DISPUTE OF TITLES ON PUBLIC LANDS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 216

A BILL TO PERMIT SUITS TO BE BROUGHT AGAINST THE UNITED STATES TO ADJUDICATE DISPUTED LAND TITLES

S. 579

A BILL RELATING TO THE PUBLIC LANDS OF THE UNITED STATES

S. 721

A BILL TO AMEND THE ACT ENTITLED "AN ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO SELL CERTAIN PUBLIC LANDS IN IDAHO", APPROVED MAY 31, 1962

SEPTEMBER 30, 1971

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DISPUTE OF TITLES ON PUBLIC LANDS

THURSDAY, SEPTEMBER 30, 1971

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

The subcommittee met at 10 a.m. in room 3110, New Senate Office Building, Hon. Frank Church (chairman of the subcommittee), presiding.

Present: Senators Church, Jordan, and Metcalf.

Staff present: Jerry Verkler, staff director; Porter Ward, professional staff member.

Senator CHURCH. The hearing will please come to order.

This is the time duly noted and set for the Senate Subcommittee on Public Lands to conduct an open public hearing on three bills dealing with dispute of title where public lands are concerned.

These are S. 721, to amend the act entitled "An Act to Authorize the Secretary of Interior to Sell Certain Public Lands in Idaho," approved May 31, 1962; S. 216, to permit suit to be brought against the United States to adjudicate disputed land titles, and S. 579, relating to the public lands of the United States.

I direct that the text of the bills, and the administrative reports thereon, appear at this point in the record.

(The documents referred to follow:)

[S. 216, 92d Cong., first sess.]

A BILL To permit suits to be brought against the United States to adjudicate disputed land titles

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1346 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) The district courts shall have original jurisdiction of any civil action under section 2408a to quiet title to lands claimed by the United States."

SEC. 2. Section 1402 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Any civil action under section 2408a to quiet title to lands claimed by the United States shall be brought in the district court of the district where the land is located or, if located in different districts in the same State, in any of such districts."

SEC. 3. (a) Chapter 161 of title 28, United States Code, is amended by inserting after section 2408 of such title the following new section:

"§ 2408a. Actions to quiet title

"The United States may be named a party in any civil action brought by any person to quiet title to lands claimed by the United States."

(b) The chapter analysis at the beginning of chapter 161 of title 28, United States Code, is amended by inserting after the item relating to section 2408 the following new item:

"2408a. Actions to quiet title."

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 29, 1971.

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

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 216, a bill "To permit suits to be brought against the United States to adjudicate disputed land titles."

We recommend that this bill not be enacted, but favor instead the enactment of draft legislation proposed by the Department of Justice, "To permit suits to adjudicate disputed titles to lands in which the U.S. claims an interest."

S. 216 would amend title 28, United States Code, to permit the United States to be named a party in a civil action brought by any person to quiet title to lands claimed by the United States. It would also give the district courts original jurisdiction to entertain these actions.

The bill proposed by the Department of Justice would allow the United States to be made a party defendant in a civil action to adjudicate disputed titles to real property in which the United States claims an interest, but not including security interests, water rights and trust or restricted Indian lands.

At present, unless the United States voluntarily brings a quiet title or similar action, it not possible for a claimant to have his rights adjudicated because of the bar of sovereign immunity. The claimants only remedy is under the Tucker Act, passed in 1887, which gives the court of claims jurisdiction over "All claims founded upon the Constitution of the United States or any law of Congress . . .". This provision allows a remedy of damages for a taking of real property, but disallows a return of the property to the claimant, and is thus obviously limited.

The remedy proposed by the Department of Justice is preferable, in our view, to S. 216 for a number of reasons:

First, it makes it clear that the bill will not waive sovereign immunity to suits based on adverse possession. The vast extent of lands in Federal ownership makes it impossible for the government to prevent persons from taking possession and occupying Federal land adversely. Moreover, because of the long-established rule that title to land could not be acquired through adverse possession, even where the fact that persons were occupying Federal land is known to representatives of the United States, the Federal government has tacitly permitted such occupancy by not bringing an ejectment action.

Secondly, the Justice proposal specifically excludes lands held in trust for Indians and Indian restricted lands. The Federal government's trust responsibility for Indian lands is the result of solemn obligations entered into by the United States government. The Federal government has over the years made commitments to the Indian people through written treaties and through informal and formal agreements. The Indians, for their part, have often surrendered claims to vast tracts of land. President Nixon has pledged his Administration against abridging the historic relationship between the Federal government and the Indians without the consent of the Indians.

A third significant difference between the Justice proposal and S. 216 is the provision in the former which would allow the United States, if the judgment is adverse to it, to elect either to return the property to the claimant or to pay money damages. This discretionary option to return claimant's property will afford adequate relief under proper conditions, but will not serve to disrupt costly ongoing Federal programs that involve the disputed lands when the government chooses instead to pay damages.

The Justice Department's proposal provides a complete, thoughtful approach to the problem of disputed titles to federally claimed land. We agree that there are desirable changes in existing law, and these changes can be effected by the Justice Department's proposal without a confusing waiver of sovereign immunity or a disruptive allowance of suits against the United States based on adverse possession. We therefore, favor enactment of the draft legislation proposed by the Department of Justice in lieu of S. 216.

Sincerely yours,

MITCHELL MELICH.

EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., September 30, 1971.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Management and Budget on the following three bills: (1) S. 216, "To permit suits to be brought against the United States to adjudicate disputed land titles," (2) S. 579, "Relating to the public lands of the United States," and (3) S. 721, "To amend the Act entitled 'an Act to authorize the Department of the Interior to sell certain public lands in Idaho', approved May 31, 1962."

The Department of Justice, in testimony before the Subcommittee on Public Lands on September 30, 1971, recommends against enactment of the three bills. Justice is also proposing a legislative alternative to S. 216 which is designed to correct the deficiencies of that bill. The Department of the Interior, in reports being made to your committee, similarly recommends against enactment of S. 210, S. 579, and S. 721.

The Office of Management and Budget concurs with the views of the Departments of Justice and Interior and recommends against the enactment of S. 216, S. 579, and S. 721. We also recommend enactment of Justice's proposed legislation as an alternative to S. 216.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for
Legislative Reference.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., September 30, 1971.

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

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 216, a bill "To permit suits to be brought against the United States to adjudicate disputed land titles."

This Department recommends that S. 216 not be enacted.

S. 216 would allow the United States to be made a party to an action in the Federal district courts to quiet title to lands claimed by the United States.

This Department would have no objection to legislation which would remove the United States from the protection of sovereign immunity in certain quiet title actions if the interests of the United States were properly protected. We prefer a substitute bill which is being transmitted to you by the Department of Justice in lieu of S. 216.

S. 216 would make possible decrees ousting the United States from possession and thus interfering with operations of the Government which have been authorized by Congress. The Department of Justice substitute provides that if the United States is in possession and the court finds that it is occupying the property without title, the United States could elect to pay compensation as determined by the court to the true owner and maintain possession.

Also, the Department of Justice substitute bill applies only to actions arising after its enactment.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

[S. 579, 92d Cong., first sess.]

A BILL Relating to the public lands of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That (a) whenever any public lands of the United States have been held by adverse possession under claim of title for a continuous period of not less than twenty years, the United States shall be prohibited from making any entry on, or bringing any action to recover, such lands. This prohibition shall not apply in any case where such lands were so held by more than one person unless there existed privity of estate between the persons holding such lands.

(b) As used in this Act, the term "adverse possession" means, with respect to lands referred to in subsection (a) of this Act, a possession which was obtained and held by a person reasonably believing that he held title to such lands, and which possession was actual, exclusive, open, and notorious.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 29, 1971.

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

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 579, a bill "Relating to the public lands of the United States."

We strongly recommend that the bill not be enacted.

S. 579 would create a right of adverse possession against the United States by prohibiting the United States from making an entry on or bringing any action to recover public lands which have been held under a claim of title for a continuous period of not less than 20 years. The prohibition would not apply in any case where such lands were held by more than one person unless there existed privity of estate between the persons holding such lands. Adverse possession is defined as possession which was obtained and held by a person reasonably believing that he held title to such lands, and which possession was actual, exclusive, open and notorious.

The doctrine of adverse possession arose at a time when and under circumstances where the fact that someone was using or occupying a piece of land was considered strong evidence that he owned it. The courts felt the need to impose a responsibility on property owners to be sure that others were not acting in a manner that gave the appearance of ownership. Under the circumstances of the times, and the lack of reliable land records, this rule tended to promote stability of property rights.

The doctrine of adverse possession has never been applicable to lands owned by the Federal Government. The legal rational for this is the doctrine of sovereign immunity. The practical reason is that the Federal Government, as the owner of vast areas of land cannot possibly keep the type of surveillance over its lands which is necessary to prevent persons from occupying Federal lands adversely. In many cases the Federal Government does not know, without expensive surveys, the precise boundaries of the Federal lands. To protect his property, the sovereign would need to employ periodic inspections of all his property and remove occupants before their occupancy could ripen into rights. The disorder and distress that this could create are obvious.

In the interest of justice, Congress has recognized adverse occupancy under specific sets of circumstances. It has passed legislation giving an occupant the right to acquire the property he claims under circumstances that suggest good faith. These include the Color of Title Act (43 U.S.C. 1068–1068b) ; the Mining Claims Occupancy Act (30 U.S.C. 701–709) ; the Trespass Land Sale Act of 1968 (43 U.S.C. 1431–1435) ; and the Omitted Lands Act of May 31, 1962 (76 Stat. 89). Each of these acts contains rather specific provisions and limitations as to who may avail himself of the benefits of the legislation. These include the existence of circumstances that could reasonably lead to belief of ownership, such as an erroneous transaction or a mining claim. Each provides for payment to the United States for conveyance of the land in question. Any additional recognition of adverse occupancy should similarly specify the particular equities which would entitle an occupant to acquire the property he claims.

S. 579 contains no guidelines or qualifications for relief except that the holding of public land shall have been for not less than 20 years, and shall have been by a person reasonably believing that he held title to such lands, with possession being actual, exclusive, open and notorious. Not only would the United States be prohibited from "making entry" on the land but it would be prohibited from bringing action to recover the lands. This would seem to prevent the United States from obtaining a juidcial determination of its right to public land. There is no provision in S. 579 for submission of proof, showing of improvements on the land or presentation of equitable considerations.

Legislation such as S. 579 would have the effect of encouraging and recognizing squatter's rights on the public lands. The administrative burden placed upon the Government by this legislation would be enormous. The historical concept of sovereign immunity from title suit is founded upon practical necessity of saving the Government from such intolerable burdens.

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

Sincerely yours,

MITCHELL MELICH,
Solicitor.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., Sept. 30, 1971.

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

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 579, a bill "Relating to the public lands of the United States."

This Department recommends that S. 579 not be enacted.

S. 579 would provide that whenever any public lands of the United States have been held by adverse possession under claim of title for a continuous period of not less than twenty years, the United States would be prohibited from making any entry on, or bringing any action to recover such lands. The bill further defines applicability of the prohibition and defines the term "adverse possession."

The United States as a property owner is not in the same position as an individual property owner. Its ownership is vast, scattered, and, in most instances, not intensively developed or occupied. Also, because the personnel charged with the administration of these Federal lands are limited in number they are not able to survey, become familiar with and give all property lines the close surveillance that most private landowners can.

This bill, if enacted, could lead to abuses. It could include trespassers and thus encourage them by giving them a preference over others. Anyone could purposely start a second chain of title to lands which in time could lead to a claim of adverse possession ". . ., by a person reasonably believing that he held title . . .".

If S. 579 were enacted, the additional costs which should be incurred by the Federal landholding agencies to protect the interest of the public by preventing fraudulent public land losses would be substantial. Surveying and marking the boundary lines and instituting surveillance procedures for early detection of adverse possession would account for much of the cost. In the 187 million-acre National Forest System, administered by the Secretary of Agriculture, there are more than 272,000 miles of boundary much of which is inadequately surveyed and marked.

This Department believes that S. 579, which would allow "adverse possession" occupancy claims against the United States, would lead to unjust enrichment of individuals at the expense of the people of the United States generally. It would establish a preference without regard to the public values involved.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

69-805—71——2

[S. 721, 92d Cong., First Sess.]

A BILL To amend the Act entitled "An Act to authorize the Secretary of the Interior to sell certain public lands in Idaho", approved May 31, 1962

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 1 and 2 of the Act entitled "An Act to authorize the Secretary of the Interior to sell certain public lands in Idaho", approved May 31, 1962 (76 Stat. 89), are amended to read as follows:

"That (a) the Secretary of the Interior, in his discretion, is hereby authorized to sell, subject to the provisions of subsection (b) of this section, any of those lands in the State of Idaho, in (1) the vicinity of the Snake River or any of its tributaries, or (2) any of the following townships: Township 1 south, range 36 east, township 1 south, range 37 east, township 2 south, range 35 east, township 2 south, range 36 east, township 3 south, range 34 east, township 3 south, range 35 east, township 4 south, range 33 east, township 4 south, range 34 east, township 1 north, range 37 east, township 2 north, range 37 east, township 2 north, range 43 east, township 3 north, range 37 east, township 3 north, range 41 east, township 3 north, range 42 east, township 3 north, range 43 east, township 4 north, range 37 east, township 4 north, range 39 east, township 4 north, range 40 east, township 4 north, range 41 east, township 5 north, range 37 east, township 5 north, range 38 east, township 5 north, range 39 east, township 6 north, range 38 east, township 6 north, range 39 east, township 7 north, range 39 east, township 7 north, range 40 east, township 7 north, range 41 east, township 8 north, range 41 east, Boise meridian; which have been, or may be, found upon survey to be omitted public lands of the United States, which lands are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

"(b) Any patent issued pursuant to sbsection (a) of this Act shall be issued subject to the person receiving such patent paying to the Secretary as consideration therefor an amount equal to $1.25 for each acre of land included within such patent.

"SEC. 2. (a) Any citizen of the United States who, in good faith under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation, or occupied any of the lands subject to the operation of this Act, or whose ancestors or predecessors in title have taken such action, shall, if such lands be offered for sale by the Secretary, have a preference right to purchase such lands upon payment of consideration in accordance with subsection (b) of the first section of this Act, under such rules and regulations as the Secretary may prescribe for the operation of this Act.

"(b) In any case in which a person acquired a patent pursuant to this Act prior to the date of the enactment of the Omitted Lands Amendments Act of 1971 upon payment of the appraised fair-market value of the property conveyed by such patent, the Secretary of the Interior shall, upon receipt by him of an application filed by such person within one calendar year following the date of the enactment of this subsection, reimburse such person in an amount equal to the difference between the amount which such person paid as consideration for such patent and the amount which he would have been required to pay if he had acquired such patent pursuant to this Act as amended by the Omitted Lands Amendments Act of 1971.".

SEC. 2. There is authorized to be appropriated such sum, not to exceed $60,000, as may be necessary to carry out the provisions of this Act.

SEC. 3. This Act may be cited as the "Omitted Lands Amendments Act of 1971".

UNITED STATES DEPARTMENT OF THE INTERIOR.
Washington, D.C., September 29, 1971.

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

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 721, a bill "To amend the Act entitled 'An Act to authorize the Secre-

tary of the Interior to sell certain public lands in Idaho', approved May 31, 1962."

We recommend that the bill not be enacted.

S. 721, cited as the "Omitted Lands Amendment Act of 1971" would amend sections 1 and 2 of the Act of May 31, 1962 (76 Stat. 89).

The "Omitted Lands Act" of May 31, 1962, authorizes the Secretary of the Interior, in his discretion, to sell at not less than fair market value any lands in Idaho in the vicinity of the Snake River or any of its tributaries which "have been, or may be, found upon survey to be omitted public lands of the United States".

"Omitted lands" are lands which may be omitted from a public survey because the "meander line" of a river as shown on the survey does not in fact coincide with its actual shoreline. The general rule is that the meander line is supposed to mark the shoreline of the water and if it comes reasonably close, then the boundary of the tract will be considered to be the actual shoreline. However, where this is a substantial amount of land between the meander line and the actual edge of the river, the meander line will be treated as the boundary of the tract and the land between it and the water will be treated as "omitted land".

Adjoining owners sometimes occupy this "omitted land" and come to regard it as part of their tract, often constructing valuable improvements on it.

The Omitted Lands Act of 1962 was enacted to provide some relief in such situations with respect to Federal lands along the Snake River in Idaho. It granted a preference right to any citizen of the United States who, in good faith under color of title or claiming as a riparian owner had, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation, or occupied any such lands. The value of the improvements was not to be considered in determining fair market value.

S. 721 would substitute a charge of $1.25 per acre for lands sold under the Act in lieu of fair market value. In addition, any person who had acquired a patent to land under the 1962 Act on payment of fair market value would be entitled to reimbursement for any amount in excess of $1.25 per acre that he paid for such land. Section 2 of the bill would authorize an appropriation not to exceed $60,000 to carry out the provisions of the Act.

The 1962 Act differs from most "color-of-title" classes of legislation in that it does call for fair market value. Both the House and Senate Interior Committees in their reports on the bill expressly noted that it "is designed to assure payment of fair market value for any lands sold under the Act by requiring that such value be determined by the Secretary of the Interior by appraisal only".

We oppose substituting a flat price of $1.25 per acre for fair market value. This substituted price has no necessary relationship to values, no necessary basis in equity, and presents no standard for justification. Moreover, the beneficiary would often be title companies who insured private transactions rather than the land owners themselves.

Moreover, S. 721 as drafted would permit sales at $1.25 to persons without preference rights. Sales under the 1962 Act have totaled $60,500, approximately one-sixth of which has come from persons without preference rights. These persons would be entitled to a refund under S. 721 as well as those adjoining owners who presumably have some sort of "equity".

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

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

Senator CHURCH. S. 721, which I introduced with my distinguished colleague, Senator Jordan, is a bill to prevent an injustice to a large number of Idaho citizens who reside on or own property along the famous Snake River in the southeastern portion of the State. Prior to 1962, Federal lands along the river were resurveyed, and it was decided by the Government that surveys made between 1875 and 1882 were erroneous—that these people were illegal occupants. In nearly every instance, they had occupied the land in full belief of their ownership, many with a chain of title exceeding 40 years. Their good faith was evident.

Realizing these people were threatened with the loss of their property, Congress passed the Omitted Lands Act in 1962. It provided that under certain conditions they could purchase the land at the present fair market value minus the cost of improvements. However, this has not proved a satisfactory solution. The owners are obliged to, in effect, pay twice over for their property, and the administrative costs to the Government have far exceeded the returns from the sale of the property.

This bill would allow the Government to sell the lands back to the people, at a token price of $1.25 per acre, and would refund a total of approximately $60,000 paid the Government under the original act.

S. 216, the bill to permit suits against the United States in land title disputes, I introduced with Senator Jordan and several other Senators as cosponsors.

This bill would amend title 28 of the United States Code to permit a citizen to bring a quiet title action against the Government in the U.S. district court in which the land in question is located. Jurisdiction is also conferred on the district courts to hear and decide such suits.

Because of the common law doctrine of "sovereign immunity," the United States cannot now be sued in a land title action without giving its express consent. Grave inequity often has resulted to private citizens who are thereby excluded, without benefit of a recourse to the courts, from lands they have reason to believe are rightfully theirs.

The third bill, S. 579, which I introduced on behalf of myself and Senator Jordan, would provide that the equitable doctrine of "adverse possession" shall run against the Government as it does in land litigation involving private ownership.

This bill would prohibit the United States from making any entry on, or bringing an action to recover, lands which have been held in adverse possession under claim of title for a continuous period of not less than 20 years. The prohibition would not apply where such lands were held by more than one person unless there existed privity of estate between the persons holding such lands.

This proposed legislation is in line with the recommendations of the Public Land Law Review Commission that the doctrine should be made applicable against the United States with respect to public lands where the land has been occupied in good faith.

Our witness list this morning is headed up by the distinguished Congressman from the Second Congressional District of Idaho, Mr. Orval Hansen. Before we turn to our witnesses, Senator Jordan has an opening statement he would like to make and I defer to him for that.

Senator JORDAN. Thank you, Mr. Chairman. Two of the bills before this hearing today, S. 216 and S. 579 are based upon recommendations going out of a 5-year study of the Public Land Law Review Commission on which I was privileged to serve. I hope that the Public Land Law Review Commission study and reports on the subject of omitted land and the related problems of suits to quiet title and the doctrine of adverse possession will help this panel expedite favorable action on these two measures. The third bill, S. 721, is legislation drafted to bring much deserved relief to many people in the State of Idaho who have a serious threat to the ownership of their property through erroneous surveys by the Federal Government. These indi-

viduals have occupied or owned their property in good faith with no question as to their title until resurveys, some occuring nearly three quarters of a century after the original surveys, indicated that they were on Government property. Several thousand acres are involved in these disputed matters of unintentional trespass and represenatives of those propertyowners have traveled here from Idaho to testify.

This bill, S. 721, provides that those who have occupied their lands in good faith can obtain title by a token payment of $1.25 per acre and that those who have been required to pay fair market value under the Omitted Lands Act of 1960 are entitled to a refund. An authorization of $60,000, the amount collected from the propertyowners under the 1962 legislation, is provided for this effort as an equitable settlement. The Bureau of Land Management which administers the Omitted Lands Acts advises that there will be no additional administrative costs and that it is prepared to settle these title cases as quickly as possible if this authorization is granted. I greatly appreciate the initiative you have shown, Mr. Chairman, in trying to restore equity in this complex area of landownership. I am pleased to join you in sponsoring this remedial legislative pack of three bills and to accept your invitation to join in this hearing today even though I am not a member of this subcommittee.

Senator CHURCH. I thank you very much, Senator Jordan. You are very much a member of the full committee and, therefore, fully entitled to sit on any of its lesser subdivisions.

Senator Metcalf, have you any statement you would like to make at this time?

Senator METCALF. No thank you, Mr. Chairman.

Senator CHURCH. Then, we will call on Congressman Orval Hansen. We are happy to welcome you here this morning and appreciate your willingness to serve as our leadoff witness. You are very knowledgeable about the problem and you have been on the ground and talked with many of the people personally who have been affected. We are most happy to welcome you.

STATEMENT OF HON. ORVAL HANSEN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. HANSEN. Thank you very much, Mr. Chairman. Let me say I am also deeply grateful to you for permitting me to appear here this morning to comment on the pending legislation and also for accommodating my rather demanding schedule which requires my being at an important conference at 10:30 this morning. Mr. Chairman, I would just speak briefly from a few notes. I would ask that a letter I received be made part of the record.

I know that there are many witnesses who come from long distances to testify and who are very knowledgeable about the subject, so my comments will be rather brief.

I might mention, however, at the outset that we are grateful to those who have come here, particularly those from Idaho, who have lived with this problem for a great many years. I am delighted to note that the witness list includes Blaine Anderson and Ted Eberle who have done a great deal of research in the history and background of this whole omitted lands problem.

We might note, also, the presence here of Mayor Rose from St. Anthony, Leslie Poole from Menan, and Kenneth Scott from Lorenzo. They have come here at considerable expense and personal inconvenience. Some of their expense is contributed to by those who are least able to assist in making it possible for the case on behalf of the landowners to be presented. We are deeply indebted to them for this effort and I think the record should show that we acknowledge that indebtedness. The inequities to which you referred, Mr. Chairman, and to which my distinguished colleague, Senator Jordan, referred are well documented and I am sure they will be further documented in the course of these hearings. The unfairness, the inconvenience, the expense that must be borne by a great many people along the river, I think will be amply shown. I would like to focus just a few moments on one other aspect of this omitted experience that we have had, since the passage of the 1962 act. That is to raise the question as to who benefits by the application of the act in its present form. I think the assumption was at such time as it was passed by Congress that there was some great interest on the part of the public and the Government, that had to be protected by making provision that these lands could not be sold to the claimants unless the Government were to receive some fair compensation. I think pertinent to this question are some of the actual figures that we have developed as a result of the experience under the act.

In response to my request, I received a letter from the Bureau of Land Management earlier this year in April detailing the expenses and the revenues that have been incurred and generated under the Omitted Lands Act. They are rather interesting. I think they do bear on the question of where the benefits lay, if any. The total expense—and while the letter is not absolutely clear, this would appear to be at least through the year 1970—the total expenses, including all of the field costs, the office cost survey, et cetera, are $790,800. The total revenues, on the other hand, from the sale of these lands to both the preference and nonpreference right claimants is $60,500. So this shows that for every $13 of expense to the Government, there has been revenue generated of about $1. So the question here, I think, can be raised: Who benefits? Now, these figures do not tell the whole story. Obviously, there must be some expenses in any event, even if the lands were to be surveyed and deeded to the claimants, and it is very likely that there are some lands still held in the Government's name that have not yet been sold or which may be retained that could conceivably be included in the benefit column. But I think, nevertheless, this disparity shows that the Government has not benefited and it shows that the losers in this case, at least among the big losers, are the taxpayers who were supposed to be protected in their interests by the passage and implementation of the original act.

Obviously, the people whose lands are affected have not benefited. The costs there also do not show up in any kind of figures that we can generate. The costs are in terms of dollars very often, but also very often, in terms of the uncertainty that accrues with having title in suspension over a long period of time, the inability to get financing, to make a sale, to take over actions with respect to the property because of the cloud that exists on the title of the property. Very often, that expense and that inconvenience far exceeds the amount of money that it would have cost to buy the land outright.

Another aspect of this that I think is well to be kept in mind is that a great many of these tracts of land are held in very small ownerships. I had the opportunity to visit many of the landowners in St. Anthony with Mayor Rose some months ago. We went sort of door to door. I think this would be an enlightening experience for anyone to go and talk to some of the widows on very limited income who were faced with this prospect of having to buy back the land, the only think they own in many cases, from the Federal Government. In addition to the cost that may be involved, there was the anguish and the uncertainty on the part of elderly people. So here again is a price that you cannot equate in terms of dollars. But this also means that in many cases, the landowner himself does not have enough at stake to go fight the Federal Government. There are just not enough dollars involved there so the injustice is suffered without any direct response on the part of the landowner.

In a few cases, the landowners can raise these questions. Therefore, it is particularly important that a committee such as this devote its time and attention to try to redress those grievances and to try to develop some kind of relief. I would only add one further suggestion in consideration of the bills, all of which I support, but would defer to the judgment of this subcommittee as to the one that would appear to have the best chance of being signed into law. If it should be the bill which relates only to Idaho, the amendment to the Omitted Lands Act, which has the virtue of being simple and also limited in its application, I would suggest and I am sure this will also be supported by other testimony here this morning, that there be an amendment so that it is not purely a matter of discretion with the Secretary of the Interior as to whether the lands will be sold, so that this is a matter of right or at least right subject to some clearer defined and justifiable criteria that can be incorporated into the law.

Again, Mr. Chairman, I thank you very much for the privilege of appearing here to present my views this morning.

(The letter referred to follows:)

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
Washington, D.C., April 5, 1971.

Hon. ORVAL HANSEN,
House of Representatives,
Washington, D.C.

DEAR MR. HANSEN: This is in further reply to your letter of February 1, requesting a report covering the activities taken by the Bureau of Land Management in implementing the Omitted Lands Act along the Snake River in Idaho.

Twenty-eight townships involving about 14,505.76 acres of omitted lands have been identified and surveyed. However, additional surveys may be required as a result of disputes which may arise. Twenty-five township plats have been approved and a final determination has been made on 16 of the 25 plats as to the disposition of the land. Sixty-three separate title transactions have been processed and patents issued to the individuals involved.

A breakdown of the funds expended and moneys received is as follows:

Idaho Falls district office	$157,000
Idaho State and Land Office	52,000
Litigation costs:	
Ruby Co., Inc	7,550
Burt A. Wackerli et al	4,000
Phillip P. Hoehn et al	2,000
St. Anthony	500
Survey costs	567,750

A breakdown of the surveying costs is as follows:

Year:	*Amount*
1957	$26,400
1958	23,400
1959	23,400
1960	22,000
1961	26,000
Subtotal	121,200
Omitted Land Act, 1962:	
1962	28,700
1963	26,000
1964	28,700
1965	20,700
1966	0
1967	0
1968	56,250
1969	35,600
1970	25,000
Subtotal	220,950
Total	342,150

Cadastral survey omitted lands—Office costs

1957–66 (estimated)	$150,000
1967–70	75,600
Total	225,600

The office cost includes drafting, note preparation, and related costs.

Field costs	$342,150
Office costs	225,600
Total survey costs	567,750
Total cost, all activities	790,800

The following are amounts received from the disposal of lands to preference and nonpreference right claimants:

Amount received from preference right claimants	$50,160
Amount received from nonpreference right claimants (public sale)	10,340
Total	60,500

Sincerely yours,

JOHN O. CROW, *Acting Director.*

Senator CHURCH. You made a very fine statement. The thing I liked about it is you emphasized the human element here which more and more seems to be lost sight of by the Government bureaucracy.

I read in the Sunday Washington Post an article of indictment against the process of decision within the State Department and the Pentagon relating to American foreign policy and how little the human element ever entered into any of the decisions in Southeast Asia over the years. I think that indictment is true. It is a sorry reflection upon our administrative process. But here, in a very limited way and in a very different field, is another illustration. We have a Government survey taken in the last century upon which the citizenry have depended through the years and suddenly, after people have lived upon the land most of their lives and developed it and have paid taxes on it and had every reason to believe it to be their own, the Government comes along

and says the survey was erroneous, we set it aside and reclaim the land on the basis of a new survey that we have now completed.

And then, in order to try and find some justice for the people thus deprived, we undertook in the Congress to furnish a legislative review after the failure of the bureaucracy to furnish any solution. The only legislation remedy that we could get approved, that we could avoid having vetoed, was one that required the landowners to pay the Government again the full fair value of the land based on present market prices. That did not seem to be a very sufficient remedy but the argument for it was that the land legally belonged to the Government and, therefore, the Government was entitled to claim its present value.

Now, you have given us figures to demonstrate that the cost of administering this law, which was signed on the strength of the necessity to protect the Government's interest, has cost the Government 13 times as much as the proceeds that have been realized. We get a case where not only the human element has been disregarded, but where the very people who are supposed to be entrusted to protect the Government's interest have ended up demanding a law that has been 13 times as costly as it has been productive of revenue to the Government itself.

I think this is the sort of thing that causes people to become so irritated with the Government and there ought to be a method that takes the injustice into account that could furnish us with a solution to this problem of why we have to wait year after year to get it solved to come back again a second time with more legislation, all of which I understand is going to be opposed by the Government, is just beyond my understanding. Well, I want to commend you for your statement and express my appreciation for your coming this morning.

Mr. HANSEN. I might acknowledge, Mr. Chairman, again focusing on where the blame lies and the remedy lies, it has been my experience in working with the BLM officials in the field at Idaho that they have been most cooperative and most sympathetic but they, after all, did not write the law and they have the unpleasant duty in many cases, to enforce it. I think maybe the record should show at least from my own personal experience, that they have been very helpful and cooperative. The answer really lies with us here in Congress in writing a more equitable law.

Senator CHURCH. Yes, I think the answer does lie here in Washington, but in writing law we need the cooperation of two branches, the Congress and the executive branch. Without that cooperation, no law can be written. It takes a presidential signature at the end of the route.

Mr. HANSEN. And it takes strong support from the executive departments and agencies to assist the Congress, as you point out, in devising and applying in the spirit in which it is intended the kinds of laws that are designed to provide relief in cases such as this.

Senator CHURCH. I think it was very fair of you to mention that the local people in Idaho, the BLM, have tried to find some legislation solution and it was on their recommendation that we submitted S. 721 in the first place, because it was confined to Idaho and it did follow a pattern that had once before been followed in a case of this kind and looked as though it might represent the way to solve the problem. I agree with you that they tried to be helpful in designing legislation to cope with this.

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Senator Jordan?

Senator JORDAN. Thank you, Mr. Chairman. Orval, your testimony is a fine contribution to the hearings here today. You made one suggestion about a specific amendment to S. 721 that I would like to explore with you briefly. On page 3, line 14 of S. 721, there is language that says "If such land be offered for sale by the Secretary" and I understand you are suggesting an amendment that would mandate the Secretary to offer the lands to the occupant.

Mr. HANSEN. Yes; that is correct, Senator. This really reflects the concern that has been expressed by many of those who are affected in eastern Idaho. The fear is that this would be purely a matter of discretion and the right would not exist, as a matter of law, for a landowner to acquire his land. Now, it may be that some specific criteria could be developed and incorporated in the legislation itself wherein the Secretary's discretionary authority could be closely limited.

Possibly there are tracts of land where there is a great and overriding public interest. Perhaps in such cases, if they could be specifically identified and defined, the mandatory effect of the bill would not work, but otherwise it seems to me that we should give the affected landowners something more than just the hope that they now have in the bill that there is a relief for them.

Senator JORDAN. I think you pinpointed a weakness in our bill. I would hope that you would put some language together that would implement the explanation you have given of your idea of what this discretionary authority of the Secretary should be and provide it to this committee. Would you be willing to do that?

Mr. HANSEN. I would be very happy to, Senator.

Senator JORDAN. Thank you.

Senator CHURCH. Senator Metcalf, have you any questions?

Senator METCALF. No.

Senator CHURCH. Thank you very much, Congressman.

Mr. HANSEN. Thank you.

Senator CHURCH. Our first witness speaking for the Government this morning is Irving Senzel, the Assistant Director of the Bureau of Land Management testifying on S. 721.

STATEMENT OF IRVING SENZEL, ASSISTANT DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. SENZEL. Thank you, Mr. Chairman. I have with me Mr. Michael Harvey, Chief of our Division of Legislation.

Senator CHURCH. Why don't you just proceed with your statement and then we will have questions.

Mr. SENZEL. Thank you.

The act of May 31, 1962, gives the Secretary of the Interior discretionary authority to sell at not less than fair market value any lands in Idaho in the vicinity of the Snake River or any of its tributaries which he finds are omitted lands. A preference right to purchase at fair market value less value added by the claimant or his predecessors in interest is given to anyone who, in good faith under color of title or claiming as a riparian owner, had prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation, or occupied such lands.

S. 721 would change the pricing provision of the present law by providing for a payment of $1.25 an acre instead of fair market value. It would also entitle any person who had already purchased land under the 1962 act to a refund of any amount in excess of $1.25 an acre that he had paid for the land. Section 2 of S. 721 would authorize an appropriation not to exceed $60,000 to carry out the provisions of the act.

When public lands adjoining bodies of water are surveyed, the water line is indicated on the survey plat by a meander line. The meander line is drawn to determine the quantity of land included in the surveyed tract. The general rule is that the actual boundary of the tract is the shoreline of the body of water, not the meander line. However, where because of fraud or error in the survey there was at the time of survey a substantial amount of land between the meander line and the actual edge of the water, the meander line is considered the boundary of the tract. Omitted lands are the lands lying between the meander line and the waterline.

The Bureau of Land Management has identified 15,000 acres of omitted lands along the Snake River in Idaho. To date, there have been 38 sales under the 1962 act involving 1,950 acres. Preference right claimants were involved in 33 of these sales covering 1,325 acres. Our Idaho State Office estimates that another 2,500 acres may be offered for sale.

If S. 721 were enacted, the maximum price for the land would be $1.25 an acre even if there were no preference claimant with some sort of equity. The bill would thus clearly provide a windfall for any non-preference right purchaser.

In any event, a flat price of $1.25 per acre has no necessary relationship to values, no necessary basis in equity, and presents no standard for justification. If S. 721 were enacted the beneficiary would often be the title companies who insured private transactions rather than the claimants.

The sum of $60,000 provided for in section 2 of S. 721 would cover only the cost of refunds to persons who had already purchased land under the 1962 act, not the costs of administering the bill. The costs of implementation of the 1962 act—primarily costs of surveys—have exceeded the payments received. The average cost of surveying was $37 per acre; the average payment to the United States for conveyance under the 1962 act was $32 an acre.

Consistent with the position which will be discussed by the Department of Justice, the Department recommends that S. 721 not be enacted.

Senator CHURCH. Well, Mr. Senzel, suppose you had owned a piece of land out there and lived on it for 40 years and paid taxes on it and had every reason to think it was your own based upon a Government survey and then the Government came along and changed the survey and told you it was reclaiming half your land, do you think that you would feel that you had been treated fairly?

Mr. SENZEL. I am not sure I could answer that question.

Senator CHURCH. Oh, yes you can.

Mr. SENZEL. I would have to know the circumstances of my claim.

Senator CHURCH. I will relate the circumstances. I am giving you

the case which I happen to believe is representative of the case of most of these citizens and nothing that the Government has shown me yet gives me any reason to believe otherwise. I state the case: Suppose you lived for 40 years and farmed and improved the land and raised your family on it and paid taxes on it and that land originally was based upon a Government survey that you had no cause to believe was erroneous. Then the Government came along and made a new survey and claimed half your land and refused to sell it back to you except at its own pleasure, such part as it pleased, and then only if you paid the Government the present market value of that land. Would you think you have been treated fairly?

Mr. SENZEL. If I had no reason to believe otherwise, I think I would feel I was treated fairly.

Senator CHURCH. You do not regard the factual situation on which I base my question a basis for feeling otherwise?

Mr. SENZEL. My understanding is there is a reason to feel that the claimants should know that the land is Federal land. That is the basis for the doctrine of omitted lands.

Senator CHURCH. Well, I do not think that that is the facts of the case and I think if you had been out talking to the people of this area, as we have been, you would think differently too. Now, you say in your testimony that if S. 721 were enacted, the maximum price for the land would be $1.25 an acre and even if there were no preference claimant with some sort of equity the bill would thus clearly provide a windfall for any nonpreference right purchaser. If the bill were amended so that the $1.25 right would be limited only to those whose property has been reclaimed, would the position of the Department be any different? In other words, if the element of windfall were eliminated entirely, would the position of the Department be any different on the bill?

Mr. SENZEL. I am not quite sure what you meant by that added statement, but if the change were just to make the $1.25 apply only to the preference claimants, I think the position of the Department would not change.

Senator CHURCH. In other words, the Department is against this bill in any case, no matter whether it is just limited, as we intended it to be, to these particular people to whom we feel injustice has been done. Even then, the Department would be against it.

Mr. SENZEL. If that particular change were the only change, yes.

Senator CHURCH. Well, what solution do you have to offer?

Mr. SENZEL. The Department has not come up with a solution or a suggestion at this particular time. The Department of Justice will discuss some of the issues involved and will have to look at the situation in the light of the principles they state.

Senator CHURCH. The Department of Interior has no solution to offer at this time; is that right?

Mr. SENZEL. At the present time.

Senator CHURCH. Do you know how many years this has been going on?

Mr. SENZEL. We have the 1962 act for about 9 years now and that has been operating.

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

Senator CHURCH. Yes, I would be happy to.

Senator METCALF. Mr. Chairman, when they were building Fort Peck Dam, that was at least 40 years ago, I was an assistant attorney general in the State of Montana and the Government was acquiring land along the Missouri and this same situation arose in case after case, so this is no new matter. This isn't something that has come as a surprise to you. This is a matter that concerns everybody in the West on all these turbuent and tumultuos rivers where there is a spring run off and an autumn overflow. Certainly by now, if you cannot come up with something from the administration, it is the responsibility and duty of Congress to do something about it.

Thank you, Mr. Chairman.

Senator CHURCH. I certainly do agree. I think this is the kind of thing that makes people feel cynical about the Government's claim to be the servant of the people. I can understand the frustrations that these owners feel when they have tried for years to get some solution and cannot get one. After all these years you come up here and testify that you are against all of the bills that are proposed to solve this problem and you have no suggestions of your own.

Senator Jordan?

Senator JORDAN. Mr. Director, I want to pursue this a little further. Senator Church said that you said on page 2 of your statement if S. 721 were enacted the maximum price for the land would be $1.25 an acre even if there were no preference claimant with some sort of equity. Do you know of any acreages or situations in that stretch of the river where there are no preference claimants who might be unjustly enriched?

Mr. SENZEL. Of the 38 sales that we have had to date, five of them have been sold to nonpreference claimants.

Senator JORDAN. Five of 38 have been sold to people who had no prior claim to the land.

Mr. SENZEL. That is right.

Senator JORDAN. In those five circumstances, was it a competitive bid?

Mr. SENZEL. This was competitive, yes.

Senator JORDAN. It is quite possible that those people who were preferential claimants could not afford to meet the higher bid of someone who was not a preferential claimant?

Mr. SENZEL. That is theoretically possible. I do not know the particular circumstances.

Mr. HARVEY. If I might interject something here, the total acreage sold at public auction has been about one-third of the acreage sold under the 1962 act. On meeting the high bid, the procedure under that act is the preferential claimant does not have to meet a high bid. He simply pays the price to the Secretary.

Senator JORDAN. What price?

Mr. HARVEY. The appraised fair market value which is required by law, but there is not a question here of meeting a high bid. If no one comes forward to pay the appraised fair market value, then the lands are put out for public auction.

Senator JORDAN. Was the appraised market value, was it closely related to the sale price of the land?

Mr. HARVEY. Yes, as far as I know. That price, incidentally, in the case of the preference claimant does not include the value of any im-

provements to the land which the claimant has made so it would be a lower value generally.

SALES OF OMITTED LANDS TO PERSONS WHO DID NOT HAVE PREFERENCE CLAIM

	Number and acreage	Selling price	Appraised price
1.	76.87	$1,070	$1,070
2.	153.80	2,390	2,220
3.	162.42	2,030	2,010
4.	212.10	4,300	3,150
5.	22.87	550	340

Our State Office, Idaho advises that preference right claims were filed on tracts covered by items 1, 3, 4 and 5 but the applications were rejected because the lands were found not to be improved, cultivated or occupied, so that the applicants did not qualify for a preference right under Section 2 of the Act of May 31, 1962 (76 Stat. 89). The tracts were then offered for sale by BLM and sold to the highest bidder, who in no case was a person who had claimed a preference right. No preference right claim was filed for the tract in Item 2. These lots were put on the market on BLM motion.

Senator JORDAN. Then, it is all together possible that the preferential claimant would not have the means to meet even the appraised price if it were close to the sale price?

Mr. HARVEY. Yes, sir; that is certainly possible.

Senator JORDAN. Of the five sales for which there was no preferential claimant as a successful bidder, will you provide for the record the number of acres involved and the amount of the sales price and the amount of the appraised price and the person who was occupying the land at that time and paying taxes on it as the residual owner?

Mr. SENZEL. Yes, sir.

Senator JORDAN. Thank you.

Senator CHURCH. Well, I do not think there is any point in asking further questions. You made it clear today that the Department really has little interest in finding a solution to this and so I think the only thing we can do is to try and pass a bill that we think does equity and then we will take it to the President. I can see where you can prevail on him to vote with you and we can prevail on him to vote with us. He casts the final vote in these cases.

Mr. SENZEL. May I volunteer a statement about the Department's attitude? The Department is not disinterested. It is not unwilling to consider and listen to alternatives. We are prepared to go further on this matter. At this particular time, we do not have an alternative suggestion.

Senator CHURCH. I think by this time, you should have a suggestion of your own if you are going to oppose all three of these bills, each one of which tries to reach a solution from a different angle. I just think it is inexcusable to come here at this late date and oppose these bills and have nothing to suggest in the way of doing justice for a lot of citizens that have been dispossessed through no fault of their own.

Mr. SENZEL. The Justice statement, I think you will see, leaves the way open for further consideration of this matter.

Senator CHURCH. All right, Mr. Senzel.

Our next witness is Mr. Mitchell Melich, Solicitor for the Department of Interior, who will testify on S. 216.

STATEMENT OF MITCHELL MELICH, SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. MELICH. Senator Church and Senator Jordan, I have with me John McHale and Ken Brown who are on my staff. The Department of Interior is opposed to the enactment of S. 216 or S. 579. We recommend instead the favorable consideration and enactment of a bill which has been proposed by the Justice Department which we feel would best achieve those objectives of S. 216 which we support.

S. 216 and the Justice proposal are aimed at a common problem which is to allow private landowners to bring suit against the Federal Government to quiet title to their land. Such suits are presently barred by sovereign immunity. The claimants only present remedy is under the Tucker Act, passed in 1887, which gives the court of claims jurisdiction over "All claims founded upon the Constitution of the United States or any law of Congress * * *." This provision allows a remedy of damages for a taking of real property, but does not require or even permit the return of the property to the claimant.

We prefer the remedy proposed by the Department of Justice to S. 216 for a number of reasons:

First, it makes it clear that the bill will not waive sovereign immunity to suits based on adverse possession.

Second, the Justice proposal specifically excludes lands held in trust for Indians and Indian restricted lands. The Federal Government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements to hold land for the Indians in trust. The Indians, for their part, have often surrendered claims to vast tracts of land. A unilateral waiver of the defense of sovereign immunity as to this land would, we feel, be contrary to President Nixon's pledge not to abridge the historic relationship between the Federal Government and the Indians without the consent of the Indians.

A third significant difference between the Justice proposal and S. 216 is the provision in the former which would allow the United States, if the judgment is adverse to it, to elect either to return the property to the claimant or to pay money damages. This discretionary option to return claimant's property will afford adequate relief under proper conditions, but will not serve to disrupt costly ongoing Federal programs that involve the disputed lands when the Government chooses instead to pay damages.

S. 579 would create a right of adverse possession against the United States by prohibiting the United States from making an entry on or bringing any action to recover public lands which have been held under a claim of title for a continuous period of not less than 20 years.

As stated in the Departments report on both introduced bills we oppose a general adverse possession law although we have supported exceptions to the general rule in specific situations where the equities of the landowner are great and the danger of abuse are limited.

I might say, Mr. Kashiwa will, of course, present the Justice Department proposal. I do not know whether that proposal is before the committee at this time.

Senator CHURCH. I should think that it might be well to have the proposal presented. We do not, other than your general reference to it in your testimony, have it. If the Justice Department has the proposal, why don't we proceed to hear Mr. Kashiwa, Assistant Attorney General for Land and Natural Resources Division of the Department of Justice. That will give us an opportunity to review the proposal.

STATEMENT OF SHIRO KASHIWA, ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE

Mr. KASHIWA. My name is Shiro Kashiwa. I am the Assistant Attorney General in charge of the Land and Natural Resources Division of the Department of Justice and am here in response to this committee's request. With me today are Mr. Walter Kiechel, Jr., Deputy Assistant Attorney General, and Mr. David R. Warner, Chief of the General Litigation Section in my Division.

I have come to discuss three bills which differ in their individual purposes. However, all three have as common objectives (1) the extension of the rights of citizens in controversies with the Federal Government involving title to land and (2) a corresponding reduction into the capacity of the Government to protect its claims of property rights against conflicting claims of private citizens.

The first of the three bills (S. 216) would permit suits to be brought against the United States to adjudicate disputed land titles. The second (S. 579) would give recognition to adverse possession as a means of obtaining title to public land. The third bill (S. 721) would substantially amend the act of May 31, 1962 (76 Stat. 89). The Department of Justice does not favor enactment of any of these bills in their present form.

S. 216

Under existing law, the defense of sovereign immunity is a complete bar to action by a private litigant against the United States to adjudicate title to real property. The doctrine of sovereign immunity has often been criticized by the courts, as well as by others, particularly as it applies to suits against the United States to quiet title to real property.

The Department of Justice is sympathetic with those who feel there should be an easing of the restrictions imposed by sovereign immunity. There is much to be said in behalf of a citizen claiming title to land in conflict with the claim of the United States to the same land. At present, such a person must passively await action by the United States to eject him from the land, or he must commit an offense calculated to stir the Government to proceed against him in order to find whether or not he has title.

The fact that a claim of ownership of land is asserted, which is inconsistent with the Government's own claim, is not ordinarily enough in itself to bring the Government into court to resolve the dispute. As a practical matter, unless the conflicting claimant is interfering with the Government's use of land, or unless it is for some other reason deemed to be in the interest of the United States to bring suit, no action will be taken. There is obviously a problem for the private

claimant. However, we do not believe that S. 216 contains the solution to that problem.

The provisions of S. 216 are identical with those of an earlier bill, S. 3248 of the 91st Congress, which we also oppose. In our view, the provisions of the bill are too broad and sweeping in scope and are lacking adequate safeguards to protect the public interest. If legislation waiving sovereign immunity from actions to try title to real property is to be enacted, we believe such legislation (1) should be prospective in operation.

Senator CHURCH. Will you explain what you mean by prospective?

Mr. KASHIWA. I will later go into that.

Senator CHURCH. All right.

Mr. KASHIWA. (2) Should provide for a 6-year statute of limitations from the time the right of action first accrued, and (3) should permit the United States to remain in possession of the property pending a final judgment. In the event the final decision is adverse to the United States, further provision should be made to authorize the United States, at its election, to remain in possession upon payment to the person or persons determined to be the owner(s) of the property of the amount the court finds to be just compensation for the property. The amount of the "just compensation" in such case should be determined at the same time as the title, rather than in an independent suit under the Tucker Act.

The Department of Justice has devoted a considerable amount of time, care, and thought in drafting a bill which would permit suits to be brought against the United States to adjudicate disputed land titles and which would also contain what we consider to be appropriate safeguards for the protection of the public interest. I have with me today copies of that bill to submit for the consideration of this committee, and I ask that it be placed in the record.

Senator CHURCH. Without objection, the text will appear at this point in the record or immediately following your testimony, whichever you prefer.

Mr. KASHIWA. Following the whole testimony.

Senator CHURCH. Very well.

Mr. KASHIWA. By the way, a formal presentation from the Department will follow in an executive communication of this bill we propose.

This bill was worked out through consultation of the Land and Natural Resources Division with the Tax Division, the Civil Division, the Office of Legal Counsel and the Office of the Solicitor General in the Department of Justice and with other Government agencies that might be affected. We strongly urge that, if legislation permitting suits to be brought against the United States to try title to real property is to be enacted, the Department of Justice bill be adoped in lieu of S. 216.

S. 579

We also feel that the enactment of S. 579 would not be in the interest of sound public land management. That bill would prohibit the United States "from making any entry on, or bringing any action to recover" public lands which "have been held by adverse possession

under claim of title for a continuous period of not less than 20 years." It would thereby create a right of adverse possession against the United States. The bill would also permit tacking of successive periods of adverse possession where there was "privity of estate between the persons." It would define adverse possession as that "which was obtained and held by a person reasonably believing that he held title to such lands, and which possession was actual, exclusive, open, and notorious."

The language of the bill, in prohibiting the United States "from making any entry on, or bringing any action to recover" lands held in adverse possession, could lead to curious results. Undoubtedly, the bill is intended to permit one holding by adverse possession to quiet title against the United States. However, the bill does not expressly authorize the initiation of a quiet title action against the United States. It merely prohibits the United States from bringing an action in the nature of ejectment. Thus, since, in the absence of some other statutory provision, the adverse occupant could not sue the United States, it would appear that a permanent cloud could be cast upon the title. Furthermore, the bill would appear to repeal, or at least to conflict with, 28 U.S.C. section 2415(c). That statute provides that there is no time limitation for bringing an action by the United States to establish the title to, or right of possession of, real property. However, the bill makes no reference to the statutes.

The doctrine of adverse possession has never been applicable to lands owned by the Federal Government. The legal rationale for this has its roots in the supremacy clause and the doctrine of sovereign immunity. However, there is a far more practical consideration. The Federal Government, as the owner of vast areas of land, cannot possibly maintain the type of surveillance over its lands which is necessary to prevent persons from occupying Federal lands adversely. In many cases the Federal Government does not know, without expensive surveys, the precise boundaries of the Federal lands. To protect its property, the Government would have to employ periodic inspections of all of its property and would have to remove occupants before their occupany could ripen into rights. The administrative problems, without consideration of cost, of such a program of inspection would be staggering. It is simply unrealistic to suppose that the Government can protect the public lands from the unlawful invasion that is almost certain to follow if adverse possession against the Government is recognized as a basis for gaining title to land. As the Supreme Court explained in *United States* v. *California*, 332 U.S. 19, 40 (1947):

> The Government, which holds its interests . . . in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.

We recommend the enactment of legislation along the lines we have proposed. Such legislation, permitting suits against the United States to quiet title, but with appropriate safeguards, will go far toward providing a solution to problems growing out of conflicting claims of the United States and individual citizens to the same land. We believe, also, that the proposal of S. 579 that adverse possession

against the United States be permitted would lead to the unjust enrichment of individuals at the expense of people of the United States generally, and we recommend that it not be enacted into law.

S. 721

A number of years ago the Department of the Interior found errors in the public land surveys of lands along the Snake River and its tributaries, in Idaho of such magnitude as to constitute, in its judgment, "gross error" or "fraud." Thereafter, that Department undertook to correct, so far as possible, the errors of the early surveys by resurveying the erroneously surveyed lands. This resulted in a finding that substantial areas of land had never been surveyed. Inasmuch as some of the lands which were resurveyed had already been patented in accordance with the old surveys, the practical result, in some instances, was the carving of tracts of public land from tracts supposedly already in private ownership. That is, where a particular legal subdivision of land was shown by the original survey plat to border on the river, and subsequent investigation disclosed that there was a significant distance between the edge of that subdivision and the river, the intervening land was surveyed as public land, designated on the survey plat by a new lot number.

This was not an unprecedented occurrence. The history of errors in the surveys of public lands, particularly where lands border bodies of water, is almost as old as the history of the public land surveys themselves. A substantial body of law has developed over the years with respect to the effect of such errors. There are now long-recognized principles to be applied in determining whether an incorrectly drawn survey line is nevertheless an acceptable representation of what is on the ground or whether the line is so inaccurately drawn as to constitute "gross error" or "fraud." If it is determined to be "gross error" or "fraud," lands omitted from the survey are excluded from any conveyance of the surveyed lands and are delineated on a new survey plat as public lands of the United States.

Senator CHURCH. Since I know of no element of fraud in the case of Idaho, I therefore must assume that the problem has arisen as a result of gross error.

Mr. KASHIWA. Yes.

Senator CHURCH. The gross error——

Mr. KASHIWA. What we are quoting here is from the cases. We are not impuning fraud to anybody.

Senator CHURCH. I understand. Since I think there has been no suggestion of fraud in the Idaho case, then the case would be one based upon gross error in the original survey, but the gross error was the error of the Government; was it not?

Mr. KASHIWA. Yes.

Senatro CHURCH. I just want to establish that.

Mr. KASHIWA. I will go back to this.

In recognition of the problems arising from the determination that there were "omitted lands" along the Snake River which should be surveyed as public lands, Congress enacted legislation, approved May 31, 1962 (76 Stat. 89), authorizing the Secretary of the Interior "to sell at not less than their fair market value * * * any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its

tributaries which have been, or may be, found upon survey to be omitted public lands of the United States," and which meet certain other criteria. The act also accorded a preference right to purchase such lands to any citizen who, "in good faith under color of title or claiming as a riparian owner," placed improvements upon, reduced to cultivation or occupied such land prior to March 30, 1961, or whose ancestors or predecessors performed such acts.

S. 721 would modify the 1962 act primarily in substituting for the authorization of the Secretary to sell the omitted lands "at not less than their fair market value" a mandate to sell such lands as may be offered for "an amount equal to $1.25 for each acre." In addition, where land has already been conveyed under the 1962 act, the bill would require reimbursement to the purchaser, upon timely application, of "an amount equal to the difference between the amount which such person paid as consideration for such patent" and $1.25 per acre.

We do not believe that the sale of land for the nominal consideration of $1.25 per acre is warranted in this instance. If, in the view of the Congress, relief beyond that authorized by the 1962 act should be extended to particular owners of land who have been affected by the survey of omitted lands, such relief, in our opinion, should be granted through private relief legislation. We can see no justification for enactment of S. 721.

As I have previously indicated, there are established principles to be applied in determining exactly what land is conveyed by a patent from the United States. The provisions of S. 721 are essentially in derogation of those principles. If the Congress wishes to avoid further problems of the nature described, it can undoubtedly enact legislation which will, in effect, preclude the United States from asserting any claim to land as omitted public land after the incorrectly surveyed land to which it is adjacent has been conveyed. Such would be the practical effect of S. 721 as to the lands specified therein. But if such legislation is to be enacted, it should apply to all similar situations, not just to lands along the Snake River. The Snake River omitted lands are not unique. We are not suggesting, of course, that general legislation of this nature should be enacted.

In conclusion, then, I wish to emphasize that the Department of Justice favors the enactment of legislation which will permit, in orderly fashion and with adequate safeguards for the protection of the public interest, the institution of suit against the United States to quiet title to real property. We do not believe that the three bills discussed here today are adapted to achieving that goal, and, for the reasons I have given, we recommend that they not be enacted.

Senator CHURCH. Thank you, Mr. Kashiwa. I want to go back to the last paragraph of page 9 in your testimony. There, you say:

> We do not believe that the sale of land for the nominal consideration of $1.25 per acre is warranted in this instance. If in the view of the Congress, relief beyond that authorized by the 1962 act should be extended to particular owners of land who have been affected by the survey of omitted land such relief in your opinion should be granted through private relief legislation.

First of all, I want to say that S. 721 is in the nature of private relief legislation. It is limited to this particular problem and I do not know what could be a more effectively drawn private relief bill than this one addressed to the problem.

Second, I do not know why you say that a nominal consideration to the Government is not warranted in this instance when in this instance the problem arises as a result of gross error on the part of the Government.

Mr. KASHIWA. This is what I want to go into. In this type of error, just because there was an error in that survey, it was an error by a surveyor of the Government, that does not mean that that title to that public land is transferred. The cases hold—a case in the ninth circuit and one in the tenth circuit—that the title to that excess land is not transferred and if it is not transferred——

Senator CHURCH. I understand but that is not the point. I am not arguing the cases with you. You are quite right. Legally looked at from the antiseptic pages of a lawyers brief, the title belongs in the Government. But I have already said this is in the nature of a relief bill to do equity because the law has done these people a great hardship. Now, you say in your testimony that the Justice Department which is set up presumably to do justice, if you want to remedy the hardship, you should introduce a relief bill. Well, that is what S. 721 is. That is why it provides for a nominal payment to the Government, that recognizes the Government's legal claim. That is why the nominal payment is put there. But it is a nominal payment in order to relieve the citizens of a hardship that was not their doing, that resulted from the gross error of the Government in the first place.

Mr. KASHIWA. But generally speaking, under the general law, lands are sold as provided in that bill which was passed at the reasonable market value. This is what we are pointing to. Mr. Warner would like to comment.

Mr. WARNER. Senators, I get your question respecting the $1.25 an acre. This is premised on your conviction that the landowner has already once paid for the land which he is now claiming. I think we would disagree that the landowner has actually paid. That is, the starting point for the equity that you are concerned about, I think, is really a debatable thing itself. When the meander line is drawn, the purpose of the meander primarily is to determine the quantity of land in the surveyed tract. Once the meander is drawn and put on the plat, you have a stipulation as to how much land is contained in the surveyed tract. In many of these cases, the lands that are being claimed, which the Government says are omitted lands, are as much as three and four times what the survey says was contained in the survey tract. So, the man did not actually pay in the first place, or his predecessor did not pay in the first place for this land that Congress in 1962 said he could have upon paying fair market value and which you would now say he could have upon paying $1.25 an acre. He did not really pay for it.

Senator CHURCH. Let me tell you in what ways the people have paid for this land. First of all, in most cases, they thought they owned the larger tract and many of them, some of whom even raised questions concerning the land, were told from time to time by agents of the Government itself that there was no cause for concern.

Second, in many cases, the land, the larger tract, was fenced and cultivated and improved, all at the expense of the man who thought he owned the larger tract.

Furthermore, for 40 years or more these people have paid taxes on what the county regarded as their ownership, which was the larger tract. In all these ways the people have paid and paid and paid. And all we can do for them in 1962 was to say we are going to give you solution. You can pay again, the fair market value. And that solution cost the Government 13 times as much as the Government collected. So you see, by any standard, this is a mess and all we want to do is clean it up. S. 721 is meant to do that as a kind of private relief bill.

Now, I suggest to you in all good humor, that when you say, Mr. Kashiwa, as you do on page 10 of your testimony, "But if such legislation is to be enacted, it should apply to all similar situations," you are referring now to S. 721 "not just the lands along the Snake River." The Snake River omitted lands are not unique. We are not suggesting, of course, that general legislation of this nature should be enacted. Of course, you are not. If we made this a general application bill to all omitted lands, you would have come in here screaming against it and you would have had 20 pages of reasons why this would have undermined the Government in its claim upon its land. So, we come in with a limited bill which isn't going to create these vast problems up and down the riverfronts of America, and you come in and say, "No, the limited bill is not the way to do it because it is not a limited problem."

The way you approach this thing, there is no way to do it. I really do not think I overstate that case. I know what your testimony would be if we had a bill of general application. You have already suggested what it would be when you say "we do not suggest such a bill."

Mr. KASHIWA. The difficulty here is lands are to be conveyed by the United States in a certain way. We in the Department of Justice must follow that and, in these cases, it was not done—it was not done in the way as provided by law.

Therefore, this rule of excess lands or the error type has been established. There is no question about the law on this.

Senator CHURCH. We are not arguing the law. We are arguing a solution to undo a hardship the law is causing. The Government can do it by drawing up a deed to each of these people, a regular quitclaim deed for $1.25 an acre and convey this land back and undo the hardship. And that is what this bill would authorize.

Mr. KASHIWA. The figure given by Interior is $34 an acre in the prior testimony.

Senator CHURCH. Yes, based upon the present fair market value. But as Senator Jordan already mentioned, many of these people have found it exceedingly difficult, some not possible, to pay the present fair market value for land that they have occupied all these years and developed and paid taxes on and thought they owned.

Mr. KASHIWA. As Mr. Warner has said, in one of the cases we know about, the area is 30 acres, which was the proper area, and the added area is 100 acres.

Senator CHURCH. That was not anybody's fault but the Government's.

Mr. KASHIWA. This is where we get back onto the theory of these cases. Somebody made an error, yes; but Federal lands are not conveyed in that way and we have to be very strict with that. Otherwise, all of our lands would be gone. We have to be strict. This is the position we take in the Department of Justice.

Senator CHURCH. Well, you certainly are strict. I must say that. But you also have to be just. Because there are lots of strict governments in the world that are not just. If one must choose between justice and strictness, I choose justice. Now, you said, in effect, let this be a relief bill, because there might be some relief needed. That is what it is. That is what it provides for a nominal payment.

Mr. KASHIWA. It is not an out-and-out relief bill. It relates to a certain situation and parties are not named and then so much is paid. Now, it relates to certain lands and the owners thereof, so it is not the out-and-out relief bill which I refer to. I am sorry about being strict about Government land conveyance laws, but, Senator, you want me to be strict with all public property, don't you? This is one of our duties and we like to enforce it strictly.

Senator CHURCH. Mr. Kashiwa, I think we have covered the field. I do want to say something kindly to you because I do not want to be entirely negative in our exchange. You have come here in connection with S. 216 with a proposal that makes a lot of sense. Unlike the Interior Department, you did not come emptyhanded. I think there are defects with the original bill, S. 216. You have pointed up these defects. We were not cognizant of them at the time we introduced the legislation. You grasp the purpose of the legislation and the objectives sought and you tried to design a bill that will accomplish that purpose. Now, I commend you for that. That is the kind of cooperation we need from the Department, from every executive department, if we are going to get solutions to these problems. I just want you to know that we will take your proposal and give it close scrutiny and consider your testimony and it may very well become the vehicle for administering S. 216 in the nature of a substitution and we may then proceed with some hope that with your Department's help we can get a law of this kind written and made a part—written onto the statutes. I want to commend you for doing that.

Mr. KASHIWA. I would like to say this: This bill was drafted under considerable study by all members in our lands division. There was a lot of expertise on this.

Senator CHURQH. I can see it has and I think it may give us a key to do something that has long needed doing, giving people the right to go into court to clear title when there is a disputed title and the Government is involved.

Senator Jordan?

Senator JORDAN. Mr. Chairman, I just want to clarify one portion of the testimony because, frankly, I do not understand it. You say on page 9, "If in the view of the Congress, relief beyond that authorized by the 1962 act should be extended to particular owners of land who have been affected by the survey of omitted lands such relief in our opinion should be granted through private relief legislation." Now, is Justice suggesting that if instead of coming in here as a joint venture, these claimants who have identical problems, identical situations, that they come in here with a private relief bill as a joint venture? You are saying, let them fragment their case, each claimant making his own so that the bureaucracy of the Federal Government can wear them down one by one. Is that what you are saying here? That private relief bills are the recourse to take in this situation?

Mr. KASHIWA. That is what we are saying. The way the bill is worded, it is not really a relief bill type of relief that I know of. You have to go through a certain procedure and a reasonable value appraisal and so forth. It is sort of a quasi-relief bill, but what we were thinking about would be out-and-out relief.

Senator JORDAN. Without any charge—if it was found for the claimant, there would be no charge. Is that what you are saying? For the land.

Mr. KASHIWA. I do not get your question.

Senator JORDAN. An out-and-out relief bill, what does that——

Mr. KASHIWA. The amount could be figured out and a bill presented to John Doe of say $500.

Senator JORDAN. I hope Justice realizes that many of these claimants are small land owners who have not the means after 20 years of disastrous farm prices, farm prices being no higher now than they were 20 years ago, these small claimants could employ a lawyer and run up against a battery of legal talent that you would pit against them and the outcome is clear. You would beat them down one by one. You are saying that these people cannot joint venture their claims although they are identical in nature. They cannot pool their claims and hire attorneys to present their case.

Mr. KASHIWA. Why put in $1.25 instead of reasonable market value? I think public land should be sold at reasonable market value.

Senator CHURCH. How many times?

Mr. KASHIWA. As Mr. Warner said, the improvements you have mentioned, improvements on the land like the fence and so forth, he did not really pay for that property. Like in the case I mentioned, he paid for 30 acres but did not pay for the hundred acres. That is what Mr. Warner wanted to point out. Sure, fencing was put on. Other improvements were put on. But with relation to discussion of title, Senator Jordan, I am sorry but I have to go back to what I said to Senator Church, that with relation to granting by the Federal Government, we have got to be strict and be within the case law of this excess property cases even in the 10th circuit court on this and we have to strictly follow—this is our position. We are just enforcing the law to the best of our ability.

Senator JORDAN. We are trying to write new law so you can mete out a little justice down at the Department in this instance rather than forcing each one of these claimants to come in with a separate bill against the Government. That is all this does. That is all I have.

Mr. KASHIWA. Senator, if our proposal to sue against the United States is passed and any of these parties feel that this is not excess property but is something else, we welcome a suit and let's litigate it.

Senator JORDAN. They feel it, Mr. Justice, but they cannot afford to take you on.

Senator CHURCH. You see, there are two things here, Mr. Kashiwa. There is the general question to which you have addressed yourself of the need to provide a means for citizens to go into court where there is a disputed title. Now, you have suggested a way we might do this and I commend you for it. But even if we did it, even if we enacted that law, even if it were finally signed by the President, that would not really reach this problem. It would not reach the problem of the omitted landowners in southern Idaho for the reason that, according to your own testimony, the law clearly establishes the title in the Gov-

ernment of the United States, so there is no disputed title here to litigate. Now, all that there is to do here to solve this problem for these owners is, we start with the recognition that the Government can lay legal claim to this land but we want to undo a hardship that is a result of the Government's own error. And we are providing a means to do it, limiting it to this case so you do not have to worry about a precedent applying everywhere, and providing for a token payment so the legalities are observed. You ought not to come in and oppose this kind of bill on the grounds of the law. We are going to try and change the law in this particular case to furnish a remedy for a hardship. I should think that you would want to help us find a solution to undo the hardship just as much as you wanted to help as find a solution to the problem that is embraced in S. 216.

Mr. KASHIWA. Mr. Warner has a comment.

Mr. WARNER. Senator, I think the real basic question on this one is: Is it sufficiently clear that the situation on the Snake River in southeastern Idaho, as to everyone of the claimants of these omitted lands, is enough different from the situation as to every other claimant of omitted lands throughout the United States that we ought to single out your constituents in southeastern Idaho and say you can have it for $1.25 an acre but the Government keeps on fighting the rest of the claimants of omitted lands on the Snake River elsewhere in the United States and on all the other rivers and lakes where we have this same kind of problem. That is the real question.

Senator CHURCH. I want to hear the Idaho witnesses and we are taking longer and that is mostly my fault, but if we just take your proposition, I would say fine, let's provide a legislative basis for alleviating hardship for all people generally. Would you help us draw such a bill? We cannot extract such a bill from the executive. Would Justice help us draw such a bill?

Mr. WARNER. I think it would be extremely difficult to do because you have mentioned in your comments that this is at the fault of the Government. Well, I am not sure it was the fault of the Government. It is the fault of a employee of the Government who carelessly or for some other reason did not make a correct survey back in 1879. Is the legislature of the United States ready to take on the approval and ratification of every Government agent which makes a mistake in the performance of his duties? In this all going to be formalized and make official action?

Senator CHURCH. We might look into that. The laws of agency that apply to everybody else make the principal responsible for the mistakes of the agent. The king in ancient England did not elect to be liable but that does not mean——

Mr. WARNER. Even the principal and agent situation you refer to, the principal is not liable for what the agent does outside the scope of his authority and that is what we are talking about here.

Senator CHURCH. Are you suggesting that this survey was not within the scope of the authority of the man who was hired by the Government to do it?

Mr. WARNER. Yes, I would say that the kind of errors which I understand are inherent in the original survey are attributable to something other than just a mistake as the survey traveled over the ground. He did it from an armchair back in his office or something, I

do not know what the background for it is, but the kind of errors which I do understand are apparent in the original survey are not the kind of errors that we would agree are made within the scope of the performance of his official duties. This is what we have in all of the injunction cases against the Federal officers. There is the question of whether or not the officer is acting in accordance with his statutory authority. In many of them, it is not. The courts hold time after time that he is not acting in accordance with his statutory authority.

Senator CHURCH. Well, it is clear to me from the attitude you have on this question that you are putting us in a position where you are saying in effect, there is no way to get there from here. There is no way for the Government to try and alieviate hardship even where the Government's own agents have caused it. I just do not think that is necessarily so. I do not think it is just Government. I think there are ways. But we will never find them as long as the Departments take the attitude that these problems are insurmountable and unsolvable.

Mr. WARNER. I do not think Mr. Kashiwa's statement—and I certainly hope what I said—does not mean we think there is no way to solve this problem. This is why we have referred to the possibility of a true private relief bill for each of the persons who can show the equity that justifies the kind of relief he proposes to give to them. But this is something that has to be done on a case-by-case basis.

Senator CHURCH. Do you know what the costs——

Mr. WARNER. One person may have equity. The guy next to him may not. Just because they happen to be in the same reach of the river which is affected by the same bum survey does not mean that they are all entitled to the same kind of treatment that would be predicated on considerations of equity. Maybe some of them do, maybe some of them do not, but all we are saying is that it is a pretty hard thing to approach on the basis of doing equity just lumping them together on a territorial basis.

Senator CHURCH. Well, I think that our familiarity with the situation, it was suggested to us they all have the same complaint based on the same survey and the same problem, and why they cannot seek some kind of collective relief is hard for me to understand.

Mr. KASHIWA. Is there any title insurance problem here?

(The bill referred to follows:)

A BILL to permit suits to adjudicate disputed titles to lands in which the United States claims an interest

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 85 of title 28, United States Code, is amended by adding after section 1347 of such title the following new section:

"§ 1347a. Disputed land titles

"The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to adjudicate disputed titles to lands in which the United States claims an interest."

(b) The chapter analysis at the beginning of chapter 85 of title 28, United States Code, is amended by inserting after the item relating to section 1347 the following new item:

"1347a. Disputed land titles"

SEC. 2. Section 1402 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Any civil action under section 2409a to quiet title to lands claimed by the United States shall be brought in the district court of the district where the

land is located or, if located in different districts in the same State, in any of such districts."

SEC. 3. (a) Chapter 161 of title 28, United States Code, is amended by adding after section 2409 of such title the following new section:

"§ 2409a. Actions to adjudicate disputed land titles

"(a) The United States may be named as a party defendant in a civil action under this section to adjudicate disputed titles to real property in which the United States claims an interest, other than security interests and water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491 or 2410 of this title, sections 7424, 7425 or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425 and 7426) or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

"(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree and the conclusion of any appeal therefrom; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

"(c) The complaint shall set forth with particularity the nature of the right, title or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title or interest claimed by the United States.

"(d) If the United States disclaims all interest in the real property at any time prior to the actual commencement of the trial, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1347a of this title.

"(e) A civil action against the United States under this section shall be tried by the court without a jury.

"(f) Any civil action under this section shall be barred unless the complaint is filed within six years after the right of action first accrues.

"(g) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession."

(b) The chapter analysis at the beginning of chapter 161 of title 28, United States Code, is amended by inserting after the item relating to section 2409 the following new item:

"2409a. Actions to adjudicate disputed land titles"

SEC. 4. This Act shall not apply to any claim or right of action which accrued prior to the date of its enactment.

Senator CHURCH. That is another statement you made. I have not had a chance to check this out. I have been told there has been no title insurance relief for these people.

I do not know. I have not had a chance to check the accuracy of it. Suppose there is a home on the extra land. To have a bank mortgage you have to have some sort of title insurance. I have not looked into that but I have been wondering. I think there are other witnesses here who may be able to clarify that point. We will ask those questions. Thank you very much.

Our next witness is Mr. John R. McGuire, Associate Chief of the Forest Service.

STATEMENT OF JOHN R. McGUIRE, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. MCGUIRE. Mr. Chairman and members of the committee, with me is Mr. Lawrence Whitfield of the Forest Service staff. I thank you

for the opportunity to present the views of the Department of Agriculture on S. 216, 579 and 721.

S. 721 would amend the act approved May 31, 1962, to authorize the Secretary of the Interior to sell certain public lands in Idaho. This bill would not involve the lands of this Department, therefore, we defer to the Department of the Interior for comments on S. 721.

The other two bills to be considered today, S. 216 and S. 579, involve land claims against the United States. This Department, because of its responsibility for the 187 million-acre National Forest System and other areas, would be very much affected by the enactment of these bills.

The Department of Agriculture has procedures for resolution of many of our trespass problems and land claims. These include quiet claim deeds, special use permits, and in some cases land exchanges.

Although we recommend that S. 216 not be enacted, we would have no objection to legislation which would remove the United States from the protection of sovereign immunity in certain quiet title actions if the interests of the United States were properly protected. We prefer a substitute bill which we understand is being transmitted to you by the Department of Justice in lieu of S. 216.

S. 216 would make possible decrees ousting the United States from possession and thus interfering with operations of the Government which have been authorized by Congress. The Department of Justice substitute bill provides that if the United States is in possession and the court finds that it is occupying the property without title, the United States could elect to pay compensation as determined by the court to the true owner and maintain possession.

S. 579 would provide that whenever any public lands of the United States have been held by adverse possession under claim of title for a continuous period of not less than 20 years, the United States would be prohibited from making any entry on, or bringing any action to recover such lands. The bill further defines applicability of the prohibition and defines the term "adverse possession."

This Department recommends that S. 579 not be enacted.

The United States as a property owner is not in the same position as an individual property owner. Its ownership is vast, scattered, and, in most instances, not intensively developed or occupied. Also, because the personnel charged with the administration of these Federal lands are limited in number they are not able to survey, become familiar with, and give all property lines the close surveillance that most private landowners can.

This bill, if enacted, could lead to abuses. It could include trespassers and thus encourage them by giving them a preference over others. Anyone could purposely start a second chain of title to lands which in time could lead to a claim of adverse possession" * * * by a person reasonably believing that he held title * * *."

If S. 579 were enacted, the immediate costs which should be incurred by the Federal landholding agencies to protect the interest of the public by preventing fraudulent public land losses would be substantial. Surveying and marking the boundary lines and instituting surveillance procedures for early detection of adverse possession would account for much of the cost. In the 187 million-acre national forest system there are more than 272,000 miles of boundary of which

more than 250,000 miles are inadequately surveyed and marked. We have a program to survey and mark the national forest system boundaries, but it would have to be greatly accelerated to protect the Federal interest if S. 579 were enacted.

This Department believes that S. 579, which would allow "adverse possession" occupancy claims against the United States, would lead to unjust enrichment of individuals at the expense of the people of the United States generally. It would establish a preference without regard to the public values involved.

Mr. Chairman, that concludes my formal statement. I will be glad to attempt to answer any questions from the committee.

Senator CHURCH. I do not think we have questions. I want to say that, on the basis of the testimony thus far, it is clear that S. 579 would have a very rocky path but I do not really buy the argument you cannot police Federal lands. If you have so much land that you cannot properly police it, it seems to me that something is seriously wrong. I know the Forest Service has undertaken to review thousands of individual mining claims, and invalidate them on the basis of carefully checking each claim. I am not impressed with the argument that you cannot survey the whole land and know when you are being trespassed against with all the personnel that you have. I just think it is a convenience not to have to do it. I suppose that having the law changed would mean that you would have to make much more careful surveillance of your property, but probably in the long run, that would be good for the Government and good for the people.

One day, we will have to come to it because these special rights applying to the Government that apply to no one else create so much difficulty that we are going to have to begin to hold the Government administration, the administrative agencies, to the same standard of proprietorship that other landowners have to observe. That is all. I understand your position. I have no questions.

Senator JORDAN. I have no questions.

Mr. MCGUIRE. Thank you.

Senator CHURCH. I understand that Ted Eberle, attorney at law from Boise, well known to both Senator Jordan and to me, has a problem, a plane problem, and has asked to testify this morning, I will call next on Ted Eberle.

STATEMENT OF T. H. EBERLE, ATTORNEY AT LAW, BOISE, IDAHO

Mr. EBERLE. May it please the committee, gentlemen, I would like to first give a few facts and then speak in support of the bill 216. As to the question of title insurance, that is a red herring. Of the entire area from Black Foot up through St. Anthony, I am fully familiar with title insurance claims. There are about 30 policies of which 99 percent are located in the platted area of Idaho Falls that the Government now says belongs to them. There are very few in the farm areas. The total policies would amount to about $150,000 to $180,000 potential loss claim so it is a significant value figure of the total number of parcels that have been spoken about this morning. They are in only one area of which I have given you a detailed map. That is the High Lands Division to Idaho Falls which has been planned for over 50 years and is substantially occupied.

Senator CHURCH. So if any of these bills were enacted to give relief, it would not entail any appreciable windfall to the title companies, is that correct?

Mr. EBERLE. In the first place, Mr. Chairman, the title company refuses to insure below the meander line because of the uncertainties that had been created by the Government and only because errors were made in a few cases were any policies issued. The result is that these people who have these problems for many years have been refused the ability to get loans and have certainty of title wholly apart from the facts because of the knowledge that the Government some day in some way would try to do what they are now doing. It would not be a major windfall. These people paid for their policy but to get to the second point I wish to give the committee in the way of facts: The assumption was made this morning that the survey made by Mr. David among the primary ones up this river were in error when made in 1877 through 1880. The facts are to the contrary. If there are any errors, they are in few and isolated areas.

The Government has continued to indicate and has indicated this morning it intends to continue to ignore the fact that the Snake River according to the photograph which I have given the committee this morning has decreased from the wild river it was in the 1880's when it was surveyed with a maximum monthly average flow and heights of around 50,000 cubic feet per second. It is now somewhere around 12,000 monthly average cubic feet per second. This is roughly one-quarter of what it was in the time of the survey. Well, if you take a bank and lower the river 10 to 15 feet this is obviously a difference between the mean high water mark as it was when the survey occurred and what it is today. The Federal Government, and I accuse only the Department of the Interior because they have been adamant in the last few years on the subject, have in their rulings by their solicitor, specifically held that the survey today is not next to the river and therefore, it is erroneous. What did they measure the river by? They required the surveys today in 1965 in Idaho Falls to be exact, practically to put on hip boots and walk the edge of the water to determine the meander line. Well, even the Government must concede a proper meander line does not trace the edge of the water. It was required only to show the general sinuosity of the stream.

The result of this particular administrative feat is that you maybe double the amount of the "omitted land" between what was surveyed as the high water mark generally in 1870 and what is today surveyed as a quarter of the streamflow in detail at the edge of the water as the new meander line. In the map I handed to the committee referring to the three sections, the last one, it shows the lots that have been claimed by the Government in the platted area of Idaho Falls, section 13, township 2 north range 37 east. The old meander line is shown to the left as it goes in a straight slash across these.

The new line falls to the waterline of the river as it was by aerial photograph, in 1962. There have been over a million acre-feet of storage construction upstream. There have been numerous diversion dams and major canals that take the water out during the high flood period of June and July. Yet, the Department of Interior, the Bureau of Land Management has the gall to say to this committee and to the Government and to the private land owners that the meander line should have

been traced at the edge of the present water today and not at a reasonable proximity back a little ways from the high water line as it existed in 1870.

Now, there is in these fractional lots that were purchased by a patentee in 1888, approximately 6 acres. This is lot 1, 2, and 3. These were sold. They did not receive a nickel for them because it was a homestead entry. The map showed the water going to the edge of these fractional lots. The Government intended to sell lots that ran to the water. The buyer intended to buy lots that ran to the water. So, 80 years later, the Government says "Oh, but this is not so." The water is way down here in the river. There is now some 29 acres between that line and the river. Now, 29 compared to 68 acres is 43 percent. omission. They say obviously this is disproportionate and, therefore, we own it.

Now, many of the examples up and down the river are not a question of 30 acres or 100 acres omitted. They are just as this one, where this is less than 50 percent land omitted. If the Government had used the surveying techniques required by the manual of 1871 and the instructions given to Mr. David in 1888, they would have to survey a new meander line that wandered somewhere back from the actual water line and there would only have been about 15 acres omitted if they had used the same rules. But they did not. The result is they saw there is 29 acres omitted which, in those days, would have been made 15. In other words, the administrative procedure carried on by the Bureau today and strongly supported by the Solicitor as evidenced by his testimony this morning is unfair, inequitable and actually contrary to all the known facts of proper surveying.

I think this committee should take note that there are in this particular plat some 31 buildings on 28 parcels that have a value of $337,000, that are in whole or in part alleged to be on Government land. In addition there are 150 vacant lots of an average 25 feet wide with a value of $1,000 a lot or another $150,000 worth of land. There is a water system and a sewer system installed and owned by the city of Idaho Falls worth perhaps $50,000 to $60,000. There is a half million dollars worth of property and buildings here. It is true the Government says we do not get the buildings, we only take the land back and we will sell it to you but there is still perhaps $250,000 to $8,300,000 worth of property here that they now claim title to under ficticious rules that were not true and are not properly maintained in law. This is an example of why we need a quiet title action bill such as bill 216. This matter is in litigation and Federal Government said you have no right to appeal to the courts to determine the facts. We made that determination in the Bureau. You can talk about the law. They have found every fact contrary to what the truth of the matter is. They refused a public hearing because they said the facts were not important enough to have one on appeal to the Secretary.

Referring specifically to the bill that has been discussed, I think the Justice Department made a reasonable effort to come up with something that is workable. We would comment upon this bill, however, as still being in need of a change or two as far as being a proper solution. They say it should be perspective only.

We know of many, many claims that should be adjudicated in court that are known today. Because they have been known perhaps for more than 6 years, there would be no action under this bill. The first point is

that the prospective part should be amended to allow a limited period for known claims today to be adjudicated. Perhaps I should also say in relation to the no adverse possession defense that if you do claim adverse possession, it should be for a reasonably long period of time such as perhaps 10 years but to say that adverse possession is not a proper question in quiet title is to amend the common law as we all know it on quiet title. The next thing they say is a 6 year statute of limitations based on the action——

Senator CHURCH. May I ask this, in the Justice Department version of the bill, do they eliminate adverse possession as a basis for claim?

Mr. EBERLE. The testimony of the Department of Interior so interprets it. I think they are are probably correct, or else they ask to have that added to it. The first right accrued of the action should be amended to first, knowledge of having an action because the right accrued many, many years ago. The water had declined in its level to about where it is now by about 1900, when the last dams were built and the land existing between the old meander line and the river which is a control canal, if you please, now, has been that way since at least 1940, when most of the reclamation projects had been completed. So it should say that the action is not accrued except from actual knowledge rather than from the indefinite wording that they have, "right of action first accrues." That is too indefinite.

I do not think anybody objects that Indian land should be exempt, forestry lands are perhaps a different situation too, and nobody objects to the fact that the Government wants to condemn it in the same action. They have a right to keep possession and pay for it. Nobody can object to that, But the real trouble under the other bill, and that is why you also need 721, is that the Secretary does not have to sell the lands that he finds were omitted. He may give them to the city for a park, to the Fish and Game of Idaho for game privileges. So many of these acres which are now claimed to be omitted will not be offered for sale.

Therefore, the quiet title action has to be in conjunction with the private relief bill which, in a sense, 721 is. But the key thing I would leave with this committee is the important fact that cannot be denied that when you reduce a river's flow to one-fourth of what it was at the time of the survey, there is a fortuity of a lot of dry land that shows up and it can be significant. Is the Government entitled to that land on the erroneous claim of an error in the survey? They surveyed today what was not the property, what was not the water line in 1880. In fact, after 1890, the river bottom belonged to the State of Idaho under statehood and the water fell after that date and these omitted lands, if they belong to anybody aside from the apparent owner, belong to Idaho, not the Federal Government. We certainly need the quiet title action so the proper parties can be before the court, which is the State of Idaho, Federal Government, and proposed land owner. You certainly need S. 724 to allow them to sell land at a bargain price where there are actual heirs in the survey.

In conclusion, I would state that I would guess perhaps three-quarters of the omitted lands are not due to errors but decline of the water line.

The Government consistently, in written opinions, refuses to recognize that decline when they say these surveys are in error.

Thank you.

Senator CHURCH. Thank you very much, Ted. I wish you would submit to the committee in writing those alterations that you think should be made in the Justice Department's bill relating to clear title actions; would you do that?

Mr. EBERLE. Yes, sir.

Senator CHURCH. Could you do that soon so we will have those before us when we make a determination?

Mr. EBERLE. Yes; it is certainly a pleasure to find the Justice Department willing to concede that there is injustice in not being able to quiet title against the Federal Government. It is an extreme injustice to have sovereign immunity and to say we cannot look at the facts. The court might make some examination we do not agree with. Thank you.

Senator CHURCH. I think that that is so, that we should modify the law to eliminate an injustice that lasted a long, long, time.

(The prepared statement of Mr. Eberle follows:)

STATEMENT OF T. H. EBERLE, ATTORNEY AT LAW, BOISE, IDAHO

A BASIS OF THE PROBLEM IN IDAHO

The Snake River and its main tributaries flow through Idaho outside of national forests and inaccessible canyons for perhaps 1500 miles. Public lands surrounding these rivers were surveyed by the United States Government in the 1870's and 1880's when they were all wild rivers. By this I mean there were no irrigation dams, irrigation diversions, flood control levies, channelization and dams. These rivers rose in the very high lands of the Rocky Mountains or its adjacent ranges, fed by deep, high snow pack as well as valley snow pack, with little rain during the summer. They had an extremely wide range of seasonal volume of flow.

Now almost 100 years have gone by since these rivers were meandered in the survey by the government of public lands to be sold or located on. What the general surveyors found in the way of location of the banks, the mean high water mark, of these rivers in the 1880's has completely changed. In the upper Snake River area where the omitted land questions exist today, commencing with the first dam on Jackson Lake in 1907, that reservoir alone by 1917 was impounding 847,000 acre feet a year of runoff. Subsequently the North Fork was controlled by the construction of Henry's Lake Reservoir in 1922 and the Island Park Reservoir in 1936, and a smaller Grassy Lake Reservoir in 1939. In addition, in the 1910's and thereafter numerous small diversion dams and large canals took water out of the river at its second major flood peak, in July, materially reducing the flow in the river. The Snake River had two crests, one in May when the valley snow melted, and one in July from the melting of the heavier high mountain snow packs.

The result is that from the earliest measurements of flow in 1890 to 1895 the maximum monthly discharge rate on the Snake River was reduced from some 50,000 cubic feet per second maximum with an average of 40,000 cubic feet per second, to what is today an average of less than 12,000 second feet on a monthly maximum discharge. See attached graph. As an uncontrolled river, the Snake and its tributaries had very high maximum flood periods and very low late fall minimums because there is very little rain in the area in the summer.

Commencing around 1960 the United States Government decided to check for omitted lands along this river, because it was apparent in places that the meander lines established in the 1870's and 1880's were now some distance from the actual water in the Snake River. The result has been to develop extreme uncertainty in land titles for many miles along the Snake River, and potentially along the other major tributaries to the Snake, the Boise River, the Payette River and certain other tributaries. While it should be obvious to everyone that the lands that are now between the surveyed meander line and the water have developed because of the reliction and accretion caused by a material reduction of the flow of water, nevertheless, the government claimed these lands were the result of errors made

by its general land surveyors 90 years before. A wild river had become a controlled irrigation canal, much of it the result of reclamation funds being paid for by the farmers along its shores for building the dams.

Section 43 U.S.C.A. 772 gives the Secretary of the Interior the right to resurvey and locate omitted lands. He is using this power to claim these lands that have resulted from the taming of these rivers. The government by this technique now proposes that they own the center of the town of St. Anthony, built astride the North Fork of the Snake River. They now claim they own a large section of platted lots in Idaho Falls, built along the east bank of the Snake River. Numerous farm lands are now claimed to be owned by the federal government subject perhaps to being sold. Power lines, railroads, communication facilities are located on land which the Secretary of the Interior asserts has never been sold to the public.

The basic problem I would point out to you in the balance of my testimony is simply that the federal government intended to allow these lands to be located upon for nothing or to sell them for very little, 90 years ago. The government did not intend to retain land between a meander line and the water, but to sell down to the water. A homesteader under a patent had a right at law to the land as he occupied it, and getting to the water was the most important part of his land in many cases. Neither the United States Government nor the homesteader intended the meander line as it was then drawn to be the boundary, but one sold and the other bought to the river. Now, because of the nature of the river and the quantity of its water, the government is taking advantage of a fortuity to seek to acquire a lot of land along waterways, an item that has developed as a very high value recreational item.

WHY CONGRESSIONAL RELIEF IS NEEDED

The bills presented are necessary to allow citizens a day in court to contest unfair government actions, and to vast long standing private rights. The reasons the Snake River resurveys of omitted lands are in error are:

1. The original surveys were not in error

Each surveyor along the Snake River and its tributaries was to survey the public lands pursuant to the 1871 Instruction to Surveyor Generals of the Public Lands Manual and special instructions. Because I am going to speak of the single example in Idaho Falls, I will speak of the particular instructions given to such surveyor for these lands in the upper Snake River Valley. Specifically, on August 8, 1877 the particular surveyor was told that he was not to survey lands "except those adopted to agriculture without artificial irrigation, irrigable lands or such as can be redeemed and for which there is sufficient water . . . (and) . . . timber lands bearing timber commercial value. . . ." Surveyors generally, and the courts have so sustained them, were not required to include in public lands to be sold swampy areas along a river which could not be developed, or rocky outcroppings and broken lands that simply were not developable for farming, also along rivers. The survey was to develop a quantity measure of the good land to be sold, excluding such nonarable land.

As you may also be aware, when it came to surveys along navigable rivers, the law was quite clear that meander lines are not established as the boundaries of fractional lots, but are for the purpose of defining the sinuosities of the banks of the streams and as a means of ascertaining the quantity of land in the fraction subject to sale, which is to be paid for by the purchaser. Such meander line represented the boundary line of the stream but the stream itself, not the meander line, is the actual boundary of the land. *Railroad Co* v. *Schurmeir*, 7 Wallace 286–287:

"Lots platted under the public land laws, according to a plat showing them bordering on a lake, extend to the water as a boundary and embrace pieces of land found between it and the meander line of the survey where the failure to include such piece within the meander was not due to fraud or mistake but was consistent with a reasonably accurate survey, considering the areas included and excluded, the difficulty of surveying them when the survey was made, and their value at that time. United States v. Lane. 260 U.S. 662."

An example is the attached copy of the resurveyed area of the Highlands Addition to Idaho Falls, Idaho. The area the government claims is omitted land, being many platted lots, consisted to a substantial part of a swampy lower portion that has been partially filled to avoid flooding during high water as well as a lava rock point which could never be farmed whether it was flooded

at the high water mark or not. Thus, not only was a large amount of the alleged omitted land below the 1877 mean high water line of the Snake River, but survey was not justified to go out around a minor, worthless rocky point excluded by the surveyor's instructions. It is not a fair reconstruction of the original plat to assign the present water line of the Snake River as if it were the mean high water mark of the river as a wild river with in excess of four times the present volume of water.

2. Use of wrong survey standards

The 1871 Instruction to Surveyors General of Public Lands Manual required substantially less accuracy than the present 1947 Manual of Surveying Instructions. Pages 23 and 24 of the 1871 manual, and page 237 of the 1947 manual, show this comparison. As you know, surveying today is done by extremely accurate instruments and new mathematical and electronic techniques. In the old days it was done with a chain consisting of 100 iron links, and if the chains were well worn it was at least a foot and a half longer than a new chain. But as to the manual specifications, in surveying irregular meandered lots the present manual requires an error of not more than 12½ links per mile. The 1871 manual allowed 150 links per mile. Thus twelve times as high an accuracy is required today. In making the relocations of the old survey, new techniques are applied. Old monuments cannot be located and are reconstructed on an entirely different basis. To find the original surveyor made errors based on the present manual is a miscarriage of justice. To measure the alleged omitted land on this new standard is equally wrong.

3. No effort made to locate original mean high water mark

In the exhibit plat attached for the Highland Addition of Idaho Falls the survey that is now claimed to establish omitted lands uses the exact edge of the Snake River water as it existed in 1962 as the meander line. Ninety years after the original survey the assumption that this is the proper means high water mark as it existed in 1877 at the original survey is so fallacious to need no further comment. No effort was made to locate where the actual 1877 mean high water mark was, and the government in answering interrogatories in the lawsuit denies it has any way to locate where the original mean high water marks may have been. As noted above, these rivers are no longer wild rivers Most of the summer flood is stored and diverted, and the maximum monthly discharge from the Snake River at Idaho Falls has been reduced from some 40,000 cubic feet a second to less than 10,000 cubic feet a second.

It should be obvious that what is today the mean high water mark of these streams bears no approximation to what it was at the time of the 1877 survey. The meander lines which at that time properly reflected an approximation of the high water mark of the stream today have considerable land lying between them and the actual water line of the controlled river. Yet the Secretary of the Interior through his solicitor, in what many Idahoans believe is an outright effort to gather green-belts along the river without justification in law, blandly holds this must have been where the water was in 1877 and therefore there was omitted land. This is because, and I quote his words in one instance:

"The meander line established in the original survey . . . follows a course that does not touch the actual course of the river and which varies from the true water course by as much as 15 chains, and it clearly shows the meander corners were established points within that distance which reflects something other than the bank of the river . . . the omission of an area of land of the size represented does not appear to be the result of a reasonable accurate representation of the river's course . . . the results are the same whether the error arose from mistake, inadvertence, incompetence or fraud on the part of the man who made the former survey."

I would call this Congress' attention to the fact that the Department insists on using the present water line of the river, which in all effects is a controlled canal today, and then claims the original surveyor must have been completely wrong when he surveyed the same stream in the 1870's and 80's as it flowed in its undiverted, uncontrolled wild river state.

4. Refusal to recognize applicable law on omitted lands

The basic principle of omitted lands developed in the midwest along streams with much less variation in flow, and ones which have not been dammed and thoroughly controlled for irrigation as in Idaho. The rule there for many years

was where the river was more or less as it had been in the survey period, if the land between the survey meander line and the actual mean high water mark was less than approximately 50% of the patented fractional lots, it was not deemed disproportionate and went with the patented lots. Numerous cases have applied this rule with considerable flexibility. Now the Department refuses to apply these cases.

Further the question is how to measure the omitted land. In the plat attached to this testimony the government proposes to measure the amount of omitted land from the exact edge of the present Snake River back to a relocated original meander line. In this Section 13 this would amount to 29.68 acres omitted in relation to the 68.40 acres originally patented in the fractional lots, the omitted land being 43% of the actual platted land. In the first place, it is obvious that the amount of omitted land is erroneous and should be a considerable lesser figure. An examination of a 1954 topography map indicates at least 25%, and perhaps 50% of the land was subject to flooding at a reasonable high water, assuming the flow would be four times what it is today. This would reduce the omitted land to at the most 15 to 18 acres, only 20% of the patented fractional lots. Further, meanders by the 1871 manual would not have used the exact water's edge. Thus, a proper new meander line would contain even less omitted area. It would not have been disproportionate to the patented area. However, the Department in administrative proceedings refuses to admit these facts or the law. Further, what land was probably above the original mean high water mark is extremely rocky with little soil. It could not have been farmed and, in fact, even after the development of farms in the area very little of it was farmed beyond the originally surveyed meander line. Now, how can the Department hold the original surveyor committed an error so grievous as to be a fraud upon the government when they instructed him how to survey which excluded rocky, swampy marginal land along the rivers? Only because this land has been improved, platted, developed as a part of a city, and happens to lie along a river, has it become valuable. And now the government claims it was never sold, based on completely erroneous standards of the resurvey and changed river conditions.

AN EXAMPLE

We have spoken about the attached Section 13, in which the government has filed resurvey and determined that the platted lots along the river between the old meander line and the river have never been sold. The history of this is that a gentleman made a homestead entry in the 1880's on this land. He acquired some 160 acres by a patent issued in 1888 based on the 1877 survey. He bought on a plat that showed he took to the river, an important valuable right at a time when there was no irrigation system in the area. Yet based on a 1962 and 1965 survey, the government in October, 1966, replatted the area between the river and the reestablished meander line of 1877.

The first example map shows the general area, and the second the government plat as filed with the detailed lot area being that which is now claimed to be unlocated land subject to resale or to claim by any government agency. The area is near downtown Idaho Falls and has been subdivided for many years. The third page of the identical exhibit shows by black blocks houses and other buildings located in the area. There are some 21 builings on 18 parcels of land which together have a value of some $337,000, including both buildings and land. In addition, there are 150 other lots, each 25 feet wide which are worth another $150,000 at a very minimum price of $1,000 a lot. The City of Idaho Falls had installed a water system and a sewer system in most of the area at the time of the government replat.

We would call your attention to a topography elevation line across the river showing its elevation at the current time, in that it is rather a fixed stream year around, at 4,695 feet mean sea level and a line drawn along the omitted property area at a 20 foot higher mark of 4,715 feet. There is testimony of old-time citizens that in the early 1900's before the irrigation dams were built the river flooded about up to this elevation which included a little further down stream into the lower part of the city center of Idaho Falls. The houses nearer the river are those more recently constructed, being below and in the area that was previously flooded. The smaller, older houses are those substantially at the higher elevation.

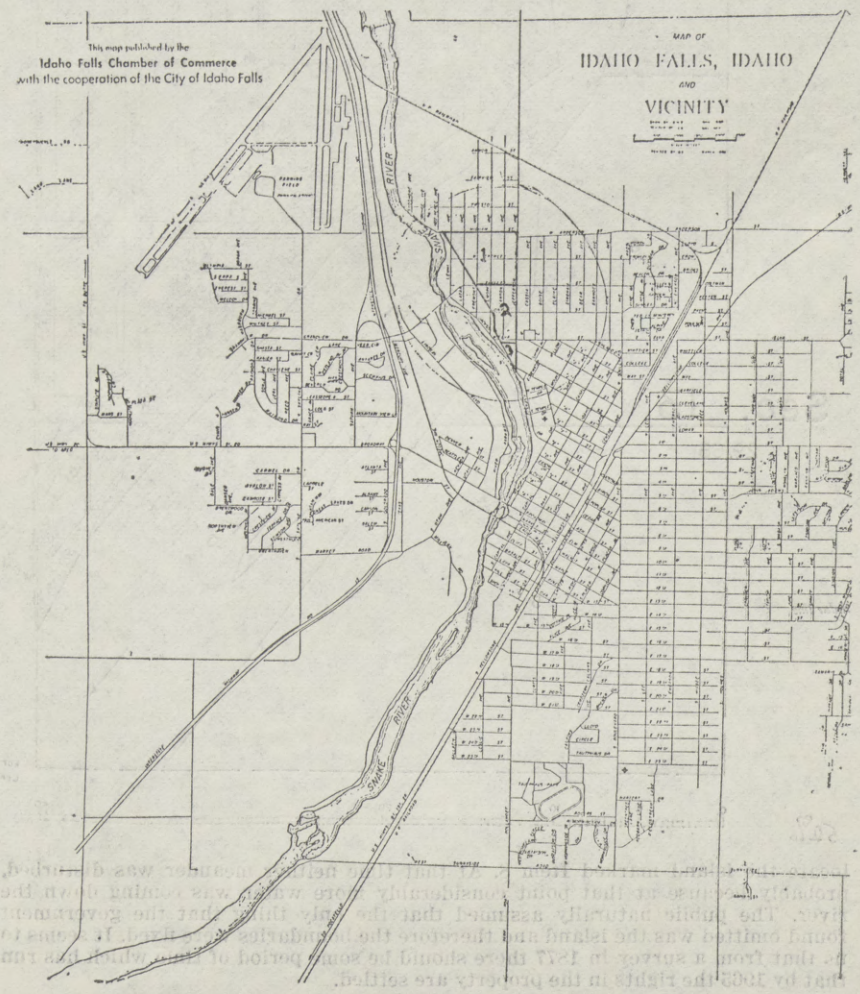
This third map merely proves that the 1877 surveyor was approximating the mean high water mark of a wild river at that time when he didn't go down into streambed and out around a rocky headland, staying approximately above the mean high water mark at that time.

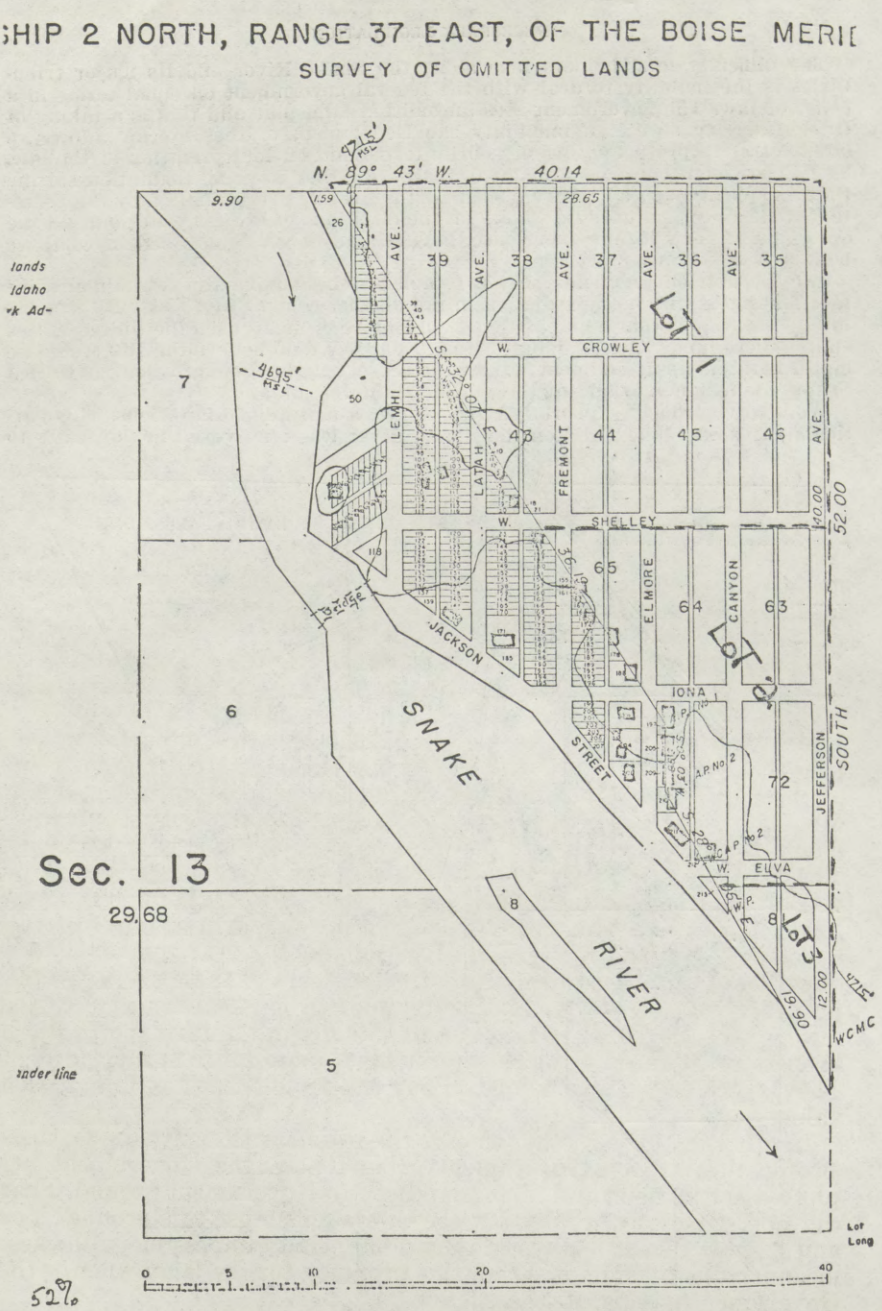
NECESSARY LEGISLATION

The difficulty land holders face along the Snake River and its major tributaries is the inability to deal with the federal government on equal terms in a court of law. The government files an omitted land plat and this is a taking of title. Asserting sovereign immunity the Department of the Interior allows an administrative proceeding wholly on its terms and on interpretation of the law. The Department concedes graciously that while they have no regulation stating that an appeal may be held from such administrative determination by the Secretary, that an appeal does lie wholly on the questions of law. At that point all the questions of fact, in our experience, have already been determined in what we believe is not a fair proceeding.

The Department contends that a complaint challenging their administrative fact finding is without jurisdiction in the district court. *Senate Bill 216* is absolutely essential so that a quiet title action may be brought when the United States claims these lands as it is doing in Idaho Falls. We do believe the Bill would be better if it had an amendment stating the action may be brought when the United States claims lands by adding the words "or interest in lands".

We also vigorously support *Senate Bill 579*, a statute of limitations. This particular area in Idaho Falls on the Snake River was resurveyed in the 1920's to





locate the island marked Item 8. At that time neither meander was disturbed, probably because at that point considerably more water was coming down the river. The public naturally assumed that the only thing that the government found omitted was the island and therefore the boundaries were fixed. It seems to us that from a survey in 1877 there should be some period of time which has run that by 1965 the rights in the property are settled.

We also support *Senate Bill 721*, setting a fixed price that omitted lands may be purchased by those who have had color of title to them prior to March 30, 1961. In some instances this Bill will help people to buy back their land upon which they have valuable improvements. Nevertheless, we would point out that this Bill alone is inadequate. If there are some areas the surveyor may have improperly meander some of these lands will not be offered for sale to their present owners, because the State of Idaho, its Fish & Game Department, its Highway Department, or the municipalities in the area, have a right first to ask for the land for park sites along the river. Needless to say, some of this land is very desirable for that purpose and will not be resold to the present owner.

CONCLUSION

On behalf of land owners and mortgagees of property now claimed to be owned by the United States, we urgently request passage of the three bills above enumerated. The most important is the quiet title action because the present interpretation of the law by the Bureau of Land Management and the Department of the Inerior has litle respect for existing rights in what we believe to be a deliberate change of policy to acquire without compensation waterfront lands. Section 43 U.S.C.A. 666 allows quiet title actions against the government on water rights, and land should be included.

Large segments of the Snake River and other of its major tributaries in Idaho can be resurveyed with just as many unfair results as this example sets forth. Only if the citizens have a right to a fair adjudication in the federal court when the United States claims their lands can justice be done.

Senator CHURCH. Our next witness is Mayor Merrill Rose, the mayor of St. Anthony. I understand you do not have a prepared statement but will speak from notes.

STATEMENT OF MAYOR MERRILL J. ROSE, MAYOR OF ST. ANTHONY, IDAHO

Mayor ROSE. Thank you, Mr. Chairman. I would heed to my colleague on the South Fork that has written testimony that will take care of the North Fork and the town of St. Anthony. My oral testimony, Mr. Chairman, has been almost 100 percent brought out in past testimony. I can see that this subcommittee is in favor of my oral testimony. The only thing that I would say is that I do have evidence showing that you are right in stating that these people in St. Anthony and on the North Fork of the Snake River are in a poverty area of our Union. I took a survey with Congressman Hansen almost a year ago and up and down the river and we came up with 69 percent of these people on this property are 70 years of age or better and are on social security or fixed income. In almost all instances that this ground is involved in, these property owners are using these grounds for assistance in their income. They, therefore, cannot afford to buy the ground back at fair market value.

In other testimony, other than to the people within city limits, these people that are on Government ground now, the Government has plotted and come in and told them that it is Government ground. They did not know how or why but they were not to use this ground. You and I know that it is physically and financially impossible with these meander line boundries within this property for the landowner or the Government to separate these lands.

Senator CHURCH. Do you have any idea what the Government will use these lands for once it reclaimed them?

Mayor ROSE. I would guess that, in other testimony, the fish and game and recreation has a lot to do with this ground. Now, you have

to concede that through our area this ground, this Snake River does not run through recreation area. It runs through farming area. A farming community. It isn't designated for recreation. I would say this——

Senator CHURCH. Is there any problem of access by hunters to the river or by fishermen to the river?

Mayor ROSE. To my knowledge, there has never been any denial on the North Fork of the Snake for any access for recreation of any kind. There is plenty of adequate accesses to the river without making it wide open for public use. Now, as far as the county and city levels of Government, we feel that in the discretion of the Secretary not to put up at least a third of this omitted land propery back for resale that it will drastically hurt the economy and the tax levies at the whole level. As you know, we are on a tax levy and if this is taken off the tax roles, the rest of the property tax is to be increased, it will be another burden to the taxpayer in property tax. It will be a definite burden at the local level.

Now, the Assistant Secretary says that you cannot individually give relief to people such as we are talking about. Mr. Chairman, every facet of the Government has made an individual sacrifice for relief, as I can remember. Every Bureau has individually made a relief of some kind. Therefore, I think he is wrong in saying he cannot make a relief bill. I have brought pictures and maps of this depressed area. This testimony will show the property involved on the North Fork of the Snake River and in the south side of the city of St. Anthony. This evidence will show in pictures and in statement that these people are living under conditions that are below the living standards of a low-income family. They are living on less than the Government has allocated for a low income right now.

Senator CHURCH. In other words, you are saying many of these people cannot afford to pay again the present fair market value of the Government claims.

Mayor ROSE. No way. There isn't one out of 100 that is involved that can afford to take the Government to task or buy this back at the fair market value.

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

Senator JORDON. No. That is a good statement.

How many people are you speaking for in your association?

Mayor ROSE. I am speaking for 45 home- and landowners within the city limits of St. Anthony and, to my knowledge, I am speaking of about 250 landholders on the north fork of the Snake River.

Senator JORDAN. That is a sizable number of people. Your testimony is well made.

Mayor ROSE. We have written testimony that we will have submitted by my colleague on the south that does take, in effect, all areas of the Snake River. Thank you.

Senator CHURCH. Thank you very much, Mayor. I know you have come a long way to give your testimony. It is very much appreciated. I want at this time to ask that the staff insert at an appropriate place a letter from Cliff Hansen, U.S. Senator from Wyoming, addressed to me in which he endorses S. 216 and pledges support to its enactment.

(The letter referred to follows:)

U.S. SENATE,
COMMITTEE ON INTERIOR AND ISULAR AFFAIRS,
Washington, D.C., September 29, 1971.

Hon. FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR FRANK: Although obligations are such that I will not be present to hear testimony on your legislation S. 216, I commend you on your recognition of this most important problem. I am anxious to see some type of solution developed.

It is common knowledge for those of us who have lived and grown up in the West that various land disputes do arise over ownership of particular pieces of property. However, the problem has arisen that because of sovereign immunity, the usual course of judicial remedy has not been available to the private citizen for purposes of clearing title to property in question. This has caused innumerable hardships and problems for the land owners in the various public land states.

During my term in Congress, scores of private bills have been introduced to quiet title for particular pieces of land. S. 216 would allow for solution of such problems through the judicial process.

Mr. Chairman, I am pleased to be a cosponsor of this legislation, and certainly will review with great interest the hearings and the testimonies presented to the Committee.

With best regards,
Sincerely,

CLIFFORD P. HANSEN,
U.S. Senator.

Senator CHURCH. Our next witness is Mr. J. Blaine Anderson, attorney at law from Blackfoot, Idaho. Mr. Anderson has presented the committee with an extensive statement and appendixes, and I want to assure him that that statement together with the appendixes will appear in full in the record. I understand that your testimony will be a summarization of the written material.

STATEMENT OF J. BLAINE ANDERSON, ATTORNEY AT LAW, BLACKFOOT, IDAHO

Mr. ANDERSON. Yes, thank you. I agree with Mr. Eberle's comments about the Justice bill and S. 216, and my comments will be devoted primarily to S. 721 and the factual situation. I have been involved, as I think you gentlemen know, with the so-called omitted lands probably since the Department of the Interior first announced the decision to resurvey in June of 1957.

Gentlemen, I think when you have completed reading my written testimony, you will agree that the Department of the Interior, for reasons I do not know, proceeded on an erroneous assumption.

(Mr. Anderson's material will be studied by the staff and retained in the committee files.)

Mr. Good, the engineer who conducted the survey in 1957 through 1960 of the area around Blackfoot, is reliably reported to have said that in making the resurvey and retracement that he assumed that the river was the same in 1957 and 1960 as it was in 1877. Gentlemen, there could not be more gross error in making that assumption. As Mr. Eberle told you, and as my written statement bears out, the Government's own stream flow records prove that assumption to be false. Therefore, everything that has been done subsequent to that false assumption is erroneous. Far more erroneous than the Government's own survey ever was.

Just to touch upon a few facts, Dr. Joe Gennet, who is a practicing geologist, Director of the Minerals Exploration Division, whose geomorphic study of the Blackfoot Snake River area is attached to my statement, concludes after very thorough study that for every 4,000 additional cubic feet per second of water flowing past the Snake River bridge, that river will rise 1 foot.

Under the present flow shown by the photograph—this is all taken from the U.S. Geological Survey stream flow measurements, that the river on the average since 1915, the average monthly flow per year, is 14,000 feet. With the advent of Palisades Dam, I do not have the figures, I would estimate it probably is now on an average of about 12,000 cubic feet per second. In 1890 to 1894, the average monthly flow, cubic feet per second, was over 40,000 and during the period of the average ordinary runoff, which would be April to July depending upon atmospheric conditions, would be as high perhaps as 56,000 c.f.s. and on a daily average they recorded in that period of time as much as 76,000 c.f.s. Gentlemen, the entire area in dispute on both sides of the Snake River at the Blackfoot bridges would have been inundated for at least a mile on each side.

In November of 1968, we took the depositions of 68 oldtimers, men that were anywhere from 68 up to 85 years of age, men who were young men and teenagers in the period 1897 up to 1905 or thereabouts, and many of them testified that water was over the old Blackfoot wagon bridge during flood stage of the river the ordinary runoff period. Several of them testified to closing channels of the Snake River in their efforts to reclaim the lands that were three-quarters of a mile away from the present channel, as found by Mr. Good. There is a rather interesting little note from the Blackfoot region center of February 3, 1881. It was a letter to the editor. "Editor region center. How are you in Blackfoot as to general health and business prospects?" This has a little humor to it also. "Oxford takes a deep interest in your welfare. In proof of it, I assure you that the report in circulation of your being submerged and drowned out by seasonable floods has caused tears to flow so abundantly that even the streets of Oxford are painfully moist."

That was written in February of 1880, printed in the Blackfoot register February 27, 1880, and the circulated report was true, water was a full mile away from the east bank—southeasterly bank of the Snake River and was crowding the railroad tracks of the old Utah Idaho Northern Railroad. I could go on and give you many examples. I urge you, gentleman—and I know you will—to read this report, especially the report of Dr. Gennet. Incidentally Dr. Gennet, since we felt that perhaps he could be discredited because of being an employee of one of the defendants and plaintiffs in these two actions, at great expense we employed Dr. Kolhord, Dr. Bender, Dr. Porter. The first two are licensed registered surveyors with doctoral degrees on the staff of the engineering department of the University of Washington, Seattle. Dr. Porter is a doctor in geology.

All of these gentlemen have had a great deal of practical experience in this same kind of problem. They fully supported the methodology and the conclusions of Dr. Gennet. They have made their own on the ground investigation. They have assisted us in preparing for litigation huge overlay maps showing the David survey of 1877, the Farmer

investigational survey of 1922 and the good survey of 1957 and 1960. I only wish I could have brought those huge exhibits for you gentlemen to see. They graphically illustrate this fact: None of those surveyors agreed on the meander line. Do you know why? I submit that each man followed his instructions and surveyed the river as he saw it as of the time he surveyed it. There is as much difference between Farmer's meander line in the investigational survey and Good's in just a short period of time, a matter of 34 years. There is as much difference between those two as there is between Farmer's and David's in 1877. The two gentlemen, Kolkord and Bender, have gone thoroughly through David's field notes and on the ground inspection and with the assistance of a civil engineering firm in Boise and Twin Falls and they will testify that Mr. David, when he closed his corners and his quarter corners, mind you in 1877, with the technology of that day, did it closer than most surveyors close them today. Therefore, how do you conclude he was inaccurate when he laid out the meander line? Gentlemen, I think I talked enough. Thank you.

Senator CHURCH. I think this testimony this morning demonstrates the usefulness of hearings. What I said earlier in the course of the hearings betrayed that assumption on the facts of the case, that the earlier survey had been proven erroneous and that the new survey established the legal basis on which the Government could assert claim to these contested lands. What you and Ted Eberle have said, at least for a good portion of the land in dispute, it may be just the opposite way around. Am I correct in that? The original survey may in fact have been the valid one and the new survey in error, so that the claim that the Federal Government now places on a good part of these lands is a justifiable and controversial claim that can only be settled properly in court. Is that right?

Mr. ANDERSON. I think that is right.

Senator CHURCH. Therefore, S. 216 giving you access to court is terribly important if you are to secure a remedy.

Mr. ANDERSON. It most certainly is. As commented by Mr. Eberle, to make the prospective only would just cut the ground out of not only people on the Snake River, but out from under in many other places. I am personally satisfied—I do not say this with any sense of anybody did this maliciously—but I am satisfied from my investigation that the Department employees did not make the kind of investigation that we have been compelled to make before they announced that they were going to resurvey. Had they done so, just a simple check and comparison of streamflow, and a profile map would have revealed that this river was wild and was all over the country in the period of time it was first surveyed.

Senator CHURCH. Thank you very much.

Senator JORDAN. This, I think, is very important testimony, both yours and that of Ted Eberle, calling our attention to that wide variance in streamflow between the 1880's when it was a wild river, a natural river, without any impoundment, without any diversions, and the runoff simply came down and flooded out over the flatlands and you had flows of up to 40 to 70 thousand cubic feet a second which now, by numerous impoundments and diversions, have been reduced to an average of 12 to 14 thousand cubic feet a second. I think that makes all the difference in the world.

When you remarked in your testimony that for every 4,000 cubic feet a second at the Snake River Bridge we might expect a 1-foot-vertical rise in the river. Therefore, take 40,000 cubic feet a second as a wild river flowing and as contrasted to 12,000 now, that is a difference of 28,000 which might conceivably make a 7-foot difference in the height of water at the Snake River Bridge. Is that what I understand you to say?

Mr. ANDERSON. Yes, sir.

Senator JORDON. And that being so, that 7 feet additional vertical rise in the river would flow out over the banks of the river from three-quarters to a mile in some areas.

Mr. ANDERSON. In some places perhaps even more than that, depending upon the configuration of the topography of the particular area. At the Snake River Bridge it would be three-quarters of a mile.

Senator JORDAN. So, the original survey in 1888 under those flow conditions might be very accurate indeed with respect to the meander line at that time under those flow conditions.

Mr. ANDERSON. I think the evidence is practically conclusive that Mr. David surveyed that meander line doggone close to where the river actually was.

Senator JORDAN. Then, I understood you to say when a Mr. Good came on to resurvey in 1950 or 1957, whenever that was, he made the assumption that the flow of the river was the same in 1957 as it was in 1887.

Mr. ANDERSON. It certainly would be.

Senator JORDAN. Any conclusions derived from that erroneous assumption would be erroneous de facto.

Mr. ANDERSON. It would have to be, yes.

Senator JORDAN. Thank you.

Mr. ANDERSON. Thank you very much.

Senator CHURCH. I think you have a very good lawsuit. I hope there is a way we can open the doors of the courts to it.

Mr. ANDERSON. I would rather not litigate. If there is a way to settle it and solve it some other way, let's do it. You gentlemen, with the cooperation of the Executive, have the power to do it. Thank you.

Senator CHURCH. I have here a letter from Harold Lee, attorney at law in Rigby, in which he submits statements by Wayne E. Tibbits, Seymour Thomas, Coral Allred, Irvin Harrop and Cleo Harrop, John T. Poole and M. G. Koon, all relevant to the subject matter of these hearings. Without objection, these statements will appear at an appropriate place in the hearing record.

I also received a letter from Terry L. Crapo, Attorney at Law in Idaho Falls, in which he submits statements and letters from a number of people directly affected by the issue and asks that we take the necessary action to present these materials to the committee. These materials will be included at an appropriate place in the record of these proceedings. I also have received some telegrams, one from Stanton W. Allison, executive secretary of the Oregon Land Title Association concerning a resolution expressing its strong support for S. 216, which will be made part of the record.

Senator Jordan handed me a telegram he received from the Idaho Land Title Association urging the passage of bills 216, 579 and 721. I also have received a similar telegram from the Idaho Land Title

Association. I also have a letter here from the California Land Title Association making its position clear with regard to these bills. They will be made part of the record.

Our next witness is Kenneth Scott from Lorenzo, Idaho.

Ken, we are happy you are here. I know you have a prepared statement so why don't you just proceed to read it.

STATEMENT OF KENNETH SCOTT, LORENZO, IDAHO

Mr. SCOTT. Mr. Chairman and committee members: My name is Kenneth Scott. I am the secretary of the Snake River Omitted Lands Association. We represent approximately 500 property owners who own land bordering the Snake River, both the north fork and the south fork, in Bonneville, Jefferson, Madison and Fremont Counties, Idaho.

We are here to express our strong support for three bills now pending before this committee. They are S. 721, S. 579, and S. 216.

We are deeply alarmed and concerned about the course of action under Public Law 87–469. We believe these pending three bills will go a long way toward correcting the inequities in administration of the present law.

Let me first state that Public Law 87–469 was designed to correct a highly inequitable situation. Under traditional law, a purchaser of land adjoining a meandered stream took title to the high water line of that stream. By traditional well-recognized State Law, a long existing fence line has been recognized as a boundary line and parties are discouraged from seeking to alter such established fence lines based upon current surveys. Both of these legal rules have a very beneficent result. A person purchases land bordering a stream knows that regardless of the changes in the stream he will still have access to it. The other rule prevents excessive litigation and conflicts between neighbors. What has been settled for years remains settled. As you know a contention was made that a survey early a hundred years ago, conducted by the U.S. Government, was in error. The Bureau of Land Management then commenced to assert title to lands, claiming the lands to have been omitted in the original erroneous survey. Public Law 87–469 was intended to permit the successors in interest to these good faith settlers and claimants, on what the Government was now asserting as omitted lands, to obtain clear title to such lands.

We will list what we feel are six strong reasons why this new legislation is necessary.

First, the existing law permits the charging of excessive prices for the land. We understand in some cases this has been as high as $1,000 an acre. Certainly the Government had originally intended to convey full title, and the only bona fide objection that could be made is that the Government lost the price that would have been obtained at that time. Almost without exception the additional acres what would be involved would have been sold then for $1.25 an acre. The Government now claims title to numerous home sites and business sites in the city of St. Anthony, Idaho. It can be documented in many cases these are elderly people living on minimal incomes and payment of more than $1.25 an acre would result in an extreme hardship. S. 721 sets the price at $1.25 per acre, and we strongly urge support of this bill.

Second, under the present law, the Secretary of the Interior can refuse to sell the land to these longtime claimants. Actual practice has shown that Government agents, exercising that discretion, have been refusing such sales. If we again follow that concept while by permitting them to receive payment for the acres they would have received when they intended to sell lots bordering on the river, then there should not be discretionary right today to refuse to sell. It is interesting that an existing law, 43 U.S.C.A. sec. 1068, as amended in 1953, makes it mandatory that the Secretary of the Interior sell land where there has been good faith adverse possession for more than 20 years. Some of our members have attempted to use this law and have been advised that Public Law 87–469 superseded it. A law that was designed to give more rights to these good faith settlers has been construed to take away longstanding rights for these people. It is difficult to challenge a law which gives the Secretary discretion to not sell. S. 579 establishes that title can be claimed by adverse possession for a continuous period of not less than 20 years. S. 216 guarantees that such action, to quiet title, based upon adverse possession, can be brought in Federal court in the local area.

Third, in administering Public Law 87–469, Government agents have refused to recognize improvements to pasture as a bona fide improvement. In many cases brushy-river-bottom land was cleared at considerable effort by manpower and horsepower without the benefit of modern machines. This unproductive land was placed into improved pasture. This pasture is often an integral part of an economic-farming unit of the owner. The consistent position of the Government has been to refuse to recognize this as land subject to the act.

Fourth, the practice of the Government agents has been to segregate the land previously under common management into small pieces, some of which they will sell and others of which they will retain for other purposes. These parcels to be retained in almost every instance are completely landlocked by deeded ground. This patchwork ownership poses considerable problems in weed control, control of malicious trespassers and supervision of fish and game activities. We submit that there already are adequate accesses to the river. This particular area of the Snake River does not run through evergreen forest, but runs through working farmlands. To open up every inch of the banks of this river, as apparently the Government agents are intending, to public recreation, would involve a horrendous problem of supervision and prevention of destruction of livestock and property.

Fifth, the evident design of the handling of present law would cut off most landowners from the river. We again emphasize the longstanding proposition that these people and their predecessors in title intended to purchase land which bordered on the river and, by the actions being taken this valuable right is being destroyed.

Sixth, it is hard for us to think of a more inequitable wasting of the money of the taxpayers, or the extreme hardship of individuals, than the approach that has been taken under existing legislation. It is hard to see how the fair costs of these lands would be sufficient to pay the cost of surveying and administration already involved in this. Most of our people are either engaged in agriculture, or wage earners, or retired people, or small businessmen. The actions of the Government

under the present law seem wholly arbitrary and unfair. These people who must work hard for a living and must produce to earn have a hard time comprehending this great expenditure of taxpayers' money in an effort to deprive them of property they had claimed and occupied and improved for many years. Frankly, their faith in our Government process is severely shaken. We surely hope that this committee will take a step toward correcting these inequities by favorably reporting these three bills. We should add that our basic support is that where people have so claimed the land for many years that they be entitled to purchase for not more than $1.25 an acre, and that the right to purchase be clear in the law as to all of the land claimed and occupied, and not left to the discretion of the Government. We have struggled with the old law for over 9 years. We all request quick action on a fair solution.

Thank you very much.

Senator CHURCH. Thank you, Ken. Can you tell me just what the Government wants to do with some of the pastureland that lies between the riverbank and the land of the claimants?

Mr. SCOTT. In some cases, Senator, they have said that this could be leased back as other Bureau of Land Management ground has been leased to people on the desert land. They also claim that certain groups have wanted some for recreation and fish and game, say that they have desires on some of this land, but I am sure that no farmer has ever refused fishermen or hunters to enter their land when they requested this permission. I, myself, like to fish and hunt and I will conduct these fishermen and hunters on tours on my land.

Senator CHURCH. Isn't it true where this land consists of a pasture or cultivated land and lies immediately adjacent to the farms in question that it will have to be maintained—that is to say it cannot be just left untended? It would go to weeds, wouldn't it? Wouldn't that be a hazard to all the adjoining farms?

Mr. SCOTT. Very much. In my particular area in Jefferson County, we are in a weed district. The county requires you maintain and control the weeds in this area and I am sure if the ground belonged to the Federal Government they would be required to control the weeds at a great expense to the Federal Government. If they planned to get into this land, they would have to acquire right of ways through now deeded land which would be another expense to the Government. I am sure under private ownership the way it had been in the past that the farmers have been interested in controlling the weeds because they do not want them spreading to their own land.

Senator CHURCH. If there were some clear and convincing, compelling public need for this particular land, it would be easier to understand why the Government clings so tenaciously to its claim, but under the circumstances it is extremely difficult to see why the bureaucracy is so stubborn in refusing to endorse any legislative proposal to solve the problem.

Mr. SCOTT. I personally cannot understand how they want much of this land for recreation because it would be a waste of money to put permanent facilities on a lot of this land because even in the past season with the rivers controlled as they are much of that ground was under water for as long as 30 days at a time. Yet, when the water resides, it is very fine pasture for the remainder of the season.

Senator CHURCH. For the most part, it is true, is it not, that the obvious highest best use to which this land should be put is in conjunction with the farms that the lands once formed part of.

Mr. SCOTT. I would think so.

Senator CHURCH. Before the new survey and the Government made claim to it. I would think so too.

Senator Jordan, do you have any questions?

Senator JORDAN. Ken, you represent 500 property owners in those northern counties. How many of those individual owners would be able to seek redress individually?

Mr. SCOTT. Most of them, Senator Jordan, are people on small farms, small businessmen. They are not familiar with the law in a lot of respects and they could not afford the cost of going to several courts. I am very sure of that. Many of them could not afford small donations to this association to send delegates to Washington.

Senator JORDAN. In many cases, their rights would be forfeited because they would not be able to employ counsel to go up against the Federal Government.

Mr. SCOTT. That is true. That is the reason this association was originally formed when the first law was passed. We thought we could help some of those people by working together because we knew they could not do it individually.

Senator JORDAN. You made a good statement and a good point.

Senator CHURCH. Thank you very much for your testimony.

Our next witness is Mr. Leslie Poole from Menan, Idaho.

STATEMENT OF LESLIE POOLE, MENAN, IDAHO

Mr. POOLE. Mr. Chairman, members of the committee, Senator Jordan, I want to thank you for this opportunity. I think most of you know that I am also a member of this Omitted Lands Committee. Possibly we have taken more time than we should have with those of us who have testified here this morning. Most of the testimony that I had, has already been quite well explored. I would like to take just a few minutes of your time, though, to possibly enlarge on just a thought or two that has been expressed here this morning, and one or two that I think have not been explored at all.

I would like to make a statement possibly concerning the intent of the original omitted lands bill. Mr. Harding, who was our former Congresman from Idaho, introduced this bill and it became Public Law 87–69. It is stated in there that the intent of this law in his defense to get this out of committee, he made the statement on January 18, 1962, before this public lands hearing, that these lands included all of the lands in question. I would like to bring this to a point here at this time, that due to changes in this law in one thing or another that transpired after this hearing, in the intent of the law it was modified to the point where the Secretary had the right to classify this land and only offer those lands which under his discretion would be offered. This pertains now to this Senate bill 721. This is one that we are very much interested in. If this could come out of committee and be considered, we would recommend that this be amended now so that it would be mandatory for the Secretary to sell all of these lands and not at his discretion. It would be a little hard to put an accurate percentage on this, but I am sure that I would be correct in saying, not

even one-third of these lands have been offered for sale. In connection with these lands, I would like to make another statement pertaining to this. Within these many acres, these landowners that we have stated that are near 500 on the North and South Fork of the Snake River, under no instance do I know of a livestock farmer or rancher being offered the opportunity to purchase these lands that have not been reduced to cultivation. This is just as much a part of his livlihood to raise livestock as the man who reduced this land to cultivation and plants beets or potatoes, wheat or other crops on it.

I would like to make this point: Under this same condition, our BLM has offered this land to the adjacent owners under BLM supervision and under their grazing rights. I would like to point out that I think that our farmers and ranchers, not only in Idaho, but over the United States have proven their ability and efficiency in taking over these lands and we could take this land over on the proposition that the change we would like in bill 721 on the old original price of $1.25 an acre that was charged through our Homestead Acts, could do this without cost to the Government and I would plainly state we can do it much more efficiently. We can prove this by our farming procedures. There are other reasons why we should be able to take over all of these lands, and especially I want to point out Jefferson County in Idaho, where I live.

At the present time, our whole county has been designated as a weed control district. This would get to the point where it would be an immense burden to the Government to control the weeds, especially Canada thistles and I could name others in our particular area, and whether they like it or not they will be required to control these weeds along the river. This would be an immense expense to the Government. I think this has been emphasized by others this morning, in all cases in our area, in Madison, Freemont, Jefferson, and Bonneville Counties, these lands that are in question at the present time are landlocked as we call it or behind deeded land.

Now, within the provision of the omitted lands bill, I think the Secretary guarantees access to these lands to those that may end up with them that are not preference right buyers. This would be another real added expense. Of course, this would add expense to the farmers and ranchers of our area.

There has been a statement or two made here this morning I would like to comment on. One of them, one of our testifiers this morning made two statements pertaining to public interest. This came from, as you know, our Justice Department. This very much concerns me. I think this was a real broad statement. As I interpret this, the public interest could change as we go through. For public interest, why didn't the Justice Department some near century ago come back in and do something with these erroneous surveys that they are claiming now instead of waiting until this time? The public interest may change another hundred years from now and they may want the land my home sets on or in some of our cities also. If this is public interest, I think we need a little better clarification of what public interest might be in their interpretation. I do not like this and I do not think any of our people will. He said these lands are held in trust. I am not saying our Justice Department is wrong but I think we better have a definition of what trust might be instead of letting it ride from year to year and then come back and say, "Well, our trust has changed."

I think all the other items on this has been discussed, as to the fairness of price and so on. I do not think I should go into this. I have spoken of this $1.25 an acre. This was, of course, the old homestead price. If this erroneous survey—or fradulent, if they want to put this terminology on it also—had been, say, discovered or brought about or recorded when it should have been 75, 80, or 100 years ago, then these people would have had the opportunity at that time to have made a homestead file on this. This was the charge that would have been put on this land at this time. So I do not see any injustice about this. If we let this go into any more length of time, we organized our organization some 9 years ago, with the promise or thought at least from the BLM that this would be solved and done over with, within a 2-year period of time.

We have now been organized 9 years, and I would like to use this as a basis: The immense expense we had as a committee over the 9 years to keep this thing alive, and the defense we had to make of our lands, we think it is time this was brought to a close one way or another. We cannot afford to any longer let the Federal Government hold us here in suspense, with this expense going against our lands. We would like to recommend that at least one of these bills be brought out of committee, that we get some action on it, and, of course, we would like to recommend also the three of them, but if 721 could be amended to include all of the land and say: Shall sell these lands, we would like to recommend that.

Senator CHURCH. Your testimony brought to my mind the possibility of another—something else we might do. That would be to make clear in one bill or another that the Omitted Lands Act was meant as a remedy, was intended to try and remedy the problem but was not meant to preempt the Color of Title Act, and that if in a given case, a person elects to pursue the Color of Title Act, and the facts of his case are such that it would be of greater advantage to him to turn to the Color of Title Act, that the omitted lands bill would not prevent him from doing so. Don't you think that might be? I do not think the Congress ever intended that this particular act should occupy the field to the exclusion of any other remedy that might be available.

Mr. POOLE. We have this in our written testimony, and we think that this should be very much considered. We do not feel that this has done away with the law. The one we quote in particular is the 1953 amendment to this Color of Title Act, and I did not dwell on it any more.

Senator CHURCH. The other thing you said that I do not understand is that as the Secretary has administered the Omitted Lands Act, he has elected to offer for sale only cultivated lands. Is that correct?

Mr. POOLE. This is correct in our particular area. I think this holds clear through the area. All of these lands as yet have not been classified, but those that they have offered for sale, they have offered to sell and allowed us to file on the lands that have been reduced to cultivation, but not those that are——

Senator CHURCH. That is strange because the language of the act as it is described here by the Justice Department is as follows: "The act also accorded a preference right to purchase such lands to any citizen who in good faith under color of title or claiming as a riparian owner placed improvements upon, reduced to cultivation, or occupied

such lands prior to March 30, 1961," so the language of the law was not that restrictive.

Mr. POOLE. This is right. We wanted to point this out. There are other proceedings that they agreed with us and this action took place, the steps that they would follow, that BLM has not followed either. We had the opportunity when this classification was made, or supposedly had the opportunity, to sit down with them and question the classification, but this has not been afforded to us.

We were just notified that these lands would be sold and these over here would not be.

Senator CHURCH. Thank you very much. I have no questions.

Senator Jordan?

Senator JORDAN. That was a good statement. The public interest 100 years ago was to get the land settled and to build a nation. That public interest was established by Congress in the Homestead Act and other acts of land disposition. Who, in your opinion, is the proper spokesman for the public interest now? Is it the Congress or Justice Department or the Department of Interior? Who would you look to for proper redress?

Mr. POOLE. I certainly would not want to go to the Justice Department after what I heard this morning. [Laughter.]

Senator JORDAN. Thank you.

Mr. POOLE. This is probably a rash statement, but I feel this way.

Senator JORDAN. Thank you.

Senator CHURCH. I think that was pretty much on the ball, considering the testimony this morning. Thank you very much.

Mr. POOLE. I thank you for the opportunity.

Senator CHURCH. Our next witnesses are Thomas E. McKnight, of the Title Insurance Co. of Los Angeles, and William J. McAuliffe, Jr., of the American Land Title Association, who will appear together.

STATEMENTS OF THOMAS E. McKNIGHT, TITLE INSURANCE AND TRUST CO., AND WILLIAM J. McAULIFFE, JR., AMERICAN LAND TITLE ASSOCIATION

Mr. MCKNIGHT. Senators, Mr. McAuliffe and myself appreciate this opportunity to testify in support of S. 216. The ALTA regards this legislation as seriously needed and urges its enactment as soon as possible. Under present law, the private landowner has no right to try, in an action to quiet title, to free his land of actual or potential claims of the United States relating to questions of ownership, boundary, or use. Hundreds of such actual or potential claims exist today, however valid, and the fact that the private landowner cannot test the validity or existence of such claims in a court of competent jurisdiction, frustrates the use, development, and marketability of such affected lands.

I would like to respectfully ask that the prepared statement that was submitted to you be entered as part of your records, and also the supplementary statement.

Senator CHURCH. That will be done.

Mr. MCKNIGHT. I would like to summarize the original statement in the interest of time. We attempted to raise examples of circumstances which illustrate the need for S. 216. The first example indi-

cated a situation where land was patented to a railroad under the granting acts of 1866 and sold by the railroad. Subsequently, the United States found that the railroad was not entitled to the land.

Meanwhile, the railroad sold the property, and in the litigation which ensued subsequently, 1890, the purchaser was not served, and judgment ultimately acquired was not recorded. The present owner, based upon the public records, feels that he owns the land. However, the forestry department also claims the lands, based upon the 1890 litigation. The present owner feels his title is secure as a good-faith purchaser of value, but this has existed for 6 years and no one can move. The property is extremely valuable, and it is holding up a multimillion-dollar project.

The second example I raise is the situation which probably you gentlemen are familiar with, and that is the fact that between 1905 and 1922, under the Forest Selection Act which had expired by 1905, there existed thousands of acres of land which had been offered to the United States as base for exchange of lands outside the forestry areas. At this time, when the original act expired, there was no act directing that the offered land be returned.

Therefore, probably as a matter of expediency, the Secretary of the Department of the Interior wrote many, many letters wherein he stated that the offer of the base lands had not been accepted, that the United States had no interest in the land, and suggested that his letter be recorded in the records, in the local records of the county recorder to perfect the chain of title to the lands which had been offered to the United States.

Now, this is a real serious situation because I am told that there are probably 10,000 acres of land in Montana whose title is based like this. 15,000 to 25,000 acres in California, 2,000 in one county alone in Washington, and probably many other thousands of acres in the other parts of the United States. This would seem to be a situation where if we could get the United States into court to determine whether there was equitable estoppel against a sovereign by reason of this letter, we would solve probably most of these problems in one swoop.

Nevertheless, it is a serious problem and I do not know any other way to rectify it. Under the present regulations of the Department of the Interior, Bureau of Land Management, the word has gone out to the district offices that as much of this land be recovered—recaptured is the word—by not honoring these letters. What the ultimate result will be, I do not know.

The third example——

Senator CHURCH. Let me ask this one question: If the law is changed through the passage of S. 216 so that you can get access to the courts, in the case that you just described, would the doctrine of equitable estoppel be available to the litigants against the Government or would the Government still be able to claim sovereign immunity?

Mr. MCKNIGHT. Well, sir, under somewhat similar circumstances in the case of *Longby* v. *Mansel* handed down the first part of this year, equitable estoppel again raised, based on the fact that the sovereign knew of the situation, they acted and expected the persons who they were in contact with to rely upon their acts. Those persons did so and were damaged and, therefore, they should not be able to deny the effect of their acts.

Senator CHURCH. So you think then if you can get the Government into court, you probably, in proper cases, could assert equitable estoppel.

Mr. MCKNIGHT. Yes, sir. The third example relates to lands along the great rivers of the Nation, particularly along the Colorado River between California and Arizona. This is not the only river in which accreed lands have been created.

The problem is, in many instances, there is no way of knowing if the Government owns adjoining property across the river and the river moves back and forth where the accreed lands belong to the Government or the private landowner.

I was recently in Missouri and in that circumstance, there the Missouri River had moved almost a mile in a matter of 50 years and the only title was based upon accretion. In that circumstance, we were able to determine that there could be no one other than the owner who owned the accretion because of the law in Missouri which gave accreded lands to the local, county, and so forth. It occurred to me in listening to the testimony of the land along the Snake River that this is a problem there and I do not know whether the Snake River is navigable or not, what consideration be given to the State title if it was not navigable, and all the other related problems.

The next problem I pointed out is the fact that in many instances, the validity of the patents are in question because of the known mineral character of the land. Often, we find that the plats and field notes of the township as surveyed indicates the mineral character. Yet, the patent comes out with no revelation on minerals. Six year statute of limitation has not run. We do not have a good faith purchaser so we have a problem. The other situation involves the boundary of disputed lands between the private landowner and the United States, similar here to the Snake River problem and others. Now, this gets to be a real serious situation where the land is extremely valuable and the private owner, his land abuts the Government land, whether it be a forestry research or some other public lands outside the forest. I have in mind circumstances where the survey indicated on your left the tier of lots in this subdivision, and on the bottom they were out of title.

Now, I do not expect what I have in mind is trying to establish whether the Government survey which created this situation was correct or incorrect. That is the same problem as your Snake River problem, to determine whether the Government's survey was correct or incorrect. In the upper right hand corner, we find land which is being sold for $20,000 an acre being occupied by the forestry people and we have no way of forcing any agreement as to boundary with these people without voluntary action on their part. We have another problem with regard to railroad rights-of-way, abandoned railroad rights-of-way. In particular, I am thinking of the Atlantic and Pacific Railroad running from Needles to Ventura, Calif. A matter of 300 miles. The original grant was abandoned in the eighties and the right-of-way existed until the 1960's when it was also abandoned by Congress but for researching minerals.

This right-of-way runs through some of the fast developing areas of California. In fact a new airport is in that vicinity. We are not as much concerned with anything except the right of entry in connection with

the minerals. Every time we show such exceptions in our policy, people have been very unhappy. Now, the problem is that the original location of the right-of-way had a scale of 6 miles equal to 1 inch. It also tied to sections and township corners which did not exist at that time back in the 1800's. Therefore, this is the type of thing which, perhaps, if we could establish in court, have the Government establish in court where their right-of-way was actually located and where the mineral rights are located.

Now, the supplementary statement that I would like to make relating to S. 216 and also to the substitute measure submitted by the administration to permit substitutes to adjudicate disputed titles to land in which the United States claims an interest, I appreciate and we appreciate the courtesy of the Department of Justice in furnishing this statement in time for us to be able to make this comment. It is thought that S. 216 which, through the great efforts of the chairman of this committee and the other members, as so timely introduced, is perhaps simpler and more easily understood than the administration bill, but perhaps the administration bill may be in some respects more technically correct.

However, we suggest that both bills are deficient in that they do not provide for suits against the United States to adjudicate disputed titles to land in which the United States claims or may claim an interest. Now, that is important because of the fact that in many instances, the claims which arise are only discovered by examination of title or survey or off record investigation of occupation and so forth, and the United States is probably not aware of their rights to make a claim, so what we are afraid of is the fact that if the bill were narrowly construed by the courts, that it might not cover the right to name the United States as a party defendant where they have not actually made the claim.

In connection with the administration bill, paragraph A of the proposed section 2409A provides that the section does not apply to trust or restricted Indian lands. It is not clear to us why these lands were omitted from the affect of the bill because the boundaries of restricted Indian lands are just as much of a problem as are other public lands or formerly public lands. Paragraph C of the proposed section 2409A should be amended to be consistent with the above recommendation if that recommendation is adopted. That is to include the right type of interest claimed or which may be claimed by the United States. Paragraph F of the proposed section 2409A of the administration bill which bars any civil right under this section unless the complaint is filed within 6 years after the right of action first accrues is clearly not within the spirit of S. 216 and as explained in our original statement, there is a vast accumulation of actual potential claims by the United States. Some of these claims have been accumulated for years because the private owners could not bring the United States into court, and this exclusion would not make any of these people—would exclude their rights under whatever bill was adopted, if this one was adopted, to try their claims in a court of common jurisdiction. Paragraph G of the proposed section 2409A provides that nothing in this section shall be construed to permit suits against the United States based upon adverse possession. S. 579 provides that adverse possession can be acquired under certain conditions which shall be the basis for forgiving

the United States from making any entry or bringing any action to recover such lands. It is offered that if the conditions under which the adverse possession was held as required by S. 579 cannot be established in a court of law as having been fulfilled, the title by adverse possession may never become marketable.

However, an unmarketable title is perhaps better than no title at all. Section 4 of the administration bill provides that this act shall not apply to any claim or right of action which accrued prior to the date of its enactment.

As we have said before, the majority of the claims or potential claims have already accrued and there is very little land left in the continental United States which is subject to disposition and, therefore, if there are any claims or are going to be any claims probably 90 percent of them have already taken place.

In summary, the association recommends that S. 216 be adopted in its present form with the exception that claims by the United States be omitted in three aspects as indicated in my supplement and, in each instance, add on interest therein in which the United States may claim an interest in order to broaden the effect of the bill and be sure that it would not be strictly construed. If S. 216 be not acceptable, then the association recommends that the administration bill be adopted with the following changes—I have enumerated the changes. I have discussed them. Generally, it is that the bill be broadened to include claims or to include the same type of language as indicated for S. 216. Claims or interests therein in which the United States may claim. Also, to exclude reference to—to exclude the exclusion of application to trust or restricted Indian lands.

And finally, to exclude the reference to the paragraphs F, G of proposed section 2409A which has to do with 6 years after the right of action first accrues and go, which refers to adverse possession, and also section 4 of the proposed bill which provides that this act shall not apply to any claim or right of action which accrued prior to the date of its enactment. I would like to say finally that our remarks should not be construed as indicating that the employees of the various public agencies referred to have not been most helpful and considerate. Indeed, they have been but, as they say they have to go by the rules and prevailing public policy.

Again, I wish to thank you for the opportunity of expressing our views on bill S. 216 and the substitute administrative bill.

Senator CHURCH. Thank you very much for your testimony. We appreciate it. Our last witness this afternoon, is Mr. John Steadman, professor of law at the University of Pennsylvania. He is representing the Administrative Conference of the United States.

(The supplementary statement referred to follows:)

SUPPLEMENTARY STATEMENTS OF THOMAS E. MCKNIGHT, TITLE INSURANCE AND TRUST CO., AND WILLIAM J. MCAULIFFE, JR., AMERICAN LAND TITLE ASSOCIATION

My name is Thomas E. McKnight and I am assistant to senior title counsel for Title Insurance and Trust Company, Los Angeles, California. With me here today is William J. McAuliffe, Jr., executive vice president, American Land Title Association staff, Washington, D.C. We are here to supplement the statement dated September 30, 1971 on S. 216 and to make a statement on the Administration Bill to "permit suits to adjudicate disputed titles to lands in which the United States claims an interest."

I respectfully request that the previously submitted statement dated September 30, 1971, together with this supplement, be accepted into the records.

The courtesy of the Department of Justice in furnishing its statement on S. 216, together with the draft of the Administration Bill to permit suits to adjudicate disputed titles to lands in which the United States claims an interest, is greatly appreciated.

It is thought that S. 261, which, through the great efforts of Senator Church, has been so timely introduced, is perhaps simpler in form and more easily understood than the Administration Bill submitted to accomplish essentially the same purpose. Yet the later mentioned bill may be more technically correct. However, both bills are deficient in that they do not provide for suits against the United States "to adjudicate disputed titles to lands in which the United States claims *or may claim* an interest." There are many instances (and I would say they are in the majority) in which an abstract, examination or other investigation of the title to a particular parcel of land, or perhaps a correct survey thereof, has or will disclose a possible claim of the United States to the title or some part thereof, or interest therein of which the United States (and also the presumed land owner) was, until the time of the investigation or survey, completely unaware.

It is not inconceivable that a narrow construction of S. 216 or the Administration Bill might exclude the right to adjudicate disputed titles to lands in which the United States has not in fact claimed an interest.

Paragraph (a) of proposed Section 2409a of the Administration Bill provides that the section does not apply to "trust or restricted Indian lands." It is not clear why these lands should not be included within the applicability of the section. Many of the problems of title and boundary are as applicable to these lands as to public or formerly public lands.

Paragraph (c) of proposed Section 2409a of the Administration Bill should be amended to be consistent with the above recommendations in connection with Paragraph (a) to refer to "the right, title or interest claimed *or which may be claimed* by the United States."

Paragraph (f) of proposed Section 2409a of the Administration Bill, which bars any civil action under this section "unless the complaint is filed within six years after the right of action first accrues," is clearly unacceptable. As explained in my original statement dated September 30, 1971, there is a vast accumulation of actual or possible claims by the United States. Some of the known claims have been accumulating for years because the private land owner could not bring the United States into court. The possible claims may be known or unknown. Yet the right of action may have first accrued as far back as 100 or more years ago.

Paragraph (g) of proposed Section 2409a of the Administration Bill provides that "nothing in this section shall be construed to permit suits against the United States based upon adverse possession."

S. 579 provides that adverse possession held under certain conditions shall be the basis for prohibiting "the United States from making any entry on or bringing any action to recover such lands".

It is offered that if the conditions under which the adverse possession is held as required in S. 579 cannot be established in a court of law as having been fulfilled, the title by adverse possession may never become marketable.

Section 4 of the Administration Bill provides that "this act shall not apply to any claim or right of action which accrued prior to the date of its enactment."

This section would completely frustrate the primary purpose of S. 216, which is to allow private land owners to perfect their titles and establish their boundaries as against actual or potential claims of the United States now existing. Most claims, actual or potential by the United States, have already accrued inasmuch as little public land is now available for disposition in the continental United States.

In summary, the Association recommends that S. 216 be adopted in its present form with the exception that "claims by the United States" be omitted in page 1, line 7, page 2, line 5 and page 2 lines 14 and 15 and in all three places insert "or interests therein in which the United States may claim an interest."

Should S. 216, amended as above suggested, be not acceptable then the Association recommends that the Administration Bill be adopted with the following changes:

1. Proposed section 1347a, 4th line be amended to read "to land in which the United States claims or may claim an interest."
2. Proposed subsection (d) to section 1402 of Title 28, U.S.C., second line be amended to read "quiet title to lands or interests therein in which the United States may claim an interest shall, etc."
3. Proposed section 2409a section (a), line 4 be amended to read "states claims or may claim an interest, other than security interest,"
4. Proposed section 2409a, line 5 be amended to exclude reference to "trust or restricted Indian lands"
5. Proposed section 2409a, section (e), line 5 be amended to read "interest claimed or which may be claimed by the United States"
6. That sections (f), (g) of proposed section 2409a and section 4 of the Administration Bill be omitted.

STATEMENT OF JOHN STEADMAN, PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA

Mr. STEADMAN. I will try to be fantastically brief.

Senator CHURCH. It will be fantastically appreciated.

Mr. STEADMAN. I am here in both my individual capacity and as a consultant to the Administrative Conference of the United States. The Administrative Conference is an independent Federal agency which has approximately 80 members, 45 of them representing the various governmental departments and agencies and about 35 individuals who were drawn from private life. It is headed by a chairman, Roger Cramton, appointed by the President, and has a small staff. Most utilize consultants. It was established in 1966 by the Congress and virtually from the beginning the Administrative Conference has been very concerned about the doctrine of sovereign immunity.

At its second plenary session in 1969, it adopted as its ninth recommendation a resolution which for all practical purposes proposed the abolishment of the adoption of sovereign immunity across the board.

Therefore, we would thoroughly support, in principle, any legislation which would accomplish the same result in any given area and certainly one of the areas where they have been particularly concerned about it has to do with property disputes between the United States and the private individual.

The Public Land Law Review Commission came to the second recommendation in its 1971 report to the President of the Congress. Legal scholars have pretty much unanimously criticized the Supreme Court decision which upheld sovereign immunity in land title disputes and I think any legislation that would come out of this committee along the lines recommended would have the thorough support of the administrative conference and certainly my own.

Now, speaking for myself, I would like to add one word. It seems to me that the ALTA representative has quite accurately hit what you might call the disputed or at least questionable problems that continue to exist in the administration proposal as opposed to S. 216, particularly the prospective nature of the bill as proposed by the administration. I believe that the administration point is that any change this radical should be phased in gradually and therefore, the prospective application would permit the courts to pick up the load gradually. Likewise the 6-year statute of limitations which is written into the bill would again preclude a great many suits of the type which the AFTA mentioned.

Senator CHURCH. Can you explain to me what is meant by "prospective application" in the context of this bill?

Mr. STEADMAN. I hesitate to explain someone else's measure, but as I understand the thrust of it, the intent is to preclude anybody from bringing an action against the United States who would, today, be able to bring such an action except for the doctrine of sovereign immunity. In other words, the bill would apply as I understand it, only to action which accrues after the bill is adopted by the Congress, and therefore, for the bulk of claims, as was mentioned by the ALTA representative, in other words, existing disputes, section 4 of the administrative measure would preclude. As I say, the reason is to permit a gradual phasing in. It is the floodgate argument you so often hear.

My personal inclination would be to take a chance on the floodgate but it is certainly the major difference between a bill which would effectively abolish sovereign immunity across the board and one in land title disputes and one which would gradually, very, very gradually open the courts to private individuals in such cases.

Senator CHURCH. The application then would only permit people who acquire land in the future concerning which there may be or may develop a contest or dispute concerning the title. Only they would be entitled to the benefit of the bill. All those who presently own property about which there are or may be disputed claims that relate to the past, would not be able to use the bill; is that correct?

Mr. STEADMAN. That certainly is my understanding, that feature of it, and even if that were abolished, I believe that the 6-year statute of limitations which is written into the bill as it now is written would, of course, preclude a great many other people even if there were not the prospective applications. Depending on the word when the cause of action accrues, is interpreted. This is not to say they would not benefit. The case in which their doctrine was set down, involved a purchase by the United States of land in 1936 and the United States when it purchased the land thought it was getting it fee simple. The argument of the contestants was that the United States only bought a life estate. If this bill was passed and the United States purchased that land in 1972, then of course, the bill would apply. So there will be some cases where it would be of help but it is my understanding, that the great bulk of transactions involving the United States in land acquisition and disposal are probably——

Senator CHURCH. Couldn't we protect against the throwing the floodgates open too wide by simply providing a period of time within which actions could be brought after a claimant could not go back?

Mr. STEADMAN. Yes; I think the attorney from Idaho had a very sound suggestion in that regard. It is not going to make everybody happy but maybe it will make everyone faintly unhappy which would mean it would be a pretty good compromise. It certainly will lead to some injustices for people who simply do not know to this day and will never know until the preliminary title hearing that the United States might have some claim.

On the other hand, I think it would effectively give those who know today that they have a dispute, a good opportunity to come in and get it taken care of. After that the gates close.

Senator CHURCH. Fine. Thank you very much. Anyone else who wants to be heard? Very well.

The hearing will stand adjourned with the understanding that the record will remain open for 10 days in order for further statements to be received. Also for certain written amendments that we have requested be prepared and submitted.

Thank you very much.

(Whereupon, at 1:28 p.m., the committee was adjourned.)

(The prepared statement of John Steadman follows:)

PREPARED STATEMENT OF JOHN M. STEADMAN, PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA

I am here today to support, in principle, prompt passage of legislation to permit suits to be brought against the United States to adjudicate disputed land titles. I do so both in my personal capacity and as a consultant to the Administrative Conference of the United States.

1. THE ADMINISTRATIVE CONFERENCE

By way of background, the Administrative Conference of the United States is a permanent, independent Federal agency established by act of Congress in 1966. Its purpose is to improve Federal agencies' administration of regulatory, benefit and other programs, and, I think it fair to say, to serve generally as a continuing body to review the fairness of governmental actions and procedures as they affect the individual citizen. To mention just one example of a wide range of endeavor, the Conference has been involved in measures proposing a consumer advocate and in opportunity for other public participation in rulemakings of general applicability by Federal departments and agencies.

Membership in the Conference consists of 40 representatives of the various government departments and agencies and 32 members drawn from the general public. There is also a governing Council consisting of an additional 11 members, including the Chairman. This latter is nominated by the President and confirmed by the President for a term of five years. The present chairman is Roger C. Cramton. The Conference has a small permanent staff and also utilizes a number of consultants in various specialties.

I am a visiting professor of law at the University of Pennsylvania Law School, specializing in real property, government organization and procurement, and commercial law. Prior to my joining the law faculty there in 1970, I had the honor to serve as the General Counsel of the Department of the Air Force. I also served in several other positions both in the Defense Department and in the Department of Justice, and practiced law for seven years with a law firm in San Francisco, California.

2. ADMINISTRATION CONFERENCE RECOMMENDTION NO. 9

Almost from its outset, the Administrative Conference has been concerned with the continued survival and indeed flourishing health of the so-called "doctrine of sovereign immunity." Quiet title legislation would serve to waive this doctrine in cases of disputes between private individuals and the United States involving title to real property. Since the general elimination of this doctrine as a defense available to the United States was an early recommendation of the Administrative Conference, there can be no doubt that the enactment of legislation eliminating this doctrine in any specific area—such as here, in land title disputes—has Administrative Conference support.

The doctrine of sovereign immunity, simply put, provides that the United States, as sovereign, may not be sued without its consent. (See, e.g., Minnesota v. United States, 305 U.S. 382 (1939).) Furthermore, since the immunity is viewed as a defect affecting the subject matter jurisdiction of federal courts, federal officers or lawyers cannot confer jurisdiction by purporting to waive the sovereign's immunity; only the Congress can consent on behalf of the United States. (Case v. Terrell, 78 U.S. (1 Wall.) 199 (1871).)

The rationale for this purely technical defense available to the United States has been shifting and unclear. The handiest shibboleth in its support has been that "the king can do no wrong," with the United States now sitting on the sovereign's throne. This rubric expresses a result, not a reason. The only rationale now regarded as faintly respectable by courts and commentators alike is that

official actions of the Government must be protected from undue judicial interference, although any support of the doctrine is under heavy attack.

Regardless of rationale, the doctrine has in fact been generally applied across-the-board to prevent suits against the United States eo nomine, except as Congress has authorized such suits. Of course such a draconian doctrine had to result in various devices to circumvent its harsher features, notably the "officer's suit," which indulges in the fiction that the doctrine does not apply, in certain more or less limited circumstances, when suit is brought against an individual government officer or employee rather than the "United States." The major statutory ameliorative measures occurred with the passage of the Tucker Act in 1887, waiving sovereign immunity as to contracts, and the Federal Tort Claims Act in 1946, waiving it as to torts. In other areas, however, the doctrine continues to flourish and thrive, including the area under discussion today.

The illogical, confusing, erratic and inequitable nature of the sovereign immunity doctrine has been too often written and elaborated upon to justify extensive discussion today. Dissatisfaction with the doctrine is virtually unanimous in the world of legal scholarship. The need for statutory reform is based fundamentally on the belief that the doctrine hinders a rational determination of basic issues and allows the United States to hide behind a purely procedural and technical defense.

An exhaustive analysis can be readily found in an article by the present chairman of the Administrative Conference, Roger Cramton, appearing in volume 68 of the Michigan Law Review at page 387, upon which much of the foregoing presentation was drawn. (Attached is an excerpt dealing specifically with quiet title.) Mr. Cramton's article incorporates, in major part, his background paper prepared for the Administrative Conference with regard to its recommendation No. 9, adopted at its second plenary meeting of October 21–22, 1969.

That recommendation dealt with "statutory reform of the sovereign immunity doctrine." The Conference there concluded that "the technical legal defense of sovereign immunity, which the Government may still use in some instances to block suits against it by its citizens regardless of the merits of their claims, has become in large measure unacceptable." For this reason, the Conference declared that "the 'doctrine of sovereign immunity' should be similarly limited when it blocks the right of citizens to challenge in courts the legality of acts of governmental administrators," and recommended that the Administrative Procedure Act be amended to so provide.

3. SOVEREIGN IMMUNITY AND TITLE DISPUTES

The inequitable effect of the application of the doctrine of sovereign immunity in real property dispute cases can be best appreciated by several examples. In 1962, the case of Malone v. Bowdoin was decided by the United States Supreme Court (369 U.S. 643). On its face, the case was a garden-variety land dispute. The United States had acquired the land by deed in 1936 from mesne grantors of one Martha A. Sanders. The plaintiffs claimed that Mrs. Sanders owned only a life estate, and upon her death the land vested in plaintiffs as remaindermen. In other words, the United States had acquired only a life estate interest from Mrs. Sanders, rather than the fee it thought it had purchased. The action was brought in ejectment, to recover the property from the Forest Service Officers then occupying it. Held, 5 to 2, sovereign immunity applies; in the absence of consent by the United States to be sued, the district court had no jurisdiction. The consequence was that relief, if any, could only be found in the Court of Claims under the doctrine of unconstitutional taking.

The holding of the case has, of course, been generally applied subsequently in land disputes involving the United States. Thus, in Simson v. Vinson, 394 F.2d 732 (5th Cir.), cert. denied, 393 U.S. 968 (1968), the issue in question was title to land formed by accretion along a river which formed the boundary between land owned by the United States and land owned by plaintiffs; suit was dismissed because of sovereign immunity. Likewise, in Gardner v. Harris, 391 F.2d 885 (5th Cir. 1968), the plaintiff's predecessor-in-interest had sold the United States land which became part of the Natchez Trace Parkway. The conveyance had been subject to an access easement, but the federal officer in charge of the parkway erected barricades across the right-of-way. In an injunction suit seeking removal of the barricades, it was held, again, that sovereign immunity barred the action.

These results have been widely condemned—by scholars, by public commissions, by the executive branch itself, even by some courts. Chairman Cramton, in his above cited article, put it thus:

"The *Gardner* decision is the logical offspring of *Larson* and *Malone*, but the result is indefensible. When government officers mistakenly seize or hold private property, such mistakes both deprive persons of specific property and subject the United States to liability. The relevant question should be whether Congress has authorized the seizure or condemnation of private property under the circumstances that existed. In the absence of such authorization, the property owner should not be limited to a damage remedy under the Tucker Act and injunctive relief should be available. The courts should assume that Congress intends that officers who deal with property should keep within their powers in taking and withholding property that is claimed by private persons. Unless a vital regulatory program is involved, Congress would probably prefer a prohibitory injunction to a grant of compensation after the fact."

The Public Land Law Commission came to a similar conclusion. That Commission, on which several members of this Subcommittee served, was formed to review in depth the laws governing the public lands of the United States. Recommendation 113 of the Commission included the proposal that "citizens should be permitted to bring quiet title actions in which the Government could be named as defendant." The supporting rationale, excerpted from page 261 of its 1971 Report entitled "One Third of the Nation's Land."

At least some courts have clearly been similarly troubled. In County of Bonner vs. Anderson, decided by the ninth circuit on March 9, 1971, the per curiam court opinion upheld the application of the doctrine of sovereign immunity between Bonner County in Idaho and the United States, but went on to remark: "As a matter of policy, it seems a shame that the County of Bonner cannot find a forum or a proper party to sue to test its claim to the land in question. In other fields, the government has created the Court of Claims and the Federal Tort Claims Act for its citizens. We wonder why the government won't sue the County of Bonner, as it may, to quiet title, rather than laughing at its contentions and saying, 'If you have a right, you can't vindicate it.'"

4. THE EXECUTIVE BRANCH PROPOSAL

It is my understanding that the executive branch itself has now recognized the underlying inequities inherent in the application of sovereign immunity to land title disputes. I am told that an official communication will be sent shortly by the Department of Justice to the Congress, proposing the enactment of a bill which would authorize in certain cases and with certain safeguards the bringing of quiet title actions against the United States. I do not speak to the details of that bill on behalf of the Administrative Conference. I can say that to the extent that it alleviates the predicament the good faith citizen now finds himself in when he has a land dispute with the sovereign, the Administrative Conference would support the principle of the measure. To the extent that it may continue to raise artificial barriers to the private citizen in such cases, such as application prospectively only, I personally would find it regrettably limited.

Thank you for this opportunity to appear before you.

APPENDIX

(Under authority previously granted, the following statements and communications were ordered printed:)

STATEMENT OF WAYNE E. TIBBITTS, LORENZO, IDAHO

I am Wayne E. Tibbitts. I was born on May 31, 1903, in Utah and came to live in Idaho at the age of seven years, in 1910, and have since resided on the initial family farmstead in Section 29, Township 5 North, Range 39, East Boise Meridian, in Jefferson County, Idaho. My father and mother originally bought portions of Lots 4, 5, and 14 in Section 29, Township 5 North, Range 39, East Boise Meridian from the Marler family, my mother's relatives.

At that time the original survey showed this to be approximately twenty-six (26) acres. Subsequently the Government did a resurvey and I personally filed a homestead on Lots 9, 12 and 15 in Section 29, Township 5 North, Range 39, East Boise Meridian. As nearly as I can ascertain from my memory this resurvey was done in the year 1927. This has been verified by various documents on file in the records of Jefferson County, and apparently my memory serves me well. At the time of the filing of my homestead rights, following the 1927 survey, on Lots 9, 12 and 15, it was my understanding from the survey then made that I had filed on all of the land between that deeded to my family in 1910 and the river. It was not until the Department of Agriculture program began measuring acreages in the late 30's or early 40's that I learned for the first time that I had more acreage under cultivation than that called for by the original deed and the subsequent patent, and was not fully aware of the fact that part of the lands which I had under cultivation were still in the name of the public until the resurvey began in the 1960's. Within my knowledge the United States Government has resurveyed my particular land on three separate occasions, each survey resulting in a correction of the prior survey or surveys.

This is understandable to me when one considers that the river immediately to the north of the land I farm has been, at various times in the past fifty-one (51) years, to the north of its present channel as far as two and one-half (2½) miles, and in between at various times in various years. It is still more understandable when one realizes that some of the survey work was contracted and was not done by employees of the government; and depending upon the time of year and whether the river was in flood stage or in side channels, or the individual doing the surveying may have stopped at the waters edge. I went ahead with the improvements of my cultivated lands under the belief and representations of the surveyors that this land was included within the lands on which I had filed a homestead. I have paid taxes on the whole of these lands for many years under the same belief and have invested time, money and effort equal to its present value under this belief. The Federal Government, through the Corps of Engineers, sought and obtained from me, as the fee simple owner of these lands, a right-of-way for a protective dike against the flooding of Snake River. Subject to the easement of the Federal Government I have continued to exercise dominion and control over all of the lands, both where the flood control levee is and to the lands between the levee and the river, wherever it may be in any one year.

Not only have I cooperated with the Federal Government in protecting these lands by the giving of easements for the flood control levee, but I have cooperated in permitting surveys from 1910 to date in the belief that in doing so I was assuring myself of the ultimate title to the lands which I had been led to believe were mine. This is true of all of my neighbors who are in the same position as I am. It has only been since approximately May 28, 1970 that I have now learned that the Federal Government proposes that I again purchase a large part of these lands at an appraised valuation yet to be arrived at. My neighbors and I feel that it is about the same as purchasing the land twice.

I think this Subcommittee should be aware of the fact that each of the farms along the Snake River from Heise downstream are small family type farming operations and that for me and my neighbors to be denied, or have to pay again for the lands, or any part of them, however large or small, would be taking an integral part of the living of that particular family from them.

CONCLUSION

I have prepared this written statement to be presented at the hearing on September 30, 1971. I personally prefer the approval of Bill S–721, provided that it is not a discretionary matter with the Secretary of Interior that he sell these lands; however, I think there is great merit in Bills S–579 and S–216. The only objection I have to these two bills is from a practical point of view, the costs of litigation to obtain adverse possession against the United States of America to gain title to these lands would be prohibitive.

LORENZO, IDAHO,
September 24, 1971.

Hon. FRANK CHURCH,
Chairman, Public Lands Committee, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: I have been given the opportunity of reading the written statement of Wayne E. Tibbitts, Route, Lorenzo, Idaho, to be presented at the hearing on Bills S–579, S–721 and S–216 before the Public Lands Subcommittee on Interior and Insular Affairs on September 30, 1971.

I am a landowner and neighbor of Mr. Tibbitts, and I find myself in the same position, in sympathy, and in support of the position he has taken with his written statement to be filed with your committee.

Would you be kind enough to enter this letter in the records in support of this position.

Respectfully submitted,

SEYMOUR THOMAS.

LORENZO, IDAHO,
September 24, 1971.

Hon. FRANK CHURCH,
Chairman, Public Lands Committee, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: I have been given the opportunity of reading the written statement of Wayne E. Tibbitts, Route, Lorenzo, Idaho, to be presented at the hearing on Bills S–579, S–721 and S–216 before the Public Lands Subcommittee on Interior and Insular Affairs on September 30, 1971.

I am a landowner and neighbor of Mr. Tibbitts, and I find myself in the same position, in sympathy, and in support of the position he has taken with his written statement to be filed with your committee.

Would you be kind enough to enter this letter in the record of this position.

Respectfully submitted,

CORAL ALLRED.

STATEMENTS OF IRVIN V. HARROP AND CLEO J. HARROP, RIGBY, IDAHO

We are brothers and the sons of Jesse S. Harrop and Myrtle Rostan Harrop. I, Cleo J. Harrop, was born at the family home on June 21, 1911. I, Irvin V. Harrop, was born at the family home in Labelle on January 30, 1917.

Since the original patents were issued in the name of our maternal grandfather, C. E. Rostan, and, or our father and mother, Jesse S. Harrop and, or, Myrtle Rostan Harrop, we have been the owners of the following described tracts of land, to-wit:

Tract 1.—The Southwest Quarter of the Northwest Quarter; Lots 1, 2, 3 and 4 of Section 2, Township 4 North, Range 49, East of the Boise Meridian, Jefferson County, Idaho.

Tract 2.—The West 60 acres of the Southeast Quarter and all of the Northeast Quarter of the Southwest Quarter of Section 2, Township 4 North, Range 39, East of the Boise Meridian, Jefferson County, Idaho.

Tract 3.—Lot 4, the Southwest Quarter of the Northwest Quarter and the West Half of Lot 3; the West Half of the Southeast Quarter of the Northwest Quarter all being in Section 3, Township 4 North, Range 39, East of the Boise Meridian, Jefferson County, Idaho.

Tract 4.—The East Half of Lot 3; and the East Half of the Southeast Quarter of the Northwest Quarter of Section 3, Township 4 North, Range 39, East of the Boise Meridian, Jefferson County, Idaho.

Tract 5.—Lots 1, 2, and 3 of Section 34, Township 5 North, Range 39, East of the Boise Meridian, Jefferson County, Idaho.

These lands have continuously been in our family since the date of patent. Our grandfather, C. E. Rostan, and our father, Jesse S. Harrop were told that the original survey lines on the lots in the afore-described descriptions included all of the land to the south bank of the South Fork of the Snake River. These lands have been continuously under the dominion and control of our families since the date of patent. Our families, and ourselves have made various improvements consisting of fences, land leveling, ditches, headgates and either cultivating of the lands and, or, the seeding to grass of small portions of the lands, all of which occurred prior to 1962. We have further paid the taxes on all of these lands. These acts were predicated upon surveys by the United States Government made in 1878 or 1879, in 1891 and, or, 1917, 1929, and 1959 and 1960. It appears worthy to note to this committee that each of the surveys varied from the prior survey or surveys and that since the passage of the "omitted lands" act the lands have been again resurveyed in 1959 and again in 1968 or 1969, with resultant corrections. Relying upon the representations thus made we have exercised the dominion and control over the lands as indicated above. We have been asked to and have granted rights of way for easements for flood control levees and for rock revetment along the south shore of the south Fork of the Snake River tying into rock revetment made by the Oregon Short Line Railroad upstream from their bridge at Lorenzo.

Not until the passage of the omitted lands act and approximately in 1962, were we aware of the fact that there were any errors in any of the surveys which would effect our title to these lands. We think it would also be of help to this committee to know that the South Fork of the Snake River adjoining the lands described in this statement, have meandered through the years from north to south and back again for distances as great as three (3) miles, which may account for the variances in the various surveys through the years.

As matters stand at this time, according to our understanding, we will be permitted to buy, at a yet undisclosed price, all of the lands originally thought to be ours, which are to the landward (south) side of the offset flood control levee. It is proposed by the Bureau of Land Management, Department of the Interior, that the United States Government retain ownership of all lands between the flood control levee and the south bank of the south Fork of the Snake River.

We feel that under the circumstances we have done all of the acts with respect to this land based upon an error apparently in original surveys, which is now being modified. Ideally, and in all fairness, we feel that we should be permitted to buy, even though we feel we have already bought it, not only the lands to the south of the flood control levee, but between the flood control levee and the rock revetment on the South Bank of the South Fork of the Snake River. In any event, we feel that it is grossly unfair to have to purchase the lands on which we, and, our ancestors, have spent our hard labor, our time and our money, except at a nominal or token fee as proposed in S–721.

CONCLUSION

We urge this subcommittee to approve Bills S–721, S–579 and S–216. We feel that Bill S–721 should direct the Secretary to sell all of these lands to which the United States Government told us we had title at $1.25 per acre, but, if, in the discretion of this subcommittee, it is not in the public interest to do so, we of course have no alernative other than to urge the passage of this bill as it presently is written. The other two bills, namely S–579 and S–216 are of little practical value to us personally because of the costs of litigation under either or both of them. Nevertheless, we urge their passage because there are as many situations as we have landowners adjoining the Snake River up and down stream from Heise to American Falls.

STATEMENT OF JOHN T. POOLE, ROBERTS, IDAHO

I am John T. Poole. I was born September 21, 1887 at Menan, Idaho. On July 1, 1935 I acquired by one purchase the East Half of Section 23, the North Half of the North Half (N ½ N ½) of Section 26, the North Half of the Northeast Quarter (N½ NE ¼) and the Southwest Quarter of the Northeast Quarter (SW ¼ NE ¼) and the Southeast Quarter of the Northwest Quarter (SE ¼ NW ¼) and Lot 6 of Section 27, Township 5 North, Range 37, East Boise Meridian. At approximately the same time, I acquired through other purchases from the Polson family and the Quinn family the South Half of the Northeast Quarter (S ½ NE ¼) and Lots 1, 2 and 7, all in Section 26, Township 5 North, Range 37, East Boise Meridian. All of the above described lands are situate in Jefferson County, Idaho. I am selling all lands in Section 26 and Section 27, owned by me, and aforedescribed, to my son, Leslie Wayne Poole. He has subsequently acquired by purchase all of that portion of Section 22 lying East of the Snake River and Lots 2, 3, 4, and 5 of Section 27, all in Township 5 North, Range 37, East Boise Meridian, in Jefferson County, Idaho.

Prior to my acquisition of these lands I was an executive for the Woods Livestock Company, subsequently Idaho Livestock Lands, Inc. These lands were owned by that company or Mr. Robert Gibson, and his successors in interest. As such an executive for the owners, I have been thoroughly familiar with the lands since the year 1908. During the whole of that period of time the whole of these lands were represented by the United States Government to be within the aforementioned descriptions, both on the initial survey and on resurvey. The lands were cultivated and improved. They have been under the dominion and control of the owners. Taxes have been paid upon the whole of the lands and much time and money have been invested by each owner in the belief that the descriptions contained the whole of the lands. It was not until the late 1960's when the last survey was made by the Bureau of Land Managament, Department of Interior, that there was any hint of the fact that any of the described premises were so called "omitted lands." The records of the "Land Office" by which it was known when it was located at Blackfoot, Idaho, were checked repeatedly by myself and they reflected that the descriptions covered the whole of these lands. Based upon these records it was not unreasonable that either I, or now my son, should have relied upon the descriptions as including the whole of the lands. We now find that if we are permitted to purchase the lands at all, as preference right claimants, we would have to do so at an appraised price, not yet arrived at, which is, in our opinion, and in the opinion of my family and neighbors, the same as purchasing the land twice, and at a value increased by our toil and efforts in improvements.

While my friends and neighbors up and down the river from Heise to the American Falls Dam each have their particular situation which may be peculiar to them, we are all, for the most part, natives of Idaho, who relied upon the faith and integrity we placed, and still repose, in the United States Government in developing a small family type farming operation. To require us to have to pay again for these lands, or any part of them, however large or small, would be taking a large slice out of the living of that particular family from them.

CONCLUSION

I personally prefer the approval of Bill S–721. I think we should be able to purchase these lands at a nominal value of One and 25/100 ($1.25) Dollars. In the alternative, I approve Bills S–579 and S–216. The only objection I have to these two bills is that it is impractical to litigate these matters in the Federal Courts to its final conclusion because of the necessary costs of litigation.

STATEMENT OF M. G. KOON

I am M. G. Koon. I am 78 years of age, and came to Idaho at the age of 9 in 1902 with my father and mother, brother and sisters. My mother was the daughter of Hyrum C. Graves, and she inherited from her father and mother 320 acres of land. Either my father, or my brother and I, when we became of age, acquired at various times, the following property:

160 acres from Alley H. Olive;
160 acres from Joe F. Perry;

160 acres from John B. Wyat; and
200 acres from Mrs. Charles Flamm.

All of these lands were immediately adjacent to, or adjoining the South Fork of the Snake River on its north bank in Township 5 North, Ranges 38 and 39 East Boise Meridian in Madison County, Idaho.

In addition to these inheritances and purchases, we purchased what was then called an "Isolated Tract". It was thus called because it was as yet unsurveyed. We paid $1.25 per acre for this land at the time of purchase with the understanding that upon its survey we would receive a Patent to the 160 acres.

I cannot remember the exact description of the property, but it was located in Section 13, Township 5 North, Range 38 East Boise Meridian near the confluence of the North and South Forks of the Snake River. At the time that the government surveyor came to survey these lands it was in the springtime and the North Fork of the Snake River was at flood stage. Some of the land thus purchased was inundated by flood water, and the survey could not be completed. It was represented to us that we would ultimately, on the final survey, receive the title to the whole of the 160 acres, which we had paid for. We have in our family continued to exercise dominion and control over this 160 acres, have developed the same, partially in cultivated lands, and also partially in highly developed pasture land, paid taxes on the whole of the 160 acres, and now at least a portion of this 160 acres is considered "omitted lands". We understand that we will have to purchase these lands again, even though we have paid for them once. I do not know how many surveys there were in between the first survey and the one made finally September 18, 1969, but in the process these are the facts as they have ultimately developed and they are within my knowledge and as I have represented them to be in this statement.

I personally now live in a new home in Section 18, Township 5 North, Range 39 East Boise Meridian, in Madison County, Idaho. This is the fourth home I have built. I did not build this home until flood control levees and rock revetment dikes had finally been constructed which insures the safety of this home. This was sometime after 1956. Prior to that time I, personally, had built three (3) separate and distinct homes on 90 acres of land I had homesteaded. Each home in turn was "lost" (destroyed) by the ravages of the river. I presume I am still the owner of approximately 160 acres of land which was either homesteaded or purchased by me, and is the present river bed of the South Fork of the Snake River. The river in this area has altered its channel from the north bank, as it now exists, adjoining the land on which my yard and home now stands, to the South as far as 2 or 3 miles. I was Chairman of Flood Control District No. 1 of Idaho for many years and inspected the river from Heise downstream to Roberts twice each year. The channel changes practically every year. I have no doubt that surveys made in the 69 years I have lived in this area have not been the same as the original survey. Such resurveys would depend upon where the river was at the moment, whether it was in flood time or where the channel had cut a new "slough". The survey and its exact circumstances have lost in history, and in the minds of those persons who, many long since dead, had actual knowledge with respect to each tract.

I could speculate with repect to some of the reasons that there are any "omitted lands" at all; for no sane, ambitious or honest and thinking person would devote a lifetime of labor, time, money and planning to the development of a piece of land, if he had known, or had reason to know, that he merely had "squatters rights" or that he was occupying lands belonging to the United States of America. Yet such is the case of every person who has under his fences, and on which he has paid taxes, "omitted lands". I consider it sufficient to have set forth in this statement facts pertaining to the land of which I have personal knowledge.

I think that this committee should be aware of the fact that I do not now own any lands except those in the river bed, and that on which my home, a small yard and a garden plot sets. Nor am I under any obligation to any members of my family or others who now own these lands to furnish them title to any "Omitted Lands".

This statement is made purely in the interest of furnishing to this committee facts which may be of some help to you in your deliberations of these bills as this committee in their discretion feels will result in justice and fairness to the people who are concerned and effected by them.

Respectfully submitted,

M. G. Koon.

STATE OF IDAHO HOUSE OF REPRESENTATIVES,
Idaho Falls, Idaho, September 27, 1971.

HON FRANK CHURCH,
U.S. Senator, Old Senate Office Building,
Washington, D.C.

DEAR SENATOR CHURCH: A number of residents in my legislative district have contacted me concerning the pending hearing before your subcommittee on the omitted lands issue. Most of these individuals reside in the Highland Park Addition to the City of Idaho Falls near the Johns Hole Bridge and their lands were taken from them for use in the construction of the interstate project several years ago.

I suggested to these people that they reduce their testimony to writing so that it might be submitted to you and included among the hearing documents. I am therefore enclosing statements and letters from a number of people who have been directly affected by the issue. Would you please take the necessary action to present this matter to your subcommittee .

These taxpayers are very concerned that the subcommittee realize that the owners of residential lots have been just as seriously damaged as owners of farm properties. They are therefore in hopes that any corrective legislation will also extend protection to residential property owners.

Thank you for your continued assistance in these matters.

Very truly yours,

TERRY L. CRAPO.

IDAHO FALLS, IDAHO,
September 25, 1971.

To Whom It May Concern:

The land on which the Rees home sits, inside the City Limits of Idaho Falls, was purchased over thirty years ago from the Idaho Power and Light. This was done in the proper manner, and I recall the sale of this property was advertised in the Post Register in Idaho Falls three times according to the law. There were no objections from anyone including the Federal Government.

For over thirty years my father and then my mother after his death, paid taxes to the City of Idaho Falls—and also heavy assessments for improvements on the property. Some few years ago they were informed that they did not own the land on which their home sat. They were told that it belonged to the Government as omitted lands.

After my father's death nineteen years ago, my mother now a widow without any income, paid the taxes out of her savings.

One heavy assessment amounted to a little over $4,000.00 for the building of a curb, half of a roadway, and a sidewalk. Said sidewalk led to nowhere. The children protested this, but mother being honest and principled took on this obligation to pay it off on an annual basis.

If this land does not belong to the City and specifically to my family—Mother being now deceased at the age of 91, then the family should be refunded for the taxes paid to the City of Idaho Falls over these many years. At the present time there is no way to get clear title in case of a sale now that it has been deeded to the children.

This is very confusing and very disconcerting to our family.

Very respectfully yours,

MILTON T. REES, M.D.

P.S.—Recently a road feeding off the new Inter State approach occupies all the room to the curb that my mother paid for and No Parking signs have been put there so that the front of my mother's house has lost access to the front door and a bed of flowers has been planted where the steps were leading up to the door.

M.T.R.

IDAHO FALLS, IDAHO,
September 27, 1971.

THE SENATE INVESTIGATION COMMITTEE OF DISPUTED LANDS,
Washington, D. C.

DEAR SIRS: On September 3, 1963, my husband and I bought lots 1–4, Block 65, Highland Park Addition to the original town of Eagle Rock, County of Bonneville, now Idaho Falls, Idaho. At that time the title to the property was clear. Title insurance was available.

Our mortgage company is Mortgage-Insurance Company, P.O. Box 639, Boise, Idaho 83701. The mortgage was recorded Sept. 6, 1963, in Book 163 of Mortgages, at page 535, Bonneville County, Idaho. The title insurance company: The Title Insurance Company of Boise, 711 Bannock Street, Boise, Idaho, insured the title as clear for property valued at $19,250.00, Policy No. 21239, order No. 9142, on January 16, 1964, signed by Mr. Stanley Gagon. Our mortgage is No. 1–0639 with the company.

In a 1962 survey this land was discovered to have been omitted from the government survey of 1877 (according to a notification given us by the Bureau of Land Management at a meeting on *August 27, 1965,* to which we were invited by letter). The line of omitted land runs diagonally across our four lots from the SE corner to the NW corner. Thus far the title insurance company or any other legal group has been unable to clear the title to our house.

In July 1971, my husband (a Warrant Officer, Grade 4, stationed at Fort Belvoir, Virginia, USAEng Reactor Group) and I were divorced. The divorce decree declares that our home property be sold and the ensuing money be divided equally between the two parties. I can not afford the cost of maintenance of the house so must move within the next six months. It is advantageous to both parties that I occupy the house until it is sold. My former husband will be responsible for the payments should the house become vacant. We need to have the title cleared as soon as is possible in order to place the house on the market.

The late discovery of a so-called meander river road line to and including our property is ridiculous. The fact that a four lane public road has been constructed and is in use through the properties of these owners and between us and the large property owners along the river is also ridiculous. The river bed could never have been this wide prior to the building of the dam below our properties or since the dam was built.

We are 100 to 200 feet higher above the river level even with a dam below the area where we are situated on the river. We can barely see the tops of the trailer trucks and large buses that travel on the river road, access road from Interstate 15 to the city of Idaho Falls. Our house is high above the level of the river.

We would appreciate your investigating the difficulties we are experiencing and making some settlement to clear our titles. Our family especially would appreciate this attention. Only one-half of our four lots is in question. We need the title cleared NOW.

Sincerely,

MARY T. EMBLETON.
ROBERT EUGENE EMBLETON.

IDAHO FALLS, IDAHO,
September 25, 1971.

INVESTIGATING COMMITTEE OF OMITTED LANDS,
Washington, D.C.

DEAR SIRS: We were greatly surprised and perturbed to find the land our house stands on, does not have a clear title. When we purchased this property, we invested in, The Title Insurance Company of Boise, Idaho, to be sure our title was not defect in any way. We were assured by all that help transact the business of buying this home, that the title was clear.

We have paid for sewage, street assessment and many years of taxes, beside all other improvements, on this property. I feel we are entitled to every consideration from the government to clear the title of our lots.

Respectfully yours,

HELEN CRANNEY.

IDAHO LAND TITLE ASSOCIATION,
September 29, 1971.

Hon. FRANK CHURCH,
U.S. Senate, Washington, D.C.

Idaho Land Title Association urges the passage of Senate bills 216, 579 & 721. 92d Congress. Present provisions of law most unfair to land owners along Snake River and its tributaries in Idaho. New legislation materially helpful to proper adjudication between the Government and land owners.

JOE GAMBOA,
President.

IDAHO LAND TITLE ASSOCIATION,
September 27, 1971.

Hon. LEN JORDAN,
U.S. Senate, Washington, D.C.

Idaho Land Title Association urges the passage of Senate bills 216, 579, and 721. 92d Congress. Present provisions of law most unfair to land owners along Snake River and its tributaries in Idaho. New legislation materially helpful to proper adjudication between the Government and land owners.

JOE GAMBOA, *President.*

PORTLAND, OREG.,
September 28, 1971.

Hon. FRANK CHURCH,
Chairman, U.S. Senate Subcommittee,
Washington, D.C.:

Oregon Land Title Association by resolution directed me to express its strong support of S. 216. It also urges consideration of amendments suggested by California Land Title Association letter of September 23rd, clarifying the objects of this measure.

STANTON W. ALLISON, *Executive Secretary.*

CALIFORNIA LAND TITLE ASSOCIATION,
Sacramento, Calif., September 23, 1971.

Hon. FRANK CHURCH,
Chairman, U.S. Senate Subcommittee on Public Lands, Senate Office Building,
Washington, D.C.

DEAR SENATOR CHURCH: On behalf of the California Land Title Association, a trade association of California's title insurance industry whose membership represents over 99% by volume of the title business in the state, I am writing to inform you, both as author of S. 216 and as chairman of the Senate Subcommittee which will shortly be considering that measure, of this Association's strong support of the principle set forth in your bill.

S. 216, relating to permitting suits to quiet title to real estate to be brought against the United States, will be greatly beneficial to innumerable persons. It will give private persons whose title may be clouded by some federal claim a judicial forum in which to resolve any dispute. This recourse, which is so basic to our democratic system of government and which plays such a large part in maintaining the freedom of the individual citizen in this country, has to date been denied our citizens except where the United States government has given its express consent. And inasmuch as the ownership of property and the stability of title is the foundation of our private economic system it seems particularly undesirable that in this area express consent of the government must be obtained before a dispute with that same government can be litigated before an imartial forum. As you said in your remarks upon the introduction of the measure last January 26th, the principle of sovereign immunity "is not appropriate where the courts are established, not for the convenience of the sovereign, but to serve the people."

I am enclosing a copy of a resolution passed by this Association in support of S. 216. You will note that in both the third and fourth paragraphs we differed slightly from the exact language of your bill. We do support S. 216 in its present form, but would suggest amendments that would clarify two potential problems, and it was in the hope of amendment that the language of our resolution was drafted. The suggested amendments are as follows:

On page 1, line 7 of S. 216, as printed, and again on page 2, line 5, and again on page 2, lines 14 and 15, in all three places strike out "claimed by the United States" and insert: "or interests therein in which the United States may claim an interest".

This would, for example, change new § 2408a to read as follows:

§ *2408a. Actions to Quiet Title.* The United States may be named a party in any civil action brought by any person to quiet title to lands or interests therein in which the United States may claim an interest.

The two problems which would be solved by this amendment are rather simple to explain. First, it would be clear that *any* interest in land which is clouded

by a federal cloud is a proper subject of such an action, and that you are not limiting actions to those brought to quiet fee titles only. Many interests less than the fee—in particular, easements—are clouded and should also have this right. Second, it is not beyond a stretch of the imagination to conceive of a court, under the strident importunings of a United States Attorney, to rule that the statute as drafted requires such a strict construction that only cases where the United States has made an actual claim may come within its scope. Yet this would be singularly unfair to the owner whose title or interest is clouded by ambiguities and uncertainties which give rise to a *potential* federal claim, although not yet pressed by the government. Hence, the suggested language "may claim an interest".

We strongly urge your favorable consideration of these amendments.

In conclusion, I have become personally aware of several situations presently existing in California where a grave injustice is being done private citizens simply because they relied on certain deeds or other acts of the United States around the turn of the century and who now find their titles clouded due to recent administrative decisions in direct opposition to earlier decisions on which they relied. The member companies of this Association are familiar with many, many more such examples. These people deserve their day in court to litigate these issues should they so desire. (For specific examples, I refer you to a letter from Mr. Darrel E. Pierce of Inter-County Title Co. to you dated March 13, 1971.) Any concept of equity and fair play demands that, in an area of such fundamental importance to our socioeconomic system and our individual liberties, the right of the private citizen to quiet his title before an unbiased tribunal cannot be hinged on the prior approval of the very entity which has raised the cloud. We strongly urge your Subcommittee to favorably recommend S. 216 to the full Committee, hopefully with the suggested amendments. If I or the member companies of this Association can be of any assistance in the enactment of this measure, please let me know.

Sincerely,

R. BLAIR REYNOLDS,
Vice President, Counsel.

The Board of Governors of the California Land Title Association at its February 25, 1971, meeting, passed the following resolution:

Whereas, it is contrary to the public interest that land titles remain in a condition of uncertainty and doubt, and

Whereas, the Courts are the traditional forum for determining legal questions relating to the ownership of land, and

Whereas, there does not appear to be any present law generally authorizing suits against the United States to quiet title to lands in which the United States claims or may claim some interest, be it

Resolved, that the California Land Title Association supports the adoption of an appropriate law by the Congress of the United States which will permit suits to be brought against the United States in the District Courts of the United States to adjudicate the title to lands or interests therein, in which the United States claims or may claim some interest.

Resolved further, that the American Land Title Association be urged to support such a bill, and that the Vice President—Counsel of the California Land Title Association advise the appropriate representatives in the United States Senate and House of Representatives of the views of the California Land Title Association reflected by the foregoing Resolution.

RIRIE, IDAHO,
September 27, 1971.

Hon. FRANK CHURCH,
U.S. Senate,
Washington, D.C.

SIR: As a pilot in World War II I helped fight to keep our country free. As a farmer I am fighting for the freedom of living and earning a living as a farmer—a struggle which continuously grows more difficult.

Recent land surveys by the Bureau of Land Management is supposedly correcting former Government land surveys listed as false and erroneous. The BLM surveyors have made at least two surveys on our place and have had to be shown the difference between manmade ditches and natural slough to determine riparian boundaries.

Originally we were told that land owners would be given preference rights to adjoining riparian ground. Now, in this BLM landgrab, we have been offered 25 acres out of 70 acres of riparian land. No consideration has been given to the fact that land once documented as "unfit for human habitation" has been cleared, the ground worked and grass planted. Such treatment for a cattle operation should receive just as much consideration as breaking up land and burning trees for row crops and is far more beneficial to ecology and environment than is row crop farming or commercial uses and just recognition should be given.

Also in considering allotment of adjacent grounds the number of deer that feed off my farm grounds should be no small factor. In early spring on my 45 acres of alfalfa there have been as many as 100 head of deer feeding on early growth for a period of approximately 30 days. This consumption of feed on my place and the retardation of alfalfa growth is no small factor in dollar returns. However, the BLM representative who decides preference rights in this area suggested that I fence my place to keep off deer. I asked if he were kidding. He said, "No, I am not kidding. A good four-wire barbed fence would fence out antelope." Having been reared in Wyoming I have seen antelope crawl through a barbed wire fence at almost a dead run and told him that he should go to Jackson Hole to see what kind of fence it takes to keep out antelope and deer. No farmer can afford that kind of fence.

When this Idaho Omitted Land Bill was passed I was 46 years old. Now I am 55 years old. Because this has dragged on so long it has been impossible to set up any feasible type of livestock operation and I, for one, am pushing for a quick and a reasonable settlement so I can get at my business of making a living for my family.

Yours truly,

MARVON M. NEWBY.

MENAN, IDAHO,
September 22, 1971.

GENTLEMEN: I am writing concerning some omitted lands in Section 22, Township 5, North Range 38 E.B.M. in Idaho, 30 acres, more or less.

This land was bought by my wife and I in 1936, in good faith, with a Warranty Deed and an Abstract of Title calling for this land, dated 1896. Taxes have been paid on this property ever since. We have spent hundreds of dollars improving and developing this farm.

It is not right to pay an attorney to try and protect this land or for our Government to take our land away from us and give it to a sportsman organization.

Yours truly,

VERN GUNDERSON.

STATEMENT OF THOMAS J. CAVANAUGH, ON BEHALF OF AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION, NATIONAL WOOL GROWERS ASSOCIATION, PUBLIC LANDS COUNCIL

Mr. Chairman, my name is Thomas J. Cavanaugh and I am appearing before you today on behalf of the American National Cattlemen's Association, the National Wool Growers Association, and the Public Lands Council, a non-profit corporation representing public land livestock grazing permittees which I serve as general counsel.

The three organizations upon whose behalf I make this appearance are pleased to be able to endorse S. 216 and to urge its enactment.

Many of the members of each of the organizations I have named are owners of lands bordering upon federally owned lands, or which have been acquired from the Government. S. 216 will inure to their benefit, as well as to the benefit of others similarly situated, by affording them the opportunity to adjudicate land title disputes with the Government in a court sitting in the area in which the land is situated.

While other situations do give rise to title disputes between the Government and citizens, the most frequent are those occasioned by the resurvey of public land boundaries. Many early surveys were erroneous or fraudulent. In addition, many of the early survey markers were of an impermanent nature and can no longer be located.

Thousands of miles of public land boundaries must be established or reestablished. It has been estimated that over two hundred and fifty thousand miles of boundary between the national forests and other ownerships are in this category.

Not infrequently the Government will, upon the basis of a new or resurvey, determine that land long thought to have been privately owned is, in fact, public. Sometimes such determinations are made upon the basis of facts, or factual interpretations which are subject to legitimate dispute. Less frequently the determination is made upon a disputed application of a rule of law to facts which are not in dispute.

While a private claimant may protest the determination by the Government that the land he claims is federally owned, he is not entitled to a hearing as a matter of right and rarely are hearings afforded to such claimants. Instead, the protest is more often reviewed by the same officials who made the initial determination.

Nor does he have recourse to the courts. Since the Government invariably asserts the defense of sovereign immunity in such suits, the private claimant cannot obtain a judgment quieting title as against the United States unless the United States chooses to initiate an action against him.

Most often the only available relief to the private claimant, no matter how legitimate the claim, is through special legislation. For a variety of reasons, this is not the most satisfactory method of resolving title disputes.

After examining the situation which now obtains when title disputes arise between the Government and private citizens, the Public Land Law Review Commission recommended that citizens should be permitted to bring quiet title actions in which the Government could be named as a defendant, that in suits brought by the Government the normal defenses of equitable estoppel and laches should be available and that the doctrine of adverse possession should apply as against the Government.

The Commission rejected the idea that a waiver by the Government of sovereign immunity in suits brought to establish the Government's claim of title would unduly interfere with the legitimate functions of Government. As the Commission noted:

"If the Government's claim is good, it will be established and, if the claim is not good, the Government cannot be harmed by a judicial determination to that effect, for it will lose nothing which rightfully belongs to it."

Not only do we endorse S. 216, but we sincerely hope that this Committee will heed the recommendations of the Public Land Law Review Commission by recommending such additional legislation as may be necessary to provide a reasonable statute of limitation upon actions by the Government to assert title to real property and to afford defendants in such actions other equitable defenses.

LEWIS & BRISTOW REALTY,
Sacramento, Calif., September 22, 1971.

HON. FRANK CHURCH,
Member, Interior & Insular Affairs Committee,
U.S. Senate, Washington, D.C.

DEAR SIR: Please put us on record as being in support of S-216 which will permit private parties their day in court to be heard on disputed land title matters involving the United States.

Thank you.

Very truly yours,

ROBERT G. LYNN, *President.*

SHAW'S,
Fresno, Calif., September 22, 1971.

Senator FRANK CHURCH,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: I wish to express my concern and thanks for your introduction of Senate Bill S-216.

It appears that it will provide a just and expedient means for settlement of land title disputes.

Trusting you and other members of the Interior Committee see fit to give full consideration and support to said Bill.

Cordially yours,

O. J. SHAW

AHRBECK & CANNAN,
ATTORNEYS AT LAW,
Anderson, Calif., March 8, 1971.

Hon. FRANK CHURCH,
U.S. Senator, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR CHURCH: This letter is to support Senate Bill 216, which has been introduced by Senator Frank Church and fellow senators in the U.S. Senate.

The bill if enacted into law would provide that an action may be filed in the Federal District Court to quiet title to land against the United States Government. As you are undoubtedly aware, the present procedures for challenging the claims of the U.S. Government to ownership or interest in real property is archaic, expensive and extremely time consuming.

Therefore, I am sending this letter in support of Senate Bill 216.

Very truly yours,

JESS D. CANNAN.

LORENZO, IDAHO,
September 7, 1971.

Hon. LEN JORDAN,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR JORDAN: We are writing in regards to the Omitted Lands Bill which is presently being studied in the Congressional Committees. We wrote to Senator's Jordan and Church; and Representatives Hansen and McClure in a letter dated February 20, 1971 in respect to our feelings concerning the problem of the omitted lands, so we would like to address this letter to the committees studying this Omitted Lands Bill, proposed by the Idaho delegation.

As we stated in our letter dated February 20, 1971 we have been purchasing a small acreage consisting of approximately 7 acres. We purchased this property from a widow, Mrs. George Hogan, who had owned and lived on the property for many years. (The county assessor states that taxes have been paid for at least thirty-five years and possibly longer.) This small acreage consists of a home, corrals, outbuildings, pasture land, garden, orchard and yard area.

The Bureau of Land Management has resurveyed this property and have stipulated they would sell about three acres, retaining the remainder for their own purpose. Now take into consideration this land that they want to retain along with the three acres they have so graciously stipulated would be for sale has been cultivated, farmed, improved and lived on for years. The BLM has also stipulated that the three acres that would be for sale would sell for several times the price of comparable cropland with irrigation water on it.

We purchased this acreage thinking this would be a good place to make our home. A place where the children could raise a few head of livestock, and if the BLM is allowed to carry out their proposal there wouldn't be enough land left to carry out any projects the children might have without mentioning the additional expense added to the original purchase price of this home by having to re-purchase the three acres.

We are hopeful that the Omitted Lands Bill will be enacted to protect the private citizen.

Sincerely,

CLAIR H. LEAVITT.
JOANNE LEAVITT.

CHAIRMAN, IDAHO STATE LEGISLATIVE COMMITTEE,
Pocatello, Idaho, October 9, 1971.

Hon. LEN JORDAN,
Senate Office Building,
Washington, D.C.

Re omitted lands on upper Snake River. People in this area very sympathetic to present occupants. I feel their rights should be protected with deeds issued to them at no additional cost.

VERNAL DOC HORTON.

WESTERGARD-MAYFLOWER,
WESTERGARD MOVING AND STORAGE, INC.,
Pocatello, Idaho, October 8, 1971.

LEN B. JORDAN,
U.S. Senator,
Senate Office Building, Washington, D.C.

DEAR SENATOR: Over thirty years ago I purchased some property on the bank of the Snake River approximately two blocks from the site of the Present L.D.S. Temple. At the time of the purchase, I had the abstract examined by qualified counsel and during the intervening years, we have constructed a lovely and expensive home, paying for the sewer, water and other off-site improvements. Particularly, we paid our share of the street, which has now become an access to the interstate, passing near our home.

I assume it is apparent to you that this property is now included in the omitted lands area of the river at Idaho Falls. It somehow seems unjust and unfair to now require that I should again purchase the property from the United States government because of an error on the part of the government engineering crew many years ago.

Our newspaper contains much discussion of a proposed bill allowing people in my position to purchase their land for a nominal amount. This, I am most anxious to do and respectfully urge your best efforts in achieving passage of this measure.

Sincerely yours,

D. L. WESTERGARD,

PETERSEN, MOSS & OLSEN,
ATTORNEYS AT LAW,
Idaho Falls, Idaho, October 8, 1971.

Re Omitted Lands Act.

Hon. LEN B. JORDAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JORDAN: May I ask that this written statement be submitted as part of the testimony in the omitted lands hearing in support of the legislation which is presently under consideration. I have become involved in the following situations which I think point out some inequities under the present Omitted Lands Act:

1. I represent Harold Taylor who formerly owned the Taylor Meat Company. His property abutted on the Snake River just south of the main portion of the City of Idaho Falls. It turned out, as I recall, that there was only a very small acreage (less than two or three acres) involved in this tract which was claimed to be omitted land. However, the purchase price was $100.00, and, in accordance with certain provisions of the Act, the government reserved an easement over and across a 100 foot strip along and parallel to the Snake River for access and recreational use of the people of the United States and for public access roads and recreational facilities. This reservation of an easement covered virtually the entire tract, and because of the breadth of the easement and the nature of its terms, the land will practically be useless to Mr. Taylor. In addition, the Act, in Section 3, reserves minerals to the lands.

2. I represent Cloyd Lee, the one about which I have corresponded with your office. As I have explained before, a group of owners of lands along the Snake River to the south of Mr. Lee's property had, at one time, on the strength of a letter issued by the Department of the Interior, or one of its subdivisions, been able to obtain title insurance on lands which are essentially omitted lands. These people have built several fine homes on this land. Mr. Lee, then five or six years subsequent to that transaction, sold a piece of property to Mr. Monte Wight of this city on a contract. He covenanted to furnish a clear title, or else to suffer a significant dimunition in price of the overall tract. About half of that tract was determined to be omitted lands by the Bureau of Land Management. He has obtained a letter virtually identical to that which the land owners to the south of him had received five or six years ago, to the effect that the government is not going to claim this omitted land and to the effect that the Cadastral Surveyors

were required to pull up their stakes and leave him in possession of the land. However, the title companies (and I have checked with both of those which service our area) have advised that they will no longer insure a title on the strength of one of those letters, because a simple change of attitude by the government could jeopardize the title. Mr. Lee's problem is unique in that he cannot claim the property under the Homestead Act, the Desert Land Act, nor can he now claim the land under the Omitted Lands Act; so he is left in a position where he cannot convey a clear title. Yet the government concedes that he is entitled to the possession, apparently, and he, or Mr. Wight, will have to suffer any change of attitude in the future by the government.

I realize that some of the legislation which is presently pending would also provide for a specified price per acre to be paid by people acquiring these omitted lands. I would certainly concur in the notion that Mr. Lee's purchase price, if he can purchase it from the government, should be held to a minimum, because he is essentially being required to pay for a mistake, as I understand it, which was made by the original governmental surveyors; and he has been paying taxes on this property during the entire time that he has owned it or claimed to own it.

To better illustrate the gross discrepancy made by the original government surveyors between the actual line and the surveyed meanderline, I will attach hereto a copy of a plat showing the tract of land which Monte Wight is purchasing from Cloyd Lee and which will further illustrate the size of that tract on which he has no opportunity to clear title. (In committee file.) In addition Mr. Lee owns the land to the south of the Monte Wight tract, as depicted on that plat and a sizable portion of that land is in the same predicament. He has paid taxes on it, owned and claimed it for many years, but now finds the title clouded by the claims of the government and the decision of Cadastral Surveyors not to bring the land within the purview of the Omitted Lands Act.

3. I represented Mrs. Mable Hoggan who owns a very small tract of land just north of the Lorenzo bridge. It is a scenic little site and she and her husband, prior to his death, built a very lovely little home thereon. The tract is approximately ten acres in size. Mrs. Hoggan is now quite elderly and has moved and has sold the property to a new purchaser. However, because of the omitted land problem, she sold it on the basis of a quiet claim deed and gave a reduction in the purchase price because of the defect in the title. The new purchaser will now be facing the problem of clearing the title; and preliminary indications are that the government is going to take a good portion of this tract and retain it for recreational purposes and will deprive him of his ownership of that portion on which the house may be located. This is not certain at this time, but at least this points out some of the complications created by this Act and the improper or erroneous survey of the Snake River which resulted in the enactment of this law.

4. I also represent a man by the name of Edward Clark and his family, who have farmed a tract of land east of Heise (about ten miles east of Ririe) for forty or fifty years. This is located along the Snake River and apparently some of the omitted lands actually go south from the Snake River into some of the farming land. Mr. Clark has been temporarily advised by the Bureau of Land Management that virtually all of the land which he claims coming within the purview of the Omitted Lands Act will not be sold by the government, but will be retained for recreational and other purposes. The survey and the like on this land is not as complete as the other cases which I have mentioned; so we are in a little bit of a state of confusion as to just what lands might be involved. But the preliminary indications are that the government is going to claim that dry farm land which really has no value for recreational purposes, because it has no reasonable access to the Snake River, and thereby this family will be deprived of what they had thought to be their land for a long period of time. They have also paid the taxes on this land during the time of their ownership and occupancy thereof.

5. I also represent a man by the name of E. M. Paulsen who is being required to buy some rushbed land located near Roberts, Idaho. The survey and other development measures required under the Act have come to a point where he is now being given the right to buy in as a preference buyer under the Act; and he has filed the necessary papers to acquire this land. However, as I recall now, the purchase price has not been established. He had to go into this land and clear it off with a bulldozer to make it accessible. Before this it was so densely covered by underbrush and the like, that it was hardly usable by animals. He is concerned that he is going to have to pay a high price for what was essentially useless land.

Both his case and that of Harold Taylor had progressed to the point where the applications had been filed as preference buyers, and publication in the newspaper and the like was to take place. However, because of the now pending legislation, the Bureau has advised us that these applications are being held up.

Very truly yours,

REED L. MOSS.

GENDRON & GENDRON,
ATTORNEYS AT LAW,
Madera, Calif., September 24, 1971.

Re S. 216.

Hon. FRANK CHURCH,
Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.

DEAR SENATOR CHURCH: It has been called to my attention that you have introduced Senate Bill 216, which would authorize an action to quiet title where there is a question as to land ownership and land claimed by the United States.

There have been several recent decisions in the Appellate Court which have actually in a circuitous manner effected somewhat of a quiet title action. The courts have gotten around the sovereign immunity doctrine by granting an injunction against an individual member of the government, and have enjoined them from interfering with the private ownership of the land. The cases I refer to are as follows, a copy of which I am including and attaching to this letter:

Nick Andros v. Craig W. Rupp; and

Clara Armstrong v. Stewart Udall, Secretary of the Interior.

(The attachments referred to were retained in the committee file.)

It would seem to me to be far more desirable to have Senate Bill 216 enacted wherein a person actually gets the matter ultimately and finally resolved, and it would seem to me that the courts by their recognition of the injunctive processes have recognized the need for such legislation, but have utilized only existing statutes to achieve the same results.

I believe it behooves the Federal Government to offer its citizens an opportunity to bring their cases to court in a clear-cut fashion, and have the matters resolved on the true issues rather than to have to utilize circuitous methods in their approach. I, myself, have been involved in two different litigations where the doctrine of sovereign immunity has arisen, and in each case sovereign immunity has been sustained. Of course, it is my intention to file suit pursuant to the appellate decisions attached hereto, which would in many aspects result in a multiplicity of legal actions and create a great deal of hardship on what I feel are justifiable claims which should be adjudicated in a proper manner.

I, therefore, would certainly lend my full support to Senate Bill 216.

Yours truly,

LESTER J. GENDRON.

WILDLIFE MANAGEMENT INSTITUTE,
Washington, D.C., October 12, 1971.

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 was unable to be represented at the recent hearings on S. 216, S. 579 and S. 721.

Briefly, our views on these important proposals are as follows:

1. S. 216—while agreeing that changes are desirable in existing law, we much prefer the proposal offered by the Department of Justice. This latter bill, in our view, will accommodate settlement of title disputes with private parties while at the same time protecting the interests of the public at large.

2. S. 579—would create a right of adverse possession in the public lands. Its enactment, in fact, could stimulate a rash of squatters' cases, further complicating the already difficult task of the administering agencies.

In its recent study report, "What's Ahead for Our Public Lands?" copy of which was furnished to the Committee, the Natural Resources Council, on page 324, in a Memorandum to the Public Land Law Review Commission (November 1969) lists Basic Positions Supported by National Conservation Organizations (signed by 15 organizations). Several of the recommendations are pertinent to

the thrust of S. 579. They uniformly put a large segment of the national conservation community on record in opposition to the objectives of S. 579.

3. S. 721—this proposal also is contrary to the recommendations of the 15 national conservation organizations, particularly to those calling for fair market value in the disposal of public lands and/or their resources. Its enactment, in our view, would be contrary to the public interest.

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

Sincerely,

DANIEL A. POOLE, *President.*

AFFIDAVIT

County of Bonneville, September 29, 1971

INTRODUCTION

Bonneville County, located in the Southeast section of Idaho, is one of Idaho's most beautiful. Its landscape is nestled around awesome mountains, gentle rolling plains and fertile fields. Idaho's finest potatoes are grown in this area and are fed by the mountain streams which combine to form the Snake River.

Much of Idaho's agricultural economy draws its water from the Snake River and it is the land along her shores which concentrates our interest here.

FEDERAL RESURVEY

Survey of the land along the Snake River in Bonneville County was begun too long ago to mention. But, a re-survey of this land along the river was begun in 1965 and continued through 1970, as far as I can tell.

During the years from 1965 until 1970, the Bonneville County Assessor's office received survey maps of "omitted lands" that lie along the Snake River in Bonneville County. In other words, the re-survey uncovered old errors by the first surveyors and added this new found land to Federal ownership and control; thus known heretofore as "omitted lands".

IDAHO LAW

When the re-survey created the omitted lands, many intent and rightful owners of property along the Snake River lost ownership to these maiden lands; ownership which may have existed for an extended amount of time in one owner's family line. But, the problem of ownership really was far deeper than family ties, especially when it came time to pay the taxes.

Within Idaho Law, I, as an assessor, am required to present valuation of Real Estate and Real Property to the County Clerk's office for taxation. The valuation, when subjected to taxation schedules, is then delivered to the "*last recorded deed owner*". Since the Federal re-survey had reclaimed lands along the river and *had not recorded legally* those lands at the county offices, I had no other choice but to send the tax notice for such properties to the "last recorded deed owner".

Further, within the years mentioned above, the State and Federal Highway Commission acquired road "right-of-way" for the John Hole Interchange. The John Hole Interchange was constructed largely upon the omitted lands in question. Therefore, property owners were legally required to pay taxes for land where ownership was questioned and some even traversed by a Federal and State Highway system.

Concerned property owners involved in the Federal re-survey began storming my office. I approached the County Prosecuting Attorney and requested that these lands be taken off the tax rolls. I was informed that, although it would be fair to those Bonneville County residents involved, it was not permissible until the "*last recorded deed owner*" became the Federal Government by act of filing and recording at the county offices.

Further, some of the properties have had delinquent taxes for several years. The Treasurer's office of Bonneville County has been trying to collect them and in trying to follow the law of Idaho, which requires it, after three years of delinquent taxes, the properties could be sold for a tax deed.

In discussing this problem with the judges of our District courts, it is their opinion that some type of legislature is necessary to resolve this acute problem

facing the County of Bonneville and the various taxing districts that this encompasses. I, too, as an assessor, feel there is need for legislative help to resolve the problem so that we, in some way, would be able to correct our rolls.

RESOLUTION

It would be my professional opinion, after working with this problem for many years and after seeing the anxieties of the people who have been involved in these omitted lands, that they be given first priority to purchase these lands at a nominal fee, thereby protecting the homes and lands which they thought they rightfully owned, and that official recording of omitted lands be undertaken.

I, Aaron L. Robinson, duly elected assessor of Bonneville County of the State of Idaho, do declare that the following information and facts are true and correct to the best of my knowledge from the records and rolls carried by the County of Bonneville in the State of Idaho, September 28, 1971, and submit herewith a report entitled "Re-Survey of Omitted Lands" for consideration.

Sworn and signed to on the 29th day of September, 1971.

(Signed) AARON L. ROBINSON,
Bonneville County Assessor.
[SEAL] ALICE BEE,
Notary Public.

RESURVEY OF OMITTED LANDS—SEC. 13, TOWNSHIP 2 NORTH, RANGE 37 (HIGHLAND PARK AREA) CITY OF IDAHO FALLS, BONNEVILLE COUNTY

Ownership of record	Lots	Estimated market value		Taxes paid
		Land	Improvements	
Block 39: George E. Brunt	Portion	650		
Block 40: Fred Keefer	Portion of 40 and all block 41 (not assessed).	2,196		
Block 42:				
Grace Mooney	1 to 5 (less highway)	704		
Leitha B. Kemmis	6 to 8	450		
Edith Oyler	9 to 10	300		
Robert G. Hitchens	11	150		
D. V. Groberg	12 to 15	600		
Al Kuhn & W. D. Huffaker	16 to 19, 21 to 37, 39 to 40, 44 to 48	3,450		
Fred Keefer	20 and 38	265		
Howard L. DePue	41 to 43	450		
Block 43: C. F. Schuldt	Portion	1,125		
Block 65:				
Robert E. Embleton	1 to 4	2,500	18,760	
L. K. Swendsen	5 to 8	2,500	24,200	
Dean F. Pfost	21 to 24	2,075		
Walter Struhs	33 to 34	100		
Cook Farms	35 to 38, 39 to 40 (less highway)	3,083		
Melvin L. Smith	41 to 44	3,000		
Dee J. Olsen	45 to 48	3,000		
Block 66:				
J. L. Wursten	1 to 4	3,280		
Frank Keefer	5 to 8, 10 to 11	4,250		
George Earl Brunt	9	750		
H. Don Bishop	12 to 18	4,375		
D. V. Groberg	19 to 21	1,875		
Richard I. Clayton	25 to 29, 30 (less highway)	3,302		
A. E. Moore	Pts. 30 and 38, 31 to 37	6,000		
Alton C. Kartchner	Pts. 38, 39 to 42	3,450	32,250	
E. D. Vissing	43 and 44	1,994	33,100	
Block 67:				
Helen H. Cranney	1 and 2	3,864	19,100	
A. R. Henderson	3 to 8 (less R/W)	4,770		
E. J. Kearns	9 to 14 (less R/W)	250		
Don Pieper Petroleum Prof	24 to 25 (less R/W)	1,702		
Block 69: Fred W. Keefer	All block 69	240		
Block 70:				
Oneita R. Austin	1 to 3	2,000	19,330	$392.65
Jack Hurley	9 to 12	3,200	15,700	
R. Keith Wright	13 to 19	5,966		
Block 71:				
Hazel R. Skelton	1 to 4	4,000	46,350	926.88
William M. Simpson	5 to 7	3,000	23,230	482.92
Howard Gilbert	8 to 11	4,000	5,080	
Howard Gilbert	12 to 14	2,400	18,030	376.14
Norman G. Jones	38 to 41	4,000	21,680	472.70
David L. Westergard	42 to 46	4,860	35,370	740.65

SEC 3 TP. 1 NORTH, RANGE 37

Hatch Brothers
Arthur L. Pederson
Kenneth Kugler
Edward McGrane

SEC 10 TP. 1 NORTH, RANGE 37

John E. Jordin
John S. Fackler
Homer L. Fackler
Blaine Rumsey
Martin McCullough
Lynn Pierce
Eugene W. Andrews

SEC 15 TP. 1 NORTH, RANGE 37

Cyde William Mace
E. C. Quigg
LeRoy W. Hult
Utah Power & Light

SEC 12 TP. 2 NORTH, RANGE 37

Henry S. Martin
Howard J. Ellis
Fred W. & Frank Keefer
L. D. S. Hospital

SEC 13 TP. 2 NORTH, RANGE 37

(Highland Park Area)

SEC 25 TP. NORTH, RANGE 37

Robert and Mark Burgraff
Clyde Z. Keefer
Sky-Vu Theatre
Philip R. Hoehn
Idaho Concrete Products
Harold Ball
Amelia Crockett
Ready-To-Pour Concrete
Virginia Blackburn
Maude C. Lyon
Hartwell Excavating

SEC 35 TP. 2 NORTH, RANGE 37

Lloyd Ryder
Vernal Cromwell
Burns Bros. Concrete
Glen E. Koester
Harold Ball
Union Pacific Land Resources

SEC 1 TP. 3 NORTH, RANGE 37

Gale W. and Ross Clements
Eldred C. Butikofer
George F. Jacobs

SEC 2 TP. 3 NORTH, RANGE 37

M. F. Henderson
Horace Phillips
Sam Sakaguchi
Arden Rosenwinkel
Eva Page
Wayne Kaufman

SEC 12 TP. 3 NORTH, RANGE 37

Jacob Stucki
Wayne R. Ward
Merle Butikofer
Richard L. Smith
Gale W. and Ross T. Clements
A. W. Naegle, et al.

SEC 13 TP. 3 NORTH, RANGE 37

A. W. Naegle
Garren L. Peterson
Norman Holve
Allen R. Butikofer
Howard S. Butikofer
Leslie A. Jephson

SEC 24 TP. 3 NORTH, RANGE 37

Ralph O. Christensen
Sheshi Mikami
Edwin H. and Robert S. Swanson

SEC 5 TP. 3 NORTH, RANGE 41

Sybil May Blakely
Collins Blakely
Murray I. Byington
Eugene Byington

SEC 8 TP. 3 NORTH, RANGE 41

L. Bar Acres — Collins Blakely
Eugene Byington

SEC 11 TP. 3 NORTH, RANGE 41

Doyle L. Lufkin

SEC 14 TP. 3 NORTH, RANGE 41

Edward F. Clark — Doyle Lufkin

SEC 15 TP. 3 NORTH, RANGE 41

Calvin McMurtrey — Edward F. Clark

SEC 4 TP. 3 NORTH, RANGE 42

Keith Buckland and Gary Hammer

SEC 5 TP. 3 NORTH, RANGE 42

B. R. Adams

SEC 7 TP. 3 NORTH, RANGE 42

James Mason — Roy B. Coles

SEC 8 TP. 3 NORTH, RANGE 42

Lawrence W. Brown

SEC 9 TP. 3 NORTH, RANGE 42

Calvin Lewis McMurtrey — Keith Buckland and Gary Hammer
L. Bar Acres

SEC 10 TP. 3 NORTH, RANGE 42

L. Bar Acres

SEC 11 TP. 3 NORTH, RANGE 42

Elaine Buckland Fullmer — Therold Buckland

SEC 13 TP. 3 NORTH, RANGE 42

Opal Fisher

SEC 14 TP. 3 NORTH, RANGE 42

Opal Fisher — Calvin Lewis McMurtrey

SEC 15 TP. 3 NORTH, RANGE 42

Opal Fisher — L. Bar Acres

SEC 24 TP. 3 NORTH, RANGE 42

Garfield Smith

SEC 30 TP. 3 NORTH, RANGE 43

James E. Durrant

SEC 31 TP. 3 NORTH, RANGE 43

James E. Durrant

IDAHO FALLS, IDAHO,
September 23, 1971.

SENATOR FRANK CHURCH,
Chairman, Subcommittee on Public Lands,
Washington, D.C.

DEAR SIRS: In 1945 my wife and I purchased four lots in the City of Idaho Falls, Idaho, lots 9 thru 12 block 70 in the Highland Park Addition. Upon purchase we received an abstract of title, a copy of which is attached, showing this property to be free of any cloud on the title. Also showing it to be part of a homestead granted in 1890 and later subdivided. (Attachments were retained in the committee files.)

We improved this property, built a home, installed a sewer system in co-operation with neighboring properties. We have also paid property taxes on this property for over 20 years as did the owners before us.

In 1965 we discovered quite by accident that the Federal Government had declared the original survey to be fraudulent and now claimed title to our property. Since we did not wish to pay taxes or assessments on property that apparently no longer belonged to us, we stopped paying the taxes and paving assessments, however they are still being billed to us. Only the last minute intervention of a representative of the Bureau of Land Management prevented the City of Idaho Falls from selling this property to satisfy a lien for delinquent paving assessments.

The present cloud on the title has caused anxiety and hardships including financial for those of us who have fruitlessly consulted attorneys trying to straighten out this involved situation.

Since it was a surveyor in the employ of the Federal Government who is supposed to have committed the error, we urge that you consider favorably the bill sponsored by Senators Church and Jordan that would give relief to the present property owners for a nominal fee. This would allow this situation to be solved quickly and equitably. There would be no out-of-pocket cost to the Federal Government.

The alternative which the present law gives us, that of buying at present market value, would means years of lawsuits, property owner against previous property owner, against the State, County and City for property taxes paid on Government land, and on and on. Those of us who could not afford to purchase our property a second time would lose all we have worked years for. It seems unthinkable that our Government would wish to profit at the expense of the innnocent property owners.

Sincerely yours,

JACK G. HURLEY,
VELMA B. HURLEY,
JIMMY T. PASEHLE,
Notary Public.

ST. ANTHONY, IDAHO,
September 24, 1971.

Re S. 216, S. 579, S. 721.

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

DEAR SENATORS: Thank you for the opportunity of adding my brief comments on the above indicated bills. My wife and I are the owners of a 77 acre tract of farm land south of the Snake River near St. Anthony, Fremont County Idaho. Almost one-half of this acreage is claimed to be omitted land. I am of the opinion that all three bills should be adopted in their basic present form.

S. 216 brings jurisdiction to the local Federal District Court "to quiet title to lands claimed by the United States". This is only fair and appropriate for the status of title to lands to be determined by the Court that has physical jurisdiction of the land. It also makes the case tried in the Court most convenient to the citizen making a claim of title. It does not adversely affect the United States government because any claim of the government can be adequately protected or prosecuted by the office of the U.S. Attorney in that local district.

S. 579 is undoubtedly the most far reaching of the three bills. Government does not like to acknowledge adverse possession against itself. However, it does exist and should exist in statutory form for the stability of title and to prevent hardship and duress to innocent people. The harshness of not allowing a claim by adverse possession is clearly pointed out in the matter of the present cadastrel survey of omitted lands adjacent to the Snake River in the State of Idaho.

1. It was U.S. government surveyors who made the original survey.
2. This "saddle back" survey has been found to be erroneous in placing portions of the Snake River in its proper location.
3. Early settlers claimed the land as it actually existed along the banks of the Snake River using points of reference outside of the immediate area. These points of reference are still valid and the banks of the river have not changed substantially for centuries before the original erroneous survey was put on paper.
4. Now the benevolent government comes and now claims that because of the mistake of their own surveyors the successors to title in these lands do not own them although they have been using them and paying taxes on these lands since pioneer days.

In my particular locality of Fremont County, Idaho, the survey has only been completed on the south side of the Snake River. However, I'm sure that it is only a matter of time until the survey would show that the same problem exists on the north side of the river as well. This would include additional residential and commercial portions of the City of St. Anthony, Idaho.

My only question on this bill is whether or not the payment of local real estate taxes should be a part of the requirement for adverse possession in addition to "actual, exclusive, open and notorious" possession. If the committee has already considered this point, I am very happy to accept the present language.

S. 721 gives the Secretary of the Interior authority (within his discretion) to sell certain of the omitted public lands in Idaho at the rate of $1.25 per acre. It also wisely provides a preference for those with a "color of title". By providing this administrative procedure, costly and lengthy judicial proceedings can be avoided in uncontested claims.

As the former Legislative Assistant to the Honorable Senator Henry Dworshak who before his passing served as a distinguished member of this committee for many years, I can appreciate the many complex problems with which you have to deal. Passage of these three bills will help solve the complexities of the omitted lands problem. I strongly urge that these bills be reported favorably by your committee and that final adoption be diligently pursued. By so doing it will afford a reasonable administrative procedure and the assurance of judicial review when required for the omitted lands now existing in Idaho and likely to exist in other states as well.

Thank you again for the opportunity of this presentation.

Sincerely,

KEITH JERGENSEN.

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