of this section for removal of nonleasable minerals shall be paid into the same funds or accounts in the Treasury of the United States and shall be distributed in the same manner as provided for receipts from national forests. Any receipts derived from permits or leases issued on lands in the recreation area under the Mineral Leasing Act of February 25, 1920, as amended, or the Act of August 7, 1947, shall be disposed of as provided in the applicable Act.

SEC. 6. The boundaries of the Ashley National Forest are hereby extended to include all of the lands not presently within such boundaries lying within the recreation area as described in accordance with sections 1 and 3 of this Act.

SEC. 7. Subject to any valid claim or entry now existing and hereafter legally maintained, all public lands of the United States and all lands of the United States heretofore or hereafter acquired or reserved for use in connection with the Colorado River storage project within the exterior boundaries of the recreation area which have not heretofore been added to and made a part of the Ashley National Forest, and all lands of the United States acquired for the purpose of the recreation area, are hereby added to and made a part of the Ashley National Forest: *Provided*, That lands within the flow lines of any reservoir operated and maintained by the Department of the Interior or otherwise needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the Interior to the extent he determines to be required for such operation.

SEC. 8. Funds hereafter appropriated and available for the acquisition of lands and waters and interests therein in the national forest system pursuant to section 6 of the Act of September 3, 1964 (78 Stat. 897, 903), shall be available for the acquisition of any lands, waters, and interests therein within the boundaries of the recreation area.

SEC. 9. Nothing in this Act shall deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction within the recreation area consistent with the provisions of this Act, or of its right to tax persons, corporations, franchises, or other non-Federal property, including mineral or other interests in or on lands or waters within the recreation area.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 4, 1967.

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

DEAR SENATOR JACKSON: This responds to your request for the views of this Department on S. 444, a bill "To establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes."

We recommend the enactment of the bill.

The enactment of the bill will facilitate administration and use of the Flaming Gorge National Recreation Area in Utah and Wyoming that extends from below the Federal dam on the Green River in northeastern Utah to southwestern Wyoming. The bill fixes the boundaries of the national recreation area by reference to a map. The recreation area will include some 201,253 acres of land and water.

The bill provides for the administration of the Flaming Gorge National Recreation Area by the Secretary of Agriculture. The recreation resources of the area are presently administered under a Memorandum of Agreement dated July 22, 1963, between the Bureau of Reclamation and the National Park Service of this Department, and the Forest Service, Department of Agriculture. The Forest Service now has administrative responsibility for the recreation resources of 78,000 acres of the area, and the National Park Service has such responsibility on 123,253 acres.

The primary purpose of the national recreation area, as stated in section 1 of the bill, will be to provide for the "public outdoor recreation use and enjoyment of the Flaming Gorge Reservoir and surrounding lands in the States of Utah and Wyoming and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters."

Most of the land within the boundaries of the national recreation area is already in Federal ownership. The precise acreage and ownership of the land involved are shown in the following table:

LANDOWNERSHIP WITHIN NATIONAL RECREATION AREA

[In acres]

	Utah	Wyoming	Total
Federal:			
Administered by Bureau of Reclamation	14,928	70,609	85,537
Administered by Forest Service	76,130		76,130
Administered by Bureau of Land Management	5,905	22,465	28,370
Total, Federal	96,963	93,074	190,037
State	334	720	1,054
Private	1,416	8,746	10,162
Total, non-Federal	1,750	9,466	11,216
Grand total	98,713	102,540	201,253

The national recreation area has a vast potential for public outdoor recreation and public enjoyment. The establishment of the recreation area will be subject to the necessary operation of the Flaming Gorge Dam. The completion of the Flaming Gorge Dam in 1962 resulted in the formation of a large clear-water lake which rises some 450 feet above the river bed and which will be some 90 miles in length. The area includes several miles of the flowing Green River and the open canyon below the dam. It extends upstream from the dam through steep canyon walls carved by the Green River through the Uinta Mountains, through the Flaming Gorge, and finally into southwestern Wyoming. In addition to the scenic beauty of the lake and adjacent areas, there are other attractions. A variety of animal species, including deer, elk, antelope, and upland game birds, attracts thousands of sportsmen annually to the region. Recreational use of the area will include boating, fishing, swimming, camping, picnicking, hiking, horseback riding, hunting, and water skiing.

The area has already become a major tourist attraction. The annual public visitation of the area has exceeded ½ million visitor days. Since more than 1½ million persons reside within a 250-mile radius of the area, we anticipate that recreation use of the area will exceed 1 million visitor days annually by 1970.

The proposed national recreation area fully measures up to the criteria established by the President's Recreation Advisory Council for national recreation areas in its Policy Circular No. 1 of March 26, 1963. The Advisory Board on National Parks, Historic Sites, Buildings and Monuments has endorsed the establishment of the Flaming Gorge National Recreation Area.

Representatives of the National Park Service, Bureau of Outdoor Recreation, and Forest Service conducted a reexamination of the management arrangements at Flaming Gorge in the fall of 1966. They agreed that administration of the area by a single Federal agency would permit savings in administrative costs of about $100,000 annually, would eliminate duplication of administrative and technical staffs and public facilities, and would provide uniform regulation of activities, among other benefits. It was agreed that the administering agency should be the Forest Service since the area is contiguous to the Ashley National Forest, with existing staff, equipment, and facilities readily available. This Department and the Department of Agriculture recently entered into a formal agreement providing for the administration of the entire area solely by the Forest Service.

A portion of the land and water area included in the national recreation area is now within the Ashley National Forest. The bill provides that all public domain lands of the United States within the boundaries of the national recreation area, all lands within such boundaries which the United States acquires for the purpose of the recreation area, and, with certain exceptions, the lands acquired or reserved for use in connection with the Colorado River storage project are added to and make a part of the Ashley National Forest.

The administration of the Flaming George National Recreation Acrea as a part of the Ashley National Forest is an acceptable arrangement. The bill permits the continuation of the leasing of minerals within the national recreation area under the Mineral Leasing Act for Public Lands and the Acquired Lands Mineral

Leasing Act, subject to certain restrictions and conditions. The bill provides for the removal of nonleasable minerals in the manner prescribed by section 10 of the Act of August 4, 1939 (53 Stat. 1196), as amended (43 U.S.C. 387), which gives the Secretary of the Interior board discretion in the methods by which he may permit the removal of such minerals. Other uses of the natural resources within the national recreation area will also be permitted to the extent such uses are consistent with the purposes of the recreation area. It is contemplated that this Department and the Department of Agriculture will cooperate with regard to the grazing use of lands within the national recreation area and the adjacent public domain lands administered by this Department. It will be our joint purpose to administer such use so as to have the least possible impact on existing grazing lessees and permittees without impairing the objectives of the national recreation area.

The national recreation area will provide a highly significant water-based recreation area on lands largely in Federal ownership in the part of the United States where water is scarce. Its establishment will help meet the rapidly increasing needs of the American people for wholesome outdoor recreation, and will preserve for them outstanding natural, historic, scenic, and recreation resources.

The Bureau of the Budget has advised that the enactment of S. 444 would be in accord with the program of the President.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., October 3, 1967.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
United States Senate.

DEAR MR. CHAIRMAN: As you asked, here is our report on S. 444, a bill "To establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes."

We strongly recommend that S. 444 be enacted.

S. 444 would establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming. The purposes of the establishment would be to provide for public outdoor recreation use and enjoyment of the Flaming Gorge Reservoir and surrounding lands, and for the conservation of scenic, scientific, historic and other values contributing to public enjoyment of these lands and waters.

The boundaries of the Recreation Area would be those shown on a map referenced in the bill. Within six months after the effective date of the Act, detailed boundary descriptions would be published in the Federal Register. The boundaries of the Ashley National Forest would be extened by the bill to include all of the lands within the Recreation Area not now within the National Forest.

The bill provides that the Recreation Area would be administered, protected, and developed by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to National Forests, in a manner coordinated with the Colorado River Storage Project. The Secretary would administer the area to provide for public outdoor recreation benefits and conservation of values contributing to public enjoyment. Management, utilization and disposal of natural resources would be carried out provided that such uses would not, in the judgment of the Secretary, significantly impair the purposes for which the Recreation Area is established. Lands or waters needed or used for the operation of the Colorado River Storage Project would continue to be administered by the Secretary of the Interior to the extent required for such operation.

Hunting, fishing and trapping would be permitted within the Recreation Area in accordance with applicable Federal and State laws. The rights of the States and other political subdivisions relative to civil and criminal jurisdication and taxation would be protected.

Lands within the Recreation Area would be withdrawn from location, entry and patent under the mining laws, but the Secretary of the Interior would be authorized to permit the removal of both non-leasable and leasable minerals in accordance with certain existing statutes, if such disposition would not adversely affect the purposes of the Colorado River Storage Project, or the administration of the Recreation Area. Any mineral leases or permits would be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he prescribes.

The bill would further provide that Land and Water Conservation Fund monies would be available for acquisition of lands, waters, and interests therein within the Recreation Area. Public lands of the United States and lands heretofore or hereafter acquired by the United States within the Recreation Area in connection with the Colorado River Storage Project or for the purposes of the Recreation Area which have not heretofore been made a part of the Ashley National Forest would be added to it. However, lands within the flow lines of the reservoir needed for the operation of the Colorado River Storage Project would continue to be administered by the Secretary of the Interior to the extent he determines necessary.

The question of how the Flaming Gorge National Recreation Area should be administered has been considered for a number of years. In a joint letter from the Secretaries of the Interior and Agriculture to the President, dated January 31, 1963, the two Departments announced their agreement that the Recreation Area would be administered jointly by the Forest Service and the National Park Service. The reservoir area has been and is now being administered in this manner by the two agencies.

Recently the two Departments have reevaluated the administrative arrangements at Flaming Gorge. Our conclusions are that single administration by the Forest Service would promote the most effective and economical management of the recreational and other resources of the area. The provisions of S. 444 are consistent with our conclusions.

The establishment of the Flaming Gorge National Recreation Area and its full development will provide all Americans a superb recreation opportunity. The Recreation Area is rich in history, scenic beauty, scientific interest, and opportunities for wholesome outdoor enjoyment.

A principal feature of the Recreation Area is the spectacular Flaming Gorge—a beautiful, high-walled gorge in the Red Canyon portion of the reservoir. This section is generally narrow and is surrounded by high steep canyon walls of multicolored sandstone, Views of the geological formations from the reservoir through this section are outstanding.

Flaming Gorge was named by the explorer John Wesley Powell. In 1869, Powell and his band began an epic-making voyage of the Green River. Here, he initiated mapping and geological studies of the Green-Colorado River System. Powell was preceded by William Ashley, who led the first expedition to explore the Green River in 1825.

The Recreation Area will provide a wide range of outdoor recreation opportunities. The Flaming Gorge Dam itself is spectacular. It is a thin arch, concrete structure rising over 500 feet above bedrock. It contains approximately one million cubic yards of concrete.

Flaming Gorge Lake, when full, will provide some 42,000 acres of water surface and 375 miles of shoreline. Water based activities include pleasure boating, water skiing, fishing, swimming, and other water sports. On the shore there are many and diverse opportunities for camping, picknicking, hiking and riding. Several camp and picnic sites are accessible only by boat.

The terrain in the southern portion of the proposed Recreation Area rises more than 2,000 feet above the reservoir level. Here there are cool forested benches and mountain slopes accessible by highway.

Hiking and riding trails, camp and picnic sites, scenic overlooks, hunting, and stream fishing are all available in this sector. There is also ready access to recreation opportunities on the adjacent Ashley National Forest, including the high Uinta Mountains.

The proposed recreation area now is heavily used by outdoor recreationists and such use will continue to increase. In 1964 there were over 500,000 visits to the area; in 1966 about 1,000,000. Estimates are that by 1971 visitations will reach 2,500,000. Fishing, boating and sightseeing are the most popular activities of visitors.

Conservation and utilization of the various resources of the Recreation Area that would not significantly impair the purposes of the Recreation Area would include grazing, timber harvesting, wildlife production and protection, and mineral production under lease or permit.

The northern portion of the proposed Recreation Area includes public domain and withdrawn lands on which grazing use is now administered by the Bureau of Land Management in conjunction with other public lands in the vicinity. The Forest Service and the Bureau of Land Management of the Department of the Interior have recently executed a Memorandum of Understanding on matters related to range management. In accordance with this agreement grazing use and grazing permits involving lands of the Recreation Area and public domain in the

vicinity will be correlated by the two agencies. The objective will be to minimize to the fullest extent possible any impacts on grazing permittees without impairing the objectives of the National Recreation Area.

We suggest one clarifying amendment. On page 4 in line 12 change "administration" to "purposes" to make it clear that in connection with the leasing of minerals consideration is to be given to the public values of the recreation area and not just the processes of administering it.

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

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., October 2, 1967.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, United States 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. 444, a bill "To establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes."

The reports which the Secretaries of the Interior and Agriculture are submitting describe the recreational potential of the area and recommend enactment of the bill, with one clarifying amendment.

The Bureau of the Budget concurs in these reports. The enactment of legislation to establish the Flaming Gorge National Recreation Area would be in accord with the program of the President.

Sincerely yours,

JAMES M. FREY,
Acting Assistant Director for Legislative Reference.

Senator Moss. I have a brief statement at this point and I will try to shorten it so that we may move along quickly with this bill.

STATEMENT OF HON. FRANK E. MOSS, A U.S. SENATOR FROM THE STATE OF UTAH

Senator Moss. The bill before us would establish by statute the Flaming Gorge National Recreation Area in northeastern Utah and southwestern Wyoming, and would end the dual administration of the area by the National Park Service and the Forest Service by giving jurisdiction for the entire area to the Forest Service.

The Flaming Gorge National Recreation Area includes some 201,253 acres of highly scenic land and water which are centered behind the magnificent Flaming Gorge Dam, built by the Bureau of Reclamation in 1962 on the Green River. The reservoir extends 91 miles through colorful country from the vicinity of Manila, Utah, to the vicinity of Green River, Wyoming. It provides some 42,000 acres of water surface and some 375 miles of shoreline.

The reservoir and recreation area are named after a steep, high-walled canyon on the river. The unusual beauty of this canyon was first described in May 1825, by the explorer, Gen. W. H. Ashley. He wrote:

> We entered between the walls of this range of mountains, which approach at this point to the water's edge on either side of the river and rise almost perpendicular to an immense height.

These sheer cliffs have become more spectacular as the lake behind the dam has filled, and boat trips up to and through Flaming Gorge

have become feasible. Under the development program for the area, swimming piers, boating ramps and marinas are being constructed, so all sorts of water sports may be enjoyed. Land development includes facilities for picnics, camping, hiking, and riding. The area is also known for its unusual geological features, and for its wide variety of game animals and other wildlife.

The Flaming Gorge Recreation Area is already very popular. In 1964, there were about 500,000 visits to the area; by 1966, the number had risen to a million. It is estimated that by 1971 there will be 2½ million visits each year. Flaming Gorge is within easy driving access of the heavily populated areas of northern Utah, including the Salt Lake City and Ogden areas and also of the larger towns along the Union Pacific Railroad and the Lincoln Highway in southern Wyoming. It will likewise be a magnet for people from the many communities of southern Idaho and western Colorado, who are only a few hours driving time from one of the many access points to the large lake which now has been formed.

The question of how the area can best be administered has been under discussion for a number of years. In a joint letter from the Secretaries of the Interior and Agriculture to the President, dated January 31, 1963, the two Departments announced that an agreement had been reached whereby the recreation area would be jointly administered by the Forest Service and the National Park Service.

However, as is usually the case in joint administration, this has not proved wholly satisfactory. Part of the area lies within the boundaries of the Ashley National Forest, and Forest Service regulations have naturally prevailed there. National Park Service rules have been in effect in other areas, and this has been confusing to campers, picnickers, horseback riders and others who have sought to use the area. It has been impossible to prevent a certain amount of duplication and overlapping in administration and also in planning for future development.

I became concerned about these problems when I visited the area some 2 years ago, and foresaw what would happen if some adjustment was not made. After discussing the matter with both Federal Departments, as well as with the State officials and others, I joined with Senator McGee to introduce a bill for single administration by the Forest Service. It was gratifying to be notified shortly thereafter, that a study was being instituted by the two Departments to reevaluate the administrative arrangements. The conclusion reached by the study team and the two Secretaries was that a single administration by the Forest Service would promote the most effective and economical management of the recreation and other resources of the area. This is what is provided in the bill which is now before the subcommittee.

In most other respects, the bill before us is essentially the same as the measures Senator McGee and I, Senator Hansen and Senator Bennett sponsored in previous Congresses to establish the Flaming Gorge National Recreation Area, the only difference being that it now provides single Department administration.

Under S. 444, the Secretary of Agriculture will manage, utilize, and dispose of natural resources as long as this does not significantly impair the purposes for which the recreation area was established.

The language of the bill provides that the Secretary shall permit—and I emphasize "shall permit"—hunting, fishing, and trapping on the

lands and waters within the recreation area, and that this must be done in accordance with applicable Federal and State laws. The bill further provides that the Secretary may issue regulations designating zones where it may be necessary to curtail hunting, fishing, and trapping, to allow for proper administration of the area, or to protect the safety of the public. But the bill specifically states that such regulations can be issued only after the Secretary has consulted with the fish and game commissioners of the States of Utah and Wyoming.

The lands within the recreation area will be withdrawn from location, entry, and patent under the U.S. mining laws. However, the Secretary of the Interior may lease minerals when he finds that such leasing would not adversely affect the purposes of the Colorado River storage project, of which Flaming Gorge is a part, and the Secretary of Agriculture finds it would not adversely affect administration of the recreation area. All leases would be subject to the consent of the Secretary of Agriculture and to such conditions as he may prescribe.

All lands of the United States retained or acquired for the recreation area within the extended boundaries will be made a part of the Ashley National Forest. Appropriations from the Land and Water Conservation Fund will be available for acquisition, if necessary, of any lands or waters within the recreation area.

The land ownership within the recreation area divides as follows: Bureau of Land Management, 28,000 acres; Bureau of Reclamation, 85,000 acres; Forest Service, 76,000 acres; Wyoming and Utah State owned, 1,054 acres; private land in both Utah and Wyoming, 10,162 acres. This means that most of the land is already in Federal ownership.

Both Secretary of Agriculture Freeman and Secretary of the Interior Udall have submitted reports to Congress recommending enactment of S. 444.

This bill is the result of several years of study and distillation of previous bills, and represents the best way to develop the Flaming Gorge Recreational area. It will create legislatively an area now existing only by administrative action, and give it all the advantages of statutory authority. It will provide for its management by a single Federal agency, which will obviously be more effective and less cumbersome than dual management, and it will clear the way for full and rapid development of a magnificent outdoor recreational resource for all of our people.

Senator Hansen, a member of the subcommittee, is sitting with us this morning. He is a cosponsor of the bill. I will ask Senator Hansen if he wishes to make any comment at this point.

STATEMENT OF HON. CLIFFORD P. HANSEN, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator HANSEN. Thank you, Mr. Chairman. I would like to make a comment. As a matter of fact, I have a statement which I would like to read, if I may.

Senator MOSS. You may go ahead.

Senator HANSEN. Mr. Chairman, the legislation which is before us today, S. 444, would dedicate the scenic lands and waters of the Flaming Gorge National Recreation Area to the use and enjoyment of the American people. This bill would create a recreation area of about 200,000 acres in the States of Wyoming and Utah.

The area contains the Flaming Gorge Dam, completed by the Bureau of Reclamation in 1962, a clear-water lake which will be 90 miles in length when completely filled, provides 375 miles of shoreline and 45,000 acres of water surface, and literally acres and acres of beauty. Outdoor-minded Americans who visit this area can enjoy sports such as fishing and hunting, and recreational activities such as swimming, water skiing, hiking, riding, boating, camping, and picnicking.

Similar legislation was first introduced in July 1964 and subsequently in the 89th Congress and January of this year. A favorable report was sent to the Senate from the Department of the Interior in February of 1966. Unfortunately, hearings were not held during the last session, and the bill was not reported out of the committee. Members of the Interior Committee and Government officials toured the Flaming Gorge area by air in June of 1966. Senators Jordan of Idaho, Moss of Utah, George Hartzog, Director of the National Park Service, and Reynolds Florance of the Forest Service, were present for that tour.

One significant change has been made in this legislation, however, which concerns the administration of these lands. In 1963, the Secretaries of Agriculture and Interior agreed to jointly administer the Flaming Gorge area through the Forest Service and the National Park Service. This provision was included in earlier bills. The present bill, S. 444, provides for a unified administration by the Secretary of Agriculture. I believe this single administration would be more efficient, and that the Secretary of Agriculture is the best office for this function since he also has jurisdiction over the Ashley National Forest which is adjacent to the Flaming Gorge.

Thousands of people have already been attracted to this excellent recreation site. One and one-half million persons live within a 250-mile radius of the area, and the Flaming Gorge Recreation Area has a potential for 1 million visitor-days of usage annually by 1970.

The Bureau of the Budget and the Departments of Agriculture and Interior have recommended the passage of this legislation. The report from Secretary Udall states:

> The national recreation area will provide a highly significant water-based recreation area on lands largely in Federal ownership in the part of the United States where water is scarce. Its establishment will help meet the rapidly increasing needs of the American people for wholesome outdoor recreation, and will preserve for them outstanding natural, historic, scenic, and recreation resources.

I would like to include in the record an article from the Wyoming State Tribune of October 13 concerning a recent study just published by the University of Wyoming Agricultural Experiment Station. This study emphasizes the economic importance of the Flaming Gorge Recreation Area to Wyoming. I will submit a copy of the full report when it is received, and I would request that the committee incorporate the report into the record of these hearings.

(The report referred to begins on p. 61.)

Senator Moss. Without objection, it will be made an appendix to these hearings.

(The article referred to follows:)

[From the Wyoming State Tribune, Oct. 13, 1967]

FLAMING GORGE VISITORS IMPORTANT ECONOMIC AID

LARAMIE, WYO.—How much do pleasure-seekers visiting Flaming Gorge Reservoir contribute to the economy of Southwestern Wyoming?

A recent study just published by the University of Wyoming Agricultural Experiment Station offers many of the answers to that question.

Among the findings are that more than 70 per cent of Flaming Gorge's visitors hail from Utah, that each dollar spent by visitors in Southwestern Wyoming generates an additional $1.07 in other economic activity, and that gasoline service stations benefit the most from Flaming Gorge activity.

Authors of the publication are Rodney C. Kite, a former graduate assistant in UW's division of agricultural economics, and Willard D. Schutz, an associate professor in the division.

Kite, a native of Albany County, earned B.S. and M.S. degrees in agricultural economics from UW. Following final testing for his master's degree in September, 1966, he started working in the fibers and grains branch of the marketing economics division of the Economic Research Service of the U.S. Department of Agriculture in Washington, D.C.

Schutz, who has served on faculty since 1955, specializes in land resource economics.

Kite and Schutz acknowledged assistance from John W. Birch, associate professor of economics and statistics in UW's college of commerce and industry.

The study, conducted in the summer of 1965, is based on 206 interviews with visitors to Lucerne valley, on the west shore of Flaming Gorge reservoir.

Other highlights of the 24-page report follow:

Some 70.7 per cent of the visitors came from Utah with Colorado and Wyoming placing second and third.

Nearly all visitors came to fish, and camped near the lake shore. A slightly higher percentage of fishermen preferred shore fishing to fishing from a boat. Visitors also came to sightsee, boat, water ski and swim.

Out of state visitors spent an average of $10.68 per party in Southwestern Wyoming on each visit to Flaming Gorge. These visitors averaged $5.26 for gas and oil, $2.68 for food and beverages, and $2.74 for other retail goods.

Based on the 59,062 visits recorded to Lucerne Valley in 1965, visitors made a direct economic contribution of $529,728 to the economy of Southwestern Wyoming, according to calculations by Kite and Schutz. An additional $565,070 in purchases were generated in that year because of visitors' direct spending, the report estimates.

The Kite-Schutz report is even more significant when one considers that by 1966 Flaming Gorge had become Wyoming's third largest tourist attraction trailing only Grand Teton and Yellowstone National Parks.

Copies of the Kite-Schutz publication are available in the offices of Wyoming county agricultural Extension agents, or from the UW Bulletin Room, Box 3354, University Station, Laramie.

Senator HANSEN. Since the introduction of S. 444 on January 17 of this year, a matter of great concern to the States of Wyoming and Utah has been brought to this committee's attention by the senior Senator from Utah, Mr. Bennett.

Senator Bennett has proposed an amendment of section 4, which is designed to protect the States' rights pertaining to fish and game on Federal lands.

Senator Bennett's amendment would eliminate the present section 4 and revise it to read:

> The Secretary shall permit hunting, fishing and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with applicable state laws and Federal laws as they pertain to migratory birds.

I support this amendment and urge its adoption by the committee.

I ask that a telegram which I have just received from James B. White, State of Wyoming Game and Fish Commissioner, endorsing this amendment, be placed in the record at this point.

Senator Moss. It may be placed in the record at this point.

(The telegram referred to follows:)

CHEYENNE, WYO., *October 18, 1967.*

Senator CLIFFORD P. HANSEN,
Washington, D.C.

We wholeheartedly support amendments of Senator Bennett, Utah, on S. 444 regarding language, fish, and wildlife on Flaming Gorge.

JAMES B. WHITE,
State of Wyoming Game and Fish Commissioner.

Senator HANSEN. As Senator Bennett will show in his testimony, the question of jurisdiction over game and fish has, since the introduction of S. 444, become a matter which demands a clear resolution by the Congress before further recreation areas are to be carved out of our Western States.

The police power of the States must not be allowed to suffer erosion in this instance. I am confident that this committee and the Congress will resolve the jurisdictional question which faces us.

Thank you, Mr. Chairman.

Senator Moss. Thank you, Senator Simpson [sic].

I am a little puzzled about that migratory bird phase. Why do you give them jurisdiction over migratory birds and nothing else?

Senator HANSEN. I think they are controlled by treaty, as I understand it. Senator Bennett is here. It is my understanding that these migratory birds go more to Canada and there are some provisions that control them that are arrived at by international treaty. This is only my understanding of the situation.

Senator Moss. I wondered why it would be necessary to give them any authority. It is already there.

Senator HANSEN. I am sure that Senator Bennett can answer that better than I can.

Senator Moss. Thank you.

Our first witness is the principal sponsor of the bill, Senator Gale McGee, senior Senator from Wyoming.

Senator McGee.

STATEMENT OF HON. GALE W. McGEE, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator McGEE. Thank you.

Mr. Chairman and my colleague from Wyoming, Senator Hansen. I think the record ought to be corrected to show that indeed Senator Hansen was here this morning. Our mutually esteemed friend Senator Simpson used to serve on this committee but I wouldn't want the record to show that he was here this morning. I want to thank the committee for this.

Senator Moss. Thank you for correcting me. I just now found the slip of the tongue.

Senator McGEE. I saw that smug look on your face and I thought you thought it was something witty you had said.

Senator HANSEN. If my senior colleague would yield I know you made one other slip of the tongue that I am sure you didn't intend. I believe you said that I had been a cosponsor of the bill before the 89th Congress and I was not here at that time. Maybe I misunderstood.

Senator Moss. Maybe that is where I transposed them. Senator Simpson was a cosponsor of the bill the last time it was up.

Senator McGee. Knowing it was of constituents I didn't want anyone to try to say, "Where was Senator Hansen this morning. He is supposed to be in Washington, you know."

Since we all watch that very closely, perhaps it is appropriate that the correction come from me.

Senator Moss. Thank you.

Senator McGee. I want to express my very deep personal appreciation to the committee for going to all the trouble involved in the intricate details of setting up a hearing on this matter since we feel very strongly that it is long overdue.

Mr. Chairman, the testimony which I offer this morning is to ask your favorable and quick action on S. 444, a bill to establish the Flaming Gorge National Recreation Area in the States of Wyoming and Utah.

When Senator Moss, Senator Hansen, and I introduced S. 444 in January of this year, we hoped to accomplish two things by the passage of this bill. First, the bill's intention was to have Congress recognize what is already a fact. Second, the bill provides for a unified and effective administration of the Flaming Gorge National Recreation Area.

To elaborate on the first point, I would like to list a number of things about this breathtaking area in Wyoming and Utah, known by millions as the Flaming Gorge National Recreation Area, but not yet recognized as such by the Congress. The gorge itself, through which runs the Green River, has existed in fact for eons. The spectacular beauty of Flaming Gorge was described in 1825 by Gen. W. H. Ashley.

In 1869 John Wesley Powell did what Congress so far has failed to do. He gave an apt name to General Ashley's discovery and called the steep canyon, through which the Green River runs, Flaming Gorge. In 1962 the Federal Government built a dam at Flaming Gorge some 500 feet above bedrock. The reservoir behind that dam will stretch some 90 miles in length. At points the canyon walls will rise 2,000 feet above the reservoir level. When full, some 42,000 acres of water surface will comprise one of the chief attractions of the Flaming Gorge National Recreation Area. Three hundred seventy-five miles of shoreline promise recreation for millions of visitors. Despite all this, Congress has failed to designate the Flaming Gorge National Recreation Area as such.

President Johnson's wife, in September of 1964, gave recognition to the Flaming Gorge National Recreation Area when she dedicated a plaque thus naming it. Surely Congress ought also to recognize the Flaming Gorge National Recreation Area.

In 1964, 500,000 visitors knew the area as the Flaming Gorge National Recreation Area. In 1966 a million visitors knew the same thing. In 1967 a million and a half visitors knew the same thing, and, hopefully, by 1971 at least, Congress will have designated what two and a half million visitors will know as the Flaming Gorge National Recreation Area. Visitors boat, swim, fish, water ski, camp, picnic, hike, and ride in an area they know as the Flaming Gorge National Recreation Area. Surely all that activity behooves Congress to know it by the same name as these active visitors know the Flaming Gorge National Recreation Area.

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Equally as important, two departments of government are conducting conservation activities regarding grazing, mineral development, wildlife, and timber management in an area they know as the Flaming Gorge National Recreation Area. In terms of recognition, Congress should do no less.

The point may seem belabored, Mr. Chairman, but it is time for us to act. The fact is that the area has existed for eons. General Ashley knew it. John Wesley Powell knew it. The engineers and working men who built the dam knew it. Millions of visitors know it every year. Mrs. Johnson recognized it. Wyoming and Utah citizens know that the Flaming Gorge National Recreation Area exists, and S. 444 asks Congress to formalize what so many know.

An important concept is at stake here. Since Shakespeare's time there has been much discussion of "what's in a name." And, of course, many insist that nothing is in a name since Shakespeare concluded, "A rose by any other name is still a rose."

But the fact is that may times it does matter a great deal that we attach a designation to what so many of us accept as fact. For Congress to continue to fail to formalize what so many know violates one's very sense of order.

It is absurd for Congress to appropriate money and efforts to the Flaming Gorge National Recreation Area and then fail to put a label on it. Flaming Gorge National Recreation Area is a reality in need of recognition.

The second point I wish to emphasize in my testimony is that S. 444 provides for a uniform and effective administration of the Flaming Gorge National Recreation Area. As you know, Flaming Gorge National Recreation Area is presently being administered by two agencies of two departments of government—the Forest Service of the Department of Agriculture, and the National Park Service of the Department of the Interior.

S. 444 proposes that the Flaming Gorge National Recreation Area be administered by a single agency—the Forest Service of the Department of Agriculture, which already administers Ashley National Forest, and the Flaming Gorge National Recreation Area will be added to and made a part of the Ashley National Forest. The Department of the Interior, the Agriculture Department, and the Bureau of the Budget, all three, have given their approval in their reports to the committee for a single, unified administration of the Flaming Gorge National Recreation Area.

In conclusion, Mr. Chairman, I ask your speedy approval of S. 444 in order to finish what has been so long in the making and in order to provide efficient and unified management of the Flaming Gorge National Recreation Area.

I, too, have to be at the same committee meeting where Senator Bible is at the present time. I will try to stress as briefly as possible those factors that need to be highlighted and reemphasized if necessary.

The first has to do just with the name that we are applying to this. The beauty of the area that was first recognized for its beauty by General Ashley, whose name is now affixed to the forest that adjoins and first designated by that term by John Wesley Powell a good many years ago led to some suggestion that this be the name here. Then there was a Senator in the Congress who sought to commemorate the memory of a very great U.S. Senator from Wyoming by suggesting

that his name be affixed to the area. It was my proposal at one time that we designate this the Senator Joseph C. O'Mahoney Recreation Area.

The hearings that we held, the constituent opinions that we sampled from southwest Wyoming, however, convinced me that that would be inappropriate and I withdrew the proposal that I made at that time. It is another illustration, I think, that we all learn a good bit when we talk to the folks back home. After I toured the area a couple of more times it seemed to me too that even though the great beauty of the area and its colorization is in our neighboring State of Utah that it still remained most appropriate as the name for the whole area.

Inasmuch as that beauty could not be transplanted to where it ought to have rested had nature had greater foresight than she had, we are content that nearly all of the good fishing is north of the State line.

I have an interesting statistic I think should be injected into the hearing in addition to the record of the almost explosive new use that is being made of this area by a constantly mounting stream of visitors. My colleague has mentioned that there were a million visitors to the area not very long ago, a million and a half this year, and it will be shooting up to two and a half million in a few more years. But the fish catch is another statistic of interest. A year ago, some 677,000 fish were caught and this has been broken down in terms of the number of fishermen and the amount of time that was spent catching them and it figures out that in that year alone one and a half fish per hour were caught. Those of us here who would like to make a living catching trout, if we could, will attest that that is not bad.

We are mighty proud not only of the rate of the catch but of the size of the average catch coming out of the area. It has become indeed a sportsman's paradise. I don't want to diminish or downgrade the many other attractive uses but I would stress that this area, lying in a section of our State which had almost no attractions of this type at all except for occasional deer hunters and once in a while antelope hunting, indeed, has created a sportman's and tourist's oasis in an area that was otherwise completely overlooked by most of the people who were passing by.

It was an honor for me to be present with the Senator from Utah at the time that the First Lady of our country gave recognition to Flaming Gorge as a recreation area. That was in August of 1964.

In view of the long history behind the description of the area, the designation of the area by word of mouth, merely by tongue, for so many decades and now more or less officially by many responsible groups, I think the time is long gone when the Congress of the United States ought to enact this pending legislation for this purpose. I think also that the proposal contained in our bill to unify the command of the area is wise indeed. It simplifies it. It centralizes the burden of responsibility so that it cannot be divided or be lost amid the myriad of, let us say, differences that might arise among joint administrators.

Thus it is possible to fix the real responsibility for effective administration of the area. I think that is the principal merit of the proposal. We have been advised, as has been alluded to here, that the single administration can save as much as $100,000 by avoiding joint or duplicating administrative procedures. This, too, then, becomes a factor that we ought to continue to bear in mind.

I would like to address myself now for just a moment to the matter that my colleague, Senator Hansen, has previously alluded to; namely, the proposal of the senior Senator from Utah to amend the pending legislation in order to carefully reserve the authority in fish and game matters to the fish and game commissions of the respective States. I have read this with great care and thought a good bit about it and believe that it comes as a very thoughtful as well as thought-provoking contribution to the dialog on the pending legislation.

As Senator Hansen did, I have received the wholehearted endorsement of this proposal from our State's fish and wildlife operation and the commissioner of our operations, Jim White, a longtime friend, is very enthusiastic in that endorsement.

I have to confess upon reflection, however, Mr. Chairman, that, frankly, as of this morning I hesitate just a little bit about taking the step proposed, first because I am not persuaded yet, at least, that there have been flagrant enough abuses under the proposed approach in other instances to warrant this kind of a move. Our history and record of cooperation administratively in these matters with the appropriate game and fish commissions has generally been a good one and a strong one. Moreover, when we stop to consider from whence we have come on this whole proposal—and I say this again with feeling because I am one of those who has learned in the process of having withdrawn an attempt to lend a different name to the area than it will now bear—I think, when we are striving to clarify and to make less likely overlaps or contradictions in authority and jurisdiction and at a time when we are moving to unify that administration in one authority that, particularly when the area exists because of national authorization, I have serious misgivings as to whether we make a contribution in reserving some of these factors within the jurisdiction of the State alone.

I note that in the closing section of the bill there is a cautionary bit of language that says:

> Nothing in this Act shall deprive any State or political subdivision of its right to exercise civil and criminal jurisdiction within the recreation area consistent with the provisions of this Act, or of its right to tax persons, corporations, franchises, or other non-Federal profit, including mineral or other interests, in or on lands or waters within the recreation area.

It seems to me, trying to envisage the kinds of things that might happen, that that pretty well covers the lakefront.

So that right now, as I have explained to my colleague from Utah, the senior Senator, I am withholding my endorsement from his proposal and I have not placed my name in sponsorship because of these very sincere feelings of hesitation that I have about it. The fact that the lake itself, with its fish life, is divided at best by virtually an imaginary line probably recommends that unilateral ultimate power of responsibility, but I use that word "power" with great misgivings only because we always have to remind ourselves that we don't like power that is thrown around for its own sake.

Having said that, the responsibility has to lie somewhere and I think that we tend to erode a bit the intent of our bill and the consequent gains that will be derived under it by injecting this reservation in language which Senator Bennett has suggested.

So, while I had not intended to comment on this at this time, and it is not a part of my regular statement, I think perhaps it is appro-

priate that we discuss this openly here so that we can weigh all of its implications. But, as of now, in trying to weigh the merits of reserving these powers to the State commissions or reposing them with the administrative agency which the bill directs to take the responsibility for the area, I think it weighs slightly in favor of placing that with the administrative agent himself or that branch of the Department of Agriculture, the Forest Service. It is not black and white. It is not an easy one to resolve.

As I see it, it is a case again where it is 60 percent, perhaps, good and 40 percent that is less desirable. But a decision has to be made, and you can't make a 60 percent decision for and a 40 percent decision against keeping it the way the bill happens to read. The decision has to be made in one direction or the other, and in the light of that I would register my misgivings about the net long-run impact of the kind of limitation that my friend, the senior Senator from Utah, proposes here.

With that, Mr. Chairman, I will wind up my remarks by simply urging the committee to move with whatever dispatch that its many cares and responsibilities will permit and hopefully in the direction of, again, as part of the upper chamber of our upper legislature, reporting out the bill and hopefully S. 444 will soon become the law of the land and our delightful and exciting new area will bear the official appellation that common usage has already very deeply emblazoned on the tongues of our people in that area as well as in the literature that abounds around it and about it.

Thank you very much, Mr. Chairman.

Senator Moss. Thank you, Senator McGee, for your testimony. It has been very helpful.

I would like to ask you one or two questions. The land here that we are talking about in the recreation area is largely federally owned now and the bill contemplates that perhaps the remainder within the boundary will be acquired for Federal ownership. Therefore, this land and the surrounding waters would be in Federal ownership and the Federal Government would have the proprietary right of operating its lands; is that your understanding?

Senator McGee. That is my understanding of it, yes.

Senator Moss. In the bill we charge the Secretary of Agriculture with operating it in a certain way. Now, if he were a private landowner, not subject to any Federal charge of how he should manage it, he could close the whole thing up and not let anybody come in at all. He could put up a "No Trespassing" sign and that would be it.

Senator McGee. That is again my understanding.

Senator Moss. But the bill says he "shall permit."

Senator McGee. That language is very explicit.

Senator Moss. And it shall be "in accordance with applicable Federal and State laws," so that he is required to permit hunting and fishing in accordance with the State law.

There is a proviso in here saying that if it is necessary for public safety, administration, or public use and enjoyment, he may make some regulation as to where the hunting and fishing would take place. This seems logical to me because you certainly don't want people shooting guns in the middle of a campground or throwing fishing lines off a dam or perhaps the boat locks. There are certain areas that need protection, of course, because 1 million people are going in there now

and it is expected that two and a half million people will soon use the area. But the bill says that he can't even regulate things like that until he has consulted with the States and talked to them about it.

Senator McGEE. That is what it says in section 4.

Senator Moss. The State game commission, at least, has a chance to make its representation, although the Secretary finally has to decide the regulations for these purposes. He is tied down to these restrictions: Public safety, administration, or public use and enjoyment.

Senator McGEE. I wonder if it would be appropriate in connection with our short dialog that we would lift out section 4 and make it a part of the dialog so that its meaning would bear upon the comments that the chairman has just made.

Senator Moss. That would clarify the record and section 4 of the bill as printed will be set forth in full at this point so that it can be read in connection with the dialog.

(The information referred to follows:)

[S. 444, 90th Congress]

SEC. 4. The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: *Provided,* That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

Senator Moss. The reason I wanted to get your opinion, as the principal sponsor of the bill, is that I raised the question earlier about putting in simply that the Secretary would have to permit hunting and fishing under State laws as they apply to the migratory birds. Migratory birds are already governed by Federal law by reason of a treaty with our neighbors in Mexico and Canada and that becomes the paramount law above the State laws. And obviously that is under Federal control.

So the part that is left out of the amendment, as discussed by Senator Hansen, is that there would be no requirement placed on the Secretary to permit hunting and fishing in accordance with State laws; that is, hunting and fishing of anything but migratory birds. There would be no requirement that he consult at all with the fish and game commissions of the two States and therefore he might apply a lot of regulations for which very valid reasons could be adduced to show why they shouldn't be included. That is what disturbs me and I have discussed this many times with a number of people.

Senator McGEE. If the Senator will let me interject there.

Senator Moss. Yes.

Senator McGEE. The Senator will recall that he and I discussed this a long while before we introduced it the first time around. Our concern was to make sure that we protected the best interests of our States, and we talked to a lot of people involved at the time, and that is our concern now. I wouldn't want to leave the record suggesting that the only way you can best protect your State's interest is to accept the amendment. My intention is to completely protect the State's interest.

The question really comes down to, How do we best protect that interest? I genuinely feel that what we may be creating here is a two-headed monster. Instead, we are trying to get rid of a two-headed

monster. We have a lot of squareheaded administrators sometimes and flatheaded ones and oddheaded ones and that sort of thing, but I don't think we need to complicate that with a two-headed one. That is what the amendment really proposes, in view of the interstate character of the body of water itself and augments the difficulty of separating and distinguishing those factors from the point of effectively pinning down responsibility.

We hear a great deal, from time to time, and I get it from my letters from home, and I am sure the other Senators do too, about the bureaucracy in Washington and how you can't find out what is going on, because it goes so many places before you can finally get to the end of the line and see who is responsible. I am afraid we would be contributing to that kind of a situation if we inject this additional factor.

I am certainly open to any improvement in the language that we can come up with that might be more articulate if there are any obfuscations here, because they are not intended, but I do believe that section 4 does protect, in the most effective way, our State's interest if, for example, you could imagine the day when, God forbid, there might become a very intensive rivalry between our two States in areas other than the football field. I hesitate to bring that up but can't resist in view of the successful season that Wyoming is now having. Therefore, from the standpoint of pinning down the responsibility, I do think that there is some advantage to our States individually, in their own right, to know where this ultimate decision-making responsibility rests. It gives them a protection as well, because they are assured of the kind of cooperation and consultation and joint working together that has already become a pattern of operation and is reflected in the language of this bill.

I just can't see how we gain with the suggested proposal and I do think I see at least where we may risk some of our best interests on the State level. That is the reason why I applaud the points that Senator Moss from Utah has just made. I find the proposal more than a little disturbing.

Senator Moss. You will recall, Senator McGee, S. 3054, which was introduced in the 88th Congress back in 1964, in which both you and I were cosponsors and Senator Bennett and Senator Simpson were cosponsors.

Senator McGee. Let the record show that this is the correct reference to Senator Simpson.

Senator Moss. Correct. I am watching myself on that name. That bill had a section 4 in it, which I would ask be set forth in the the record at this point, that is identical. It may have a one-word difference, but I haven't been able to detect that. It is exactly the language that section 4 of the current bill, S. 444, contains and that was developed after a long period of consultation with both the Interior and Agriculture Departments, which were to be involved in this recreation area at that time.

(The information referred to follows:)

[S. 3054, 88th Congress]

SEC. 4. The Secretary of the Interior shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable laws and regulations of the respective States: *Provided,* That the Secretary, after onsul ation with the respective State fish and game

commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

Senator Moss. It was supported by all four Senators from the two States fully at that time.

Senator McGee. Which would lead to the question, then, what has happened in the 2 years or so since to alter the wisdom of it. Maybe something has happened. I just don't know.

Senator Moss. I would like to direct attention to one other matter. Last year the Senate passed the Spruce Knob-Seneca Rocks National Recreation Area, which is located in West Virginia. There is a report that goes with that and I might point out that the Seneca Rocks Recreation Area bill contains a section 4, again, which is essentially like this. I would like to read this from the report. This is paragraph 4 of of the Spruce Knob-Seneca Rocks report. The report number is 507 and it is dated July 22, 1965. Paragraph 4 reads:

The Izaak Walton League of America and the National Wildlife Federation submitted generally similar amendments requiring the Secretary to permit hunting and fishing in the area in accordance with State law but authorizing him to prohibit hunting at particular times and places for reasons of public safety, administration, or public use and enjoyment. They—

these two national conservation organizations—

stated that their purpose was to apply the same rule as is applicable to similar recreation areas administered by the National Park Service.

This is a Forest Service area, the one this report pertains to.

The committee has therefore recommended an amendment in language identical to that contained in section 5(b) of Public Law 88–492 establishing the Ozark National Scenic Riverway Area. This language has served as the model for subsequent bills prepared by the Department of the Interior. The Forest Service advises that it would follow this rule in any event and has no objection to the amendment.

The language put in is essentially what we have in this bill.

I want to point that out to show the number of times that this has been considered by the committee and by the departments and the fact that it is in existing law now on recreation areas that have been created by the Congress and signed into law by the President.

For that reason, I share some reluctance as to why we should dismantle this section now and write it in a different way. It seems to be working very well. Do you know of any instance where the Forest Service, in managing any of its national forests or recreation areas, has evoked a conflict with the hunting populace or the fishing populace as to their management?

Senator McGee. I don't know of any where the Forest Service has. We had a little ruckus in our State over elk with the Park Service, but that turned out to have been a decision by an individual rather than the administration in the Park Service itself and, thanks to our joining hands, my colleague and I have been able to untangle most of that controversy.

But, again, the cooperation with the game and fish commissions was made a very clear part of the record even there, of Montana and Wyoming in particular in that case. The element of cooperation is that which is so important and I think the record is replete with such examples.

While there are differences that sometimes do arise, there are sometimes differences between the States, as we found out in the elk problem,

that may arise. Therefore, when you have an overlap on some great sportsmen's resource like this where, in the case of the elk, Wyoming feeds the elk and then they run them over the line so that Montanans can shoot them. Down in Flaming Gorge, Utah plants the fish and drives them over the line so that we can catch them. There is really, in cases of basic policy differences, a chance for disputes between the States.

I just don't see how we add to the effectiveness of pinning responsibility at the same time that we guarantee, we make it mandatory—not a matter of choice but mandatory—that these opportunities to fish and hunt shall be a part of it and that they shall be developed by the Secretary of Agriculture in consultation with and in cooperation with the appropriate game and fish commissions.

I really believe that we have covered all of the feasible options. Now, you can always conjure up some specter under a most extreme set of circumstances, but this is capable of conjuration at most any time on any question and I think that we have to keep our wits about and not push the panic button.

The record is good. The capabilities or possibilities of tempting digressions that could be injurious to the States do not seem to be lurking on the horizon anywhere here and I think the gain for the States has already been spelled out very eloquently here by all who have contributed to this dialog thus far.

So that, in my judgment, entitles us to proceed with the belief that this is as close to realistic and practical and rational administrative effectiveness and responsibility as we could hope for in an area as new and as widespread as the Flaming Gorge Area.

Senator Moss. I asked you the question about the Forest Service because in my State—and I assume it is the same in Wyoming—we have had a long and happy relationship of 50 years or more, as long as there has been a Forest Service, of hunting and fishing in the national forests. I expect to be there this weekend as I go every weekend when the deer season opens and hunt in the national forest. All I have ever found is the greatest of cooperation between the Forest Service and the State fish and game department. I am not aware really of any conflict that has existed in my State that involves the Forest Service and the State fish and game commission.

Senator McGee. The Senator will forgive me for having desecrated the Forest Service myself but I couldn't resist getting that commercial in on the elk problem that we have in Yellowstone.

Senator Moss. Senator Hansen, do you have any questions?

Senator Hansen. First I want to compliment my distinguished senior colleague for the contribution he has made this morning. He always speaks with great clarity and forcefullness and he has a very excellent understanding, I think, of the problems of our State.

I am certain that in most instances he and I agree quite completely on points wherein there is a clear-cut issue of State versus any other interest. I say that because it isn't often that I feel required to express a different point of view.

I would like to point out, if I may, that when we refer to S. 92, which was introduced back in 1965, there is a difference as I read the language in section 4 of that bill introduced in the 89th Congress. I call attention to the first sentence, reading now from S. 92:

The Secretary of the Interior shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable laws and regulations of the respective States.

That language is not contained in the bill before us now, S. 444. I would point out that I don't think we are so much concerned with States law as we must be concerned with the regulations that are promulgated by the State game and fish commission in trying to discharge as best they can their responsibilities to the people of Wyoming, to the perpetuation and production of fish and wildlife and the management of it.

The issue in Yellowstone to which my distinguished senior colleague referred to this morning came about because of a seeming failure, I believe, at least on the part of the park officials, to understand and to appreciate the help that the game and fish departments of Montana and Wyoming were willing and eager to give in solution of a problem that will inevitably arise where you have jurisdiction by different authorities.

On the one hand the park officials were trying to manage wildlife so as not to bring about a deteriorization of the range in Yellowstone Park. On the other hand, the State of Wyoming, charged with the management of the fish and wildlife, was concerned about how it could cooperate with the National Park Service. I know that at various times during the 4 years I was Governor we thought that we had reached an understanding. Then somehow the lines of communication would break down, steps would be taken unilaterally, and I don't mean to say that all the fault rested by any means with the Park Service. I think probably the State was derelict at times in not having gone further than it did in trying to suggest ways in which it could be helpful.

I am delighted that we were able to resolve that matter and I want to pay my respects to the very effective effort you made, Senator McGee, in calling hearings out in Wyoming and in getting the interested officials together, both those representing the Federal Government and those representing the State of Wyoming, and bringing a halt to the direct reduction which is a nice term to indicate slaughter of elk within the Yellowstone Park. I hope that there will be no need to have a repetition of that.

I would say, insofar as controversies between States are concerned, that I am not disturbed about that a bit. I know how closely the State of Utah, your State, Senator Moss, works with my State in the resolution of problems over the management of fish and wildlife. I know they work very closely together. There is an extremely effective relationship between these State departments.

We have common boundaries, of course, that extend for quite a considerable distance. I am not disturbed about that, but I am concerned about the ability of the Federal Government to exercise jurisdiction and, while we are not talking about a big area, let me just observe, if I may, some of the things that happen when there is an area upon which hunting might be restricted.

We have the situation in Grand Teton National Park. To the east of the park, as Senator McGee and I both are well aware, hunting is permitted and these elk are pretty smart animals. If you hunt them in one place and not in another they sort of get so they can read the boundary line signs that aren't there better than the hunters can.

Senator McGEE. They also read the calendar. They know when the season opens.

Senator HANSEN. They do, and you soon find that you build up concentrations of game animals within protected areas and it is for this very reason that the Fish and Wildlife Service, in cooperation with the State of Wyoming, has found it necessary to open the National Elk Region, if you please, to hunting occasionally in order to thin out those elk that know they are protected there, that have found the sanctuary that is extended to them the year round. The number builds up, the use increases beyond the ability of the forage on that area to sustain the population and, in order to prevent the deterioration of the forage on that refuge, hunting has to be permitted.

Now, let us remember that when you talk about Federal lands, the general public assumes immediately a proprietary interest, and there are a great number of people who don't like hunting in the first place, and they resent the control that the State game and fish commissions may exercise over the hunting. They resent the fact that seemingly, in their judgment, preference is given to residents of the State as contrasted to out-of-State citizens.

These are some of the reasons why I think it is necessary now, before we go further in establishing recreation areas, we should consider what sort of administration we should devise in trying to iron out these knotty problems, before they get to the point that they did in Yellowstone Park.

I subscribe to your excellent statement, that this is a great area. It has great potential for our whole country. There can be no doubt of that. It is in a part of the country that has been singularly devoid of the attractiveness that comes from water, and an opportunity to get away from it all, so that it will make an important contribution.

I know that the game and fish departments of Wyoming and of Utah will be just as eager to expand these important resources as are our coworkers at the Federal level. Yet there are some good reasons why there should be a clear spelling out wherein this responsibility vests. It is for this reason that I think it makes very good sense that the State of Wyoming and the State of Utah, through their game and fish departments, have the power under this bill, not only to see that State laws are recognized, but as well to see that regulations promulgated by these departments will be recognized. It is for this reason that I subscribe to the amendment that Senator Bennett has proposed.

If I may, I would like to have inserted in the record, Mr. Chairman, the last major paragraph of a letter dated October 19, 1967, addressed to Senator Alan Bible, chairman of the Subcommittee on Parks and Recreation, written by Thomas L. Kimball, the Executive Director of the National Wildlife Federation.

The paragraph to which I refer reads:

> We are of the firm opinion that hunting, fishing, and trapping of resident species of wildlife must be permitted in accordance with applicable State laws, with the regulatory authority of the Federal Government limited to that contained in the Migratory Bird Treaty Act. The last phrase in Section 4 after "provided," relating to the issuance of regulations designating safety zones where hunting, fishing, or trapping would not be permitted, is not necessary. The Secretary of Agriculture can exercise the prerogative of any landowner to prohibit trespass for any purpose on all or parts of the Area.

(The letter referred to follows:)

NATIONAL WILDLIFE FEDERATION,
Washington, D.C., October 19, 1967.

Senator ALAN BIBLE,
Chairman, Subcommittee on Parks and Recreation,
Senate Committee on Interior and Insular Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: The National Wildlife Federation appreciates the invitation to comment upon S. 444, establishing the Flaming Gorge National Recreation Area in Utah and Wyoming and would appreciate it if this letter can be made a part of the record of the current hearings.

The National Wildlife Federation is a private organization which seeks to attain conservation goals through educational means. The Federation has independent affiliates in 49 States. In turn, these affiliates are made up of local clubs and individuals who, when combined with associate members and other supporters of the National Wildlife Federation, number an estimated 2,000,000 persons.

The National Wildlife Federation long has believed that additional recreational facilities must be provided to meet demands of the rising human population, particularly when the construction of other Federal projects offer unusually good opportunities. This method makes the maximum use of public investments. In our opinion, the Flaming Gorge National Recreation Area in Utah and Wyoming is of the type that fits this category.

The Flaming Gorge water area, formed by construction of a dam on the Green River in northeastern Utah, is the principal feature of a highly scenic and rugged region. Spectacular scenery is provided by steep canyon walls which tower over the stream and, through many-colored deposits of limestone, present a vivid backdrop for the water. Water-oriented sports, hunting, hiking, and camping are among the varied types of outdoor recreational activities offered by the Flaming Gorge area. Containing a variety of deer, elk, antelope and upland game birds, plus numerous archeological sites, this well can be one of the most outstanding and attractive recreational areas in the Nation.

We believe that the Flaming Gorge area can be managed efficiently and effectively by the Forest Service, U.S. Department of Agriculture, under laws, rules, and regulations which permit the multiple use of natural resources when compatible with the primary purposes of the Recreation Area. It is essential that the Secretary of Agriculture be required to approve of any mineral lease issued by the Secretary of the Interior in order that the primary interest of the Recreation Area will receive the proper consideration.

We are of the firm opinion that hunting, fishing, and trapping of resident species of wildlife must be permitted in accordance with applicable State laws, with the regulatory authority of the Federal Government limited to that contained in the Migratory Bird Treaty Act. The last phrase in section 4 after "provided," relating to the issuance of regulations designating safety zones where hunting, fishing, or trapping would not be permitted, is not necessary. The Secretary of Agriculture can exercise the prerogative of any landowner to prohibit trespass for any purpose on all or parts of the Area.

In summary, we hope the Committee soon can see fit to issue a favorable report upon S. 444 in a form containing the above-listed recommendations.

Thank you for the opportunity of making these observations.

Sincerely,

THOMAS L. KIMBALL,
Executive Director.

Senator MCGEE. I think the implication in that paragraph is clear. What Mr. Kimball is pointing out is well known to all of us, that under Federal law there can be no challenge by the State as to the authority. The Secretary does have this authority, and we recognize that, and I think that, where we establish a recreational area, we ought to take occasion to make exception to this fact so as to assure that the respective States, whose interests are so deeply involved here, will be able to exercise not only through applicable State law, but by regulation as well, the rights and the prerogatives of the various States.

Senator MOSS. If the Senator would yield, I would like to point out that this is what I tried to underline earlier, that as a proprietary

landowner, it is true that the Secretary could just put up "No Trespass" signs, if Mr. Kimball is right. I don't think he can do quite that much, but he has an inherent right of regulation for public safety and administration.

Section 4 of the bill places a greater burden on him. It says he cannot issue regulations until he has consulted with the State. He has to consult first, and then regulate. So that the bill ties him down much more to being in communication with and responding to recommendations of the State before he sets up any of these regulations to preserve public safety, administration, and public use and enjoyment.

Therefore, the amendment would be much less restrictive. It just says that he can then go ahead, under the theory of Mr Kimball, at least, and set up whatever regulation he wants to accomplish these purposes.

One other thing: As was suggested by you, Senator Hansen, the interim bill between the one introduced in the 88th Congress and the one today was S. 92 of the 89th Congress and it did contain the language "applicable laws and regulations."

I could explain that "regulations" was taken out of there simply because of redundancy. If the law provides that in order to implement the law the governmental authority may issue regulations, then that is in accordance with the law, and if you just say "in accordance with the law," it includes regulations under the law whereby he is given authority to issue.

As a matter of redundancy it was left out, but I would certainly have no objection to putting it back in. A couple of redundant words are not going to hurt.

Obviously, when we have a fish and game law in the State, it sets right out by saying the Fish and Game Commission, under certain circumstances, shall set forth the dates on which the hunts shall be held, and the bag limit, and so forth, and that becomes part of the law when they operate in accordance with the law.

Senator HANSEN. Would the Senator yield?

Senator Moss. Certainly.

Senator HANSEN. I don't mean to quibble over this, and I will not say anything further, or at least I don't intend to on this point.

I would call attention, though, that in S. 444 the word "Federal" has been added. The section now reads:

> The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws . . .

Senator Moss. The Federal laws apply to migratory birds.

Senator HANSEN. And in the old bill, S. 92, it says:

> The Secretary of the Interior shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable laws and regulations of the respective States.

I think there the emphasis in that bill was on laws and regulations of the respective States. In the new bill, the word "Federal" has been added. It says, "Federal and State laws," and there has been deleted the word "regulations."

Senator Moss. If the Senator would yield, that is because the migratory bird matter raised its head, and the Federal law controls migratory birds, because this is subject to the treaty. The Federal

Government has no law governing fish and wildlife that exist in the forests and streams of the United States. That is controlled by the State law.

Senator McGee. Is it permissible for the witness to get back into the dialog?

Senator Moss. You may.

Senator McGee. If I may, Mr. Chairman, then, my statement will be very short. I was ready to leave sometime ago, but other things have come up.

Inasmuch as I will be represented as the author of these statements, it might be appropriate for the record to say what I thought they meant when I put them in the bill.

First, the language in S. 92 we changed in the interests of conciseness and brevity, without any intention of substracting from intent or clarity.

It is refreshing to me, as it always is, to hear Senator Moss, a lawyer, strive to avoid redundancy. My colleague and I are not lawyers, so that we sometimes take a dim view of what some of us call the world's oldest profession, but the language was only and fundamentally and simply designed to contribute to clarity, not in any way to try to put a sleeper in there to permit somebody to take advantage of the State. If, indeed, those who architect language in our bills believe that we don't do any other kind of violence to what we are doing here, I have no objection, either, to putting that little phrase back in there, if this removes that apprehension, because we all have that apprehension.

I think it is covered in the current bill, under section 4, and I will attest to my own recollection about the injection of the word "Federal," there.

Federal is already there. This happens to be a Federal area, and therefore we were trying to make this very clear in terms of the Migratory Bird Act, and that sort of thing. You are not going to achieve anything by leaving "Federal" out of there, and pretend that this is a national recreation area.

So I would be willing to abide by language that would—this is the real nub of it—reinsert "and regulations of the respective States." I don't think it is necessary, but it does not do any violence to me.

I was not even a professor of English, so that I cannot claim to be offended in terms of sentence structure, or the sly implications of redundancy. If that brings us to common ground, that is fine with me.

I would just remind us that our concern is that some Federal authoritarian somehow is going to abuse us somewhere along the line. That is really what it comes down to.

I think the record abounds the other way. I think the safeguards we have written into this bill cover the probable or rational options that might conceivably arise in unimaginable ways.

Finally, if you assume the very worst, I say to my colleague that Wyoming is still going to have two U.S. Senators here in Washington, and I would seriously doubt that any high-handed administrator would get very far very fast in something that was in open contravention to the intent of the legislation, and the intent is clear, it seems to me. So, if you assume the worst, the State is not without its very potent capabilities of redressing whatever abuse—and it would have to be abuse, it would not be consistent with the law—

that might be attempted or practiced by some high-handed administrator at some x point in the future.

I really believe that with the reinsertion of the language that we struck in trying to clarify, "and regulations of the respective States," with the understanding that we will continue to insure that Wyoming shall continue to have two U.S. Senators, and Utah has two, that we have covered all of the fronts without risking what really is disturbing to me, and that is the prospect of some administrative confusion by fragmenting the responsibility beyond the extremes described in section 4.

I think we have covered the reasonable ones. The others we can cover in the emergencies, if they were ever to happen, and understand that I underscore that these are most unlikely things that will happen, but if they do, and somebody abuses them, we have some rather considerable recourse to the Congress.

Senator Moss. Senator Hansen.

Senator HANSEN. If the Senator will yield for just a moment.

Senator McGEE. Yes.

Senator HANSEN. My concern is that we so comport ourselves here that they will want the same two they now have in Wyoming.

Senator McGEE. Let's make that unanimous.

Senator Moss. On that happy note, we will thank the senior Senator from Wyoming for his testimony, and the dialog that we have had about the wording of the bill.

I will assure the Senator, as to the suggestion that these two words might be added, that this phrase will be brought up in the markup of the bill for the committee to consider.

Senator McGEE. And may I again thank the chairman and Senator Hansen for their patience. I want to personally apologize not only because I feel compelled to hesitate on the proposed amendment, but because the senior Senator from Utah and I have just emerged from battle as colleagues on the same team trying to fend off the flutterings of a lot of feathered birds out on his campus in Utah. Therefore it is with reluctance that I had to take issue on this one, when we were standing shoulder to shoulder on our last joint appearance.

Thank you very much.

Senator Moss. Thank you, Senator McGee.

The senior Senator from Utah, Wallace F. Bennett, will be our next witness. We apologize to Senator Bennett for the long wait. We did not foresee that there was going to be that much dialog.

STATEMENT OF HON. WALLACE F. BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH

Senator BENNETT. I appreciate the opportunity to discuss what I think is the only issue in this particular bill. I think everybody else supports the bill. I think this is a very serious issue, and it has some ramifications beyond those that have been already discussed.

I am sorry that the senior Senator from Wyoming left, because he made one statement that I think needs correcting, or on which I think there can be an observation.

He said he regretted that Nature had failed to move the beauty of the canyon into Wyoming. It was not Nature that made that decision. It was the Congress of the United States. They made the lines that

separated the States and, at the risk of losing the support of the junior Senator from Wyoming, I would point out that when the State of Utah was instituted, this area was all in the Territory of Utah, and Congress came along and cut that corner out and put it in Wyoming, so that he should be grateful to Congress for what he got, rather than complain to Nature that Wyoming was cheated.

Mr. Chairman, I appreciate the opportunity to appear here today in support of S. 444, a bill to establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming.

I am especially pleased that the administration of the recreation area will be under the single jurisdiction of one Federal agency, in this case the Secretary of Agriculture. I understand this will save about $100,000 in administrative costs each year by eliminating duplication of overhead costs and technical staffs as well as public facilities.

The bill would authorize as a national recreation area some 200,000 acres extending from several miles below the Bureau of Reclamation's Flaming Gorge Dam on the Green River in northeastern Utah and upstream from the dam through steep canyon walls carved by the river, through the Uinta Mountains and the Flaming Gorge into southwestern Wyoming.

The area has already become a major tourist attraction since Flaming Gorge Dam has created a large body of water in a semiarid region enhanced by diversely outstanding scenic surroundings.

The section of the Green River from the head of Flaming Gorge downstream to the mouth of Red Canyon is almost a continuous series of canyons and smaller side canyons. Many portions of Red Canyon are narrow, precipitous, and colorful, with the same reds, grays, and purples found in the canyons of Dinosaur National Monument. Flaming Gorge itself is notable for the intense reddish orange shades of its cliffs, which rise abruptly a thousand feet above the river.

Generally, these canyons of the Green River parallel the Uinta Mountains, the only major east-west range of mountains in the United States, an area nationally known for its scenic beauty.

Recreational use of the area will include boating, fishing, swimming, camping, picnicking, hiking, horseback riding, hunting, and water skiing. The area is also of historical interest and the Henrys Fork area would be an excellent point from which to present the story of the fur trappers, or Mountain Men, who did so much to open up this vast region.

Mr. Chairman, I also would like to point out to the committee that despite the merits of this legislation, and the importance in the recreation area designation, I feel that the bill requires an amendment which will help protect the people of Utah and Wyoming, and which I would like to offer to the committee at this time for its consideration.

My amendment deals, to nobody's surprise, with section 4, the fish and wildlife section of the bill.

At this point I would like to make the point that I have no pride of authorship in the wording of my amendment. I think the objective that I hope to accomplish is more important than the words, and I if have not written the best possible words, I am sure the staff of the committee, and its members, will be able to improve them.

It seems to me that the issue here is very simple: Will the Secretary of Agriculture have the final and more or less undisputed say

with regard to the control of hunting, fishing, and trapping—whether after consultation, or without consultation is not very important in the end—or will the management of these game resources remain where they have always been, under the control of the States?

This discussion about consultation reminds me of an old Western saying, that "They gave him a fair trial, and then hanged him."

I don't think it diminishes the power of the Secretary in any sense. It simply takes a little longer for him to implement his decisions.

Senator Moss. Would the Senator yield at that point?

Senator BENNETT. Yes.

Senator Moss. I would like to point out that the only thing he is required to consult on is whether he is going to set up certain areas.

Senator BENNETT. That is right.

Senator Moss. Because of safety regulation.

On the first part, he has to permit hunting, fishing, and trapping in accordance with the State laws.

Senator BENNETT. But under the guise of setting up areas and determining times, he can, in effect, declare the whole area off limits.

Senator Moss. That is what Mr. Kimball says he has the inherent right to do now, as a proprietary owner, but I say he is required at least to come and talk about it before he can do it under the bill.

Senator BENNETT. I think you are wrong, as I shall try to explain later in my statement.

The section now reads:

> Section 4. The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: Provided, that the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

I would like to see that section amended, eliminating the last half of it, so that it will read:

> The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with applicable State laws, and such Federal laws as pertain to migratory birds.

My amendment merely spells out very clearly the role of the State in the management of the fish and game in the recreation area, and is designed to protect the States long and court-supported rights in this field.

It is my feeling that if the language in the legislation is allowed to stand, it could have far-reaching and adverse results on the State fish and game programs, by all but eliminating Fish and Game Department jurisdiction and activities on Federal lands.

My amendment has the wholehearted support of the Utah Fish and Game Department, the Utah Department of Natural Resources, the Wyoming Game and Fish Commission, the Western Conference of the Council of State Governments, and the International Association of Fish and Game Conservation.

In addition, Mr. Thomas Kimball, the executive director of the National Fish and Wildlife Federation, has told me:

> If there is any way that the present language can be interpreted to mean that the Agriculture Department can issue regulations for hunting and fishing on Federal lands, then it should be clarified.

And I assume he means clarified to indicate that the Secretary does not have that right.

I am informed by various members of these aforementioned agencies that they are deeply concerned over the present language in the legislation, and they all would like to see it changed, so that there will be no question about the States' rights to manage their own fish and game.

Since colonial times in this country, the ownership of wildlife, by law, history, and tradition, has been separated from the ownership of the land. The Supreme Court has also ruled that all species of wildlife are held in trust by the individual States for the people of each State.

The historical doctrine of ownership of fish and game by the States is still basically the law of the land, as decided in *Geer* v. *Connecticut*, 161 U.S. 519 (1896).

I do not want to take the committee's time in going through all of the various nuances and ramifications of this case, but I think I must point out that the conclusion of the Court was that the States had inherited from the Crown and Parliament of England all of the rights, both of property and sovereignty, which were exercised in England over game and fish.

Another significant case which set down the law that the U.S. Government is not the owner of game and fish, despite its superior treatymaking power, was decided in *Sickman* v. *United States* (1950), 184 F. 2d 616.

This basic right, with one exception, has remained with the States. That exception concerns migratory bird treaties, since a treaty negotiated under the treatymaking power of the United States becomes the supreme law of the land, and all State or Federal laws become subordinate to the provisions of such a treaty.

That is the reason why in my substitute amendment we have the phrase: " . . . and such Federal laws as pertain to migratory birds."

And we have heard that discussed at great length today.

I put the phrase referring to migratory birds in my amendment for the purpose of making it abundantly clear that by reserving these rights to the States I was not by inadvertence ignoring the right of the Federal Government to write the migratory bird treaties.

Mr. Chairman, I would like to point out to the committee that in the event it wants to dig deeper into the legal problems and precedents in this field, I have in my file a copy of a brief of the Legal Committee of the International Association of Game, Fish, and Conservation Commissioners.

Since listening to the earlier discussion, I think that should be in the hearing, and I would like to offer it for the record.

Senator Moss. Without objection, it will be made an appendix to this hearing as it appears to be quite long.

Senator Bennett. Mr. Chairman, that was generated by an Interior Department Solicitor's opinion and in part as a result of a letter written by the Secretary of the Interior to a man named James L. Early of Denver, Colo., and I would like to read that letter at this point, because I think this will clearly indicate how serious and how potentially widespread the ramifications of this decision may be.

The letter is dated March 11, 1967, signed by the Secretary of the Interior. After two short introductory sentences, the heart of it is contained in this paragraph:

The Federal Government has the right to control, regulate, and manage the wildlife resources on Federal lands acquired or reserved for Federal purposes.

He sets himself completely in opposition to the Court decisions. Reading again:

We do not question the States' jurisdiction to manage and control resident wildlife on non-Federal lands. We believe the conservation effort will be best served by public and private conservation forces putting their energy to support programs which further conservation efforts in light of that understanding.

Now, if this point of view stands, then the Senator from Utah, my junior colleague, cannot go deer hunting any more in Utah without permission of the Secretary of the Interior, if his deer should happen to be on Bureau of Land Management lands.

Senator Moss. Obviously what the Secretary of the Interior may have written does not alter the law, and the law, having said that fish and game are under jurisdiction of the States and held by the people of the States, is the law, no matter what anybody might write about it.

Senator BENNETT. I think it is the law as it affects this case, and I don't think the States should give up that jurisdiction to the Secretary of Agriculture, particularly in view of the stated Solicitor's opinion and attitude of another Cabinet officer in the same administration as the present Secretary of Agriculture.

Mr. Chairman, I ask that the complete letter be included in the record.

Senator Moss. That will be done.

(The letter referred to follows:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 11, 1967.

Mr. JAMES LARUE EARLY,
Denver, Colo.

DEAR MR. EARLY: We have received your letter of February 26 and the enclosed clipping from the *Denver Post* relating to jurisdiction over wildlife.

At this point in history a review of the provisions of the Louisiana Purchase relating to wildlife would in our opinion be academic.

The Federal Government has the right to control, regulate, and manage the wildlife resources on Federal lands acquired or reserved for Federal purposes. We do not question the States' jurisdiction to manage and control resident wildlife on non-Federal lands. We believe the conservation effort will be best served by public and private conservation forces putting their energy to support programs which further conservation efforts in the light of that understanding.

We appreciate your inquiry and the attached news item.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

Senator BENNETT. Now, I would like to go back to the present language in section 4, and just again point out that it reads:

Provided, that the Secretary, after consultation * * *

We have already had a great deal of discussion about that word "consultation." Most of us from the States under heavy Federal land ownership should know what "consultation" means. We have had consultation on our views on other land and water matters, and we know what usually happens, and whose opinion usually prevails.

To go on:

* * * after consultation with the respective State fish and game commissions, may issue *regulations* designating zones *where* and establishing periods *when* no hunting, fishing * * *

Why should the States of Utah and Wyoming give to the Federal Government the right to set hunting and fishing seasons? Why should the States of Utah and Wyoming give the Federal Government the right to designate which areas are open to hunting, and which are not? What is going to be next, a Federal fishing or hunting license, with Federal game wardens?

Senator Moss. Where does that apply?

Senator BENNETT. I think that is inherent in this idea that he can regulate hunting and fishing.

Senator Moss. In the sentence, he

shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction * * * in accordance with the applicable * * *

Senator BENNETT (reading):

* * * may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

Senator Moss. You conjure out of that that he then will suddenly close down the whole area?

Senator BENNETT. I am not saying he will. I say that as a complete and extreme interpretation, I think the power given is broad enough. Let me go on.

Senator Moss. Let me ask you one more question.

Don't you think that the manager of the recreation area ought to have some regulations about whether you can shoot deer that are walking through a campground, or fish off of a pier of the dam, or some of those things, if he is charged with managing that area?

Senator BENNETT. I think the regulation involving this basic management in terms of time and area should remain with the States, where they now are, and I am not worried about the ability of the State to issue a regulation that you cannot fish off a dam.

Senator Moss. This is the part that bothers me, Senator, that this area is going to be managed by the Federal Government. In fact, the land is owned by the Federal Government. Would you think that the State ought to come in and say, "Within 50 yards of the road, you shall not shoot deer on this area," or, "Within a campsite you shall not," and all of these details of managing that land?

Senator BENNETT. Does not the State have that power now on land other than Federal land?

Senator Moss. No; this is Federal regulation in Federally owned land.

Senator BENNETT. You did not understand my question. Does not the State Fish and Game Commission now have the power to set areas where there shall be no hunting, and if they can say, "You can't hunt in such-and-such a period, such-and-such a time," can they not say, "You can't hunt within 50 yards of a road," or, "You can't fish off of a dam?" Is that not just an extension of their present power?

Senator Moss. No, the State can control the time and bag limits, and things like that, in managing the game, but as far as managing the land is concerned, saying, "In this area, because it is dangerous, you can't do it," you have to apply to the landowner.

If it is a State highway, yes, you can do it, but, if it is a forest highway, it has to be a forest regulation. That is what I am saying.

Senator BENNETT. I hate to say this to my colleague. I think we are picking at nits, and missing the basic philosophical problem that is involved in this contest between us.

Senator Moss. That is what I am unable to understand, because I have examined this carefully, and for a long time, but go ahead, Senator.

Senator BENNETT. The Agriculture Department, which obviously helped draft this legislation, apparently is trying to claim exclusive jurisdiction, and at the same time is attempting to claim ownership of the resident fish and game.

I question how this can be. As has been pointed out, if, in an area of exclusive jurisdiction, privately owned cows happen to get on the Federal recreation area, are they automatically converted into Federal cows? Obviously not.

Similarly, the game is owned by the public, and the State is only the trustee for management. A conveyance of land, and a cession of jurisdiction does only that—it conveys the land and cedes jurisdiction; it does not convey title to the game. The Federal Government does not own the game, and cannot kill or utilize it, except in accordance with State law.

The argument has been made that the present section 4 language follows that accepted by the committee in other bills, and it gives the assurance that State laws must be followed. Frankly, I do not see any assurance that State laws must be followed, because the bill now reads:

> *Provided,* That the Secretary * * * may issue regulations * * *

For an example, I have the letter dated March 11, 1967, which Interior Secretary Stewart L. Udall has written to Mr. James L. Early of Denver, Colo., in which the Secretary says:

> The Federal Government has the right to control, regulate, and manage the wildlife resources on Federal lands acquired or reserved for Federal purposes.

That does not sound to me like assurance that State laws will be followed.

I have listened with a great deal of interest to the discussion of the prior bills covering this same subject, and the difference in language, and the fact that nobody was concerned about this problem when the prior bills were up.

I think the time we became concerned about this problem was when such language was written into Public Law 88–639, the Lake Mead National Recreation Area bill, and I think the experience of the State of Arizona as a result of that language is the thing that has touched off the concern in the minds of the Fish and Game Commissioners and other State officials in Utah and Wyoming.

Mr. Phil Cosper, the Assistant Director of the Arizona Fish and Game Department, told me just yesterday when he was asked how the fish and wildlife language in the Lake Mead bill had worked out, that:

> There is no question, we wish it had not gotten into the bill. We had assurances when the Lake Mead bill was under consideration that it would be taken out, and after, to our surprise, it appeared, it has certainly hampered our management program.

Senator Moss. What is that language? Would you set it in there? I am not familiar with the wording of the Lake Mead bill.

Senator BENNETT. The words are virtually identical with the words that are in this bill.

Senator Moss. All right. Are you going to read the section from the Lake Mead bill?

Senator BENNETT. I will be glad to read it. Would you like to follow it by reading the text of the present bill?

Senator Moss. The present bill. All right.

Senator BENNETT (reading):

> The Secretary of the Interior shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable laws and regulations of the United States and the respective States: *Provided*, That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

Is it not identical?

Senator Moss. Well, there are minor variations, but the general import is the same, yes.

Senator BENNETT. The Director of the Arizona Department of Game and Fish made the same point in a letter to Interior Secretary Stewart L. Udall dated October 28, 1965, when the superintendent of the Lake Mead area took it on his own to close a 5-square-mile big horn sheep range on the basis of safety.

I was told by the Arizona people that barely one person a year goes into this so-called big horn sheep range country, which apparently is some of the roughest in the Nation, yet the superintendent decided to close it as a safety measure.

In addition, the same superintendent also took it upon himself to bar firearms and shotguns within 2 or 3 miles of Lake Mead Recreation Area campsites—in other words, you could not even camp there if you had a shotgun or a rifle—again as a safety measure.

I have yet to see a shotgun with anywhere near a 3-mile range. They don't shoot that far.

For the information of the committee, I would like to leave a copy of the letter of protest on this subject from Mr. Swank to Secretary Udall. In addition, I would like to read only the first and last paragraphs of Mr. Swank's letter.

He said:

> Since 1952 there has been some conflict between the Arizona Game and Fish Commission and the administrators of the Park Service regarding hunting on Lake Mead National Recreation Area. We feel that the Superintendent of the area, Mr. Charles Richey, is overzealous in his desire to control or to eliminate hunting from the recreation area and is using the guise of "public safety" to close areas which in his opinion should not be hunted.

He goes on to say:

> I would like to reiterate that I sincerely believe that the Superintendent of the Lake Mead Recreation Area does not want to harvest sheep in the area in question and is using the provisions of Section 5 of P.L. 88–639 pertaining to public safety to gain his objective.

(The letter referred to follows:)

OCTOBER 28, 1965.

Hon. STEWART UDALL,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: Since 1952 there has been some conflict between the Arizona Game and Fish Commission and the administrators of the Park Service

regarding hunting on Lake Mead National Recreation Area. We feel that the superintendent of the area, Mr. Charles Richey, is overzealous in his desire to control or to eliminate hunting from the recreation area and is using the guise of "public safety" to close areas which in his opinion should not be hunted.

Of immediate concern is the proposed closure of an area along the Colorado River above Willow Beach to Boulder Dam. Our personnel working this area have recommended a limited Big Horn sheep hunt there for several years. But in trying to cooperate and trying to reach some agreement with the Superintendent the Commission has held off opening the area to hunting until this year. Department personnel notified the Superintendent's office of their proposal to recommend to the Commission this area be opened to a limited number of sheep permits this year. At their July 24 meeting the commission approved this recommendation. In a final effort to resolve the difference a meeting was held on October 25, but no progress was made. We recognize and Arizona law recognizes that there are certain areas where the discharge of firearms poses a potential threat to the public. Arizona law prohibits the discharge of firearms within ¼ mile of a dwelling or using a firearm in a careless or reckless manner. These laws have been adequate to take care of any problems around such intensively used recreation areas as Saguaro and Canyon Lakes. This area is used intensively by deer, water fowl and small game hunters and I know of no area in Arizona where other outdoor recreation use is greater. Yet to my knowledge there has been no conflict. Arizona game management unit 15–B is open to sheep hunting from November 27 to December 2. We cannot predict where in the unit these hunters will go, but I cannot believe that if all five of them were in this disputed area there would be any real conflict with fishermen or sightseers or any potential threat to others by these hunters.

Our regulations provide for the taking of only mature ram big horn sheep and wildlife management familiar with the "triangle area" hope that two rams can be harvested there. There are several large rams in that area and removal of two, they feel, would be following sound management practices. I am in complete agreement that an opportunity should be provided to those using the river to see and photograph big horn sheep. However, as I pointed out in my letter to Mr. Richey on October 5, it has been my experience in both Africa and North America that game viewing, game photographing and hunting are not incompatible uses. I am well aware that Section 5 of P.L. 88–639, and Lake Mead National Recreation Act, provides that the Secretary, after consultation with the states, may issue regulations designating zones where hunting shall not be permitted for reasonable public safety. We are well aware of the potential problem regarding this section, particularly as it applies to the present superintendent of the recreation area.

Enclosed is a resolution passed by the Colorado River Wildlife Management Council on March 31, 1964, indicating their concern at the time this legislation was being discussed in Congress, council which was composed of the state and wildlife departments of California, Nevada, Utah, Wyoming, and Arizona. They originally endorsed the legislation but objected when changes were made which gave the Secretary final word regarding hunting on the area.

As you recall, the Leopold Report on wildlife problems in national parks made a definite distinction between parks and recreation areas. The report states that national recreation areas are by definition multiple use in character as regards allowable types of recreation. The report goes on to say "this (hunting) opportunity should be developed with skill, imagination and (we would hopefully suggest) with enthusiasm." I would like to reiterate that I sincerely believe the Superintendent of the Lake Recreation Area does not want to harvest sheep in the area in question and is using the provisions of section 5 of P.L. 88–639 pertaining to public safety to gain his objective, as this law specifically states: "The Secretary, after consultation with respective states . . . etc."

I feel that I should bring this directly to your attention.

Very truly yours,

WENDELL SWANK,
Director, Arizona Department of Game and Fish.

Senator BENNETT. For the interest of the committee, I should point out that the letter brought a telephone call response in which the Interior Department informed the Arizona director that the matter would be cleared up by the Park Service.

What finally happened is that the Park Service allowed five big horn sheep hunters to go into the area, if the Arizona Fish and Game

Department sent one of its personnel along with each individual hunter, apparently to stand guard over him.

I would like also at this point to ask the committee to accept for the record a letter addressed on February 24, 1967, to Senator Paul J. Fannin, signed by Wendell G. Swank, director of the Arizona Game and Fish Department.

Senator Moss. Without objection, that will be printed in the record.

(The letter referred to follows:)

ARIZONA GAME & FISH DEPARTMENT,
Phoenix, Ariz., February 24, 1967.

Senator PAUL J. FANNIN,
Senate Office Building,
Washington, D.C.

DEAR PAUL: Thank you very much for forwarding to me a copy of S. 27, the Glen Canyon National Recreation Area bill.

As I suspected, this bill contains the same language as the Lake Mead Recreation Area bill pertaining to hunting and fishing. It gives the Park Service final authority in determining where and when hunting shall be permitted. This is the gradual enroachment on state rights that I spoke about to you last December.

For your information I am forwarding to you resolutions from the International Association of Game, Fish and Conservation Commissioners. A similar resolution was passed by the National Livestock Association. I am also enclosing information from the Western Governors Association and a copy of a report from the Natural Resources Committee of the National Governors Association.

The Park Service will tell you they must have final authority to protect the public, but on Lake Mead where we have identical language the Arizona Game and Fish Commission was intimidated to the degree that they did not establish limited hunting for bighorn sheep for two years, and received reluctant approval year before last only after agreeing to send a game manager from out Department with each hunter. I might also mention that Director George Hartzog of the Park Service assisted us in getting the area open to hunting, probably against the wishes of his staff and employees. I just point this out to indicate his desire to cooperate, and the difficulty encountered in changing Park Service philosophy.

We have had similar experience with fishing. We have no closures in the area and the Commission denied a request several years ago to close an area adjacent to the Willow Beach Hatchery because they were not convinced that this closure was justified. The Park Service then closed the area under the provisions of the Mead Act, and it remains closed today.

The Lake Mead National Recreation Area Act was a subject of considerable debate. Enclosed is a copy of minutes from the annual meeting of the Colorado River Management Committee meeting on March 30 and 31, 1964, along with a resolution adopted at that meeting. This Committee is composed of the game and fish commissioners of the states within the Colorado River drainage.

The Glen Canyon National Recreation Area is going to affect Utah more than Arizona, but there is still some twenty miles in Arizona above the dam and along the river below. I therefore suggest the following amendments:

Page 4, line 22: strike "Federal and"

Page 4, line 23: after the word "laws" add "and Federal laws pertaining to migratory waterfowl."

Page 4 and 5: Eliminate the remainder of Section 5.

Section 5 would then read:

"The Secretary of the Interior shall permit hunting and fishing on lands and waters under his jurisdiction within the boundaries of the Glen Canyon National Recreation Area in accordance with applicab e State laws and Federal laws pertaining to migratory waterfowl."

Paul, if I can be of further assistance or answer any questions, please let me know.

With best wishes,

Sincerely,

WENDELL G. SWANK, *Director.*

Senator BENNETT. He is referring to the Glen Canyon National Recreation Area bill:

As I suspected, this bill contains the same language as the Lake Mead Recreation Area bill pertaining to hunting and fishing. It gives the Park Service final authority in determining where and when hunting shall be permitted. This is the gradual encroachment on States' rights that I spoke about to you last December.

Then going over to another short paragraph on page 2 of this same letter:

We have had similar experience with fishing—

he said after referring to the bighorn sheep incident to which I have referred.

We have no closures in the area, and the Commission denied a request several years ago to close an area adjacent to the Willow Beach Hatcheries, because they were not convinced that this closure was justified.

In other words, the State asked to have an area close to the hatchery closed, and the Secretary denied it.

The Park Service then closed the area under the provisions of the Lake Mead Act, and it remains closed today.

Senator Moss. This was the case, then, when the State wanted it closed, and they finally got the Park Service to close it.

Senator BENNETT. But when the State wanted it closed, the Park Service refused to close it, then when the bill was passed transferring the final authority to the Park Service, they closed it on their own, but they would not close it for the State. This is an example of the fact that we are going to have conflicts of jurisdiction, and as a representative of the State of Utah, and in view of the history and the judicial decisions in this area, I think the jurisdiction should remain with the State fish and game commissions.

I would like to move now to another section of the bill, section 5, which pertains to mining and other such uses within the recreation area.

I had intended to offer a companion amendment, preserving the right to more exploration and mining in the area, but on second thought I would like to call this to the attention of the committee, with the request that it be studied carefully, and that if possible the committee develop an amendment, or if, in its judgment, the committee decides that is not wise, then that something be put into the report on the bill.

I think this is important, under the present circumstances, because a year ago in January oil was discovered in Summit County a few miles west of the Flaming Gorge Recreation Area. Just last week the Utah Geological and Mineralogical Survey has informed me that there is a very great possibility that additional oil is beneath a portion of the proposed High Uintas Wilderness Area, which also is near the Flaming Gorge Recreation Area boundaries.

Senator Moss. May I intervene?

Is the Senator aware of the language in the bill which says that the Secretary "may permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area * * * in accordance with the Mineral Leasing Act of February 24, 1920, as amended," which of course covers oil and gas and all nonleasable minerals?

What is prohibited is the location and entry and patent of mining rights.

Senator BENNETT. That is right.

I hope the committee will take another look at that because, while there has been no important discovery of solid minerals in this area, because the whole general area in this part of the State is heavily mineralized, I am not sure we should tie that up completely.

To me that is of much less concern than this fundamental question of jurisdiction, in light of the letter from the Secretary of the Interior, which proposes the philosophy that the decisions of the Court are wrong, that they apparently may seek to develop a whole new philosophy to establish the ownership in the Federal Government of the fish and game resources, rather than the present decision, which reserves it to the State, and for another reason, Mr. Chairman.

You have a whole series of these recreation areas coming along. The experience in Lake Mead would indicate that we should stop, look, and listen before we fasten this present concept on every other recreation area that comes along, because, while this affects Utah and Wyoming, there are others which will affect many other States. This could almost wipe out the effective jurisdiction of State fish and game commissions over any Federal land in our Western Federal land States.

I hope the committee will adopt an amendment, and the language is not too important to me, which will accomplish the purpose that my amendment was intended to accomplish.

Senator Moss. It is not clear to me just what protection your amendment would give to the State to manage its fish and game that is not already contained in section 4.

Senator BENNETT. Well, it is my fear that, in the event of a conflict, section 4 gives the Secretary the right to veto any action by the State fish and game commission.

We have had one little experience on this particular reservoir. Assuming that it had the right to manage the wildlife on this reservoir, the State of Utah decided it was necessary to plant some fish in the reservoir, and the Secretary of the Interior told them they had no right to plant any fish, and forbade the planting of the fish. So the State went ahead and planted them, anyway.

I think if they had not, the fishing, which is so fabulous there, would not have been very good. I think this points up the problem that we face. It is a question of the ultimate power, the ultimate source of final decision.

I think, under the previous Court decisions, that power has always rested in the States, and I am afraid this language is going to transfer it to the Federal Government, and not only in recreation areas, but I understand the Secretary of the Interior has suggested that this power rests in him in all lands acquired under the Louisiana Purchase. So you are going to affect every State in the Union, and I think the time to stop it is now.

Senator Moss. Well, now, in the letter of Mr. Kimball that you put into the record, where he recommends the taking out of the proviso, then Mr. Kimball says this, and I quote from the letter:

> The Secretary of Agriculture can exercise the prerogative of any landowner to prohibit trespass for any purpose on all or parts of the area.

Senator BENNETT. But the private landowner does not manage the fish and game that may move across his land.

Senator Moss. But he can post, and say, "You can't come in here, and can't shoot any game on my land, and you are in trespass if you do."

Senator BENNETT. If the Secretary has that power, he has it, and maybe something should be done to lessen it, but I don't think we should specifically give him the power to supplant, and that is what this bill will do, the State fish and game authorities in the area.

Senator Moss. Let me follow you. You said the Secretary may have that power to keep people from trespassing there, but this bill does precisely something by saying that, although he manages the land, although he is the landowner and manager, he "shall permit." He is charged by law, "He shall permit" fishing and hunting.

Senator BENNETT. But my amendment would not take that out.

Senator Moss. Yes, it would. "He shall permit in accordance with migratory birds." That is all yours said.

Senator BENNETT (reading):

> * * * shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area, in accordance with applicable State laws * * *

Senator Moss. Wait a minute. I thought it had migratory birds.

> The Secretary shall permit hunting, fishing and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with applicable State laws, and such Federal laws as pertain to migratory birds

Senator BENNETT. That is right. "He shall permit." I don't think that changes that situation, that phase of the discussion at all, but it is applicable.

Senator Moss. If you break that down and say any Federal laws, then it does exactly the same thing, does it not? It says he shall permit it.

Senator BENNETT. I agree that he shall permit it, but the difference between your language and my language is that your language says:

> *Provided,* That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations * * *

In other words, I read that language to transfer the ultimate right to manage the fish and game in the recreation area, from the State fish and game commissions to the Secretary.

Now, he may not issue the regulations without consultation, but, having consulted, he goes ahead and issues his regulations anyway, even if the States disagree, and even if it creates serious problems for the States.

Senator Moss. You would prefer Kimball's version, then, that he simply put up "No Trespass" signs wherever he wanted?

Senator BENNETT. Senator, you are trying to trap me. I don't say that. I say, "The Secretary shall permit." He is not allowed to put up trespass signs.

Senator Moss. That is in the bill. Then it goes on to say that if he is going to limit any area, he has to consult with the State first, before he could do that. Your amendment says nothing about that at all.

Senator BENNETT. My amendment says that the management of the fish and game will remain in the hands of the State agencies, and under applicable State laws, and that a man hunting in that area, who crosses over from the Ashley Forest on to the recreation area, is being bound by the same law on both sides of the boundary.

He does not suddenly become bound by a different set of regulations which the Secretary has issued.

Senator Moss. But you don't take away from the landowner the proprietary right to manage his land against trespassers, do you?

Senator BENNETT. I do if you do, because my language is exactly the same as yours.

Senator Moss. Well, mine does not take the right away from him, but says he cannot exercise his right until he has consulted.

Senator BENNETT. Mine does not take the right away from him, and says that he has no right to manage the fish and game, that belongs to the State. It belongs to it now.

Senator Moss. This does not give him any right to manage the fish and game.

Senator BENNETT. Of course it does.

Senator Moss. It says he can protect the interests for public safety, administration, or use and enjoyment there only after he has consulted with the State about the areas that are to be involved.

Senator BENNETT. But in the end, after he has consulted, he makes his own decision. In Arizona he said, "You can't hunt."

Senator Moss. Because he owns the land.

Senator BENNETT. The issue is very clear. I don't think we need to belabor it. It is a question of the ultimate authority over the management of the fish and game, and I am afraid, Senator, if you accept your philosophy, then the same philosophy applies to all the public lands, and 74 percent of the land in Utah is public land, and the Fish and Game Commission would then be left with jurisdiction over the 25 percent of the State which is generally not open to hunting.

Senator Moss. Unless the Congress, by law, directs the land manager what he shall do, which we try to do here.

We say he shall permit hunting and fishing, in accordance with State law.

Senator BENNETT. No. All it says is he has to consult.

Senator Moss. No, no. It says that he shall permit.

Senator BENNETT. That is right. Mine says he shall permit, too.

Senator Moss. So does this. This says he shall permit, and the only exception to it is to say when he is going to close it for safety or one of these reasons set forth, he shall first consult. Yours says nothing about that. He simply has to rely on his inherent right as a landowner to put up a no-trespass sign.

Senator BENNETT. Of course, I would imagine taking this no-trespass idea could now close a small part of the area. He would not have to close the whole area. He could post a small part of it.

I would have to do a little digging on that. I don't know to what extent the State law regarding posting of trespass with respect to hunting and fishing might come into this. It might not. This is something that I have not investigated, but I still come back, it seems to me, to the fact that the basic problem is, Who has the ultimate responsibility for controlling fishing and hunting in the area?

My idea is that it should be left with the State and the people in Utah, Wyoming, or Arizona. I read your language to say that it will give the Secretary the ultimate power to control, and in Arizona he has used that ultimate power once or twice.

Senator Moss. Suppose there is a hunter on the recreation area who walked into one of these big campgrounds, and a big buck was

there, and he wanted to shoot it. If there has been no regulation saying, "You shall not discharge guns within the campground area," and there is no general State law on that, then the person is completely free to do it. Is that right?

Senator BENNETT. Well, I cannot imagine a hunter who would walk into a campground area.

Senator Moss. You want to imagine all kinds of things. You have been imagining, because the Secretary of Interior——

Senator BENNETT. I have not been imagining. I have been drawing on the record, the history.

Senator Moss. We have been talking about the Secretary of the Interior. He is not even involved in this.

Senator BENNETT. The principle is the same.

Senator Moss. You have been saying, because of a letter the Secretary wrote, that obviously cannot have application, cannot change the law that exists, that this is going to happen.

Senator BENNETT. There is also a solicitor's opinion in addition to the letter and because this language in the Lake Mead law created problems that we can now know about and measure, I think we are properly warned against including the language in this law.

Senator Moss. Well, I am sorry. I don't have any familiartiy as to why they wanted to stop hunting big horn sheep for a while in an area, but it seems to me that that degree of regulation which was predicated on safety, as your statement would indicate, certainly can be decided by the appropriate supervisor as to whether indeed there there was safety involved. I don't know. I don't know about safety. Maybe it was the safety of the individual in the crags that he wanted to protect.

These things all have a basis of regulation. We cannot presume, I don't believe, that they are all going to be administered against the citizen.

Senator BENNETT. Well, I don't think that we can presume that the State Fish and Game Commission will always administer them against the Federal Government.

Senator Moss. That is the reason we tried to work out this language. I might point out that this was language developed by the Izaak Walton League and the National Wildlife Federation, in the first place.

Senator BENNETT. I recall, and I think probably you know more about this than I do, that there are laws in Utah prohibiting the careless use of firearms, which should take care of your hunter in a campground.

Senator Moss. Oh, yes, careless use of firearms, right, but you would have to go over under another section of the law, if you are going to apply that as a hypothetical example of the man walking through the campground seeking to shoot deer there.

Senator Hansen.

Senator HANSEN. I have no questions.

Thank you, Mr. Chairman.

Senator Moss. Thank you very much, Senator Bennett. We appreciate having your testimony.

Senator BENNETT. Thank you.

Senator Moss. At this point, the letters from The Izaak Walton League and Sport Fishing Institute endorsing the bill will be placed in the record.

(The letters referred to follow:)

THE IZAAK WALTON LEAGUE OF AMERICA, INC.,
Washington, D.C., October 18, 1967.

Subject: S. 444.
Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
United States Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The Izaak Walton League of America recommends the enactment of S. 444, to establish the Flaming Gorge National Recreation Area as part of the Ashley National Forest under management of the Department of Agriculture. We were delighted that the Interior and Agriculture Departments have jointly agreed to this sensible arrangement.

The area, with which I am personally familiar, fully measures up to the standards of a National Recreation Area and is already attracting recreationists in large numbers from all over the country. There is every reason to believe that visitor use, now estimated at half a million annually, will double within the next two or three years.

As a result of inquiries while in the region 3 different times this year, I am satisfied that substantial numbers of recreationists, fishermen particularly, are heading toward Flaming Gorge rather than Yellowstone-Teton. In view of near capacity crowds in these great Parks, the value of Flaming Gorge to the whole system is apparent.

We note that Sec. 8 of S. 444 provides for acquisition of lands, waters and interests therein through allocations from appropriations made to the Land and Water Conservation Fund. We also note that Sec. 5 provides that all receipts from permits and leases issued for removal of nonleasable minerals are to be distributed in the same manner as other national forest receipts. The same section provides that lands within the area shall be withdrawn from location, entry and patent under the mining laws, and this because the recreation values are considered overriding.

Would it not follow logically that receipts from mineral permits and leases issued on lands within the recreation area be plowed back into the recreation effort—in other words, into the Land and Water Conservation Fund. It is clear that the Fund is inadequate to meet the full opportunity which Congress had in mind when it created the Fund. In our opinion it would be logical and we suggest the idea for whatever consideration it warrants.

Sec. 4 of the bill, relating to hunting, fishing and trapping is satisfactory.

The League is appreciative of the opportunity to comment on this legislation.

Respectfully,

J. W. PENFOLD,
Conservation Director IWLA.

SPORT FISHING INSTITUTE,
Washington, D.C., October 18, 1967.

Re: S. 444—"To establish The Flaming Gorge National Recreation Area in the States of Utah and Wyoming and for other purposes."

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

DEAR SENATOR JACKSON: Sport Fishing Institute recommends enactment of S. 444. We consider this one of the finest of the western recreational areas developed in the Colorado River Basin and do highly endorse the Federal Government's joint decision of its Departments of Interior and Agriculture to administer this area under the U.S. Forest Service as a part of the Ashley National Forest.

Our Executive Vice President, Mr. Richard H. Stroud, had the privilege of visiting Flaming Gorge Reservoir in the fall of 1964. He was most impressed by the spectacular country and the high quality of fishing. (The Sport Fishing Institute was freely consulted concerning the preimpoundment fish renovation program eradicating undesirable rough fish from the drainage and developing

a quality rainbow trout fishery as carried out largely by the state conservation agencies of Utah and Wyoming).

Recreational use has been exceptional on this 91 mile long reservoir (when full). In 1965 over 167,000 angler-days of use occurred which was 39 per cent above pre-project estimates for 1970! During this period at least 677,000 fish were harvested for an average success for all areas (boats and shore fishing combined) of 1¼ fish per hour! The U.S. Department of Interior has reported that this area has already become a major tourist attraction with an annual public visitation exceeding one-half million visitor days. It is anticipated that this will double by 1970.

Mr. Chairman, on the basis of all observations made, none to the contrary the adoption of Flaming Gorge as a National Recreation Area by the Congress will provide a highly significant water-based recreational asset to this Nation with a minimum of land acquisition necessary and low administrative costs under the direction of the U.S. Forest Service.

Kindly make these remarks a part of the written record of hearings.

Sincerely,

PHILIP A. DOUGLAS,
Executive Secretary.

Senator Moss. I think we will try to press on. There is so much business this afternoon that I don't think we will be able to continue the hearing.

Would Mr. Baker and Mr. Nelson come forward.

STATEMENT OF HON. JOHN A. BAKER, ASSISTANT SECRETARY, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY M. M. NELSON, DEPUTY CHIEF, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. BAKER. Mr. Chairman.

Senator Moss. We appreciate your being here to testify. If you have a full statement that you want to place in the record and comment only on the points that seem to be in some area of disagreement, we will be glad to do it that way, but you are in control. You handle your own testimony the way you would like.

Mr. BAKER. Thank you, Mr. Chairman.

We are pleased, of course, for this opportunity to speak in support of S. 444. I am accompanied at the witness table by M. M. Nelson, Deputy Chief of the Forest Service.

Also for the record, Mr. Chairman, if I may I would like to say that I have been pleased that Senator Moss is chairing the subcommittee this morning. I would like to say that I have followed closely his activities and contributions since long before his election to Congress. It has been a privilege to be associated with his efforts to bring about a new era of creative conservation. It is fitting this morning that the hearing on this bill, which is another great step in moving forward in the creative conservation that has been initiated by President Johnson and the Congress and in which this committee has made such a stellar and strategic contribution, should be under the chairmanship of Senator Moss.

The bill would establish the Flaming Gorge National Recreation Area on and around Flaming Gorge Reservoir on the Green River in Utah and Wyoming. Its enactment we feel would be another great step forward in furthering a new era of creative conservation.

The purpose of the area would be to provide for public outdoor recreation use and enjoyment, and conservation of scenic, scientific,

historic, and other values contributing to public enjoyment of the area's lands and waters. The national recreation area would be administered by the Forest Service of the Department of Agriculture.

The provisions of the bill are explained in detail in our report to your committee. I would like to describe briefly the evolution of the administrative arrangements that have led to S. 444, and tell you a little about this remarkable area and how the Forest Service will manage it.

Flaming Gorge Reservoir was formed by the Flaming Gorge Dam, which was completed in 1964. The dam was built by the Bureau of Reclamation as a part of the Colorado River storage project. It has resulted in the creation, in this rather arid country, of a deep and scenic lake—some 42,000 surface acres at maximum level.

The dam, and the highly scenic Red Canyon country in the southern portion of the reservoir, are within the Ashley National Forest, administered by the Forest Service. The Forest Service undertook development of the recreational use of this sector. North of the Canyon, the National Park Service of the Department of the Interior was assigned administration of recreation activities on the remainder of the reservoir outside the national forest in Utah and the portion in the State of Wyoming.

In a joint letter from the Secretaries of the Interior and Agriculture to the President, dated January 31, 1963, the two Departments announced their agreement that the area would continue to be operated jointly by the Forest Service and the National Park Service—with all the area within the Ashley National Forest to be administered by the Forest Service. The reservoir area has been and is now being administered in this manner by the two agencies.

The Secretaries also announced in the 1963 letter their agreement that national recreation areas would be established only by act of Congress, and administered as recommended by the executive branch and determined by Congress. Accordingly, the administration recommended to the 89th Congress that the Flaming Gorge National Recreation Area be established under joint administration by the Secretaries of Agriculture and the Interior.

Recently the two Departments have reevaluated the administrative arrangements at Flaming Gorge. This reevaluation was made with the participation of the National Park Service, Bureau of Outdoor Recreation, and the Forest Service. The conclusions of the two Departments are that single administration, by the Forest Service, would be most effective and economical. The conclusions have been set forth in a memorandum from the involved agencies which has been approved by Secretaries Freeman and Udall. The provisions of S. 444 are consistent with these conclusions.

A spectacular feature of the recreation area is the Flaming Gorge—a beautiful, high-walled gorge marking the entrance to the portion of the reservoir known as Red Canyon. Here the lake becomes quite narrow and is surrounded by high, steep canyon walls of multicolored sandstone. These walls are a spectacle of color, which is everchanging with the time of day, and with the passing of the seasons. From the reservoir, views of the geological formations above are outstanding.

Flaming Gorge, Red Canyon, and the beautiful blue lake are just the focal point of the widespread recreation opportunities of this unique country. This truly is a land of variety and contrast.

The recreation area can be approached from three directions—Green River, Wyo., on the north; Manila, Utah, on the west; and Vernal, Utah, on the south.

From Green River and Manila you start in low, rolling, picturesque rangelands covered with sagebrush, shadscale and other range shrubs and grasses. As you wind upward, the bluffs become steeper and dotted with scattered juniper and pinyon. Reaching the upper benches the cover turns to lodgepole and yellow pine, with scattered patches of fir. In spring and early summer many beautiful varieties of flowering plants add color to the journey.

The drive from Vernal on Route 44 has been termed the "Drive Through the Ages." Millions of years of the earth's history is told in the rock formations along the highway. At the southwestern border of the recreation area the Ashley National Forest has established the Sheep Creek Canyon Geological Area to help interpret the remarkable geology for the area's visitors.

A boat ride on the reservoir is a spectacular experience. Traveling from the dam through Red Canyon the steep, exceptionally colorful gorge rises above you over 2,000 feet to cool, forest benches and mountain slopes. As you pass through beautiful Flaming Gorge, you reach a wide, expansive lake, flanked by rolling hills.

Much activity centers on the reservoir itself. When full, the lake provides 42,000 acres of water surface and 375 miles of shoreline. In addition to pleasure boating, there is water skiing, and many other water sports. The good fishing is fast becoming famous.

There are numerous campsites available for overnight and long-term visitors. Some of the most popular are in secluded parts of the reservoir, accessible only by boat. Hiking and riding trails, picnic sites, scenic overlooks, hunting and stream fishing all add to the many opportunities for outdoor living. On the forested slopes south of the reservoir there is trail access to the fabulous high country of the Uinta Mountains.

Recreation use of the area is already heavy and is increasing yearly. In 1964 there were over 500,000 visits; in 1966 the visitation was just short of 1 million. Because of the increased stature that comes with congressional designation, we estimate that by 1971 visitations will reach 2,500,000. We believe recreation use will continue to increase beyond 1971.

To accommodate these recreationists the Forest Service has constructed nearly 850 camp and picnic units and other recreation facilities. These include the Red Canyon Visitor Center, perched on the canyon rim, and five boat ramps of which two are especially large and of high capacity. The National Park Service has provided over 475 units for family camping and picnicking, six boat launching ramps, and several observation points, contact stations and boat docks. Some 25 miles of trail have been constructed on the portion within the National Forest which includes the scenic plateau and breaks of the canyon above the lake.

The constantly increasing visitor use will require additional facilities. During the first 5 years the Forest Service will need to install an additional 2,000 family units for campers and picnickers. Some 40 miles of road will be needed, of which 16 will be to provide access to recreation sites. There will be need for several additional boat ramps, boat docks, swimming beaches and viewpoints. Should the use con-

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tinue to increase additional facilities of the same character and kind will be required. These, of course, will be installed over a greater period of time.

I would like to comment on one provision of S. 444—subsection 2(3). This provides that management, utilization and disposal of natural resources could be carried out so long as the Secretary of Agriculture determines that such use would not significantly impair the purposes of the recreational area.

This is an important provision. It distinguishes national recreation areas from other Federal land managment areas. Outdoor recreation is recognized as the most important use of the area, but other resource uses are not limited provided they do not significantly interfere with recreation use.

Thus, Flaming Gorge National Recreation Area will be under multiple-use land management.

In addition to outdoor recreation, a portion of the area now within the national forest, is producing and will continue to produce timber. This area has about 50 million board feet of merchantable timber. Timber harvesting would be done in areas selected and by methods modified so that such use would not hamper or detract from recreation values.

Grazing is another important use that will continue. There is now use of range by both cattle and sheep. Of course such grazing within areas actually developed for recreation use is controlled, but livestock use of other areas adds to rather than detracts from recreation desirabillty. Recreation visitors like to see cattle on the open range and cowboys in action. It is part of a vacation in the West.

The bill expressly provides that hunting, fishing, and trapping would be permitted within the recreation area in accordance with applicable Federal and State laws.

Flaming Gorge National Recreation Area has magnificent potential. It has the capacity to serve millions of visitors annually. Its full development can bolster the economy of the surrounding communities and the entire region. S. 444 will speed us along in making this possible. I urge its enactment.

Mr. Chairman, we will be happy to answer any questions that the members of the committee may have.

Senator Moss. Thank you, Mr. Baker. You have been here, I know, all morning, and have listened to all of the colloquy that has gone on. Therefore my questions would apply really to section 4 and I would like to ask you, first, if the interpretation of the Department is that it may in any way alter the mandate here that the Department shall permit hunting, fishing, and trapping on the waters within the jurisdiction in accordance with applicable Federal and State law.

Is there any Department feeling that it can in any way evade or subvert or not observe State law on fish and game so far as licensing, bag limit, time of taking, and other laws and regulation that the State may issue governing fish and game?

Mr. Baker. Mr. Chairman, the language of the bill is quite clear and quite conclusive that the Secretary of Agriculture would be directed to permit hunting, fishing, and trapping on the area in accordance with applicable State laws and that all of the business of game management that traditionally has been a function of the States would remain a function of the States with this language.

Senator Moss. Do you find in this language any power that would be given to the Department of Agriculture to alter or change or nullify any State law?

Mr. BAKER. Mr. Chairman, I had thought earlier that it had absolutely no effect in changing the law or in affecting the relationship. I have not had an opportunity to check out Mr. Kimball's statement that was read into the record that this would make a direct requirement that the Secretary of Agriculture permit hunting and fishing and would not allow him to put up no trespassing signs on the total area. To that extent if Mr. Kimball was not overstating his point, this would be a limitation on the Secretary of Agriculture rather than a granting of additional powers.

Senator Moss. Mr. Kimball says in his letter that:

> The last phrase in section 4 after "provided", relating to the issuance of regulations designating safety zones where hunting, fishing, or trapping would not be permitted, is not necessary. . .

I wondered if you would comment on that. Is that sentence necessary or can the Department function without any legislative authorization to designate zones for safety, administration, and public use?

Mr. BAKER. First, Mr. Chairman, if it is unnecessary I see no particular reason for having objection to it. Secondly, to the extent that it is necessary for the protection of campgrounds, for the protection of swimming beaches, for other aspects of appropriate land management for a multiple-use area it would give by law of Congress particular emphasis to the recreation use including hunting, fishing, and trapping. If this power already rests in the Secretary of Agriculture there could obviously be no reason for objecting to it being included in here. This makes a clearcut statement and in effect limits the authority of the Secretary of Agriculture rather than extending it or expanding it.

Senator Moss. Of course, the Forest Service has a long history of managing the national forests that exist in both Senator Hansen's State and my State, as well as all the Western and many of the Eastern States, and hunting has been carried on generally as a practice in all of these areas. Is that not true?

Mr. BAKER. Mr. Chairman, I might say that there exists in every State of the Union where national forests are a cooperative agreement between the Department of Agriculture, the Forest Service, and the department of game and fish conservation, or whatever is the appropriate department, which spells out in a completely mutually agreeable way how they will manage the game and we will do the work to provide the habitat. This has been a longstanding practice in our land management activities. I know of no single instance where there has been any difficulty.

Senator Moss. Do you see anything in the language of section 4 or elsewhere in the bill that would change the arrangement now existing, as you say, in every State in the Union by limiting or changing the manner in which hunting and fishing could be carried on in this recreation area?

Mr. BAKER. We would propose to carry through with the way it is now being handled. There is nothing in this bill, for example, that would change the historical ownership of game and fish from the State to the Federal Government. There is nothing in here that would give police powers to the Department of Agriculture to determine seasons,

determine bag limits or any of the other aspects of the regulation of fish and game that you mentioned.

Senator Moss. This bill, of course, would place this entire area in the Ashley National Forest.

Mr. BAKER. That is correct.

Senator Moss. It would be part of the national forest with some specialized functions of a national recreation area because the Bureau of Reclamation would still be involved on the reservoir.

Is it your testimony that the regulations of the Forest Service that now exist so far as fish and game are concerned would carry over into the recreation area?

Mr. BAKER. That is correct.

Senator Moss. Senator Hansen, do you have any questions?

Senator HANSEN. Mr. Baker, I do have some questions. First, I would like to ask some questions that deal with this section 4 that has been so much discussed already this morning. I have had occasion to work, over the years, with Forest Service officials and I would like to add my compliments to those that have already been cited for the good job that you people in the Department of Agriculture do. I think you have been quite outstanding in reflecting the best interests of the citizens generally.

Mr. BAKER. Thank you, Senator, and I thank you even more because I couldn't agree with you more. This has really been an organization with 60-odd years of exemplary public service.

Senator HANSEN. I would like to say that, as we can all imagine, it would be most unusual if there had never been any little misunderstandings or problems at all, and I am sure you would be the first to admit that there have been at times in the past. It is in an effort to do what I can, here and now, to clarify precisely what our feelings are that I would like to ask some questions.

In response to one of Senator Moss' questions, I don't believe I can quote it, but perhaps it would be helpful if the record could be read back. I think, paraphrasing what you said, that you stated you would have no desire to upset or to countermand the management so far as fish and wildlife is concerned.

Mr. BAKER. We don't have that authority now. We have never sought to exercise it. The bill would not give us the authority to exercise it.

Senator HANSEN. Would you have any objections to language stating that being contained in the bill?

Mr. BAKER. We think the language in the bill is quite explicit with respect to that and raises no particular problem. If you see a problem, we would be glad to discuss specific language with you but in the bill, as it is now written, we see no real reason for inserting words about this.

Senator HANSEN. Did I understand you to say that if I feel that it might be necessary or helpful——

Mr. BAKER. We would be glad to look at the language and discuss it with you. I am not at all sure that it would be necessary to have additional or new language. Section 4 is quite explicit, quite clear, and conclusive.

Senator HANSEN. We have had references made earlier today to the language in section 4 of the bill that was introduced in the 89th Congress. It says, "The Secretary of the Interior"—and of course,

now, I recognize, Mr. Chairman, that we are talking about the Secretary of Agriculture and not the Secretary of the Interior.

How would it sound if we were to state: "The Secretary of Agriculture shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable laws and regulations of the respective States." I am not trying to trap you or trick you. This section differs, as you will observe.

Mr. BAKER. Mr. Chairman, Senator Hansen, I agree with the comment that the authors of the bill made earlier that I see no objection whatsoever to adding the words "and regulation."

Senator HANSEN. What about deleting "Federal"?

Mr. BAKER. That brings up the problem that was earlier mentioned about the migratory birds.

Senator HANSEN. Would Senator Bennett's amendment including precisely those words cover the migratory birds, if this is the only concern?

Mr. BAKER. Well, it seems to me that Senator Bennett's amendment does not go far enough in making it perfectly clear with respect to other than just migratory birds, that the Secretary of Agriculture is directed by the Congress to permit hunting, fishing, and trapping. It seems to me that the reading of the Senator's language has restricted the State authority and control rather than expanding it as it is now listed because it says that we would permit hunting, fishing, and trapping, in accordance with such Federal laws as pertain to migratory birds, and that he wouldn't have to permit it with respect to anything but migratory birds as I read it in his statement.

Senator HANSEN. And it would restrict the State's authority?

Mr. BAKER. It would seem to me that it would be more restrictive than section 4 as now written.

Senator HANSEN. But it would not, as you see it, restrict the Federal Government authority?

Mr. BAKER. Leaving out the part about applicable State laws it says the Secretary shall permit hunting, fishing, and trapping on the lands under his jurisdiction under such laws as shall pertain to migratory birds and doesn't cover any other laws relating to any other kind of hunting, fishing, and trapping so that it seems to me like the gate is widened rather than the very specific directive that is in section 4 as now written.

Senator HANSEN. I am not certain exactly how that statement——

Mr. BAKER. Section 4 says: "With the applicable Federal and State laws," which covers all of them so that the Secretary is required to permit hunting, trapping, and fishing under all laws that are extant and not just the Federal laws that relate to migratory birds.

Senator HANSEN. If this bill, as presently drafted, were enacted, specifically would the Department of Agriculture, as an agency of the Federal Government, have authority that it does not now have?

Mr. BAKER. I think, as section 4 is now written, that we would have less authority than Mr. Kimball, anyway, in his statement says that we already have because the language of section 4 is very restrictive. It says directly that we have to permit hunting, fishing, and trapping and it says even before we are trying to protect a campground we have to go through the consultation procedure, which means that the entire framework of our appeals procedure, including

the non-Forest Service board of appeals, would be available for any abuse.

There is no way we can write a law to be sure that every last person will do exactly what the law says, but if somebody does abuse it, in addition to what you and Senator McGee were saying about representing your sovereign State, there is also the appeals procedure whereby officials up to and including the President of the United States can reverse the preemptory or unwise action by a local land manager.

Let me add that we would draft very careful internal procedural instructional material. It would in no way be our purpose to use this language for the purpose of upsetting these already very agreeably effective working agreements of cooperation between us and the various States on game and fish management.

This has been a very productive and very efficient and effective procedure and as far as I am aware, from watching it closely for many years, a completely amicable interagency working relationship.

It would be our desire to continue that close working relationship because it has been very productive from both their standpoint and ours.

Senator HANSEN. While Mr. Kimball doesn't disclose his thinking further in this regard, may I ask you, Mr. Baker, referring to the paragraph of Mr. Kimball's letter to Senator Bible:

> We are of the firm opinion that hunting, fishing, and trapping of resident species of wild life must be permitted in accordance with applicable State laws, with the regulatory authority of the Federal Government limited to that contained in the Migratory Bird Treaty Act.
>
> The last phrase in section 4 after "provided," relating to the issuance of regulation designating safety zones where hunting, fishing, or trapping would not be permitted, is not necessary. The Secretary of Agriculture can exercise the prerogative of any landowner to prohibit trespass for any purpose on all or parts of the area.

This, I think, is Mr. Kimball's opinion as to the authority that the Secretary now has. I ask you, sir, has not the Secretary from time to time exercised and declared a regulation also to require the taking or the removal of game animals if in his opinion the presence of animals in numbers or at certain times of the year might be detrimental to the range wherein they are found?

Mr. BAKER. Very, very seldom has this been exercised in the last 62 years and the most recent one was many years ago before this new language we are discussing ever came out.

Senator HANSEN. He still has the authority.

Mr. BAKER. Our agreements with the States provide that the States regulate the season and bag limit, and so forth, the population compared to the habitat. It is our responsibility to make the habitat as good as possible and it is their responsibility to make the regulations so as to determine the population or the animal units to land area ratio.

Senator HANSEN. I don't want to misquote you or misunderstand you. Are you saying that the Secretary still has this authority and it has not been exercised in recent times or are you saying that he no longer has it?

Mr. BAKER. Our memorandums of agreement with the 50 States assign that function to the States rather than our having it.

Senator HANSEN. What is the term of these memorandums of understanding or memorandums of agreement?

Mr. BAKER. These are of indefinite life with either party, I presume, with the authority to withdraw after a certain amount of notice, but we have no intention whatsoever of withdrawing and no one indicated that we wanted to withdraw either.

As far as I know, Senator, the close working relationship between the local forest offices and the State fish and game commissions is a very close and very harmonious working relationship and we intend to keep it that way.

Senator HANSEN. Let me assure you that I couldn't agree with you more. I think this is exactly right but I don't think we ought to delude ourselves as to where authority or responsibility ultimately rests or vests on the basis of memorandums of understanding or memorandums of agreement with the various State game and fish authorities. The Forest Service has abrogated or relinquished its authority to exercise, in the final analysis, the determination of numbers of game animals that are found on national forest lands?

Mr. BAKER. I think that this is why it is well to have the specific language that is in section 4 of the bill, to make it perfectly clear that the Secretary is required to permit hunting, fishing, and trapping in accordance with State laws.

Senator HANSEN. Would you answer my question, though? I don't think you have done that. I mean does not the Secretary still have this authority?

Mr. BAKER. Yes, I think you are correct if destruction of habitat is involved. We are not talking about this bill, we are talking about national forests generally.

Senator HANSEN. I am talking about the position that the Department of Agriculture takes in the authority that I think vests with the Department in the ultimate ability to make a declaration regarding the presence of game animals on national forest lands or lands under the administration of the Department of Agriculture.

Mr. BAKER. I am informed that we would not have the authority to change State game laws or the regulations established by the State under game laws, that we would have the authority in case of potential habitat destruction to effect a reduction in the population numbers on our own.

Senator HANSEN. You say that you might effect regulation of numbers on your own?

Mr. BAKER. With our own personnel, under our own management activities.

Senator HANSEN. You would be forced to the same thing that the Park Service was forced to do in Yellowstone. Is that the point you are making?

Mr. BAKER. Right, but as a land management matter and not a game and fish management matter. We would not be able to change the laws and rules and regulations of the State.

Senator MOSS. Would you yield to me for just a moment?

Senator HANSEN. I would point out that the *Geer* case, which goes back to 1896, settled the ownership of the fish and game in the States and that that has been followed consistently by the courts ever since. So that, as far as ownership and management in trust for the people are concerned the authority lies in the States.

Mr. BAKER. That is correct.

Senator Moss. The only authority that you could exercise is if the land or the acreage owned by the Forest Service were being damaged to the point that you had to intervene, in some way your action would have to be predicated on that basis.

Mr. BAKER. That is correct, and because of the close cooperative working with the State fish and game commissions it has not been necessary to use that authority for many, many years. The fish and game commissions have been just fine, cooperative partners in this going operation.

Senator Moss. Thank you.

Senator HANSEN. I appreciate the question, Senator Moss. I think your statement that is revealing to me is that you have not found it necessary to exercise this authority for many, many years. I believe with that statement and what it implies you have answered the question I was trying to get at and once again let me say that I commend your service and the good judgment of the various States in having worked out memorandums of agreement. I think this is the way we should be doing it. However, it is important, for the record, to understand where authority ultimately vests and what your rights are as contrasted with those of the States. It is my opinion that the Federal land management agencies have asserted the right if, in their judgment, it was necessary in order to protect the lands under their jurisdiction to go in and take such steps as they may believe are indicated in the control and management of game numbers. Do you agree with that?

Mr. BAKER. Yes, the way you said it is correct. I was listening very carefully. We do not have the authority, and we wouldn't want to use it if we had it, to try to write new game laws restricting hunting on the forest lands. We don't have that authority. We wouldn't ask for it.

Senator HANSEN. I have one further question on this subject. Will the present memorandum of agreement between the Department of Agriculture and Wyoming extend to the management of this new recreation area, assuming that it does become in fact a recreation area?

Mr. BAKER. That is correct.

Senator HANSEN. I will try to move hurriedly. I appreciate that we are running late here, Mr. Chairman. These are some questions that I hope may anticipate some of the questions that I may be called upon or that you may be called upon to answer later, and I think that it is important to have it made part of the record now.

Is the Agriculture Department in fact going to allow oil and mineral exploration within the recreation area boundaries?

Mr. BAKER. The bill is quite specific on that. It authorizes the Secretary of the Interior to make a decision, after obtaining the consent of the Secretary of Agriculture, I believe. The bill would authorize that leasable minerals be made available under the Mineral Leasing Act. It obviously would be our intention to carry out the law and we think these provisions are good provisions.

Senator HANSEN. Is there a statement of the Department of Agriculture's policy regarding mining within national forest lands or in national forests?

Mr. BAKER. All of the mining laws, and the Mineral Leasing Act, are binding on our activities and our internal instructional

materials which govern the activities of subordinate Forest officers are consistent with the provisions of existing mineral laws.

Senator HANSEN. Would this same attitude and same policy approach be extended in the recreation area?

Mr. BAKER. Yes, indeed.

Senator HANSEN. What is the purpose of the Agriculture Department's proposed amendment changing the word "administration" to "purpose" on page 4, line 12 of the bill?

Mr. BAKER. Mr. Chairman, the main reason I am sure for this one was that it is more precise language. It is not for the purpose of changing the intent of the provision. The basis for administration is to carry out the purpose of an act. If this is what this section intends, then it is more direct and precise to say "purpose" rather than "administration."

Senator HANSEN. What effect will this change have on mineral exploration?

Mr. BAKER. There would be no change. The change of the word "administration" to "purpose" would not affect the meaning of any of the language in the bill.

Senator HANSEN. Will the Agriculture Department allow free entrance and exit from these lands, within reason of course, insofar as mineral exploration is concerned?

Mr. BAKER. Yes, within reason, as you mentioned, consistent with recreation use, which is the primary purpose of the national recreation area. We would try to make compatible arrangements that would not be unduly disturbing but at the same time would be reasonable.

Senator HANSEN. What about strip mining within the area?

Mr. BAKER. Strip mining would be permitted if it was not incompatible with the purposes for which the national recreation area was established.

Senator HANSEN. How would you contemplate strip mining? Would it be compatible?

Mr. BAKER. In some places, perhaps yes, in other places, no. If one wanted to put a strip mine right at the finest swimming beach in the area, it would be incompatible. But if it was over somewhere where it did not destroy the scenic beauty or impair other use of the area it might be compatible.

Senator HANSEN. Thank you very much, Mr. Baker. And thank you, Mr. Chairman.

Senator Moss. Thank you, Senator Hansen.

I do thank you, Mr. Baker and Mr. Nelson. I appreciate the kind words you said about me at the beginning of your testimony.

Mr. BAKER. I only said them, Mr. Chairman. You deserved them.

Senator Moss. Thank you very much.

I guess this is Baker day, because Mr. Howard Baker is going to testify here for the Department of the Interior. Howard Baker is the Associate Director of the National Park Service. We will accord to you, if you would like, the same privilege of putting your statement in the record and making any comments that you have. In effect, you fellows are sort of losing jurisdiction here so that we hope that we can go with your blessings.

Senator HANSEN. If I could interrupt just a moment, let me say that I am particularly pleased to see my longtime good friend Howard

Baker here this morning. He and I have had a few battles in the past and we have had a great many more points on which we can agree than we have found reasons for disagreement. I want to say that I recognize him as a very fair man and a very honest and forthright man and when we haven't agreed I think we have understood clearly the validity of opposing points of view.

I just welcome your presence here. It is good also to see among those in attendance here my good friend, Mr. Dickinson.

STATEMENT OF HOWARD W. BAKER, ASSOCIATE DIRECTOR; ACCOMPANIED BY J. MICHAEL LAMBE, OFFICE OF LEGISLATION, NATIONAL PARK SERVICE, AND THOMAS P. HOLLEY, SPECIAL ASSISTANT TO THE DIRECTOR, BUREAU OF OUTDOOR RECREATION, DEPARTMENT OF THE INTERIOR

Senator Moss. Would you identify those who accompany you, Mr. Baker?

Mr. BAKER. Mr. Chairman, on my left is Thomas Holley, who is representing Dr. Edwards of the Bureau of Outdoor Recreation. On my right is Mr. Michael Lambe, who is with me in the National Park Service.

Mr. Chairman, I am pleased to be here today to speak on behalf of the Secretary of the Interior in support of S. 444, to establish a Flaming Gorge National Recreation Area in Utah and Wyoming. The area will be administered by the Forest Service, Department of Agriculture.

At present, the 201,253-acre Flaming Gorge area and man-made lake created by the construction of Flaming Gorge Dam by the Bureau of Reclamation is administered in two sections by the Forest Service and the National Park Service.

The Forest Service manages about 78,000 acres above the dam in the Ashley National Forest of Utah (south unit), and the National Park Service manages over 123,253 acres farther up the Green River in Wyoming (north unit). The lake extends 91 miles upstream from Flaming Gorge Dam and is one of the major units of the Colorado River storage project.

In interdepartmental agreements of January 28, 1963 and July 22, 1963, administrative responsibility for recreation at Flaming Gorge Reservoir was assumed jointly by the Forest Service and the National Park Service. The division of responsibility was established on the basis of the preexisting national forest boundaries.

Since 1963 both the Park Service and the Forest Service have pursued the management and development of Flaming Gorge for recreation purposes. Typical of the kind of facilities being provided in the unit administered by the National Park Service are those at the Lucerne Valley development area. Here a boat ramp, marina, swimming pool and beach, campground and picnic facilities, amphitheater, trailer court, and lodging and food facilities have been or are being constructed. Altogether, developments have been constructed or were planned at 17 sites by the National Park Service.

Through June 20, 1967, construction items totalled $4,394,000. In fiscal year 1967, operation and maintenance costs for the north unit amounted to $269,950 and this figure increased to $316,450 for fiscal 1968.

Public use of Flaming Gorge has grown with the construction of facilities. In 1965, the Park Service recorded 274,000 visits to the north unit. This increased to 426,500 in 1966 and to 540,000 through September of this year.

Since 1963 a conscientious effort has been made by the field personnel of our two agencies to manage this resource. It became obvious, however, that the divided management on a single body of water entails duplication and unnecessary overhead.

In June 1966 we discussed this with Dr. Crafts of the Bureau of Outdoor Recreation, and the Bureau was designated to chair a study committee composed of representatives of that Bureau, the Forest Service, and the National Park Service, to reevaluate the management arrangements at Flaming Gorge.

This interdepartmental study was made, with all three bureaus participating. It was found that single agency administration of the entire national recreation area would have several distinct advantages. It would:

1. Permit savings in administrative costs of about $100,000 per annum.
2. Eliminate duplication of top administrative staff.
3. Eliminate duplicate expenses for engineers, architects, landscape architects, and other technicians needed to plan, develop, and supervise construction projects.
4. Eliminate duplicate public contact stations and offices and the need for separate publications for each area.
5. Eliminate confusion for visitors, because of differing regulations and territorial responsibilities and ease relations with States, counties, concessioners, and representatives of other Federal agencies.
6. Eliminate differences in rules and regulations and their administration involving camping, boating, traffic control, fire protection, sanitation, and hunting and fishing.
7. Eliminate differences in law enforcement.
8. Eliminate differences in the collection of fees and distribution of receipts.
9. Eliminate differences in standards for campgrounds, the number of units per acre, restrooms, sewage systems, roads, signs, cleanup and attendant services.

These findings and conclusions were set forth in a memorandum addressed jointly to the Secretary of Agriculture and the Secretary of the Interior and signed by the Chief of the Forest Service and the Directors of the National Park Service and the Bureau of Outdoor Recreation.

Among the recommendations in the memorandum were that the Flaming Gorge National Recreation Area be administered as one entire unit by the Forest Service. The provisions of S. 444 substantially reflect the recommendations of our three bureaus.

The national recreation area will provide a highly significant water-based recreation area on lands largely in Federal ownership in the part of the United States where water is scarce. Its establishment will help meet the rapidly increasing needs of the American people for wholesome outdoor recreation, and will preserve for them outstanding natural, historic, scenic, and recreation resources. We, therefore, recommend the enactment of the bill.

Mr. Chairman, I appreciate this opportunity to appear before the committee concerning this important conservation matter.

The statement does support, as did the Department report, the enactment of S. 444. As I have myself been associated with this area for a long time, I appreciate its great recreational value. I think it is a very fine area and the Department, of course, is in favor of this area being administered as one, under one single agency, and we are in full support of the proposal that the area be administered by the National Forest Service of the Department of Agriculture.

I would be very happy to answer any questions.

I think it might be helpful, Mr. Chairman, to show you this. I have here a copy of our brochure which we put out on the Flaming Gorge area. In view of the discussion we had this morning, I would like if you would turn to the first inside fold on the left. May I read this to you:

Fishing: You can fish throughout the year at the recreation area. A fishing license from either Utah or Wyoming is required. To the license must be affixed a special use stamp from the other State if fishing within its boundaries. Before fishing, read the current regulations. They can be obtained at Ranger stations.

I think the rest is not too important.

Ice fishing is permitted except in hazardous areas during periods when thin or broken ice may endanger life and property. Hunting and trapping are permitted at Flaming Gorge in accordance with a federal, state and local laws, except in developed concentrated use areas designated by the superintendent. Ask at the superintendent's office to inspect the map on which those areas are marked.

If you will turn to the next side, under the heading, "Firearms and explosives:"

Carrying loaded firearms in developed concentrated public-use areas is prohibited. In all other areas do not use firearms in a manner which would endanger persons or property.

If you will turn over to the back, I would like to read this sentence:

Be sure that you comply with boating and fishing regulations of Federal and State agencies applicable to Flaming Gorge Recreation Area.

I think this helps perhaps for the record in stating our position in our management of the fishing, hunting, and trapping within the Flaming Gorge Recreation Area.

Senator Moss. Thank you.

It is helpful to have you present these regulations currently in effect while the area is being administered jointly by the Forest Service and the National Park Service.

Let me also say for the record that I have been there a number of times, and I have noticed the very high degree of cooperation and coordination between the two Federal departments, as well as with the State departments involved. I want to make it clear that there has not been any specific incident or problem that has brought about the suggestion that the area go under one single administration. It is simply that there is an economic saving that can be made plus the potential misunderstanding.

Now, the only thing that I can think of that ever has come to my attention here is that, because the regulations of the Forest Service and the Parks Department are a little bit different on some things like whether you have to pay 50 cents to launch your boat or not, that sometimes citizens who patronize the area become a little upset.

They said, "I can launch my boat down there for free. Why do you want to get 50 cents from me for doing it here?"

That is about the extent that I know of that there has been any friction at all. Of course, it is readily explainable. I would think that in the long run for uniformity it is in the interest of the citizens generally to have one Federal manager over this Federal area and since a large part of this, or some part at least, is already within the forest area, it seems logical that the Forest Service take on the full administration and they will do a very fine job of it as they are doing a most excellent job on the forest area of the recreation area right now.

I don't believe that we need, or at least I don't need any questioning about section 4, which we have been talking about so much because if the bill should become law and if we adopted this language, the Park Service and the Interior Department would not be involved in any event. The questions, I think, have been asked of the Department of Agriculture and the Forest Service heretofore.

Mr. BAKER. That is right, sir.

Senator MOSS. We do appreciate your coming here, and we are glad to have the Bureau of Recreation represented. I understand that the Director would be here if his health were better. I want to compliment the Bureau of Outdoor Recreation for the fine job it is doing in the various areas with which it is concerned. I am very happy about the way that is going. I do appreciate the very fine work of all of you gentlemen.

Do you have any questions?

Senator HANSEN. No, I don't. I think you have covered it very well. The questions on section 4, happily for you, Harold, do not apply here.

Senator MOSS. Thank you very much.

The record will be held open for 10 days. If there is any additional comment or material that you think would assist us in the record, amplifying any of the points that have been discussed here this morning, or any other point that has to do with this bill, we would be happy to receive it within the next 10 days and include it in the record.

Mr. BAKER. I might say, Mr. Chairman, that legislation has been passed on eight different recreation areas and section 4 in this proposed bill is almost the same as all of the other eight recreation area bills that have been passed by the Congress.

Senator MOSS. I think that is a helpful comment. When we were talking earlier about the Spruce Knob-Seneca Rocks Recreation Area a section of the report indicated that this language had been developed in consultation with the great wildlife organization and had received extensive study and careful preparation until finally pretty well standardized. It would be a departure now if we changed the language here, which doesn't mean we shouldn't examine it.

You can always look it over and maybe you can find a way to improve it, but there is a degree of uniformity that is quite important in keeping our recreation areas administered in generally the same manner.

Mr. BAKER. The management of the fish and wildlife aspects of the recreation areas by the National Park Service has been worked out pretty carefully with the fish and game commissioners of the States so that we believe we have a solution that is acceptable generally all the way around. I know that you find cases when people

probably don't interpret the intent of the regulation or the law as it should be, but certainly the Department has said that they agree with section 4 as it is written. I think it is very fine and does the job that is intended.

Senator Moss. Thank you very much, Mr. Baker, and gentlemen.

(Subsequent to the hearing, the following additional information was submitted:)

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, D.C., November 1, 1967.

Hon. ALAN BIBLE,
Chairman, Subcommittee on Parks and Recreation,
Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR BIBLE: We ask for this opportunity to clarify for the record several points relative to wildlife management practices of the National Park Service at Lake Mead National Recreation Area raised by Senator Wallace F. Bennett in his statement of October 19, 1967, during the subcommittee's hearing on S. 444, a bill to establish the Flaming Gorge National Recreation Area.

1. The statement was made that the Superintendent took it on his own to close a triangular section of the bighorn sheep range bordering on Lake Mohave on the basis of safety. The implication is that Superintendent Richey in 1965 decided to close the area in question. This is not true. By mutual agreement between Arizona state officials and the National Park Service the triangle area had been closed for many years. This area is a portion of a large desert bighorn sheep refuge which extends into Nevada. The Nevada portion of this refuge, incidentally, remains closed, and this closure is in cooperation with the Nevada Department of Conservation and Natural Resources.

In 1965 the Arizona Department of Game and Fish recommended that the portion of the area in question be opened to bighorn sheep hunting. The Superintendent of Lake Mead pointed out the public safety factors which should be considered and was of the opinion that because of the heavy boating and fishing use adjacent to the area it should remain closed. As indicated in Senator Bennett's statement, Superintendent Richey's decision to maintain the closure was reversed in this office, and the triangle area was opened to bighorn sheep hunting.

2. Testimony also implied that the Superintendent required hunters to be accompanied by a State Game Warden. The National Park Service has no control over the number, sex, or age of bighorn sheep taken, or the number of hunters permitted to kill sheep or other game species, or the manner in which hunters are allowed to hunt. These are prerogatives of the State, in this case the Arizona Department of Game and Fish. The requirement, therefore, that each sheep hunter be accompanied by a State Game Warden while hunting in the triangle area was initiated and carried out by the State, not the National Park Service. We understand this requirement was not imposed on the hunters last year nor will it be this year. Only five hunters received State permits to hunt bighorn sheep in this State game management unit. The Superintendent has no authority to either reduce or increase the number.

3. The statement was made that the Superintendent barred firearms and shotguns within 2 or 3 miles of campsites. The Superintendent is responsible for the safety of all recreation area visitors, and therefore, is authorized to close certain areas to hunting or other activities which would be in conflict with or hazardous to other visitors. In this connection a total of seven campgrounds and visitor concentration areas are closed to shooting. The closed areas have a radius of approximately 1 mile, with a single exception. That exception is at the Katherine Landing Area at the southern end of Lake Mohave where the closed zone includes many privately owned tracts, cabinsites, and mining operations.

Lake Mead National Recreation Area personnel work closely with the State of Arizona as well as the Nevada wildlife managers and game enforcement officers. To our knowledge there has been little or no difficulty in conducting the various hunting and fishing programs in the national recreation area.

We trust the above information will be helpful in your consideration of the subject legislation.

Sincerely yours,

HOWARD W. BAKER,
Associate Director.

Senator Moss. I have a letter from the Wildlife Management Institute supporting this legislation for inclusion in the record at this point.

(The letter referred to follows:)

WILDLIFE MANAGEMENT INSTITUTE,
Washington, D.C., October 18, 1967.

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

DEAR SENATOR JACKSON: It is regretted that the Institute will not be able to be represented at the committee's public hearing on S. 444, the proposal to establish the Flaming Gorge National Recreation Area in Utah and Wyoming.

The Institute is pleased to express its support for the objectives of S. 444. We agree that the boundaries of the new national recreation area should be formalized and that the administration of the project should be the responsibility of a single agency.

I would appreciate having this letter made a part of the hearing record.

Sincerely,

DANIEL A. POOLE, *Secretary.*

Senator Moss. As previously stated, the record will be kept open for 10 days so that additions to statements or new opinions may be included. I direct that such insertions be made in the hearing record at this point.

(The data referred to follows:)

WESTERN OIL AND GAS ASSOCIATION,
Los Angeles, Calif., October 25, 1967.

S. 444—Flaming Gorge National Recreation Area.

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

DEAR SENATOR JACKSON: The Parks and Recreation Subcommittee of your Committee recently concluded hearings on the above bill. I understand the record is still open for comments and would appreciate the following views being submitted for the hearing record.

At the outset, it should be made clear that we know of no immediate oil and gas interest in the proposed Flaming Gorge National Recreational Area. Our interest in this legislation stems from our belief that the multiple use principles should be safeguarded in any federal legislation designed to set aside or classify for special purposes portions of the federal lands.

Section 5 of S. 444 provides that the Secretary of Interior, with the concurrence of the Secretary of Agriculture, "may permit" the removal of leasable minerals from lands within the proposed recreation area under provisions of the Mineral Leasing Act of February 24, 1920 and Acquired Lands Mineral Leasing Act of August 7, 1947, provided there is a finding "that such disposition would not have significant adverse effects on the purposes of the Colorado River Storage Project" or on the "administration of the recreation area."

On the surface, the above language would appear to provide that oil and gas leasing would be permitted if the conditions set forth were met. However, over the past two years, we have had an unfortunate experience with the Department of Agriculture and its Forest Service as regards their administration of the Wilderness Act (78 Stat. 891). This law clearly provides that oil and gas exploration and subsequent leasing and development can take place until midnight, December 31, 1983. Yet the Forest Service, by administrative fiat, has pointedly ignored this fact and denied such operations. It has been called to account at the House floor debate on the proposed San Rafael Wilderness (H.R. 5161) (Congressional Record—House, October 16, 1967; see remarks by Representative Craig Hosmer and Walter Baring, page H13405).

The present language of Section 5 of S. 444 gives the Secretary of Agriculture discretion as to whether to permit oil and gas leasing. Should some future national recreation area have outstanding oil and gas possibilities, we are confident, based on the Secretary and the Forest Service's hostile attitude over the past two years, that we would be denied the opportunity to develop the oil potential and its attendant revenue for the federal government.

The petroleum industry now has the technological capability to operate compatibly in any type of environment. Oil is produced in some of our largest cities without the slightest disturbance to populace. Oil is also produced from beneath our coastal near-shore waters without the public, in many cases, being aware that such activities are being carried on. It follows that oil operations could be conducted in a national recreation area without the slightest "adverse effect" on its administration.

Therefore we believe that Section 5 of S. 444 should be amended to provide that the Secretaries of Interior and Agriculture "must permit" the removal of leaseable minerals under the two Mineral Leasing Acts cited, unless, following a public hearing, it is clearly determined that such proposed leasing and operations will have a specific adverse effect on the administration of the recreation area.

Your assistance in seeing that the foregoing remarks are placed on the hearing record for S. 444 is greatly appreciated.

Very truly yours,

HENRY W. WRIGHT,
Secretary, Public Lands Committee.

Senator Moss. The hearing will now be adjourned.

(Whereupon, the subcommittee recessed, at 12:50 p.m., subject to call.)

APPENDIX A

Economic Impact on Southwestern Wyoming of Recreationists Visiting Flaming Gorge Reservoir

(Research Journal 11—August 1967—Agricultural Experiment Station, University of Wyoming, Laramie)

FOREWORD

Flaming Gorge Reservoir, which extends about 90 miles along the Green River with nearly half its length in Wyoming, has grown rapidly as a recreationists' attraction during the past several years. It was to study the impact of this new facility that Rodney C. Kite conducted interviews of recreationists in the summer of 1965. His inquiries formed the basis for a Master's thesis which he completed at the University of Wyoming in 1966.

This paper briefly reports on methodology and findings of the thesis.

The authors gratefully acknowledge the assistance of Dr. John W. Birch, Associate Professor of Economics and Statistics, University of Wyoming, whose counsel was valuable, especially as relates to methodological procedures employed in doing this research.

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The Economic Impact on Southwestern Wyoming of Recreationists Visiting Flaming Gorge Reservoir

(By Rodney C. Kite, Former Graduate Assistant, Division of Agricultural Economics, and Willard D. Schutz, Associate Professor, Division of Agricultural Economics.)

This study analyzes the economic impact of expenditures by recreationists visiting Flaming Gorge Reservoir in Southwestern Wyoming in 1962.[1] Additional information on the impact of expenditures, including multiplier effects, on respective sectors of the economy should be valuable to people in Southwestern Wyoming and to those in the state and elsewhere who are interested in water resource development.

The area of study defined as Southwestern Wyoming includes Sweetwater, Sublette, Lincoln, and Uinta counties. This report draws on a 1962 study by Richard Lund for data and method of analysis, and it uses his area delineation.[2]

Southwestern Wyoming's four counties comprise a total of 13,811,300 acres, and in 1960 their population was 38,000. Most people lived in four major cities: Rock Springs, Green River, Evanston, and Kemmerer.

Flaming Gorge Reservoir is in Wyoming and Utah. It extends from Flaming Gorge Dam in Northeastern Utah to near the city of Green River. The reservoir and dam are focal points of the Flaming Gorge National Recreation Area. The area is divided into two parts: 120,000 acres outside Ashley National Forest, administered by the National Park Service, and 7,300 surface acres of reservoir inside the Forest administered by the U.S. Forest Service. The entire reservoir has 42,000 surface acres, 375 miles of shore line, and is 91 miles long.

Data were collected at the reservoir during June, July, and August 1965. Initially, the portion of the reservoir extending into Wyoming and accessible through Wyoming, was divided into two parts: the east and west sides. The east side has limited access and receives only limited use by local people. It receives practically no use by non-local visitors. Therefore, the east side of the reservoir was excluded from data collecting procedures.

Developed sites on the reservoir were assigned numbers. A table of random numbers was consulted to establish a system of visiting the sites which would insure a random sample of visitors' expenditures. A total of 206 interviews

[1]For a more detailed report on this subject, see Kite, Rodney C., "The Impact in Southwestern Wyoming of Spending by Recreationists Visiting Flaming Gorge Reservoir," unpublished M.S. thesis, University of Wyoming, 1967.

[2]Lund, Richard E., *A Study of the Resources, People, and Economy of Southwestern Wyoming*, (Wyoming Natural Resource Board in cooperation with the Division of Business and Economic Research, University of Wyoming, Laramie, Wyoming: 1962).

[3]A non-local visitor is defined as: Any person living outside southwestern Wyoming, who entered the Recreation Area through S.W. Wyoming, and used recreational facilities at the reservoir.

were taken: 33 from southwestern Wyoming residents and 183 from non-local visitors.[3] Non-local visitors constituted 84 percent of the interviewees.

Recreationists were questioned about their trips—where they began and the distances traveled to visit the reservoir. They also were asked about number of persons in their parties and their ages, their lengths of stay, and the activities they planned to engage in while at the reservoir. Information about money spent in southwestern Wyoming for gasoline and oil, food and beverages, and all other significant goods and services was obtained.

A static-open Leontief model was used for determining tourists' impact upon the economy of the area.[4] This model provides information about the direct and indirect activity generated within an economic system by new income.[5] Since the emphasis was on new income, only non-local recreationists were included in the analysis.

Source and Activities of the Recreationists

Non-local visitors to Flaming Gorge Reservoir traveled an average of 230 miles, approximately the distance from Salt Lake City, Utah to the Lucerne Valley Development area via Green River, Wyoming. The average distance traveled by recreationists is not surprising since 70.7 percent of the non-local visitors were from Utah.

Origin of non-local parties	Percent of parties contacted
Utah	70.7
Colorado	10.9
Wyoming	9.2
Other states	9.2

Table I presents data concerning characteristics of non-local visitors to Flaming Gorge Reservoir in 1965.

Utah. Utah visitors constituted 70.7 percent of the parties interviewed. These traveled an average of 209 miles, and 95.9 percent of them said the primary purpose of their trip was to visit the reservoir.

The composition in numbers of adults and children, male and female, of the parties from Utah was similar to that of all parties. Tabulated statistics measured in percentages showed that the average party from Utah contained 1.95 adult males, 1.25 adult females, .4 male teenager, .2 female teenager, and 1.6 children—making an average party of 5.4 persons. Utah recreationists led number of persons in party size among the four visitor classifications, and they spent an average of 2.8 days at the reservoir.

Their principal reasons for visiting the reservoir were to fish and camp; 99 percent stated they came to fish, and 93 percent said they would camp. The camping activity is considered subsidiary to fishing. Camping would not have been undertaken in most cases if fishing had been unavailable. In fact, nearly all activities were undertaken because the visitors were there to fish. Many parties who were sightseeing made the trip to reconnoiter fishing, planning to return in the future for that purpose.

Colorado. The second largest group of visitors contacted came from Colorado. These traveled the greatest average distance—327 miles, had the smallest average party size—2.8 persons, and stayed the shortest time—2.3 days. The composition of the average party from Colorado was as follows: adult males, 1.2; adult females, .8; teenage males, .1; teenage females, .1; and children, .6.

Colorado had a smaller percentage of visitors who made the trip primarily to reach the reservoir (57.9 percent) than did Utah. As a result the distribution of activities undertaken was different from Utah's. For example, more Colorado than Utah visitors listed sightseeing as an activity in which they engaged.

Wyoming. Parties from Wyoming, outside the southwestern area, amounted to 9.2 percent of the total of non-local visitors. They traveled an average of 260 miles, stayed 3.5 days, and their parties percentage-wise were composed of 4.2 persons. The composition of the average Wyo-

[3]See Appendix A including tables 1-3 inclusive.

[4]See the report by Harmston, Floyd K. and Richard E. Lund, *Application of an Input-Output Framework to a Community Economic System*, (Division of Business and Economic Research, College of Commerce and Industry, University of Wyoming, Laramie, Wyoming).

Table I. Recreationists Visiting Flaming Gorge Reservoir, 1965

Item		Utah	Colo.	Wyo.	Other states	All states
Primary purpose of trip	(Percent) yes	95.9	57.9	93.7	12.5	83.9
was to visit reservoir	no	4.1	42.1	6.3	87.5	16.1
Purpose of visit was to:						
Sight-see	(Percent)	2.4	10.5	6.3	50.0	8.1
Shore-fish		52.8	63.2	37.5	43.7	51.7
Boat-fish		46.3	36.8	62.5	31.3	45.4
Boat		0	0	6.3	0	.6
Camp		93.5	94.7	93.7	75.0	92.0
Water ski		12.2	10.5	37.5	6.3	13.8
Swim		21.1	15.8	37.5	12.5	21.3
Other		.8	0	0	0	.6
Persons in party	(Number)	5.4	2.8	4.2	3.5	4.9
Composition of party	(Percent of total)					
Adults	Male	35.9	44.4	35.8	32.1	36.2
	Female	23.2	29.6	28.4	32.1	24.6
Teens	Male	6.9	3.7	10.5	5.4	6.9
	Female	4.3	1.9	11.9	3.6	4.7
Children		29.7	20.4	13.4	26.8	27.6
Length of stay	(Days)	2.8	2.3	3.5	3.1	2.8
Distance traveled	(Miles)	209	327	260	247	230

Source: Interviews June, July, August 1965.

ming party was as follows: adult males, 1.5; adult females, 1.2; teenage males, .4; teenage females, .5; children, .6.

The activities engaged in by Wyomingites listed in order of importance are: (1) fishing, (2) camping, (3) water skiing, (4) swimming, (5) sightseeing, and (6) boating. It was noted that more Wyomingites engaged in boating for pleasure, water skiing, and swimming than parties from other states. The reason for this might be because they had more boats at the reservoir as interviews showed 62.5 percent of the parties (highest of all states) had boats with them.

Other States. Fewer parties from states other than Wyoming, Utah, and Colorado began their trip specifically to visit the reservoir (12.5 percent). The distance traveled was lower than might be expected (247 miles); however, this reflects only the distance traveled specifically to reach the reservoir. (Distance reported for Utah, Colorado and Wyoming was also that traveled specifically to reach the reservoir.)

Parties from other states were second only to those from Wyoming in the length of their stay—3.1 days, and more of them listed sightseeing as a primary activity (50 percent) than did other groups.

As might be expected, since most were not traveling just to reach the reservoir, fewer parties from other states camped (75 percent), fished (75 percent), water skied (6.3 percent), or swam (12.5 percent).

The average party for this category was made up as follows: adult males, 1.1; adult females, 1.1; teenage males, .2; teenage females, .1; children, 1.0.

The average party from other states contained 3.5 persons. Their activities were: (1) fishing, (2) camping, (3) swimming, (4) water skiing, (5) sightseeing, (6) pleasure boating, and (7) other activities, such as rock collecting.

All States Combined. The average distance traveled by all visitors contacted was 230 miles, and the average length of stay for all parties was 2.8 days. All states combined had 4.8 persons per party, the breakdown was: adult males, 1.8; adult females, 1.2; teenage males, .3; teenage females, .2; children, 1.3.

The survey showed that 83.9 percent of all visitors traveled specifically to reach the reservoir, and the primary purpose of their trip was to fish. Ninety-seven percent of all visitors fished, and 92 percent camped.

Expenditures Made by Recreationists

Interviewees indicated that they purchased the following kinds and amounts of goods in southwestern Wyoming in 1965 (Table II).

Table II. Average Expenditures by 173 Recreational Parties Visiting Flaming Gorge Reservoir, 1965.

Goods purchased	Per party
Gasoline and oil	$ 5.26
Food and beverage	2.68
Other	2.74
Total	$10.68

Table III shows the distribution and ranges of recreationists' expenditures for the three kinds of goods.

Table III. Distribution and Ranges of 173 Recreationist Parties' Expenditures at Flaming Gorge Reservoir, 1965.

	Goods purchased		
Item	Gas	Food and beverage	Other
Interval (dollars)			
0- 4.99	85	143	140
5- 9.99	73	17	16
10-14.99	8	6	8
15-19.99	3	2	4
20-24.99	3	3	2
25-	1	2	3
Range (dollars)	0-26.95	0-37.00	0-36.99

It was necessary to do some preliminary testing before expanding the interview data to include all relevant visits to Flaming Gorge Reservoir. First it was important to determine if expenditures made for the same class of goods differed among visitors from different states. For instance, did visitors from Utah spend more for gasoline and oil than visitors from Colorado?

An analysis of variance tested differences in expenditures between parties from various states for gasoline and oil, food and beverages, and other goods. There was no significant difference between expenditures by parties from various origins for the three classes of goods.[6] Therefore, these expenditures were treated as coming from the same populations.

In estimating the number of non-local visitors to the area, an extension of the proportions recorded through interviews was employed—16 percent local and 84 percent non-local parties. The 84 percent was applied to the total reservoir visitors interviewed at sites accessible through southwestern Wyoming to provide an estimate of non-local visitors for 1965.

Records of visitors to the Lucerne Valley kept by the National Park Service show that 59,062 parties used the reservoir in that district in 1965. Table IV lists the visitation distribution.

Table IV. Visits to the Lucerne Valley District, 1965 (By months)

Month	Traffic count
January	532
February	1,570
March	870
April	2,603
May	5,984
June	7,443
July	11,671
August	10,547
September	5,414
October	3,954
November	4,467
December	4,007
Total	59,062

Source: Records at the Lucerne Valley District Ranger Station, Manila, Utah.

A problem was encountered in segregating between local and non-local monthly visitations, as interviews were taken only during June, July, and August 1965. The possibility existed that the relationship between local and non-local visitors was different during "off" months—other than summer.

[6]For details on the analyses of variance, see Kite *op. cit.*, p. 54.

One source of information relating to the origin of visitors to Flaming Gorge Reservoir is a paper by John Hewston, candidate for the Ph.D. at Utah State University. Hewston's paper is a preliminary report, and he cautions that conclusions are "neither intended nor implied."[7]

Hewston found that in 1964, 15.9 percent of the parties visiting the reservoir were from Wyoming, with 11.4 percent from the Rock Springs-Green River area.

Our interviews in 1965 indicated that 23.67 percent of the visitors were from Wyoming with 15.9 percent from the Rock Springs-Green River area.

Hewston's data are for the entire reservoir and for the year as a whole. Data gathered by the author are for just the Lucerne Valley District and for the three-month summer period.

The similarity was considered ample evidence for the authors to treat the proportion of local to non-local visitors for the entire year in the same manner as for the three months studied.

Using a ratio of 84 percent non-local to 16 percent local visitors, the total annual visits to the Lucerne Valley District was an estimated 49,600 parties.

The average party expenditure times 49,600 non-local parties gives a total expenditure of $529,728. This is direct income to retailers from expenditures by non-local recreationists.

Total expenditures were divided among the classes of goods as shown in Table V.

Table V. Distribution of Recreationists' Total Expenditures, by Sector

Sector	Total expenditures
Gasoline service stations	$260,896
Food and beverage estimate	132,928
Other retail	135,904
Total	$529,728

Estimates of average party expenditures and total expenditures are lower than might be expected. Lund found that all out-of-state travelers in Wyoming spent $34.87 per party per trip. Parties whose destination was Wyoming spent $69.76 in the state. Parties who camped in Wyoming spent $43.05.[8] Explanation for lower expenditures by persons visiting Flaming Gorge Reservoir lies in the fact that most visitors were from Utah. They could make the short-distance trip and return home without replenishing supplies, except possibly for gasoline, and without paying for lodging. Expenditures listed are for the trip into the area and do not reflect expenses incurred while leaving the area. This means that total expenditures will be underestimated.

[7]Hewston, John G., "The Role of the Fishery in the Development of Recreational Use Pattern on a New Reservoir," Utah State University, Utah Cooperative Fishery Unit, March 25, 1965.

[8]Lund, Richard E., *A Study of Wyoming's Out-of-State Highway Travelers*, (Division of Business and Economic Research, University of Wyoming, Laramie, Wyoming: 1961), page 8.

Economic Impact of Expenditures by Recreationists

The direct and indirect impact of new income (exports from the area) on the economic system of Southwestern Wyoming may be derived by use of the multiplier matrix shown in Appendix A, Table 3.[9] Table VI shows the portion of the matrix which is applicable to expenditures by recreationists and dollar amounts of direct and indirect activity generated by recreationists.

The multipliers shown in Table VI indicate how much economic activity will be generated in a particular sector of the economy by one dollar of new income. Interviews at Flaming Gorge indicated that "gasoline service stations," "food and beverage establishments," and "other retail" sectors were the ones most affected by visitors' expenditures. Table VI shows, for example, that one dollar of new income to gasoline service stations will generate three cents income to utilities (see line 8), 41 cents to general wholesale (see line 9), and 24 cents to households (see line 24).

Total Impact. The direct and indirect impact of all expenditures is shown in the last columns of Tables VI and VII. The sectors experiencing the greatest influence from Flaming Gorge recreationists' spending in 1965 also are shown in Table VII.

Total direct and indirect income generated by spending in service stations, food and beverage establishments, and other retail sectors was $1,094,798. This means that the overall multiplier was 2.067. Direct benefits of $529,728 accrued entirely to the three primary sectors enumerated above. Whereas, indirect benefits accrued to all sectors.

Gasoline Service Stations. This sector received the greatest total benefit of any sector. Direct income was $260,896, and indirect income was $5,147.

Gasoline service stations were responsible for the most income generated, $517,886. This reflects the magnitude of aggregate expenditures in gasoline service stations, not the importance of income dollar-for-dollar. In fact, a single dollar spent in gasoline service stations returns less income to the economic system than it would if spent for food and beverages or for other retail items. The primary reason for this is the preponderance of transactions between gasoline service stations and general wholesalers.

The portion of the input coefficient matrix relating activity between these two sectors shows a coefficient of .37198. This coefficient indicates that for each dollar spent at gasoline service stations, 37 cents will in turn be spent by these service stations in general wholesale. The general wholesale sector spends 84 cents of each dollar it receives on imports. The result of these transactions reduces the income generated inside the system and thus the gasoline service stations' multiplier. This multiplier was 1.98503, the smallest multiplier among the three sectors receiving income from recreationists.

The import-drain from the economy, caused by money paid out to wholesalers, is partially offset by gasoline service stations' payments to households. Households received the second largest benefit from expenditures at service stations. Each dollar of income to gasoline service stations induced 24 cents of income to households.

Total income generated to households in 1965 was $63,382, an amount sufficient to have employed 23 persons in service stations at an average of $2,715.[10] This assumes use of all additional income for wages, with no allowance for profits. Income to households was spent primarily in the other retail sector; 41.63 percent of all household inputs came from this sector, while only 27.85 percent of its inputs were imported. Income accruing to households, then, will have a more pronounced affect on the economic system than income to general wholesale.

The other retail sector received the third largest benefit, an estimated $29.539, from expenditure by recreationists to the gasoline service station sector. Of the $29,539 received, $26,387 was generated by household purchases.

Other Retail. The other retail sector received $135,904 directly from expenditures by recreationists. Before this income leaked from the system in the form of imports, it generated $272,202 in direct and indirect income. Of the indirect income generated, the retail sector itself

[9]The reader interested in the technical aspects of input-output analysis can find a brief explanation in Appendix A.
[10]See Appendix B for computation of average annual wage of persons employed in retail establishments in 1964.

Table VI

Multipliers For, And Income Generated By Income Received In, The Gasoline Service Stations, Food and Beverage Establishments, and Other Retail Sectors

Sector	Gasoline service stations		Food and beverage establishments		Other retail		Total
	Multi-plier	Dollars	Multi-plier	Dollars	Multi-plier	Dollars	Dollars
Agriculture	.00574	1,498	.01667	2,216	.02119	2,880	6,594
Minerals: Gas and oil production	.00608	1,586	.01190	1,582	.00689	936	4,104
Minerals: Oil field service	.00080	209	.00156	207	.00091	124	540
Minerals: Other mineral products	.00142	370	.00257	342	.00224	304	1,016
Manufacturing: Lumber	.00046	120	.00074	98	.00080	109	327
Manufacturing: Other	.00811	2,116	.03417	4,542	.04226	5,743	12,401
Transportation	.01315	3,431	.02148	2,855	.03000	4,077	10,363
Utilities	.03165	8,257	.06192	8,231	.03582	4,868	21,356
Wholesale: General	.40678	106,127	.29181	38,790	.18238	24,786	169,703
Wholesale: Farm produce handlers	.00030	78	.00131	174	.00113	154	406
Retail: Building materials and implements	.02132	5,562	.03213	4,271	.02547	3,461	13,294
Retail: Gasoline service stations	1.00861	263,142	.01183	1,573	.00977	1,328	266,043
Retail: Food and beverage	.01294	3,376	1.02224	135,884	.01837	2,497	141,757
Retail: Other	.11322	29,539	.20007	26,595	1.17514	159,706	215,840
Service: Lodging	.00000	0	.00000	0	.00000	0	0
Service: Business and professional	.00331	864	.01090	1,449	.00343	466	2,779
Service: Repair	.00544	1,419	.01297	1,724	.00557	757	3,900
Service: Other	.02455	6,405	.03443	4,577	.03212	4,365	15,347
Real estate rental	.02115	5,518	.02867	3,811	.01525	2,073	11,402
Finance	.01924	5,020	.02443	3,247	.01626	2,210	10,477
Contractors: Building	.01274	3,324	.01947	2,588	.01365	1,855	7,767
Contractors: Other	.00613	1,599	.00086	114	.00067	91	1,804
Local government	.01895	4,944	.03273	4,351	.01884	2,560	11,855
Households	.24294	63,382	.41744	55,489	.34474	46,852	165,723
Total	1.98503	517,886	2.29230	304,710	2.00290	272,202	1,094,798

Source of multipliers: Appendix A. Table 3.

Table VII. Major Benefiting Sectors, 1965.

Sector	Direct benefit	Indirect benefit	Total benefit
Gasoline service stations	$260,896	$ 5,147	$ 266,043
Other retail	135,904	79,936	215,840
General wholesale	0	169,703	169,703
Households	0	165,723	165,723
Food and beverage establishments	132,928	8,829	141,757
All other sectors	0	135,732	135,732
Total	$529,728	$565,070	$1,094,798

received $79,936. The original direct income expanded by a factor of 2.00290; this is the multiplier for other retail sector.

The other retail sector received, in addition to the recreationists' direct purchases of $135,904, an additional $79,936 in induced income.

Households received the major induced income, $46,852, from recreationists' spending in the other retail sector. This would provide an average wage of $3,366 for 14 additional persons in the other retail sector, assuming no additional profit.

As with the gasoline service station, the general wholesale sector received considerable induced income, $24,786, from recreationists' expenditures in the other retail sector.

Food and Beverage Establishments. The sectors receiving the most benefit from spending by recreationists in the food and beverage establishments were households, general wholesale, and other retail sectors.

The household sector received the major portion of generated income, $55,489. If all this income had been used to pay wages, it would have paid $1,958 per year to 28 additional persons.

The general wholesale sector experienced the second largest impact, $38,790, from spending in food and beverage establishments. This is not surprising since 23.43 percent of the inputs of the eating and drinking establishments came from the general wholesale sector.

The third largest induced income benefits, $26,595, were received by the other retail sector. The size of the multiplier for food and beverages—other retail .20007—indicates considerable generated activity in the other retail sector. In fact, 20 cents of income is generated in other retail by each dollar of new income to the food and beverage sector. This might not have been so evident had one consulted only the input coefficient matrix. The input coefficient relating direct activity between food and beverages and other retail is .00977. Thus less than one percent of its direct purchases are made by food and beverages from the other retail sector. This points out the importance of considering induced income in an analysis such as this. In this case, income received by households, because of expenditures in the food and beverage establishments, causes appreciable activity in the other retail sector.

Induced income alters the relative importance of various sectors to the total economic activity in the system. As Table VII shows, the food and beverage establishments, although ranked third in terms of direct receipts, ranked fifth in terms of direct and indirect income from all expenditures. Induced activity is responsible for this change.

Summary

During June, July, and August of 1965 interviews were taken at Flaming Gorge Reservoir. Recreationists were questioned about their trips and expenditures in southwestern Wyoming. The interviews indicated that 70.7 percent of the visitors were from Utah, 10.9 percent from Colorado, 9.2 percent from Wyoming, and 9.2 percent from other states. All parties averaged 4.9 persons, traveled an average of 230 miles, and spent an average of $10.68 in Southwestern Wyoming.

When the 3-month figures were expanded, the total annual expenditures by tourists were estimated at $529,728: $260,896 for gas and oil, $132,928 for food and beverages, and $135,904 for other retail goods. When the indirect benefits were computed from direct expenditures, the direct income of $529,728 expanded to $1,094,798. This expansion meant that the overall recreation multiplier was 2.067. The sectors receiving the greatest total benefit were, in order of importance: (1) gasoline service stations, (2) other retail, (3) general wholesale, (4) households, and (5) food and beverage establishments.

Impact estimates presented in this study should be regarded with caution. The sample was gathered during three summer months, and then expanded to include a 12-month period. Data on expenditures by fall and winter visitors were analyzed by using the same proportion of local to non-local visitors as was found for the summer months. Because the sample did not cover the entire year, some error may exist in the estimate of recreationists' total expenditures.

Another cause for caution in interpreting the results of this study comes from the estimate of money spent by the summer visitors. Only expenditures made as visitors entered southwestern Wyoming were used. If visitors made no further purchases as they left the area, impact estimates would be correct. If, however, they purchased the same amount of gasoline, while leaving the area as they did when entering it, impact estimates for the gasoline service station sector would be only half what they should have been. Money spent for any of these goods and services while leaving the area would change the impact estimates.

Appendix A. The Static Open Input-Output Model

The input-output model was developed and explained by Wassily Leontief in 1951.[1] It was expanded by Leontief and others in 1956.[2] The model consists of three matrices: transactions, input coefficient, and multiplier.

The Transactions Matrix

Sectors in the economy defined as endogenous are those affected by a decision within the system. Exogenous sectors are not influenced by a decision within the system to produce. Endogenous sectors are the first 24 shown in Appendix A, Table 1, and exogenous sectors are the last two (25 & 26) shown in Table 1.

The transactions matrix is formed by arranging the various delineated sectors of the economy into matrix form. The matrix contained one row and one column for each sector in the economy. Reading across row one of Table 1, the number under the heading "agriculture" indicates that $1,395,000 worth of output by the agriculture sector was purchased by the agriculture sector in 1959. In the same row, the figure under "manufacturing—other" indicates that $1,957,000 of agriculture's output was purchased by the other manufacturing sector.

Input Coefficient Matrix

The input coefficient matrix for southwestern Wyoming in 1959 is shown in Appendix A, Table 2. Its elements are obtained in the following way:

Let x_{ij} denote the elements of the transactions matrix at the junction of the i^{th} row and j^{th} column; where $i = 1, 2, 3, \ldots n$ and $j = 1, 2, 3, \ldots, n$, n equals the number of sectors in the economy. (In this study $n = 26$).

$$\text{Let } X_j = \sum_{i=1}^{n} x_{ij},\ j = 1, 2, 3, \ldots, n.$$

The input coefficient, denoted as a_{ij}, will equal x_{ij}.

The input coefficient matrix is then generated by transforming small x_{ij}'s to a_{ij}'s.

The a_{ij}'s can be regarded in two ways: as the percentage of the j^{th} sector's inputs supplied by the i^{th} sector, or as a technical coefficient indicating the amount of inputs purchased by the j^{th} sector from the i^{th} sector for each dollar of input. For example, line 24 in Table 2 under the agriculture column indicates that the input coefficient for household-agriculture ($a_{24\,1}$) is .43847. This coefficient shows: (1) 43.85 percent of agriculture's inputs are purchased from households, or (2) for each dollar of inputs by agriculture 43.85 cents comes from households. The coefficients also may be read across the rows to show the relationship between each sector's sales and the sector making the purchase.

The Multiplier Matrix

The input coefficient matrix was derived from the transactions matrix and the multiplier matrix from the input coefficient matrix. Subtracting the input coefficient matrix from an identity matrix and inverting produces the result for the multiplier matrix. In the static open model imports into and exports from the system are exogenous and are not included in the portion of the matrix which is inverted.

Elements in the multiplier matrix, Appendix A, Table 3, indicate the activity generated within southwestern Wyoming's economy by new income before it is "leaked" from the system via the import-drain. For example, the intersection of the row and column headed "agriculture" shows a multiplier of 1.10487 indicating that each new dollar of income received by agriculture generated one dollar of direct income and ten cents of induced income to the sector. Other elements under the agriculture column show only induced income from the dollar received in new income.

The diagonal elements of the multiplier matrix are all equal to or greater than one. This is so because each sector's income always includes the original direct receipts plus induced income.

The total of each column shows how much total activity will be generated in the system by one dollar of new income to a sector. The sum of the column headed "agriculture" is 3.22764—indicating that about $3.23 of activity will be

[1]Leontief, Wassily W., *The Structure of American Economy*, (Oxford University Press, New York: 1951).
[2]Leontief, Wassily W., and others, *Studies in the Structure of the American Economy*, (Oxford University Press, New York: 1953).

Transactions Matrix for Southwestern Wyoming — 1959
($1000's)

No.	Sector	Agriculture	Minerals			Manufacturing	
			Gas and oil production	Oil field service	Other minerals	Lumber	Other
1	Agriculture	$ 1,393	$ 0	$ 0	$ 0	$ 0	$1,957
2	Minerals: Gas and oil production	0	1,421	0	0	0	2
3	Minerals: Oil field service	0	4,022	0	0	0	0
4	Minerals: Other minerals	0	0	0	2	0	32
5	Manufacturing: Lumber	110	4	0	247	4	2
6	Manufacturing: Other	35	2	79	0	1	7
7	Transportation	459	26	252	11	93	107
8	Utilities	220	27	21	724	39	83
9	Wholesale: General	987	401	71	19	128	31
10	Wholesale: Farm Produce handlers	931	0	0	0	0	0
11	Retail: Building materials and implements	1,022	123	11	114	27	73
12	Retail: Gasoline service stations	0	0	0	0	0	0
13	Retail: Food and beverage establishments	0	0	0	0	0	0
14	Retail: Other	928	56	317	68	23	43
15	Service: Lodging	0	0	0	0	0	0
16	Service: Business and professional	328	321	9	2	5	22
17	Service: Repair	0	8	81	5	37	22
18	Service: Other	0	2	16	80	0	5
19	Real estate rental	0	5	39	2	5	21
20	Finance	381	9	94	0	38	86
21	Contractors: Building	155	63	0	48	39	94
22	Contractors: Other	145	1,042	0	783	0	0
23	Local government	1,160	776	68	184	6	32
24	Households	7,939	4,521	2,110	4,736	496	940
25	State and federal revenues	473	2,038	104	158	132	49
26	Imports	1,440	15,728	1,955	4,944	51	1,454
	Total Inputs	$18,106	$30,595	$5,227	$12,127	$1,124	$5,062

Source: Lund, Richard E., A Study of the Resources, People, and Economy of Southwestern Wyoming, 1962, (Wyoming Natural Resource Board, Cheyenne, Wyoming: 1962), page 74a (with some slight revisions).

APPENDIX A. Table 1

Transactions Matrix (Continued)
($1000's)

No.	Transportation	Utilities	Wholesale		Retail			
			General	Farm produce handlers	Building materials and implements	Service stations	Food and beverage	Other
1	$ 289	$ 0	86	155	37	0	0	53
2	0	1,304	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0
4	0	12	0	0	0	0	0	2
5	0	2	1	0	11	0	0	6
6	3	7	17	2	9	0	141	1,193
7	0	54	306	7	425	1	30	631
8	359	155	96	13	49	79	224	495
9	369	763	201	98	58	2,211	1,607	5,283
10	0	0	0	0	0	0	0	1
11	8	12	388	0	31	0	23	138
12	0	0	0	0	0	10	0	0
13	0	0	0	0	0	0	0	0
14	186	258	138	119	201	8	67	749
15	0	0	0	0	0	0	0	0
16	9	47	43	5	21	38	43	272
17	91	130	77	9	33	0	37	0
18	2	2	7	1	4	0	23	0
19	24	13	70	0	16	86	127	279
20	39	121	75	13	109	54	60	167
21	3	20	297	1	5	31	24	72
22	0	0	0	0	0	0	0	0
23	1,452	367	49	7	40	53	114	219
24	9,182	1,686	1,654	253	1,152	696	1,594	7,598
25	668	199	2,401	10	94	170	290	531
26	2,001	2,131	15,672	825	5,701	2,509	2,453	20,838
Total	$14,685	$7,283	21,578	1,518	7,996	5,946	6,860	38,527

Note: Endogenous sectors are 1-24. Exogenous sectors are 25 and 26.

APPENDIX A. Table 1

Transactions Matrix (Continued)
($1000's)

	Service									
							Contractors		Local	
No.	Lodging	Business and Professional	Repair	Other	Real estate rental	Finance	Building	Other	government	Households
1	1	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	19	0	400
5	0	0	0	37	0	0	117	12	12	0
6	6	1	15	41	31	13	123	42	30	947
7	14	5	5	27	3	4	308	57	44	917
8	331	32	57	259	190	59	111	52	357	2,617
9	634	299	233	286	93	0	290	210	186	183
10	0	0	0	0	0	0	0	0	0	0
11	69	5	15	100	238	18	1,055	48	202	2,515
12	0	0	0	0	0	0	0	0	0	2,107
13	0	0	0	0	0	0	0	0	0	3,968
14	156	49	172	165	62	45	322	296	394	31,022
15	0	0	0	0	0	0	0	0	0	0
16	14	19	21	103	42	118	34	2	11	108
17	53	16	5	93	59	8	76	358	44	523
18	95	0	6	59	10	4	4	0	652	4,679
19	76	32	51	93	0	75	30	7	7	908
20	73	8	38	120	207	34	56	94	23	1,170
21	34	0	12	55	163	27	434	0	102	1,148
22	0	0	0	0	0	0	6	1,489	0	0
23	20	7	9	46	217	25	57	75	0	524
24	607	593	679	2,365	491	1,787	3,368	3,141	4,664	0
25	28	14	29	96	54	36	133	134	68	7,968
26	352	482	486	2,268	136	1,113	4,407	9,977	1,549	12,770
	2,563	1,562	1,833	6,213	1,996	3,366	10,931	16,013	8,345	74,474

APPENDIX A. Table 1

Transactions Matrix (Continued)
($1000's)

No.	State and federal purchases	Exports	Total
1	1,099	13,036	$ 18,106
2	0	27,868	30,595
3	0	1,205	5,227
4	0	11,660	12,127
5	0	559	1,124
6	16	2,301	5,062
7	48	10,851	14,685
8	366	268	7,283
9	0	6,937	21,578
10	0	583	1,518
11	19	1,742	7,996
12	0	3,839	5,946
13	0	2,892	6,860
14	41	2,632	38,527
15	0	2,563	2,563
16	0	64	1,562
17	6	0	1,833
18	0	485	6,213
19	30	0	1,996
20	0	297	3,366
21	13	8,107	10,931
22	0	12,532	16,013
23	2,838	0	8,345
24	7,707	4,515	74,474
25	0	0	15,877
26	3,694	0	114,936
	15,877	114,936	$434,743

generated, both directly and indirectly, by one dollar of new income received by this sector.

The Mathematics of Static Open Input-Output Analysis

The static open input-output model is demonstrated as follows:

n = the number of sectors in the economy

k = the number of endogenous sectors in the economy

$n-k$ = the number of exogenous sectors in the economy

x_{ij} = the elements of the transactions matrix $i, j = 1, 2, 3, \ldots, n$

$X_j = \sum_{i=1}^{n} x_{ij}$ $j = 1, 2, 3, \ldots, n$, X_j is total input of the j^{th} sector

$X_i = \sum_{j=1}^{n} x_{ij}$ total output of the i^{th} sector, $i = 1, 2, 3, \ldots, n$

$X_i = X_j$ total output equals total input

$Y_i = \sum_{j=k+1}^{n} x_{ij}$, total exports $i = 1, 2, 3, n$

a_{ij} = the elements of the input coefficient matrix, $a_{ij} < 1$ for $i = j$

$a_{ij} \geq 0$ for all i, j.

$= \frac{x_{ij}}{X_j}$ $i, j = 1, 2, 3, \ldots, n$

m_{ij} = elements of the multiplier matrix, $i, j = 1, 2, 3, \ldots, k$

$M_j = \sum_{i=1}^{k} m_{ij}$ $j = 1, 2, 3, \ldots, k$, the overall multiplier of the j^{th} sector.

Y denotes the xnl vector of final demand (exports)

B denotes the nxn transactions matrix

X denotes the nxl output vector

A denotes the nxn input coefficient matrix

M denotes the kxk multiplier matrix and $M = (I\text{-}A)^{-1}$

T denotes the nxn diagonal matrix where $t_{ij} = X_j$ for $i = j$ and $t_{ij} = 0$ for $i \neq j$.

Using the designations above, production equations for the economic system can be written:

$$X_i = \sum_{j=1}^{k} x_{ij} + Y_i, \quad i = 1, 2, 3, \ldots, n \qquad (I)$$

Since $a_{ij} = \frac{x_{ij}}{X_j}$ or $x_{ij} = a_{ij}X_j$ (I) can be written:

$$X_i = \sum_{j-1}^{k} a_{ij}X_j, \quad i = 1, 2, 3, \ldots, n \qquad (II)$$

Where there are n equations of the form (II), all equations of form (II) can be expressed in matrix notation as (III) where $A = BT^{-1}$.

$$X = AX + Y \qquad (III)$$

Then,

$$X - AX + Y \qquad (IV)$$

$$(I - A)\,X = Y \qquad (V)$$

$$X = (I-A)^{-1}\,Y = MY \qquad (VI)$$

Equation VI, resulting from forms IV and V, when output is expressed as a function, indicates how much output must be forthcoming to meet a given final demand.

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APPENDIX A. Table 2

Input Coefficients — Southwestern Wyoming — 1959

No.	Sector	Agriculture	Minerals			Manufacturing	
			Gas and oil production	Oil field service	Other minerals	Lumber	Other
1	Agriculture	.07694	.00000	.00000	.00000	.00000	.38783
2	Minerals: Gas and oil production	.00000	.04645	.00000	.00000	.00000	.00040
3	Minerals: Oil field service	.00000	.13146	.00000	.00000	.00000	.00000
4	Minerals: Other minerals	.00000	.00000	.00000	.00016	.00000	.00634
5	Manufacturing: Lumber	.00608	.00013	.00000	.02037	.00356	.00040
6	Manufacturing: Other	.00193	.00007	.01511	.00000	.00089	.00139
7	Transportation	.02535	.00085	.04821	.00091	.08274	.02120
8	Utilities	.01215	.00088	.00402	.05970	.03470	.01645
9	Wholesale: General	.05451	.01311	.01358	.00157	.11388	.00614
10	Wholesale: Farm produce handlers	.05142	.00000	.00000	.00000	.00000	.00000
11	Retail: Building materials and implements	.05645	.00402	.00210	.00940	.02402	.01447
12	Retail: Gasoline service stations	.00000	.00000	.00000	.00000	.00000	.00000
13	Retail: Food and beverage	.00000	.00000	.00000	.00000	.00000	.00000
14	Retail: Other	.05125	.00183	.06066	.00561	.02046	.00852
15	Service: Lodging	.00000	.00000	.00000	.00000	.00000	.00000
16	Service: Business and professional	.01812	.01049	.00172	.00016	.00445	.00436
17	Service: Repair	.00000	.00026	.01550	.00041	.03292	.00436
18	Service: Other	.00000	.00007	.00306	.00660	.00000	.00099
19	Real estate rental	.00000	.00016	.00746	.00016	.00445	.00416
20	Finance	.02104	.00029	.01798	.00000	.03381	.01704
21	Contractors: Building	.00856	.00206	.00000	.00396	.03470	.01863
22	Contractors: Other	.00801	.03406	.00000	.06457	.00000	.00000
23	Local government	.06407	.02536	.01301	.01517	.00534	.00634
24	Households	.43847	.14777	.40367	.39053	.44128	.18629
25	State and federal revenues	.02612	.06661	.01990	.01303	.11744	.00971
26	Imports	.07953	.51407	.37402	.40769	.04537	.28498
	Total*	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000

Source: Derived from Table VI.

*May not total due to rounding error.

APPENDIX A. Table 2

Input Coefficients (Continued)

No.	Transportation	Utilities	Wholesale		Retail			
			General	Farm produce handlers	Building materials and implements	Service stations	Food and beverage	Other
1	.01973	.00000	.00395	.10211	.00463	.00000	.00000	.00138
2	.00000	.18304	.00000	.00000	.00000	.00000	.00000	.00000
3	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
4	.00000	.00168	.00000	.00000	.00000	.00000	.00000	.00005
5	.00000	.00028	.00005	.00000	.00138	.00000	.00000	.00016
6	.00020	.00098	.00078	.00132	.00113	.00000	.02055	.03096
7	.00000	.00758	.01406	.00461	.05315	.00009	.00437	.01637
8	.02451	.02176	.00441	.00856	.00613	.01330	.03265	.01285
9	.02519	.10710	.00924	.06456	.00725	.37198	.23426	.13709
10	.00000	.00000	.00000	.00000	.00000	.00000	.00044	.00003
11	.00055	.00168	.01783	.00000	.00388	.00000	.00335	.00358
12	.00000	.00000	.00000	.00000	.00000	.00172	.00000	.00000
13	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
14	.01270	.03622	.00634	.07839	.02514	.00129	.00977	.01944
15	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
16	.00061	.00330	.00198	.00329	.00263	.00000	.00627	.00000
17	.00621	.01825	.00354	.00593	.00413	.00000	.00539	.00000
18	.00014	.00028	.00032	.00066	.00050	.00635	.00335	.00706
19	.00164	.00182	.00322	.00000	.00200	.01446	.01851	.00724
20	.00266	.01698	.00345	.00856	.01363	.00904	.00875	.00433
21	.00020	.00281	.01365	.00066	.00063	.00000	.00350	.00187
22	.00000	.00000	.00000	.00000	.00000	.00516	.00000	.00000
23	.09911	.05152	.00225	.00461	.00500	.00898	.01662	.00568
24	.62676	.23666	.07601	.16667	.14407	.11706	.23236	.19717
25	.04560	.02793	.11034	.00659	.01176	.02867	.04227	.01378
26	.13420	.27681	.72860	.54348	.71298	.42190	.35758	.54075
	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000

APPENDIX A. Table 2

Input Coefficients (Continued)

	Service						Contractors			
No.	Lodging	Business and professional	Repair	Other	Real estate rental	Finance	Building	Other	Local government	Households
1	.00039	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
2	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
3	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
4	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00119	.00000	.00537
5	.00000	.00000	.00000	.00596	00000	.00000	.01070	.00075	.00144	.00000
6	.00234	.00064	.00818	.00660	.01553	.00386	.01125	.00262	.00359	.01272
7	.00546	.00320	.00273	.00435	.00150	.00119	.02818	.00356	.00527	.01231
8	.12915	.02049	.03110	.04169	.09519	.01753	.01015	.00325	.04278	.03514
9	.24737	.19142	.12711	.04603	.04659	.00000	.02653	.01311	.02229	.00246
10	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
11	.02692	.00320	.00818	.01610	.11924	.00535	.09651	.00300	.02421	.03377
12	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.02828
13	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.05328
14	.06087	.03137	.09384	.02656	.03106	.01337	.02946	.01848	.04721	.41631
15	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
16	.00546	.01216	.01146	.01658	.02104	.03506	.00311	.00012	.00132	.00145
17	.02068	.01024	.00273	.01497	.02956	.00238	.00695	.02236	.00527	.00702
18	.03707	.00000	.00327	.00950	.00501	.00119	.00037	.00000	.07813	.06283
19	.02965	.02049	.02782	.01497	.00000	.02228	.00274	.00044	.00084	.01219
20	.02848	.00512	.02073	.01931	.10371	.01010	.00512	.00587	.00276	.01571
21	.01327	.00000	.00655	.00885	.08166	.00802	.03970	.00000	.01222	.01541
22	.00000	.00000	.00000	.00000	.00000	.00000	.00055	.09299	.00000	.00000
23	.00780	.00448	.00491	.00740	.10872	.00743	.00521	.00468	.00000	.00704
24	.23683	.37964	.37043	.38065	.24599	.53090	.30811	.19615	.55890	.00000
25	.01092	.00896	.01582	.01545	.02705	.01070	.01217	.00837	.00815	.10700
26	.13734	.30858	.26514	.36504	.06814	.33066	.40317	.62306	.18562	.17148
	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000

APPENDIX A. Table 2

Input Coefficients (Continued)

No.	State and federal purchases	Exports	Total
1	.06922	.11342	.04165
2	.00000	.24247	.07038
3	.00000	.01048	.01202
4	.00000	.10145	.02790
5	.00000	.00486	.00259
6	.00101	.02002	.01164
7	.00302	.09441	.03378
8	.02305	.00233	.01675
9	.00000	.06036	.04964
10	.00000	.00507	.00349
11	.00120	.01516	.01839
12	.00000	.03340	.01368
13	.00000	.02516	.01578
14	.00258	.02290	.08862
15	.00000	.02230	.00590
16	.00000	.00056	.00359
17	.00038	.00000	.00422
18	.00000	.00422	.01429
19	.00189	.00000	.00459
20	.00000	.00258	.00774
21	.00082	.07053	.02514
22	.00000	.10903	.03683
23	.17875	.00000	.01920
24	.48543	.03928	.17131
25	.00000	.00000	.03652
26	.23267	.00000	.26439
	1.00000	1.00000	1.00000

APPENDIX A. Table 3

Multiplier Matrix for Southwestern Wyoming, 1959

No.	Sector	Agriculture	Minerals			Manufacturing	
			Gas and oil production	Oil field service	Other minerals	Lumber	Other
1	Agriculture	1.10487	.00638	.01800	.00910	.01502	.43468
2	Minerals: Gas and oil production	.01260	1.05302	.00854	.01843	.01625	.01245
3	Minerals: Oil field service	.00166	.13843	1.00112	.00242	.00214	.00164
4	Minerals: Other	.00471	.00199	.00380	1.00375	.00449	.01003
5	Manufacturing: Lumber	.00795	.00065	.00086	.02132	1.00496	.00425
6	Manufacturing: Other	.02883	.01277	.03650	.01826	.02565	1.02277
7	Transportation	.05720	.01795	.06803	.02058	.10960	.05422
8	Utilities	.06558	.02241	.04439	.09596	.08459	.06263
9	Wholesale: General	.16880	.05744	.09611	.07678	.21453	.11218
10	Wholesale: Farm produce handlers	.05684	.00034	.00095	.00049	.00080	.02238
11	Retail: Building materials and implements	.10484	.02202	.03525	.03917	.06816	.07335
12	Retail: Gasoline service stations	.02312	.00958	.01834	.01696	.02199	.01803
13	Retail: Food and beverage establishments	.04348	.01801	.03449	.03190	.04136	.03391
14	Retail: Other	.42739	.16197	.34986	.27363	.37108	.31821
15	Service: Lodging	.00000	.00000	.00000	.00000	.00000	.00000
16	Service: Business and professional	.02660	.01372	.00699	.00437	.01168	.01771
17	Service: Repair	.01216	.00779	.02411	.01109	.04467	.01388
18	Service: Other	.06296	.02633	.04999	.04965	.05553	.04857
19	Real estate rental	.01837	.00857	.02199	.01266	.02278	.01860
20	Finance	.04754	.01250	.03729	.01810	.05795	.04546
21	Contractors: Building	.03132	.01089	.01688	.01916	.05733	.03990
22	Contractors: Other	.01072	.03980	.00086	.07234	.00122	.00515
23	Local Government	.09395	.03745	.03468	.03274	.03540	.05428
24	Households	.81615	.33807	.64734	.59880	.77635	.63649
	Total	3.22764	2.01808	2.55637	2.44765	3.04350	3.06077

Source: Derived from Table 2.

APPENDIX A. Table 3

Multiplier Matrix (Continued)

			Wholesale		Retail				Service	
No.	Trans-portation	Utilities	General	Farm produce handlers	Building materials and implements	Service stations	Food and beverage	Other	Lodging	Business and professional
1	.03574	.00940	.00746	.11916	.01125	.00574	.01667	.02119	.01274	.01049
2	.01568	.20252	.00270	.00636	.00471	.00608	.01190	.00689	.03300	.01100
3	.00206	.02662	.00035	.00084	.00062	.00080	.00156	.00091	.00434	.00145
4	.00540	.00454	.00084	.00211	.00160	.00142	.00257	.00224	.00333	.00336
5	.00138	.00110	.00044	.00120	.00179	.00046	.00074	.00080	.00125	.00075
6	.02881	.01781	.00559	.01516	.01033	.00811	.03417	.04226	.02225	.01943
7	1.02754	.02592	.02002	.02082	.06206	.01315	.02148	.03000	.02980	.02326
8	.08163	1.05498	.01405	.03310	.02451	.03165	.06192	.03582	.17185	.05726
9	.13372	.17741	1.02868	.12598	.04462	.40678	.29181	.18238	.34223	.26683
10	.00187	.00050	.00039	1.00614	.00059	.00030	.00131	.00113	.00068	.00056
11	.04870	.03047	.02718	.02606	1.01838	.02132	.03213	.02547	.06548	.03731
12	.02669	.01387	.00407	.01027	.00786	1.00861	.01183	.00977	.01518	.01646
13	.05020	.02608	.00766	.01931	.01478	.01294	1.02224	.01837	.02855	.03096
14	.43321	.26102	.07202	.24808	.15006	.11322	.20007	1.17514	.31233	.29159
15	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000	1.00000	.00000
16	.00713	.00989	.00340	.00840	.00519	.00331	.01090	.00343	.01328	1.01718
17	.01841	.02626	.00584	.01110	.00819	.00544	.01297	.00557	.03291	.01908
18	.07342	.03946	.01078	.02755	.02086	.02455	.03443	.03212	.07726	.04137
19	.02101	.01381	.00657	.00878	.00841	.02115	.02867	.01525	.04455	.03378
20	.02873	.03272	.00839	.02194	.02210	.01924	.02443	.01626	.05216	.02420
21	.02386	.01723	.01823	.01192	.00793	.01274	.01947	.01365	.03471	.01837
22	.00146	.00810	.00026	.00151	.00044	.00613	.00086	.00067	.00170	.00085
23	.12305	.07157	.00834	.02262	.01802	.01895	.03273	.01884	.03499	.02251
24	.94225	.48956	.14384	.36242	.27741	.24294	.41744	.34474	.53582	.58111
	3.12325	2.56084	1.39710	2.11083	1.72171	1.98503	2.29230	2.00290	2.87039	2.52916

APPENDIX A. Table 3

Multiplier Matrix (Continued)

No.	Service		Real estate rental	Finance	Contractors		Local government	Households
	Repair	Other			Building	Other		
1	.01495	.01288	.01949	.01317	.01463	.00654	.01518	.01832
2	.01379	.01554	.02831	.01218	.00834	.00446	.01820	.01329
3	.00181	.00204	.00372	.00160	.00110	.00059	.00239	.00175
4	.00361	.00359	.00415	.00440	.00309	.00319	.00490	.00737
5	.00094	.00693	.00226	.00100	.01200	.00125	.00307	.00137
6	.03006	.02623	.03958	.02725	.02856	.01337	.03067	.03755
7	.02489	.02490	.03397	.02326	.05160	.01383	.03212	.03409
8	.07179	.08088	.14734	.06341	.04338	.02320	.09476	.06916
9	.21561	.12806	.15427	.09277	.09462	.05581	.12865	.13238
10	.00079	.00069	.00103	.00071	.00077	.00035	.00081	.00099
11	.04512	.04987	.16688	.04510	.12770	.01947	.06730	.05888
12	.01728	.01725	.01913	.02165	.01490	.00920	.02388	.03683
13	.03250	.03244	.03598	.04072	.02801	.01730	.04490	.06927
14	.36887	.30067	.35061	.35206	.26743	.16612	.42318	.56716
15	.00000	.00000	.00000	.00000	.00000	.00000	.00000	.00000
16	.01753	.02243	.03169	.04111	.00746	.00271	.00834	.00718
17	1.01242	.02449	.04268	.01284	.01502	.02879	.01761	.01459
18	.04739	1.05314	.06199	.05513	.03798	.02320	.13789	.08955
19	.04233	.02919	1.01913	.03875	.01453	.00804	.01976	.02540
20	.04219	.03947	.12943	1.03320	.02226	.01597	.02815	.03272
21	.02631	.02647	.10572	.02820	1.05526	.00824	.03384	.02901
22	.00102	.00107	.00170	.00103	.00139	1.10303	.00132	.00141
23	.02600	.02699	.13513	.02838	.02312	.01359	1.02343	.02721
24	.61004	.60878	.67534	.76428	.52579	.32464	.84279	1.30012
	2.66724	2.53400	3.20953	2.70220	2.39894	1.86289	3.00314	2.57560

Appendix B. Computation of Average Wage Received in Gasoline Service Stations, Food and Beverage Establishments and Retail Sector, 1964.

Item	Gasoline service stations	Food and beverage establishments	Other retail	Total
Number of employees	165	476	701	1,342
Payroll, first quarter	$112,000	$233,000	$ 590,000	$ 935,000
Total payroll[a]	$448,000	$932,000	$2,360,000	$3,740,000
Average wage (3) — (1)	$ 2,715	$ 1,958	$ 3,366	$ 2,787

Source: U.S. Bureau of the Census, County Business Patterns, 1964, Wyoming, CBP-64-52 (U.S. Government Printing Office, Washington, D.C.: 1965).

[a]Yearly wages are four times the wages paid the first quarter.

APPENDIX B

BRIEF OF THE LEGAL COMMITTEE, INTERNATIONAL ASSOCIATION OF GAME, FISH AND CONSERVATION COMMISSIONERS

IN OPPOSITION TO MEMORANDUM OPINION NO. 36672 ISSUED BY SOLICITOR FOR THE DEPARTMENT OF THE INTERIOR

Re: Authority of the Secretary of the Interior to manage and control resident species of wildlife which inhabit wildlife refuges, game ranges, wildlife ranges, and other Federally-owned property under the administration of the Secretary

Final Draft—Aug. 13, 1965

I. STATEMENT OF QUESTION INVOLVED

The Solicitor for the United States Department of the Interior has recently issued an opinion on the subject of "authority of the Secretary of Interior to manage and control resident species of wildlife which inhabit wildlife refuges, game ranges, wildlife ranges, and other Federally-owned property under the administration of the Secretary."

The specific question asked by the United States Fish and Wildlife Service is:

"Does the Secretary of the Interior have the *authority to promulgate regulations which control the hunting and fishing activities of the general public on land within the refuge system,* when such regulations are more restrictive than State fish and game laws?" [Emphasis supplied.]

This question, as submitted to the Solicitor, grew out of the position taken by various State fish and game departments and the ad hoc committee of the International Association of Game, Fish and Conservation Commissioners. As set forth in the Solicitor's opinion, this position is,

"That the Secretary may issue *only* hunting and fishing regulations for resident species of wildlife that incorporate completely State law, because all resident species of wildlife, other than migratory birds, are subject to the *exclusive* jurisdiction and control of the several States, and the States have some semblance of title to the resident species of wildlife."

The Solicitor affirmatively answered the specific question asked by the United States Fish and Wildlife Service, and concluded:

"It is our conclusion that the Secretary has ample legal authority to make hunting and fishing regulations for particular areas within the National Wildlife Refuge System that prohibit activities authorized and permitted by State law. The regulation of the wildlife populations on Federally-owned land is an appropriate and necessary function of the Federal government when the regulations are designed to protect and conserve the wildlife as well as the land."

But the most ominous contention made by the Solicitor is to be found in the following all-inclusive statement (page 5) of his opinion:

"From the foregoing authorities it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest in land within a State and, in the exercise of this proprietary interest, has constitutional power to enact laws and regulations controlling and protecting that land, including the persons, inanimate articles of value, and resident species of wildlife situated on such land, and that this authority is superior to that of a State."

It is the considered opinion of the legal committee of the International Association of Game, Fish and Conservation Commissioners that the Solicitor's opinion is erroneous.

II. EFFECT OF SOLICITOR'S OPINION ON STATES' CONSERVATION PROGRAMS

If the opinion of the Solicitor prevails, the States will suffer serious consequences with respect to their conservation programs. A tabulation annexed hereto indicates the extensive ownership of lands by the Federal government within the States. If the courts uphold the sweeping contention made in the Solicitor's opinion, the States would lose their regulatory power over resident game and fish on Federally-owned lands within their jurisdiction and also a considerable revenue derived from licenses since such licensing power would be displaced by Federal licensing structure as a result.

III. HISTORICAL DOCTRINE—STATE OWNERSHIP OF GAME AND FISH

The historical doctrine of ownership of game and fish by the several States is still basically the law of the land, as decided in *Geer v. Connecticut*, 161 U.S. 519 (1896).

It must be conceded in this day that whatever doubts may have existed as to the ownership of game and fish by the several States, that doubt was finally put at rest by the United States Supreme Court decision in the *Geer* case. The issue here was whether a statute passed by the Connecticut legislature prohibiting the transportation of game outside State boundaries violated the Commerce Clause of the Constitution. The Supreme Court went to great lengths researching the law which had been extant in many countries and through several centuries of history. The conclusion was that the States had inherited from the Crown and Parliament of England all the rights, both of property and sovereignty, which were exercised in England over game and fish.

In the majority opinion of Mr. Justice White, this transfer of sovereignty and proprietary right over game and fish is succinctly stated:

"Undoubtedly this attribute of government to control the taking of animals *ferae naturae*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters, or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the States with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal government by the Constitution."

In discussing the issue involved, namely, whether a State violated the Commerce Clause in prohibiting the transportation of game outside its borders, Mr. Justice White made the following salient observations:

"The foregoing analysis of the principles upon which alone rests the right of an individual to acquire a qualified ownership in game, and the power of the State, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the State of Connecticut here in controversy. The sole consequence of the provision forbidding the transportation of game, killed within the State, beyond the State, is to confine the use of such game to those who own it, the people of that State. The proposition that the State may not forbid carrying it beyond her limits involves, therefore, the contention that a State cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other States to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the State has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the State has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of State commerce, as a resulting necessity such property has become the subject of interstate commerce, and is hence controlled by the provisions of article 1, section 8, of the Constitution of the United States. But the errors which this argument involves are manifest. It presupposes that where the killing of game and its sale within the State is allowed, that it thereby becomes commerce in the legal meaning of that word. In view of the authority of the State to affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the State. It may well be doubted whether commerce is created by an authority given by a State to reduce game within its borders to possession, provided such game be not taken, when killed without the jurisdiction of the State. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the State necessarily entered into and formed part of every transaction on the subject, and

deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the State, under the provision in question, created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce, and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and interstate commerce is marked, and has always been recognized by this court."

That the United States government is not the owner of game and fish, despite its superior treaty-making power, was decided in *Sickman* v. *United States* (1950), 184 F 2d. 616. In this case, plaintiff landowners located adjacent to a game preserve brought action under the Federal Tort Claims Act to recover damages to their crops claimed to have been destroyed by migratory waterfowl. The landowners alleged that the United States by having wild geese in its possession and control is responsibile for any depredations which such geese may commit; and that the United States, when geese are in this country, is the owner of said geese, or is trustee for the high contracting parties to the treaties governing these migratory birds, and by reason of said trust owes the duty to protect innocent persons from damage which they may cause.

As to the ownership claim, the Court said:

"In the oral argument before this court, plaintiffs' counsel insisted that the United States government was the owner of the wild geese, at least while they were within the geographical confines of this nation. If counsel's theory is correct, presumably as such geese passed the Canadian boundary on their northern flight, and the Rio Grande River if they flew that far south, their ownership passed then to the governments of Canada and Mexico respectively. Plaintiffs' theory as to the ownership of migratory wild fowl which have not been reduced to possession is without merit and cannot be sustained.

* * * * * * *

"The United States, *considered as a private person*, did not have any ownership, control or possession of these wild geese which imposed liability for their trespasses. * * *"

IV. UNITED STATES SUPREME COURT DECISIONS MODIFYING STATE OWNERSHIP DOCTRINE

The doctrine of State ownership of game and fish has been only slightly modified by the United States Supreme Court in three cases. These are:

(1) *Missouri v. Holland*, 252 U.S. 416 (64 L. Ed. 641), held that the treaty-making power of the United States is supreme and thus the Migratory Bird Treaty and the Migratory Bird Treaty Act passed pursuant thereto are the supreme law of the land. Previously there had been an act of Congress regulating migratory birds which had been declared unconstitutional in *United States v. Shauver*, 214 Fed. 154 and *United States v. McCullagh*, 221 Fed. 288. This decision was based on the concept that the States owned migratory birds and that they could not be the subject of Congressional exercise of power. However, since the treaty-making power vested in the United States is part of the Supremacy Clause, the Supreme Court speaking through Justice Holmes held that a treaty on the subject of migratory birds supervenes all Federal and State constitutions and laws and creates rights superior to those previously exercised either by the States or their citizens. There is nothing in this decision which otherwise negates the holding in the *Greer* case that the States are owners of resident game and fish.

(2) *Toomer v. Witsell*, 334 U.S. 385 (92 L. Ed. 1460), held that when a State permits and encourages fish to enter the stream of interstate commerce, it cannot discriminate by imposing licensing fees and taxes on non-residents greater than those imposed on residents. This case involved the constitutionality of South Carolina statutes governing commercial shrimp fishing in the three-mile maritime belt off the coast of that State. The statutes in question permitted transportation of shrimp out of South Carolina but imposed a tax considerably higher than that paid by a resident of the State. They also imposed a fee on the shrimp boat—$25 if owned by a resident, and $2500 if owned by a non-resident.

Chief Justice Vinson in distinguishing this situation from that in *McCready v. Virginia*, 94 U.S. 391 (24 L. Ed. 248), pointed out that the *McCready* case related to a non-migratory fish species. It was also observed in the opinion that although the *Geer* case involved a statute prohibiting the transportation of game out of

the State, these statutes of South Carolina not only permitted the shrimp to be placed in interstate commerce but even encouraged the citizens of South Carolina to do so.

In applying the Commerce Clause, the Court said (p. 402):

"The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource. And there is no necessary conflict between that vital policy consideration and the constitutional command that the State exercise that power, like its other powers, so as not to discriminate without reason against citizens of other States."

Thus the fullest import of this decision is that even though a State may have plenary authority over its game and fish, it cannot avoid or circumvent the command of the Commerce Clause when it permits its game and fish to be placed in the stream of interstate commerce.

(3) *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (92 L. Ed. 1478), held that a State could not discriminate in the granting of fishing licenses as between aliens and citizens since under the Federal Constitution the power to regulate the activities of aliens is vested in the Congress.

Torao Takahashi, an alien of Japanese origin, was denied a license to engage in commercial fishing in the coastal waters of the State of California under a statute passed in 1943 prohibiting the issuance of such licenses to aliens ineligible for United States citizenship. Japanese fell within that class. Having been denied a license, Takahashi filed an action in mandamus in the State court to compel the Commission to issue him a license. The Supreme Court of California, 30 Cal. (2d) 719, 185 P. (2d) 805, validated the statute chiefly on the ground that California had a proprietary interest in the fish found in the three-mile belt and thus could bar aliens from participating in the taking of this species of State property.

Justice Black, writing the majority opinion, referred to *Truax v. Raich*, 239 U.S. 33, which involved the validity of an Arizona law militating against employers hiring alien employees. He stated:

"This court, in upholding Raich's contention that the Arizona law was invalid, declared that Raich, having been lawfully admitted into the country under federal law, had a federal privilege to enter and abide in 'any State in the Union' and thereafter under the Fourteenth Amendment to enjoy the equal protection of the laws of the state in which he abided; that this privilege to enter in and abide in any state carried with it the 'right to work for a living in the common occupations of the community,' a denial of which right would make of the Amendment a barren form of words.' "

The holding in this case of course must be limited to the issue involved, namely, whether a State can discriminate against an alien who apparently was making his livelihood from fishing in the waters of that State. The holding merely is to the effect that even though the State may have plenary authority over its resources such as game and fish, it cannot in the exercise of that authority deny aliens the same rights that it accords to its citizens because under the Federal Constitution the rights and immunities of aliens is a subject which has been vested in the Congress.

This again in no way upset or militated against the basic doctrine that the States not only are the owners of but exercise plenary authority over game and fish located within their boundaries.

Consequently, it is still the law of the land as can be garnered from decisions of both State and Federal courts that irrespective of the ownership of the land itself, the States still possess the primary proprietary and sovereign power to regulate and control the resident game and fish within their respective boundaries.

V. ANALYSIS OF SOLICITOR'S OPINION

A. Bases of Solicitor's contention

The Solicitor premises Federal power in the Congress to authorize the Secretary of the Interior to make the limited hunting and fishing regulations here specified upon:

1. Article IV, Sec. 3, clause 2 of the Federal Constitution, which provides:

"The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *."

2. The authority of the Federal government to acquire lands within a State by eminent domain for purposes within the ambit of its constitutional powers.

3. Article VI, clause 2 of the Federal Constitution, which provides:

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; * * *."

4. The sovereign proprietary interest of the United States as a landowner.

Based upon the cases cited, the Solicitor concludes:

"* * * it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest in land within a State and, *in the exercise of this proprietary interest*, has constitutional power to enact laws and regulations controlling and protecting that land, including * * * resident species of wildlife situated on such land, and that this authority is superior to that of a state." (Emphasis supplied.)

B. Analysis of Cases Cited by Solicitor

It is the purpose here to analyze critically the cases cited in the Solicitor's opinion, as well as others, to test the validity of the Solicitor's interpretation of the scope of Federal power under Art. IV, Sec. 3, clause 2 of the Federal Constitution to include the regulation by the United States of resident species of game upon Federally-owned lands.

None of the cases cited expressly support the Solicitor's broad conclusion.

1. *Hunt v. United States, 278 U.S. 96 (1928)*

This case involves the killing of deer on the Grand Canyon National Game Preserve by the District Forester under the direction of the Secretary of Agriculture. It arose because officers of the State of Arizona threatened to arrest and prosecute any person attempting to kill or possess or transport such deer for violation of the game laws of Arizona. Three persons who had killed deer under the authority of the United States officials were arrested. The United States brought suit against the Governor and Game Warden of the State of Arizona to enjoin them from continuing or threatening such proceedings. From a lower court decree in favor of the United States, the Governor and Game Warden appealed to the United States Supreme Court.

The Kaibab National Forest and the Grand Canyon National Game Preserve covered practically the same area in the State of Arizona. They were created by proclamations of the President under authority of Congress.

The Supreme Court found that the evidence made clear that the deer had injured the lands in the reserves by overbrowsing upon and killing young trees, shrubs, bushes and forage plants; that thousands of deer had died because of insufficient forage; and that the direction given by the Secretary of Agriculture to kill large numbers of the deer and ship the carcasses outside the reserve limits was necessary to protect from injury *the lands* of the United States within the reserve. The Court specifically mentioned the fact that observance of the State game laws "would have so restricted the number of deer to be killed as to render futile the attempt *to protect the reserves.*" [Emphasis supplied.]

The Court said:

"The direction given by the Secretary of Agriculture was within the authority conferred upon him by act of Congress. And the power of the United States *to thus protect its lands and property* does not admit of doubt (citing the Camfield case, the Utah Power and Light case, the McKelvey case and the Alford case), the game laws or any other statute of the state to the contrary notwithstanding."

The Supreme Court did not disturb or review a provision in the decree of the lower court that it "should not be construed to permit *the licensing* of hunters to kill deer within the reserve in violation of the state game laws." The decree of the lower court was modified by requiring all carcasses of deer and parts shipped outside the boundaries of the reserves to be marked to show that the deer were killed under the authority of the United States officials within the limits of the reserves.

2. *Camfield v. United States, 167 U.S. 518 (1897)*

Before analyzing the portion of the Solicitor's opinion which touches upon the constitutional powers of Congress to acquire, presumably without cession, the lands within the National Wildlife Refuge System for the various purposes of wildlife conservation,[1] we shall examine the early and often cited case of *Camfield v. United States*, 167 U.S. 518 (1897), from which the Solicitor has quoted as follows:

"The general Government doubtless has a power *over its own property* analogous to the police power of the several States, and the extent to which it may go in

[1] The portion of the opinion referred to is that which reads: "There can be no doubt that the Federal Government may acquire lands within a State for purposes within the ambit of its constitutional powers, and that it may do so by virtue of the power of eminent domain. *Fort Leavenworth R.R.* v. *Lowe*, 114 U.S. 525, 531 (1885). In the exercise of this power the United States has acquired land for many purposes, including wildlife refuges, game ranges, preserves, parks, and reservations, to name a few."

the exercise of such power is measured by the exigencies of the particular case." [Emphasis supplied.]

This quotation, while accurate, is taken out of context and does not accurately reflect the Court's own words of limitation contained in that opinion.

The *Camfield* case involved the construction and application of an act of Congress to prevent unlawful occupancy of public lands by making unlawful all fencing of public lands by persons having no claim of title. Defendants had fenced their own alternate odd numbered sections of land so as to enclose 20,000 acres of public land. The United States proceeded under this act to compel defendants to remove their fences. With respect to public domain land, the Court there said:

"While the lands in question are all within the state of Colorado, the Government has with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold from sale. It may grant them in aid of railways or other public enterprises. It may open them to pre-emption or homestead settlement; but it would be recreant to its duties as a trustee for the people of the United States to permit any individual or private corporation *to monopolize them for private gain*, and *thereby practically drive intending settlers from the market.* * * *" [Emphasis supplied.]

The Court there held the statute before it applicable to defendants' lands, and said:

"Considering the obvious purposes of this structure (fencing the specific odd numbered sections) and *the necessities* of preventing the inclosure of public lands, we think the fence is clearly a nuisance, and that is is within the constitutional power of Congress to order its abatement, notwithstanding such action may involve an entry upon the lands of a *private individual.* The government doubtless has a power over its own property analogous to the police power of the several States, and the extent it may go in the exercise of such power is measured by the exigencies of the particular case. *If it be found necessary for the protection of the public, or of intending settlers, to forbid all inclosures of public lands, the government may do so,* though the alternate sections of private lands are thereby rendered less available for pasturage. * * *

"While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a state, which it would have within a territory, we do not think the admission of a territory as a state deprives it of the power of legislating *for the protection of the public lands,* though it may thereby involve the exercise of what is ordinarily known as the police power, *so long as such power is directed solely to its own protection.* A different rule would place the public domain of the United States completely at the mercy of state legislation." [Emphasis supplied.]

3. *Utah Power and Light Co.* v. *United States, 243 U.S. 389 (1917)*

The Solicitor quotes the following from the *Utah Power and Light Co.* case:

"True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent *with full power in the United States* to protect its lands, *to control their use,* and to prescribe in what manner others may acquire rights in them." [Emphasis supplied.]

From this quotation the Solicitor seems to read into that case a determination that the ownership of land by the United States carries with it plenary power "to control the use of its land." There is the implication that this power extends to establishing a refuge for game other than such as is the subject of treaty.[2] It is submitted that this case must be read within the framework of the facts and claims of the parties.

The *Utah Power and Light Co.* case involved suits brought by the United States to enjoin the continued occupancy and use, without permission, of certain lands in forest reservations in Utah as sites for works employed in geneating electric power. Almost all the lands in the reservations belonged to the United States and before reservation by executive order with the express sanction of Congress were public lands subject to disposal under the general land laws.

The defendants (among them the Utah Power and Light Company) contended that their claims to the right to occupy such land must be tested by the laws of the State in which the lands were situated rather than by legislation of Congress.

Defendants also claimed that some of the regulations promulgated by the Secretary of the Interior under the Congressional act empowering the Secretary to make general regulations to permit the use of rights of way through public

[2] See U.S. Attorney General Opinion, Vol. XXIII, page 589 (Nov. 29, 1901) attached hereto.

lands, forest reservations and others go beyond what is appropriate for the protection of the interest of the United States and are unconstitutional, unauthorized and unreasonable.

To this the Court said:

"If any of the regulations go beyond what Congress can authorize, or beyond what is authorized, those regulations are void and may be disregarded; but not so of such as are thought merely to be illiberal, inequitable, or not conducive to the best results."

It should be noted that the Court supported only the position of the government that under Congressional authorization it had the constitutional power to protect government lands against trespass and injury. This is the right of every property owner whether public or private. There is no support in this case for the unfounded proposition in the Solicitor's opinion that this holding accords to the United States government rights in the game and fish on such lands—rights which belong to the States and cannot be taken away from them by mere ownership of lands even by the United States.

4. *United States v. Alford, 274 U.S. 264, 267 (1927)*

The Solicitor has made the following statement, citing in support thereof the cases of *United States v. Alford* and *Camfield v. United States*, supra:

"The authority of the proprietary interest is so substantial that it has been protected by holding enforceable Congressional statutes forbidding the acts on land adjoining Federally-owned lands that might endanger the latter."

Although this statement may be true, nevertheless the *Alford* case fails to support the proposition that by mere ownership of lands with its concomittant right to protect such lands against injury, the government of the United States ipse facto becomes the regulatory owner of resident game and fish.

5. *Chalk v. United States, 114 F 2d 207 (4th Cir., 1940)*

The Solicitor's opinion concludes with the following declaration:

"The basic constitutional authority appertaining to the proprietary interest in land owned by the United States has sustained the killing of game on Federally-owned land by Federal officials while acting within the scope of their authority, although acting in violation of the game laws of the State in which the land was located. *Hunt v. United States*, 278 U.S. 96 (1928); *Chalk v. United States*, 114 F 2d 207 (4th Cir., 1940).

"From the foregoing authorities it is apparent that the United States constitutionally empowered as it is, may gain a proprietary interest in land within a State and, in the exercise of this proprietary interest, has constitutional power to enact laws and regulations controlling and protecting that land, *including* the persons, inanimate articles of value, and *resident species of wildlife situated on such land*, and that this authority is superior to that of a State."

We totally disagree with these broad and unqualified conclusions and we submit the cases cited do not support them.

The *Hunt* case did not decide that there was Constitutional power under Art. IV to regulate and protect game *as a part* of the land in the exercise of Federal power to protect the land and property thereon.

The *Chalk* case planted decision on two grounds, namely, the protection of forest land itself from damage by an overabundance of game without sufficient pasturage and upon cession of the exclusive jurisdiction over wild game on the game preserve.

The *Chalk* case was a suit brought by the United States against the Commissioner of Game and Inland Fisheries of North Carolina and State officials under his direction and supervision to enjoin and restrain them from enforcing statewide game laws respecting game, birds and fish on lands of the United States known as Pisgah National Forest and the Pisgah National Game Preserve.

The case arose out of a determination by the United States Secretary of Agriculture that the deer herd in the Game Preserve was damaging and injuring the land and forest and authorizing the diminishing of the herd by hunting and trapping under conditions as the Chief of the Forest Service might find necessary.

On authority of *Hunt* v. *United States*, supra, the Court held that the United States had the undoubted right to protect its lands and property from severe damage. But the controlling issue upon which the Court planted its decision was that the land constituting the national forest had been acquired by the United States *with the consent of the State of North Carolina; and that there had been a cession of exclusive jurisdiction over the control of wildlife in the Pisgah Game Preserve by North Carolina to the United States under a 1915 act of the North Carolina*

legislature [3] which was accepted by subsequent amendments to the Weeks Act under which the game preserve was established within the boundaries of the National forest.[4]

Concerning this power, the Court stated:

"In addition to the inherent power of the Government to protect its property we have the power expressly ceded to the plaintiff by the State of North Carolina in the Act of 1915 * * *. In this Act the State ceded exclusive jurisdiction over the control of wildlife in the Pisgah Game Preserve to the Federal Government and such cession of jurisdiction for a limited purpose is exclusive as to that purpose, while not necessarily a cession of the right to legislate for all purposes.* * *

"*The State of North Carolina having granted to the plaintiff exclusive jurisdiction over the wild life in the Game Preserve, the State could not, by the passage of any General Game Law, in any way affect the right of the plaintiff under the cession.*" [Emphasis supplied.]

Again we say that these decisions in no manner support the magisterial but tenuous propositions and conclusions of the Solicitor that the United States government as the result of mere ownership of lands thereby acquires regulatory power over resident game and fish to the exclusion of the State in which the lands are located.

VI. BASIC FALLACY OF SOLICITOR'S OPINION—Failure to recognize the rule governing determination of rights accruing to the United States out of ownership of property (not public domain land, but property acquired by purchase or condemnation)

The fallacy of the Solicitor's broad and sweeping conclusions stems from his failure to recognize the elementary premise that the United States, despite its awesome sovereignty, in purchasing or acquiring lands in the several States secures only those miniments of title possessed by the owner in the role of seller.

Concededly, under the law of every State the prior private owner did not own any rights in the game and fish found on such lands as against the State, or at most he had a very limited and qualified right in the game and fish. By purchasing or acquiring lands from such prior private owner, the United States did not and could not secure the proprietary and sovereign rights which the State possessed in the resident game and fish involved.

That the United States government in acquiring land in the several States gets only such rights therein as are prescribed by State law is a proposition well supported by many court decisions. Among these decisions are the following:

(1) *United States v. Fallbrook Public Utility District, 165 F. Supp. 806 (1958)*

In this case the United States sought to claim certain water rights arising out of government ownership of land in California by reason of its sovereign status in spite of its prior stipulation disclaiming that for such reason it had "rights to a greater quantity of water than a person not a sovereign would have, standing in the position of the United States."

This District Court in ruling on a pre-trial motion refused to allow this claim and restricted the government's claim to that made by stipulation, which the Court stated to be

"The rights to the use of water which the United States acquired when it purchased the Rancho Santo Margarita. Such rights are the same rights, no more and no less, than the Rancho had, and hence the United States acquired the same rights as any private party who might have purchased the Rancho."

In the memorandum opinion, the Court said:

"Finally, we believe that *the stipulation accords with the law* in the matter (1) as to the rights claimed by the United States and (2) that state law controls. The stipulation recognized well-established law—that when the United States contracts or acquires property within a state, the law of that state controls what rights in the United States arise therefrom. (*United States v. Burnison*, 1950, 339 U.S. 87, 90, 70 S. Ct. 503, 94 L.Ed. 675; *Reading Steel Casting Co. v. United States*, 1925, 268 U.S. 186, 188, 45 S. Ct. 469, 69 L.Ed. 907; *United States v. Fox*, 1876, 94 U.S. 315, 320, 24 L.Ed. 192; *United States v. Nebo Oil Co.*, 5 Cir., 1951, 190 F.2d 1003, 1010; *United States v. Williams*, 5 Cir., 1947, 164 F.2d 989, 993; *Los Angeles & Salt Lake R. Co. v. United States*, 9 Cir., 1944, 140 F.2d 436, 437, certiorari denied 1944, 332 U.S. 757, 64 S. Cit. 1264, 88 L.Ed. 1586; *Werner v.*

[3] "An act to give the consent of the State of North Carolina to the making by the Congress of the United States, or under its authority, of all such rules and regulations as in the opinion of the Federal Government may be needful in respect to game animals, game and non-game birds, and fish on lands, and in or on the waters thereon, acquired by the Federal Government in the western part of North Carolina for the conservation of the navigability of navigable rivers."

[4] The amendment prohibited the taking of wildlife on such Preserves except under rules and regulations made by the Secretary of Agriculture.

United States D.C.S.D. Cal., 1950, 10 F.R.D. 245, 247.) All that Mr. Veeder has done is to stipulate in accordance with applicable law."

(2) *United States v. Nebo Oil Co., 190 Fed. 2d 1003 (1951)*

The doctrine that the law of the State where United States property is located governs determination of specific property rights in such land was upheld in the case of *United States v. Nebo Oil Co.*, supra. This was a suit brought by the United States for a declaratory judgment that it was the owner of minerals in 800 acres of land in Louisiana purchased for national forest subject to the prior sale of minerals under the land under statutory prescription. The Louisiana State Supreme Court had held a subsequent Louisiana statute which made mineral rights in lands sold to the United States subject to reservation or prior sale of such rights imprescriptible applicable to sales made to the United States prior to the effective date of the Act. This opinion was based upon a holding that, under Louisiana law, laws of prescription are retrospective in operation. The Federal Circuit Court of Appeals held it was bound by the State Court's interpretation of the subsequent statute. In disposing of the United States' contention that the latter statute as construed was unconstitutional as disposing of property belonging to the United States in violation of Art. IV, Sec. 3, Cl. 2 of the United States Constitution, the Court held that under Louisiana law the United States acquired no vested interesti n the minerals protected by the Constitution.

(3) *United States v. Fox (1876), 94 U.S. 315, 320.*

In this case the Court held that a devise of land in New York to the United States was void under a New York statute of wills which provided that a devise of lands in that State could be made only to natural persons and to corporations created under the laws of the State which were authorized to take by devise. It also held that it was bound by the holding of the New York Court of Appeals construing the state statute.

In arriving at its decision, the Court said:

"The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the *disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated.* McCormick v. Sullivan, 10 Wheat. 202. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal government. *The title and modes of disposition of real property within the State, whether inter vivos or testamentary, are not matters placed under the control of Federal authority.* Such control would be foreign to the purposes for which the Federal Government was created, and would seriously embarrass the landed interests of the State."

The principle of *United States v. Fox*, supra, was reaffirmed in *United States v. Burnison* (1950), 339 U.S. 87.

(4) *United States v. Williams, 5 Cir. (1947), 164 Fed. 2d 989; and Los Angeles & Salt Lake P. Co. v. United States, 9 Cir. (1944), 140 Fed. 2d 436*

State law controlled construction of the rights acquired by the United States as a purchaser at a judicial sale in *United States v. Williams*, surpa; and in *Los Angeles & Salt Lake R. Co. v. United States*, supra, a deed conveying California land to the United States was interpreted by California law.

(5) *Werner v. United States, D.C.S.D. Cal. (1950), 10 F.R.D. 245*

The *Werner* case involved a lease of land in California to the United States. The Court there said:

"Validity of the lease and option to renew in controversy here and the rights of the parties derived thereform are governed by the law of California where the land is situated and the lease was made. (Citations)"

(6) *Reading Steel Casting Co. v. United States (1925), 268 U.S. 186*

It is a basic legal doctrine that the rights of the United States in its property are determined by the same principles as govern conveyances between individuals. Such was the holding in *Reading Steel Casting Co. v. United States*, supra. This case involved rights in chattels. The Court there said:

"The contract is to be construed and rights of the parties are to be determined by the application of the same principle as if the contract were between individuals. *Smoot's Case*, 15 Wall. 36, 47; *Manufacturing Co. v. United States*, 17 Wall. 592, 595; *United States v. Smith*, 94 U.S. 214, 217."

(7) *United States v. Smith, 94 U.S. 214, 217.*

The above doctrine was also delineated in *United States v. Smith*, supra, where the Court through Mr. Justice Waite said:

"* * * it was decided in *Smoot's Case*, 15 Wall. 546, that the principles which govern inquiries as to the conduct of individuals, in respect to contracts, are equally applicable where the United States is a party."

But the Solicitor attempts to overcome this hurdle by arrogating to the United States rights and powers beyond that of a mere individual land owner by stating:

"These broad powers arise out of the proprietary interest of the United States to control the use of its land *and they exceed the powers of an ordinary land owner in the respect that the interest is held by a sovereign and carries with it enforcement powers, referred to as police powers.*"

It is clear that this statement of the Solicitor is not supported by the cases above cited and discussed.

VII. REGULATION OF MIGRATORY SPECIES

In United States v. Shauver, 214 Fed. 154, 156, the proposition that the United States government had inherent sovereign powers over migratory birds was rejected by the courts. In this case the constitutionality of the Act of March 4, 1913, c. 145, 37 Stat. at L. 847, protecting migratory birds and game, was before the District Court of the Eastern District of Arkansas. It was there contended by the United States that the Congress possessed the power to regulate migratory birds and game as an "implied attribute of sovereignty in which the national government has concurrent jurisdiction with the States."

The court disposed of this contention as follows:

"A similar argument was presented to the court in Kansas v. Colorado, 206 U.S. 46, 89, 27 Sup. Ct. 655, 664 (51 L. Ed. 956), but held untenable. Mr. Justice Brewer, speaking for the court, disposed of it by saying:

" 'But the proposition that there are legislative powers affecting the nation as a whole, which belong to, although not expressed in, the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the amendment, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the tenth amendment. This amendment, which was seemingly adopted with prescience of just such a contention as the present, discolsed the wide-spread fear that the national government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that, if in the future further powers seemed necessary, they should be granted by the people in the manner they had provided for amending that act. * * * Its principal purpose was not the distribution of power between the United States and the states, but a reservation of the people of all powers not granted.' "

Apparently the soundness of this decision was accepted by the United States officials and it was succeeded by the neogtiation of the Migratory Bird Treaty and adoption of the Migratory Bird Treaty Act, both sanctioned by the Supreme Court in *Missouri* v. *Holland*, supra.

Consequently, the rights and powers acquired by the United States when it secures title to lands by purchase or condemnation cannot be tested by any nebulous or far-fetched assertion of inherent sovereignty. The true test is similar to that applicable to lands owned by a private owner, namely, the doing of those things or the taking of such action as may be necessary to preserve and protect the muniments of title which the government received from the former private owner. The extent of these muniments of title must be tested by the laws of the States in which the land is situated. Since game and fish are not part of the muniments of title, and since the United States does not have any inherent sovereignty over game and fish as such, this contention of the Solicitor must necessarily fall because it cannot be sustained by its own bootstraps.

VIII. SCOPE OF FEDERAL POWER DEFINED

The correct approach to the problem of the Federal government's power to regulate resident species of wildlife on Federally-owned land in the National Wildlife Refuge System is developed by the Court in *United States* v. *2,271.29 Acres, More or Less, of Land in LaCross, Trempeleau, Vernon and Grant Counties, Wis., et al.*, 31 F. 2d 617 (1928). This was a condemnation proceedings for lands in the Upper Mississippi Wild Life and Fish Refuge, provided for by Act of

Congress of June 7, 1924. The Attorney General of Wisconsin appeared and contended that the legislative consent involved in the case violated the State Constitution. He argued that:

"* * * the state holds and controls navigable waters in trust for its people, and may not delegate such trust to another sovereignty, and it is under similar nondelegable obligation to its people with respect to game animals, fowl, and fish.

"*It is not to be denied that the national government may acquire lands necessary or convenient for the exercise of its powers, within any of the states, and that neither the consent of the states nor of individuals is necessary.* Kohl v. United States, 91 U.S. 367, 23 L. Ed. 449.

The court found that no navigable waters were involved so that no question of unlawful abdication of the State's obligation to the people in that respect was considered.

On the question of Federal power to regulate game in connection with refuges established under the Migratory Bird Treaty Act, the court said:

"But it is clear, also, that the right to regulate the taking and use of game and fish is, generally speaking, in the state as an attribute of its sovereignty, subject only to valid exercise of authority under the provisions of the Federal Constitution. Geer v. Connecticut, 161 U.S. 519, 16 S. Ct. 600, 40 L. Ed. 793; Ward v. Racehorse, 163 U.S. 504, 16 S. Ct. 1076, 41 L. Ed. 244; Kennedy v. Becker, 241 U.S. 556, 564, 36 S. Ct. 705, 60 L. Ed. 1106; Carey v. South Dakota, 250 U.S. 118, 120, 39 S. Ct. 403, 63 L. Ed. 886.

"In so far as the 'Refuge Act' relates to migratory birds within the terms of the treaty with Great Britain (39 Stat. 1702) and the Migratory Bird Act (40 Stat. 755 [16 USCA Sec. 703 et seq.]), the state's power to consent to the acquisition of land for the purpose of conserving migratory bird life is not open to question. The national government's power to regulate the taking and use of such birds was upheld in Missouri v. Holland, 252 U.S. 416, 40 S. Ct. 382, 64 L. Ed. 641, 11 A.L.R. 984, and there can exist in the State of Wisconsin no trust or obligation to its people requiring it to refuse consent that the national government carry out the latter's constitutional powers. On this branch of the case there remains only the question of the validity of the state's consent relating to game animals, birds (other than migratory), and fish.

"In this connection it may be well to note that the 'Refuge' Act contemplates no general regulation of the game and fish within the State, but merely that the United States shall acquire and own a limited tract or tracts of land to be used as a refuge and breeding place for such game. Manifestly the purpose is conservation by an approved and effective method, providing a place of limited area where such game may resort, thrive, and multiply, and to that end hunters and fishermen may be excluded under regulations of the Secretaries of Agriculture and Commerce, and prosecuted by the Federal authorities in federal courts for violation of such regulations.

* * * * * * *

"As I view the so-called 'Refuge' Act, it establishes primarily a refuge for migratory birds. Congress apparently recognized the fact that, as a necessary and natural result of establishing such a refuge, nonmigratory birds, game generally, and in so far as the lands were overflowed, fish, would resort thereto and breed therein, so that incidentally the area would become a refuge for many kinds of game. Their increase in the area might or might not become inimical to the welfare of migratory birds. On the other hand, the presence of some varieties of other game and fish, and the conservation of aquatic plants, etc., will undoubtedly be of great value to the area as a refuge for migratory fowl. So it seems quite essential that, as an incident to the maintenance of the refuge for migratory birds, those in charge have some power of regulation over the number and kinds of other game present, and also, in order that the migratory birds may be secure in their refuge, that hunters and fishermen be at times excluded. Thus as an incident to the main purposes arises the necessity of regulation of game which ordinarily is subject to regulation by the state alone. United States v. Shauver (D.C.) 214 F. 154; U.S. v. McCullaugh (D.C.) 221 F. 288. This intent of Congress to give to the Secretaries of Agriculture and Commerce the right of regulation of game other than migratory birds, as an incident merely to the main purpose, is clearly and definitely indicated by the phrases 'to such extent,' as they are used in section 3 of the act.

* * * * * * *

"What has been said goes far to solve the other questions raised by the challenge of the validity of the 'Refuge' Act as beyond the power of Congress. *The power of Congress to establish a refuge for game, other than such as is the subject of treaty,*

may well be seriously doubted. See Missouri v. Holland, U.S. v. Shauver and U.S. v. McCullaugh, supra. It may be assumed that it has no such power. Nevertheless it may conserve migratory birtds, and do what is reasonably necessary to carry out that power.

"It has long been settled that Congress may select the means to carry out a federal function, without interference from the courts. Granting the power to establish a refuge for migratory birds, it follows that it is well within the power of Congress to authorize the Secretary of Agriculture to acquire lands within a state for that purpose, and to authorize the Secretaries of Agriculture and Commerce to make such regulations relating to wild life generally, including non-migratory game and fish, as becomes reasonably necessary to maintain a proper and efficient migratory bird refuge, and such other regulations as may attend the proprietary ownership of the area by the government under subsection 2, sec. 3, art. 4 of the Constitution. Thus viewed, no lack of power in Congress to enact the 'Refuge' Act is perceived." [Emphasis supplied.]

Although the Solicitor recognizes the general power of the States to protect fish and game within their territorial limits as an attribute of the States' sovereignty, nevertheless he infers that it is open to question whether the States' sovereign power over hunting and fishing extends to *any* Federally-owned land. This inference is not consistent with prior decisions of the Solicitor for the department of the Interior, or the Attorney General of the United States.

In an opinion by Attorney General John W. Griggs to the Secretary of State dated September 20, 1898 (Opinions of U.S. Attorney General, vol. 22, page 214 et seq.) pertaining to the power of the United States to enter into treaty stipulations with Great Britain for the regulation of the fisheries in waters of the United States and Canada along the international boundary, he said:

"The regulation of fisheries in navigable waters within the territorial limits of the several States, in the absence of a Federal treaty, is a subject of State rather than of Federal jurisdiction. Congress has the paramount right to regulate navigation in the navigable waters of the United States, but Congress has no authority, in the absence of treaty regulations, to pass laws to regulate or protect fisheries within the territorial jurisdiction of the States. (McCready v. Virginia, 94 U.S. 391; Lawton v. Steele, 152 U.S. 133.)"

In an opinion of the Department of the Interior dated April 15, 1931 (Vol. 53, page 349), on the applicability of State fish and game laws to lands allotted to Indians from the public domain, it is said (page 361):

"* * * and on the public domain 'The power of all the States to regulate the killing of game within their borders will not be gainsaid.' (Ward v. Race Horse, 163 U.S. 504)."

In another opinion of the Department of the Interior dated February 12, 1943 (Vol. 58, page 331), the following was expressed relating to regulations of hunting and fishing on land ceded by the Shoshone and Arapahoe to the United States under treaty for disposition as provided by Congressional Act (33 Stat. 1016):

"But it is still necessary to determine whether the United States had any interest in the ceded lands that the State was barred from exercising its police power over them. Although the tribal councils no longer could regulate hunting and fishing on the ceded lands, such a power, it might be argued, was vested in the Secretary of the Interior as conservator of the public domain.

"There is no doubt, however, that the State can enforce its conservation laws on public lands. The Federal Government, to be sure, if necessary to protect its interests in such lands, may disregard State conservation laws, but in the absence of an overriding *Federal interest,* they remain applicable. Although it has been held that, under authority conferred by statute, Federal administrative officers could proceed to exterminate deer committing depredations in a national forest despite inhibitions of State conservation laws, it is implicit in this decision that the State conservation laws would normally have governed (Hunt v. United States, 278 U.S. 96). Federal jurisdiction over game in a national forest was based on an express cession of State jurisdiction in Chalk v. United States, 114 F (2d) 207 (C.C.A. 4, 1940). As said by Mr. Justice Brandeis in Omaechevarria v. Idaho, 246 U.S. 343, 346:

> '* * * The police power of the State extends over the federal public domain, at least when there is no legislation by Congress on the subject. * * *'

"The crucial question in determining the applicability of State conservation laws to ceded Indian lands is whether the exercise of this jurisdiction will interfere with or embarass the Federal Government in the execution of *the purpose for which it holds the lands.* Even if State jurisdiction over such lands be conceded,

still it does not extend as the court said in the Utah Power and Light Co. v. United States, 243 U.S. 389, 404:

> '* * * to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them.'

See also Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525; Arlington Hotel Company v. Fant, 278 U.S. 439; Surplus Trading Company v. Cook, 281 U.S. 647; James v. Dravo Contracting Co., 302 U.S. 134; Stewart & Co. v. Sadrakula, 309 U.S. 94. * * *

"I fail to perceive, however, any overriding Federal interest which would justify regulation by the Secretary of Interior of hunting and fishing on the ceded lands."

IX. CONCLUSIONS

Therefore, in view of the well-established and historical concept that all fish and wildlife found within the territorial limits of the States are the property of the several States and thus subject to their primary and sovereign control and regulation, various situations and relationships have to be considered in determining what authority the Federal government may exercise over fish and wildlife found on Federally-owned lands. These are outlined below:

1. *Lands owned by the Federal government concerning which the State has made no cession of jurisdiction*

(a) The State can regulate resident species of game and require persons to secure State licenses in order to hunt on such lands.

(b) Within the limits of Congressional authority, the Federal government through its duly authorized agency can prohibit hunting and impose restrictions on hunting which are more restrictive in their nature than those provided by State law. This it does in the exercise of its prerogatives and rights as a proprietor of the land it owns.

(c) When it becomes necessary to protect Federally-owned property from injury or destruction caused by depredations of resident species of wildlife, within the limits of Congressional authority the Federal agency in charge of such lands may reduce by its own agents the species involved. This the Federal government does as an ordinary proprietor of such lands for their protection against destruction by wildlife. This authority is no different from the right exercised by a private land owner, although many State laws require that he secure a permit for the killing of such wildlife.

(d) The Federal lands referred to in the Solicitor's opinion are designated as "wildlife refuges, game ranges, wildlife ranges and other Federally-owned property under the administration of the Secretary." So long as there has been no cession of jurisdiction by the State to the Federal government with respect to any lands, it is of no importance what they are called or what uses the Federal government intends to make of them.

2. *Federal Enclaves*

(a) In many States there exist areas known as Federal enclaves. These are areas containing Federally-owned lands concerning which there has been an unconditional cession of jurisdiction to the United States government. By this act of cession the State has relinquished its authority and jurisdiction excepting as to such matters which it might have reserved in the cession of jurisdiction. In effect, the lands of such Federal enclaves revert to their status of Federal territory. Consequently, assuming that in such unconditional cession of jurisdiction the State has not reserved the right to regulate and control hunting and fishing, the Federal government and not the State in such instance would have the authority to regulate these activities and the species of wildlife found upon such lands.

(b) Federal enclaves of course do not encompass the entire area of any State, and consequently the State can regulate and license the possession and transportation of wildlife occurring within the territory over which it still has jurisdiction. Therefore any person who either hunts or fishes on such enclaves nevertheless must comply with State laws regulating licensing, possession and transportation of game and fish taken in the enclave upon leaving the enclave and setting foot on the area under State jurisdiction.

3. *Principles Applicable to Fisheries*

The principles applicable to the fisheries and fishing are different from those applicable to resident game. In some States the riparian owner is given title to the bottomland of such waters; but even in those States, such as in Michigan, the State has a paramount and perpetual trust in all of its waters for the maintenance

and preservation of the fish life therein. Consequently, whenever the Federal government purchases or condemns privately owned lands riparian to a body of water, it acquires only those rights which the private owner possesses. Therefore, whatever rights and authority States exercise over such waters and the bottomlands thereunder (except such rights as the Federal government exercises under the Commerce Clause), States may continue to exercise despite Federal ownership of such riparian lands.

The result is that the Federal government, even though it owns riparian lands, has no authority to regulate or control in any way either the fishery or the right of fishing in waters under State jurisdiction. Of course, should the State make an unconditional cession of jurisdiction to the Federal government of an area which includes lakes or rivers without reserving its authority over the fisheries, then the State has lost its authority to regulate or manage such fisheries.

4. *The Effect of Treaties on Wildlife and Fish*

A treaty negotiated under the treaty-making power of the United States becomes the supreme law of the land and all State or Federal laws become subordinate to the provisions of such a treaty. The Migratory Bird Treaty implemented by the Migratory Bird Treaty Act supervenes any State or Federal law. The government of the United States exercises the powers granted under the treaty, not as a land owner, but as sovereign. The provisions of a treaty vesting authority n the Federal government to regulate certain species of migratory wildlife supersedes State authority and consequently any State laws in contravention of a treaty are null and void.

At the present time there is no treaty vesting the Federal government with authority to regulate the fisheries found within the States of the United States. Thus it cannot regulate any of the fisheries, even those found within the Great Lakes.

Appendix C

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., October 24, 1967.

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

Dear Senator Jackson: Since our letter of October 4, 1967, recommending enactment of S. 444, we understand that an amendment to this bill is being considered by some which would revise section 4 of the bill substantially. Section 4 reads as follows:

"Sec. 4. The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: *Provided,* That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment."

We are taking this opportunity to comment in opposition to the proposed amendment.

In our opinion, the language of this section, particularly the proviso, is important to the proper administration of any national recreation area, whether it be administered by this Department or by the Department of Agriculture, and it should not be revised. Similar language may be found in a number of statutes authorizing the establishment of national recreation areas—e.g., section 5 of the Act of October 8, 1964 (78 Stat. 1040), establishing the Lake Mead National Recreation Area; section 6 of the Act of September 1, 1965 (79 Stat. 614), establishing the Delaware Water Gap National Recreation Area; section 6 of the Act of May 31, 1966 (80 Stat. 191), establishing the Mount Rogers National Recreation Area; and section 4 of the Act of October 15, 1966 (80 Stat. 914), establishing the Bighorn Canyon National Recreation Area.

Section 4 of S. 444 directs the Secretary of Agriculture to permit hunting, fishing, and trapping on the lands and waters within this new recreation area in accordance with applicable Federal and State laws. The drafters of this language recognized that there may be portions of the recreation area where such activities should not be permitted for reasons of public safety, good administration of the area, including the resources thereon, and public use and enjoyment. For example, it would not be in the public interest to permit hunting in a portion of the area that is intensely used by the non-hunting public for picnicking or swimming. Also, it may be that all or part of the recreation area should be closed because of a fire hazard. To meet these possibilities, the drafters wisely gave the Secretary of Agriculture authority to designate zones where and establish periods when such activities will not be permitted. But he may only exercise this authority after consultation with the State fish and game commissions. This consultation provision, while we do not object to it, is a limitation on our authority as a landowner, because a private landowner may refuse to permit hunting or fishing on his land without consulting with anyone.

The proposed amendment would take away this important authority. It would leave the Secretary of Agriculture powerless to cope with these situations. We believe that such an amendment is not in the public interest.

There is considerable history behind this proposed amendment. For some time now, the fish and game directors of the States, through the International Association of Game, Fish, and Conservation Commissioners, contend that the States have title to, and ownership of, all fish and wildlife and exclusive authority and jurisdiction to regulate the taking of such fish and wildlife, except migratory birds, on all lands within the State, including Federal lands, except where the States have ceded exclusive jurisdiction to the United States. This Department does not agree with this contention. The law does not support the State's theory. A number of bills, however, have been introduced in the House of Representatives which are designed to legislate the State's theory into law (see *Missouri* v. *Holland*,

252 U.S. 416 (1920), and *Toomer* v. *Witsell*, 334 U.S. 385 (1948)). We have been asked to comment on those bills and will in the near future.

In the meantime, we have been working with the Association to develop mutually acceptable policy statements concerning fish and wildlife regulation and control on Federal lands administered by this Department. It is our view that this approach to the problem is far better, from the standpoint of furthering this Nation's conservation movement, than the legislative approach.

In furtherance of this approach, this Department, in consultation with the Association, adopted a policy statement covering Federal lands within the National Wildlife Refuge System. We are advised by the Association's spokesmen that this policy statement is quite satisfactory to them. Paragraphs 1 and 3 of that statement are as follows:

"1. The Department will continue to permit, on such areas within the System, the harvest of fish and resident wildlife in accordance with State regulations unless the Secretary determines after consultation with the States that public access to these areas for the purpose of hunting or fishing should be restricted or limited;

"3. The Secretary of the Interior will continue to consult with the appropriate State agency when it is necessary to develop management plans for limiting over-abundant populations of fish and resident wildlife on areas within the System, and secure the concurrence of the State agency except where injury is occurring or about to occur;"

As you can see, these paragraphs, like the proviso in section 4 of S. 444, contemplate some situations where hunting or fishing must be restricted or limited. The Association has recognized this fact in the case of the National Wildlife Refuge System. We believe that, upon careful reflection, they would recognize that the principle is the same for all Federal areas. Accordingly, we strongly urge your Committee to retain this proviso in section 4 of the bill.

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,

STANLEY A. CAIN,
Assistant Secretary of the Interior.

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