ACREAGE LIMITATION EXEMPTIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER RESOURCES

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

S. 1733

A BILL TO PROVIDE FOR THE DIFFERENTIATION BETWEEN PRIVATE AND PUBLIC OWNERSHIP OF LANDS IN THE ADMINISTRATION OF THE ACREAGE LIMITATION PROVISIONS OF FEDERAL RECLAMATION LAW

JULY 2, 1968

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CONTENTS

STATEMENTS

COMMUNICATIONS

ACREAGE LIMITATION EXEMPTIONS

TUESDAY, JULY 2, 1968

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER RESOURCES
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

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

Present: Senators Church, Moss, Allott, Jordan of Idaho, and Hansen.

Also present: Jerry T. Verkler, staff director; Daniel A. Dreyfus, professional staff member; and E. Lewis Reid, minority counsel.

Senator CHURCH. The hearing will come to order.

The purpose of this hearing before the Water and Power Resources Subcommittee this morning is to take testimony on S. 1733, introduced by Senator Jordan for himself and cosponsored by myself, to provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law.

The policy of the Department of the Interior is to apply the acreage limitation of reclamation law to lands in State and other public ownership. S. 1733 provides that such lands would be exempt from the acreage limitation.

The text of S. 1733 and the reports of the Department of the Interior and the Bureau of the Budget will be inserted in the record at this point.

(The data referred to follow:)

[S. 1733, 90th Cong., first sess.]

A BILL To provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplemental thereto) which limit the acreage of irrigable land held in private ownership which may receive irrigation benefits from, through, or by means of Federal reclamation works, shall not be applicable to lands owned by States, political subdivisions, and agencies thereof, and local public bodies organized pursuant to State law for nonprofit purposes and performing functions which, in the opinion of the Secretary of the Interior, are of public nature and purpose.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 1, 1968.

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

DEAR MR. CHAIRMAN: This is in reply to your letter of May 12, 1967, requesting the views of the Bureau of the Budget on S. 1733, a bill, to provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law.

The purpose of this bill is to exempt from the application of reclamation excess land laws those lands owned by States, State agencies, and nonprofit agencies chartered under State law which are performing functions of a public nature and purpose in the opinion of the Secretary of the Interior. We understand that S. 1733 was originally introduced because of the proposed application of excess land laws to certain lands in the State of Idaho. The bill would have general application, however, covering over 25,000 acres in nine Western States now owned by States and their political subdivisions.

We do not have enough information on the State-owned lands in Idaho or similar lands in other States to come to a firm conclusion regarding the merits of legislation to exempt these lands from Federal excess land laws. However, we are concerned about piecemeal amendment of Federal excess land laws. We believe it desirable to hold exceptions to those laws to a minimum until a comprehensive review of acreage limitation laws provides a basis for consistent overall legislative reform.

With specific reference to S. 1733, we would have no objection to enactment if the bill is amended as recommended by the Department of the Interior in its report and if Congress finds that separate legislation for State-owned lands is justified.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 1, 1968.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on S. 1733, a bill to provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law.

We recommend enactment of the bill only if amended as indicated herein.

This bill provides that the provisions of Federal reclamation law (act of June 17, 1902), 32 Stat. 388, and acts amendatory thereof and supplementary thereto) which limit the acerage of irrigable land held in private ownership which may receive irrigation benefits from, through, or by means of Federal reclamation works, shall not be applicable to lands owned by States, political subdivisions, and agencies thereof, and local public bodies organized pursuant to State law for nonprofit purposes and performing functions which, in the opinion of the Secretary of the Interior, are of public nature and purpose.

We understand that S. 1733 was introduced because of the proposed application of these laws by the Department of the Interior to an agriculture experiment station operated by the University of Idaho and a farm operated by the Idaho State School and Hospital. The acreage limitation provisions found in reclamation law have as their objective the encouragement of farming carried out on family-size farms of 160 acres or less. It has been the concern, both of this Department and the Congress, that the benefits of Federal reclamation projects not inure to a few large landowners, and the acreage limitation embodies this policy by requiring that ownership of land receiving project water be in small family-size units.

Repayment by the water users of the costs of reclamation projects allocated to irrigation is limited by ability to pay, interest free, spread over a long period of years, and reduced by the application of power revenues. It has been the long-established policy of Congress that such financial assistance is justified by the resulting economic and social benefits to the Nation.

The matter of the applicability of the excess land laws to lands owned by the States has arisen several times in the past.

The Department of the Interior has been specific in declaring that the excess lands provisions of reclamation law apply to all non-Federal owners. In a letter to the Assistant Attorney General, Department of Justice, dated January 23, 1967, the Solicitor of this Department stated:

"In summary, it is the opinion of this Department that these basic [excess lands] provisions of reclamation law apply to any and all landowners who have lands within a reclamation project. The language 'in private ownership' is prop-

erly read to mean any non-Federal ownership. This includes the States. Allowing individual States to maintain large landholdings would be inconsistent with the congressional desire to diversify ownership and to encourage family farming * * *. Therefore, it would be inconsistent with the clearly expressed intention of Congress to allow the States to avoid the provisions of the excess land laws."

Without mitigating circumstances being present, there seem to be no reasons why irrigated farming should be carried out on excess acreage owned by the States, or their subdivisions, when the same activity cannot be done by private citizens.

There are instances of State-owned lands located within reclamation projects which are not farmed primarily to raise revenue. Among these might be hospital and prison farms, State-operated welfare institutions, or lands used for agricultural research by public educational institutions. Often such lands are leased to private individuals who carry on the actual farming. However, the principal reason for the cultivation of these lands lies not in the raising of revenue for the lessee or the owner of the lands. Rather, public benefits are afforded by such use. To supply reclamation project water to excess lands devoted to these sorts of uses would not be contrary to the policy behind the excess lands provisions of reclamation law.

In order to narrow the coverage of S. 1733 to situations of this nature, we propose an amendmet to the bill. On page 1, line 8, after the word "works," add the following language.

"shall not be applicable to lands which are owned by any State or political subdivision thereof, or public agency or institution of such State or political subdivision, so long as such lands are farmed by such State, subdivision, agency, or institution in the direct furtherance of a public function thereof, but not for the rasing of revenue, as determined by the Secretary of the Interior."

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,

KENNETH HOLUM,
Assistant Secretary of the Interior.

(Subsequent to the hearing the Treasury Department asked to file a report. It is as follows:)

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., August 1, 1968.

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

DEAR MR. CHAIRMAN: The Department would like to take this opportunity to present its views on S. 1733, "To provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law."

The bill would provide that the provisions of Federal reclamation laws which limit the acreage of irrigable land held in private ownership which may receive irrigation benefits from, through, or by means of Federal reclamation works, shall not be applicable to lands owned by States, political subdivisions, and agencies thereof, and local public bodies organized pursuant to State law for nonprofit purposes and performing functions which, in the opinion of the Secretary of the Interior, are of public nature and purpose. The introductory remarks of the sponsor of S. 1733, which appear in the Congressional Record for May 10, 1967, indicate that the bill was introduced because of the proposed application of the excess land law requirement to an agriculture experiment station and a State school and hospital farm.

Under the Federal water resources program, irrigation is heavily subsidized. This subsidy arises in two ways: (1) irrigation water users are generally not required to repay the total costs allocated to irrigation, and (2) the portion of total costs allocated to irrigation which is repayable by irrigation water users is repaid without interest. The present value of this interest rate subsidy under current market conditions is equal to approximately two-thirds of the original amount repayable by the irrigation water users. In order to spread this irrigation subsidy as widely as possible and to limit the amount of subsidy derived by any single landowner, reclamation law generally places a limit on the number of acres under any one ownership that may receive project water.

We have no knowledge of the need or justification for the additional irrigation subsidies which would result from the bill. In this connection, the introductory remarks of the sponsor of the bill do not provide any indication of intent to extend additional irrigation subsidies to the State and local agencies which would be affected by the bill. In fact, the sponsor's remarks indicate concern simply with the availability of water to these agencies.

Water could be made available without subsidy to the excess land holdings of the affected agencies by providing for the repayment of the total costs attributable to irrigation of such lands with interest at a rate sufficient to cover the estimated current cost of money to the Treasury. Interest-bearing repayment of costs attributable to irrigation of excess land holdings is required of landowners served by projects constructed under the Federal small reclamation project program.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

ROY T. ENGLERT,
Acting General Counsel.

Senator CHURCH. I would like first to call upon the principal sponsor of the bill, Senator Jordan, for whatever remarks he would like to make.

STATEMENT OF HON. LEN B. JORDAN, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator JORDAN. Just a short statement. Thank you, Mr. Chairman.

As sponsor of this bill I am glad to have the opportunity to discuss the matter which threatens to interfere with and obstruct the operation of some of our State-owned experiment stations and the Idaho State School and Hospital for the Mentally Retarded. Section 5 of the Reclamation Act states:

> No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landlord.

A decision by the Solicitor of the Department of Interior to the effect that lands not in Federal ownership were considered private lands for the purposes of the reclamation law has seriously affected some of our institutions in Idaho, and I am sure in other States as well.

The Bureau of Reclamation advised the officials of the Caldwell Idaho Experiment Station, owned by the University of Idaho, and the Idaho State School and Hospital for the Mentally Retarded at Nampa, Idaho, that water would be delivered as usual during the 1967 crop season if amendatory legislation had been introduced in Congress to correct the situation. That is the reason this bill was introduced on May 10, 1967.

We may have other institutional farms or experiment stations in our State in the same category. These are operated as a public benefit and not for profit. They do not have excessive acreage, but they do exceed 160 acres. It seems unreasonable that tracts such as these would be limited to 160 acres for irrigation while a man and wife operating a farm as a unit may receive water for 320 acres of land. The 160-acre irrigation limitation on these nonprofit institutional lands would cause them to idle cropland, equipment, and manpower so they cannot efficiently produce to their capacity or fulfill the functions they were established to perform.

This bill would in no way interfere with the operation of acreage limitation on privately owned land. It will assist in the development

of our agricultural economy, which we are all trying to improve, and the rehabilitation and training of the mentally retarded.

I feel sure that Congress did not intend to penalize institutional experiment nonprofit programs, and hope that the committee will give favorable consideration to the proposal contained in this bill.

Senator CHURCH. Thank you very much, Senator Jordan.

Have any other members of the committee a statement they would like to make at this time? If not, we will call our first witness, Mr. Floyd E. Dominy, Commissioner of the Bureau of Reclamation, Department of the Interior. I understand you are accompanied by Maurice Langley, of the Division of Water and Land Operations.

Will you proceed, sir.

STATEMENT OF HON. FLOYD E. DOMINY, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY MAURICE N. LANGLEY, CHIEF OF DIVISION OF WATER AND LAND OPERATIONS, AND ALFRED J. BURROWS, COMPLIANCE AND SETTLEMENT OFFICER

Mr. DOMINY. That is correct. In addition to Mr. Langley, I have Mr. Burrows, the Compliance and Settlement Officer in that Division, so we will be prepared to discuss any details of this problem that the committee would be interested in this morning.

Mr. Chairman and members of the committee, it is a pleasure to appear before this subcommittee in support of S. 1733 which we consider to be a very beneficial legislative proposal. As indicated in our departmental report on S. 1733, the purpose of this bill, if amended as proposed, would be consistent with the purpose and intent of reclamation law. Therefore we recommend enactment of the bill with the amendment proposed in the departmental report.

If so enacted, it would afford an exemption from the acreage limitation provisions of law to irrigable lands on reclamation projects owned by States, political subdivisions thereof, and appropriately related public agencies and institutions to the extent that the lands in question are not farmed primarily for revenue-raising purposes.

Several typical examples of land use that we believe should be afforded the exemption contemplated by this bill are mentioned in the Department's report. It may prove helpful to review a number of the most frequently encountered situations.

The situation which presently receives the greatest degree of attention involves land owned by State universities and colleges and used for agricultural experiment and instructional purposes. To properly conduct such experimental programs, an adequate acreage must be available on which to establish control plots and various experimental techniques.

A number of such experimental complexes may be involved, depending on the variety of crops, cultivation practices, irrigation techniques, and related research upon which experiments are being conducted. Without the exemption that would be afforded by S. 1733, however, the State, as the owner of such lands, may be limited to a single experimental station of inadequate size, thus, significantly restricting the flow of benefits that would otherwise accrue to irrigators from a more effective and comprehensive research program.

97-479—68——2

Demonstration farms or similar establishments are frequently located on lands owned by the State or its political subdivisions. The principal benefit that acrues from such establishments is the dissemination of agricultural and related information in the early years of new reclamation projects. Such demonstration farms constitute one of the most practical ways of bringing the benefits of research directly to the private farm operators in an agricultural community.

Public institutions of States, counties, or cities which own and operate irrigable lands on reclamation projects for public purposes would also be afforded relief by S. 1733. Frequently, agricultural acreage is utilized for hospital farms, prison farms, youth correctional institutions, and similar establishments. While food and related products of such farmlands are customarily used by the institution, the farms frequently have more far-reaching benefits in the education, rehabilitation, and general physical welfare of the inmates.

Another use of irrigated lands owned by States, counties, cities. et cetera, is the incidental cultivation of portions of airports, parks, and other public-use areas. Areas between runways and taxiways cannot be segregated for purposes of disposal or for independent private-ownership operation. Often such areas must be maintained under irrigation in order to meet requirements for dust control, assure sound protective management and conservation, as well as to achieve the desired beautification of the premises.

Some revenues may accrue to the landowning entity when cultivation is performed through leasing. Protective maintenance requirements attained through irrigation must, in any event, be performed if these facilities are to meet their principal purpose. Were leasing to be foregone, such maintenance operations would have to be performed by the public maintenance forces, most likely at a considerable increase in operational cost.

Two other rather unique situations often exist. One involves State school lands held for ultimate disposition under established State statutes. Such lands are, on occasion, operated in the interim under conservation and development programs which may yield some lease revenues. Such revenues do not flow to personal gain but accrue and are utilized for the public benefit. It is our understanding that the exemption that would be afforded by S. 1733 is not intended to permit the State, or any political subdivision thereof, to receive irrigation water for its lands under long-term leasing programs for the primary purpose of raising revenues.

There is the consideration as to how far the Secretary should have discretionary authority to approve exemptions to quasi-public institutions and bodies organized under applicable State laws such as privately financed universities and colleges. Well-established experimental farms, devoted primarily to educational purposes, and recognized far and wide as outstanding contributors to agricultural knowledge and techniques, are not infrequently a vital part of the program of such private colleges.

S. 1733, with the proposed amendment, would encompass such situations and, at the same time, insure that no exemption would be afforded to irrigable farmlands operated in a manner that has as a principal objective the raising of revenues.

S. 1733, if enacted, will not set the stage for any large-scale exemption of lands. Based on data from 1966 reclamation project land-ownership reports, a total of slightly less than 31,000 acres of land in nine of the 17 contiguous States in which the reclamation program operates are owned by those States or political subdivisions thereof. Of that total, only approximately 25,500 acres are presently considered excess irrigable lands, hence directly related to the purpose of this bill.

Those 25,500 irrigable acres are distributed among 28 different contracting entities on 17 reclamation projects. These 17 projects involve a combined service area of somewhat over 1.7 million irrigable acres. The 25,500 irrigable acres that might fall within the purview of this bill represents only about 1.5 percent of that total. Furthermore, that 25,500-acre figure represents only about three-tenths of 1 percent of the total reclamation acreage served throughout the West.

In summary, we find nothing in this bill that is inconsistent with the fundamental concepts enunciated by the Reclamation Act and its various supplements and amendments. Quite to the contrary, we sincerely believe that S. 1733 would serve a significantly beneficial purpose if enacted with amendatory language substantively as proposed in our report.

That concludes my prepared statement, Mr. Chairman.

Senator CHURCH. Thank you, Mr. Dominy.

The staff advises me that it would be helpful for purposes of preparing the report on this bill if you would supply the committee with a detailed statement of the legal basis for the current policy concerning the application of the acreage limitation provisions of the reclamation law to lands in State ownership. Apparently we do not have a precise statement of the legal basis for applying limitation to the State-owned lands, which of course has been the practice. We need to have that in the report that accompanies the bill.

Mr. DOMINY. We will be very pleased, Mr. Chairman, to supply the chronology of solicitors' opinions which have culminated in the present legal interpretation.

Senator CHURCH. Fine.

Now, I take it, Mr. Dominy, that the various examples that you have set out here would all constitute cases where water could be supplied if this bill were passed, irrespective of the present 160 acre implication. Is that correct?

Mr. DOMINY. Yes, sir.

Senator CHURCH. And that is so even if the bill were amended?

Mr. DOMINY. That is correct.

Senator CHURCH. Senator Jordan?

Senator JORDAN. I have no questions, Mr. Chairman. I think it is a good statement. It makes the position of the Department abundantly clear and quite in line with our thinking.

Senator CHURCH. Are you satisfied, Senator Jordan, that the amendment is acceptable?

Senator JORDAN. I think so. I think it covers our situation. It may not be accepted by the people in other areas, but it does handle our situation adequately, I believe.

Senator CHURCH. Senator Moss.

Senator MOSS. I do not have any questions.

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

Senator HANSEN. If I may, Mr. Chairman. Am I to understand that the intent of the amendment is to include under the exemption hospital and prison farms?

Mr. DOMINY. That is correct.

Senator HANSEN. I have no further questions.

Mr. DOMINY. The intent of the amendment, of course, is to make very explicit that it is institutional-type management other than for revenue-producing purposes. In other words, the State could not retain large quantities of land and lease it out for revenue purposes under this amendment.

Senator CHURCH. We have received letters commenting on this bill from the South Columbia Basin Irrigation District of Pasco, Wash., the Quincy Columbia Irrigation District, Quincy, Wash., and the East Columbia Basin Irrigation District of Othello, Wash.

Without objection, those letters will be included in the record at this point.

(The letters referred to follow:)

SOUTH COLUMBIA BASIN IRRIGATION DISTRICT,
Pasco, Wash., June 25, 1968.

Hon. CLINTON ANDERSON,
Chairman, Subcommittee on Water and Power Resources, Committee on Interior and Insular Affairs, Senate Office Building, Washington, D.C.

DEAR SENATOR ANDERSON: We understand that your subcommittee is holding a hearing on S. 1733 on July 2, 1968. This letter is intended to inform you of the attitude of the board of directors who represent approximately 1,300 farms in the Columbia Basin project, Washington. Our interest evolves because there are 1,610 acres of State-owned land within this district which have water facilities available to them but remain idle because of a conflict of State and Federal laws, and there are another 1,560 acres of State-owned lands within this district which do not have water available but which are caught in this same conflict.

Even though S. 1733 would apparently resolve this problem we are vehemently opposed to its passage in its present form. As originally written it would allow the States to retain all their lands and lease them out to commercial farmers. This, we believe, is not in accord with the intent of the reclamation law and the family-farm concept that was intended when Congress authorized this project.

We have been notified that the Secretary of Interior has proposed an amendment that would narrow the coverage of S. 1733 to the situations of concern to the bill's sponsors, the Honorable Senators Jordan and Church of Idaho. This proposed amendment would be of some value to the State of Washington and other States covered by the reclamation laws.

We can wholeheartedly support and do recommend passage of S. 1733 if amended as suggested by the Secretary of Interior in his recent response to Senator Jackson.

As a point of clarification only—the three irrigation districts of the Columbia Basin project are requesting other legislation to return the pre-October 1962 antispeculation exemptions as concerned to State-owned lands within this project.

Very truly yours,

RUSSELL D. SMITH,
Secretary-Manager.

QUINCY-COLUMBIA BASIN IRRIGATION DISTRICT
Quincy, Wash., June 26, 1968.

In re S. 1733

Hon. CLINTON ANDERSON,
Chairman, Subcommittee on Water and Power Resources, of the Senate Interior and Insular Affairs Committee, 3106 Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The following comments of the Quincy-Columbia Basin Irrigation District are for the purpose of submitting its views on S. 1733, which we understand will be heard by your committee on July 2, 1968.

The Quincy District is one of the three districts of the Columbia Basin project. At the present time, approximately 500,000 acres are under irrigation on the

Columbia Basin project. Upon the completion of the project, approximately 1,000,000 acres will be irrigated from project facilities. We are advised that included within the project area is 50,000 acres owned by the State of Washington which will be capable of being served with irrigation water.

Because of the large acreage owned by the State of Washington, the Quincy District is quite concerned about the proposed legislation and opposes the provisions of S. 1733 as presently drafted. The district does not feel that permitting the State of Washington, or any other State, to farm large acreages of excess land would be beneficial to the community nor to the advancement of reclamation and that it is contrary to established reclamation law.

The district has been advised that the Department of Interior has submitted its views to your committee indicating that it has no objection to a State farming excess land when it is done for a public purpose as contrasted to farming excess lands primarily for raising revenue. The district is somewhat concerned as to whether or not a line of distinction can be made between lands being farmed for a "public purpose" and State excess lands being farmed for "revenue". It would seem to us that it could logically be argued that any State land being farmed, even primarily for "revenue", would still be for a public purpose as it must be presumed that any revenue received from a State's excess lands would be utilized for the use and benefit of all the citizens of the State of Washington and therefore was for a "public purpose".

The Quincy District is not opposed to limited irrigation of excess lands for such purposes as State experimental and research farms. However, it feels that each request to receive water for excess lands should be approved and authorized by Congress so that it could consider the merits of each application. For instance, the Department of Interior in its comments on the proposed legislation refers to a "State-operated welfare institution." Would this permit the State department of welfare to secure water on the 50,000 acres of State-owned land in the Columbia Basin on the basis that all of the products grown thereon would be utilized in the State's welfare program? If so, then it is the district's opinion that such a program should be specifically authorized by Congress.

We realize that the proposed amendment by the Department of Interior places upon the Secretary of Interior the duty of determining whether a proposed use is in furtherance of a "public function". While the proposed amendment most certainly improves S. 1733, we seriously question whether the term "public function" sufficiently prevents the opening of the door to extensive farming of large areas by a State and its various political subdivisions and agencies.

In your hearings on S. 1733, your consideration of the comments herein contained would be appreciated.

Respectfully submitted,

JOHN W. BAIRD,
Secretary.

EAST COLUMBIA BASIN IRRIGATION DISTRICT,
Othello, Wash., June 24, 1968.

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

DEAR SENATOR JACKSON: When the Columbia Basin Act was amended on October 1, 1962 the amendment repealed the provision which allowed the States to sell their lands to the highest bidder and made it mandatory for them to sell the lands before they were platted. This amendment caught already platted lands in the amount of about forty-five hundred acres in a position where conflicting laws between the State of Washington and the United States make it impossible for the State to either sell or obtain water on the land. The State, of course, would like to lease these lands out for farming and thus obtain perpetual income from the lands, but the Irrigation Districts do not favor this. In an attempt to alleviate this problem the Irrigation Districts are sponsoring legislation designed to reinstitute the pre-October 1, 1962 exemption from the anti-speculation provisions of Reclamation Law as they affect State-owned lands in the Project, while retaining the general applicability of acreage limitation.

It is our understanding that the Bureau of Reclamation in Washington is preparing the proposed legislation and we are very hopeful, Senator Jackson, that you will introduce this legislation.

Very truly yours,

VAN E. NUTLEY, *Secretary-Manager.*

Senator CHURCH. I have also received a letter from Catherine May, a Member of Congress, calling attention to the Washington situation. If I read the letter correctly, it is declaring in support of this bill if amended as you have suggested. Apparently the amendment would take care of the Washington problem.

Mr. DOMINY. The districts were courteous enough to send us copies of those same communications. I want to make it clear, Mr. Chairman, that I think this amendment does go along with the request of the districts. However, the State of Washington would not favor this amendment, as I understand it.

Senator CHURCH. Without objection the letter will be included in the record at this point. The last paragraph of the letter reads:

> In order to resolve the separate situation involving lands in the Columbia Basin project which are owned by the State of Washington I have introduced this week another bill.

And I think that is what you have reference to.

Mr. DOMINY. Yes, sir.

Senator CHURCH. Very well, this letter will be included in the record at this point.

(The letter referred to follows:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 28, 1968.

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

DEAR SCOOP: It is my understanding that the Subcommittee on Water and Power Resources, Senate Committee on Interior and Insular Affairs, will hold a hearing on S. 1733 on July 2.

The three irrigation districts on the Columbia Basin project in the State of Washington have advised me of their opposition to this legislation as presently drafted, but of their support of the bill if it is amended in order to narrow its coverage to the kind of situation that caused the legislation to be introduced. I understand the Department of the Interior proposes an amendment to the bill which would satisfy the desires of these three irrigation districts.

In order to resolve a separate situation involving lands on the Columbia Basin project which are owned by the State of Washington, I have this week introduced H.R. 18153. This bill, a copy of which is enclosed along with an announcement as to its purpose, has the approval of the Columbia Basin project irrigation districts. I wanted to advise you of its introduction with the suggestion that consideration of this proposed solution to the problem in the State of Washington—apart from that in Idaho—may be appropriate for consideration during the forthcoming hearings on S. 1733.

Kindest regards.

Sincerely yours,

CATHERINE MAY,
Member of Congress.

[Enclosures]

[H.R. 18153, 90th Cong., second sess.]

A BILL To provide for delivery of irrigation water to certain lands on the Columbia Basin project, Washington

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other presently existing provision of law to the contrary, the purchaser of State school or other public irrigable lands, owned as of the date of this Act by the State of Washington, or the heirs and devisees of such purchasers, if otherwise eligible under reclamation law to receive project water, from, through, or by means of Columbia Basin project works and facilities for the lands purchased, shall not be disqualified for such delivery of water by reason of the amount of the purchase price paid or to be paid to the State for such lands.

NEWS RELEASE FROM THE OFFICE OF U.S. REPRESENTATIVE CATHERINE MAY

WASHINGTON, D.C.—Federal legislation which will allow the State of Washington to sell irrigable dry lands on the Columbia Basin project at irrigable land prices has been introduced by Congresswoman Catherine May, Republican of Washington.

The bill is designed to resolve a 6-year conflict between State and Federal policy which has prevented the delivery of irrigation water to an estimated 3,500 acres of State-owned plated land on the project.

Mrs. May said she introduced the legislation after suggesting to the three Columbia Basin irrigation district boards several alternative solutions to the problem. "This bill embodies the recommendations of the three boards," the Fourth District Congresswoman said.

"Under existing circumstances, the State of Washington is entitled to receive irrigation water on only one 160-irrigable-acre landholding in each of the project's three irrigation districts. Although the State can sell the remaining lands at dryland prices, it has been unwilling to do so because the true value is much higher as irrigable land. Since the income from these lands is earmarked for the State school fund, the reluctance of the State to sell at dryland prices is understandable," Mrs. May explained.

Mrs. May's bill would reinstitute the pre-October 1, 1962 exemption from the antispeculation provisions of reclamation law as they affect State-owned land on the project, while retaining the general applicability of acreage limitation. It provides that purchasers of State school or other public irrigable lands shall not be disqualified for delivery of water by reason of the amount of the purchase price paid to the State for such lands.

"This approach to the problem should benefit not only the irrigation districts, but the State of Washington as well," Mrs. May stated.

Senator CHURCH. If there are no further questions, thank you very much, Mr. Dominy.

Senator JORDAN. One more question the staff has given me.

Does this mean the Secretary of Interior would not make any determination concerning revenues where the lands operated were strictly for institutional use, as we have discussed here?

Mr. DOMINY. Yes, sir; I think the Secretary would obviously, under this bill, interpret the institutional leasing of the type described as being an exemption that Congress would be granting if this act were passed.

Senator JORDAN. Even though an occasional surplus might find its way to the markets in that operation.

Mr. DOMINY. Right.

Senator JORDAN. Thank you.

Senator CHURCH. Our next witness is Mr. Bert L. Cole, Commissioner of Public Lands, Seattle, Wash.

Mr. Cole, we are happy to welcome you here this morning.

STATEMENT OF BERT L. COLE, COMMISSIONER OF PUBLIC LANDS, SEATTLE, WASH.

Mr. COLE. Mr. Chairman, I have an apology. Or rather United Air Lines should apologize that they lost my suitcase with my extra copies of material. However, I understand they have located it, and it will be in some time this afternoon.

I am Bert Cole, the elected Commissioner of Public Lands for the State of Washington. I would like to read a statement that we prepared, and I would like to make some comments on Commissioner Dominy's intent that was read into the record this morning concerning Senator Jordan's bill.

A serious difference of interpretation of the existing Federal reclamation laws exist between the Bureau of Reclamation and the State of Washington, Department of Natural Resources. The Bureau defines the words "lands in private ownership."

We in the Washington Department of Natural Resources very definitely do not believe that "State-owned lands" are "lands in private ownership." We believe that currently the existing Federal reclamation laws do not restrict delivery of project water to any and all State-owned land within Federal reclamation districts nor do these laws prohibit the State from selling State-owned land within such districts at public auction as required in our State constitution. Arguments supporting our interpretation of the existing reclamation laws are attached as exhibit A.

We presume that two questions may be considered by Congress as you study S. 1733. The first relates to the interpretation and clarification of the existing reclamation laws. The second question relates to determination of whether Congress wants to continue the direction and policy actually intended in the existing reclamation law.

If you agree that Congress did not intend "lands in private ownership" to include State-owned lands, and if you wish to continue the original policy in the existing reclamation law, S. 1733 is urgently needed to convince the Bureau that Congress intended the plain and ordinary meaning of its words to apply in the application of its reclamation statutes and as elaborated further in the Congressional Record.

In considering any change from the congressional policy set forth in the existing reclamation laws as we interpret them, we believe there are many good reasons why Congress should retain the present exemptions for State-owned lands from the so-called antispeculation provisions of the reclamation laws.

The initial avowed intent of Congress in imposing acreage limitations against "lands in private ownership" and in limiting the selling price of excess land held by private owners can be met as well or better by permitting the State-owned lands to be operated through lease.

1. A practice of not selling State-owned land can hardly result in inflating the selling price of said land.

2. Between 1952 and 1962 the State did sell 25,245 acres of State-owned irrigable land in the basin per our contract with the Bureau. We estimate that there is between 20,000 and 30,000 acres of State-owned land within the existing boundaries of the three irrigation districts in the basin that may some day be platted as irrigation lands, but this remaining State-owned acreage is approximately 5 perceent of the estimated total platted irrigable land.

3. Bureau publications show that 43 percent of the privately owned irrigated farm units in the basin were operated by tenant farmers in 1967.

4. There is no limitation on the number of acres in private ownership that may be leased and farmed by one individual or company.

5. Why should the State be denied the opportunity to lease its lands when the private individuals who have purchased State lands can and do lease it to tenant operators?

6. The term "small farmer" is a relative term. But often the "smaller of the small farmers," with still more limited financing, find it easier to farm on leased land.

7. We do not believe that it can logically be argued that the application of the acreage limitation against the State is needed to prevent any one individual from reaping an undue share of benefits from the project when the income from the State-owned lands will benefit the hundreds of thousands of public schoolchildren of the State for whom these State-owned lands are held in trust.

8. The State-owned land will not be withheld from development if project water is made available to them.

9. Any loss in local taxes due to retention of leasing of State-owned land will be relatively small after application of the State's equalizing fund for public education and allowance for taxing and private leasehold interest. An interim committee of the State legislature is reviewing the need for some type of payment in lieu of local taxes on all State-owned land.

10. While factions within the basin area favor the State selling the State-owned land in the basin, the Washington State Grange has rejected a resolution urging legislation to require the State to sell its irrigable lands in the basin. The Washington Education Association and the Washington School Directors' Association strongly favor retention of this State ownership.

At the very minimum the State must have the right to sell State-owned lands at public auction and to consummate recordable contracts. We know of no organization within the State that opposes the State having this right.

A combination of the 1962 repeal of special provisions of the Columbia Basin Act, the Bureau's unilateral cancellation of its contract with the State, and the Bureau's new 1962 interpretation of the old basic reclamation laws placed the State and the irrigation district in an untenable position.

The repealed portions of the Columbia Basin Act had specifically denied water to any State-owned land in the Basin, but they had permitted sale at public auction as per a contract to be executed between the State and the Bureau. That contract had directed that the State should wait until within 1 year of the time of water delivery to each area as estimated by the Bureau.

Simultaneously with the repeal of the special provisions forcing sale of State-owned lands in the basin and of the cancellation of the contract, the Bureau said the State must sell prior to preliminary platting which normally occurs about 3 years before water delivery. The contract had said we must wait until within 1 year of water, but suddenly the Bureau was saying that in waiting as per the contract, we had already waited too long. Fourteen hundred acres were caught in that "frozen status." It could not be sold; it could not get water; but it was and is billed for the water that the Bureau will not deliver.

We are beginning to get a persecution complex in our dealings with the Federal Government relative to State-owned lands in the Columbia Basin.

1. In 1946 and 1953 the State of Washington agreed through stipulation to condemnation of 67,899 acres in the Wahluke Slope area, most of it within the basin irrigation project, at an average price of less than $2 per acre, when adjoining private landowners won in excess of $100 per acre.

2. Since the start of the Columbia Basin project, the State has permitted the Bureau to take, without cost, any State-owned lands that

the Bureau selected for project purposes, including administrative building sites, until we finally rebelled at giving up a 11-acre tract that we did not think the Bureau needed for "Bureau purposes." The Federal district court has just ruled that the Bureau cannot have this 111 acres of land without paying for it, and stated in essence, that the Bureau should have paid the State for all the other State-owned lands the Bureau has taken "free-of-charge."

The State of Washington and the Department of Natural Resources want Federal reclamation projects in the State. We want and expect to do and pay our share, as permitted under our constitution, to encourage their development, but we also want to and must manage our trust schools lands to maximize long-term revenue to our public schools.

We urgently request enactment of S. 1733 so that we can all get on with the development of the Columbia River Basin and other Federal reclamation projects for the benefit of the people, the State, and the Nation.

Senator Moss. Thank you, Mr. Cole, for that statement.

Is it your opinion that S. 1733 will answer your problem there?

Mr. COLE. Yes, sir. S. 1733 will answer our problem. But the legislative intent that was read into the record by Commissioner Dominy would not satisfy our problem. The bill itself would.

Senator Moss. Then you oppose the amendment that has been suggested to the bill; is that right?

Mr. COLE. Is that what the Commissioner was suggesting an amendment? Yes, I would oppose that.

Senator Moss. You would support the bill as written, and without any amendment?

Mr. COLE. Yes, sir.

Senator CHURCH. Mr. Cole, if the committee were to amend the bill as suggested by the Bureau, it would then have the effect of providing a partial exemption rather than complete exemption that is now written into the bill under the original wording. Would you regard such a partial exemption as a step in the right direction?

Mr. COLE. Yes, sir; that would be a step in the right direction. We would rather have half a loaf than none at all. We have had frozen lands within the district that we cannot even sell. Congress granted these lands to our Western States particularly to help the States with their basic problems. Education, and higher education, is one of the more important ones. We do not see why some bureau should be restricting our opportunity to maximize our income from these lands.

The State of Washington sold, through free trade prospects this year, $37 million worth of timber. And this goes to our common school and higher institutions of education, which means tax dollars that our respective citizens do not have to raise.

We also earned about a million dollars in our wheat sales, on dryland wheatlands. This helps to eliminate some of the taxing cost to our local people.

My respective commissioners in other States have similar problems. I have discussed this with them. We feel that, since Congress granted these lands to us freely, we ought to have an opportunity to manage these lands. We want to pay our fair share of the water costs and,

any development costs, but we want to have unrestricted opportunity to manage these lands as they were given to us, and not by some dictates of an attorney in the Bureau of Reclamation's office.

Senator CHURCH. Are you familiar with the bill that Congresswoman May has put in?

Mr. COLE. Yes, sir.

Senator CHURCH. Is that addressed in a more general way to your problems?

Mr. COLE. That bill will permit us to sell our lands. The board of natural resources, which includes our Governor, Governor Evans, has discussed this very seriously the last 6 months. We have a board meeting tomorrow morning. And the board has unanimously endorsed the statement that I made, and feels that we should not be beat over the head by some bureau in Washington relative to the management of our lands, or told when to sell them at a discount price—that we ought to have a free opportunity to manage these lands, that Congress gave to us, to help our State get along with some of its basic functions.

Senator CHURCH. So you are favorably disposed to Congresswoman May's bill?

Mr. COLE. It will help us sell some of the lands that we have. But the policy of the board of natural resources is not to sell land. Land is the best investment we have. We get a greater appreciation each year in land than we do in the interest rates on the money. And the board feels it should retain ownership of the land and farm it out to tenant farmers, sharecropping, such as we do in our dry wheat farming.

Senator CHURCH. Thank you very much, Mr. Cole.

Senator Allott, do you have any questions?

Senator ALLOTT. I will pass to Senator Jordan.

Senator JORDAN. Mr. Cole, the situation you outline here that obtains in Washington is quite different from the relief we are seeking in the specific language of our bill, is it not?

Mr. COLE. Well, the intent that was read in by Commissioner Dominy apparently is so. But when we read your bill, and our attorney general's office read your bill, it would satisfy all the problems we have. It would give us a hand, an opportunity to manage our lands unrestrictedly. Certainly we have institution lands, too. We have experimental lands for Washington State University and the University of Washington that we would like to have irrigated. We did get some experiment legislation for the Washington State University.

Senator JORDAN. But the lands that the State of Washington wishes to retain as a commercial venture until a more propitious time for disposing of them might come about is quite a different operation than lands such as you have in your State and we have in ours, that are operated by a State mental hospital or an experimental station, are they not?

It seems to me you are talking about a broader interpretation.

Mr. COLE. Well, the Land Commissioners Association, Senator Jordan, would be very happy to have the land irrigated along the lines of the bill without the intent that was just read into it by the Commissioner, leaving us unrestricted opportunity to manage the lands.

We have institutional needs, too, and we have agricultural research needs, too. In fact, as I stated, we had some special legislation through Congress for Washington State University, so that we could get some water on an extra 160 acres.

Senator JORDAN. This is precisely our problem. As the problem was explained to me they were notified at the experiment station and the mental hospital that they did not qualify under the Excess Limitation Act, and the water was to be turned off, or they would not be supplied with water, after 1967, if they did not get remedial legislation. That is the problem we sought to cover. We did not intend to cover general legislation as such that might be embroiled in controversy.

We do have a letter from one district in your State——

Mr. COLE. Three of our irrigation districts approved your bill.

Senator JORDAN. Yes.

Mr. COLE. They met with us at our last board meeting in Olympia.

Senator JORDAN. I have no further questions.

Senator CHURCH. Senator Hansen?

Senator HANSEN. I would defer to Senator Allott if he has a question first.

Senator ALLOTT. No, I have not.

Senator HANSEN. As I understand, Mr. Cole, you would prefer to see S. 1733 enacted into law unamended?

Mr. COLE. Right.

Senator HANSEN. And as to the language in the bill which refers to lands owned by States, political subdivisions and agencies thereof, and local public bodies organized pursuant to State law for nonprofit purposes and performing functions which in the opinion of the Secretary of the Interior are of a public nature and purpose, you contend that all of the lands owned by the State of Washington, and I would presume you might not exclude lands in other States as well that are owned by other States, are for public purposes, and of a public nature.

Mr. COLE. We feel that we are serving the same people that Congress is, and that every dollar we earn is a tax dollar we do not have to pay. And so we cannot see why the Bureau of Reclamation seems so adamant to make it difficult for us to carry out the mission that our enabling act gave us. In fact, our attorneys feel that the basic law, as I stated in my statement, does not permit the Commissioner of Reclamation to carry out the standards and rules and regulations that he does now. We still have some cases pending in court now. We have won one, and we hope we will win the next two.

Senator HANSEN. I note, according to some information which has just been handed me by the staff, that in the State of Washington you have some 3,913 acres of such lands. We have in Wyoming some 3,226 acres of such lands. You are in excess by 3,113 acres. We are in excess by 2,426 acres. I think we do have a common problem.

Mr. COLE. Yes, sir. I have discussed this with Commissioner King and other land commissioners who have this problem, and we feel that Senator Jordan's original bill, without an amendment, would certainly satisfy our needs and give us the opportunity to manage our granted lands in the best interests of the State and the Federal Government.

Senator HANSEN. I have no further questions. Thank you, Mr. Chairman.

Senator CHURCH. Thank you very much, Mr. Cole, for your testimony this morning.

Any other testimony?

If not, the hearing will stand adjourned at this time and we will go into executive session.

(Whereupon, at 10:45 a.m. the subcommittee proceeded to other business.)

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