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LEGISLATION TO REVISE THE PUBLIC LAND LAWS

GOVERNMENT

IMENTS

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HEARING

BEFORE THE

LIBRARY
KANSAS STATE UNIVERSITY

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 921

A BILL TO PROVIDE FOR THE PROTECTION, DEVELOPMENT,
AND ENHANCEMENT OF THE PUBLIC LANDS ; TO PROVIDE FOR
THE DEVELOPMENT OF FEDERALLY OWNED MINERALS ; AND
FOR OTHER PURPOSES

S. 2401

A BILL TO PROVIDE FOR THE MANAGEMENT, PROTECTION,
AND DEVELOPMENT OF THE NATIONAL RESOURCE LANDS,
AND FOR OTHER PURPOSES

S. 2743

A BILL TO ESTABLISH A WORKING CAPITAL FUND FOR THE
BUREAU OF LAND MANAGEMENT OF THE DEPARTMENT OF
THE INTERIOR, AND FOR OTHER PURPOSES

MARCH 22, 1972

PART 2



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

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1972

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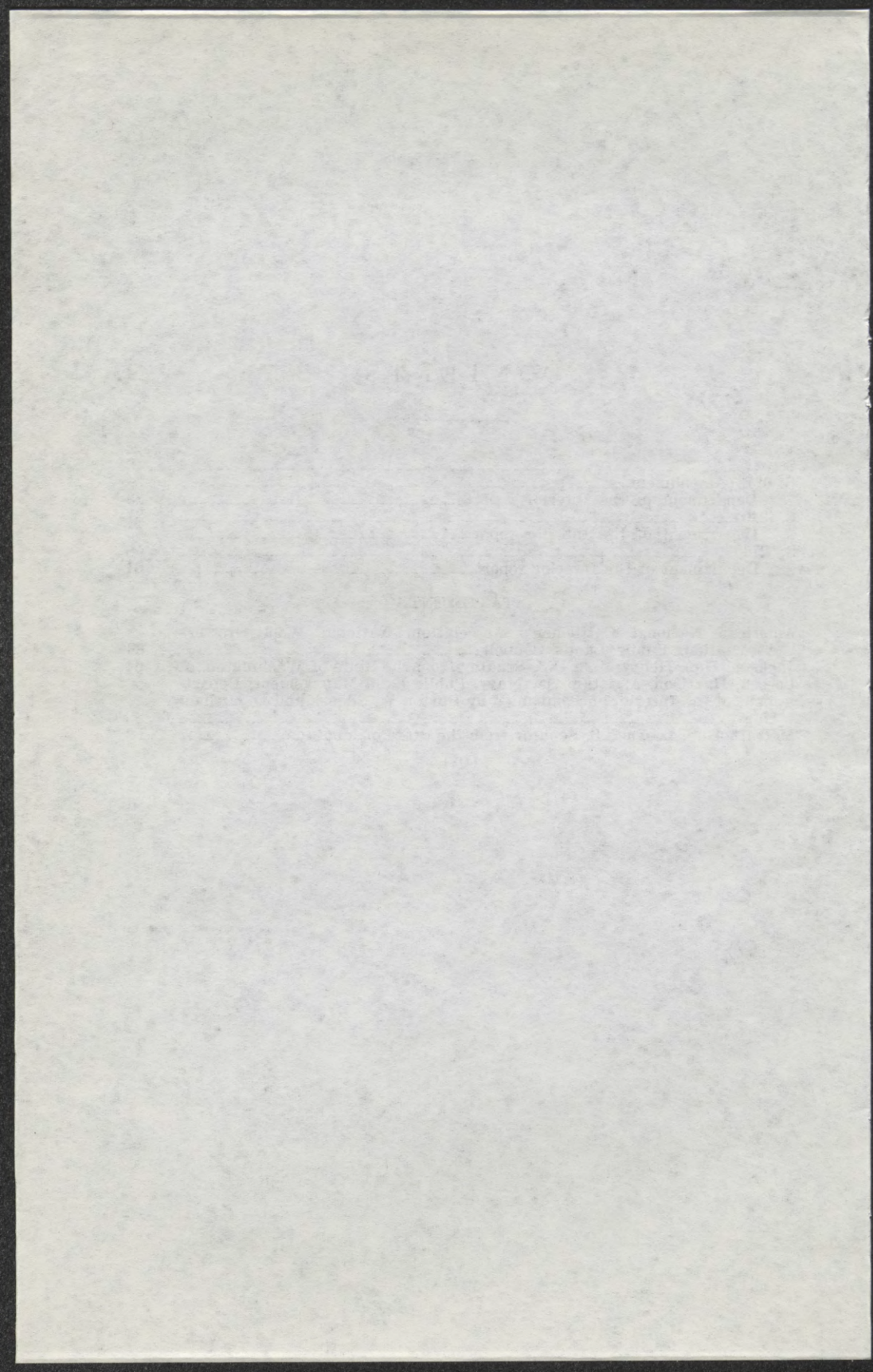
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LEGISLATION TO REVISE THE PUBLIC LAND LAWS

WEDNESDAY, MARCH 22, 1972

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

The committee met, pursuant to notice at 10 a.m., in room 8110, New Senate Office Building, Senator Lee Metcalf presiding.

Present: Senators Metcalf, Bellmon, Gravel, Hansen, and Hatfield.

Staff present: Jerry T. Verkler, staff director; Mary Jane C. Due, staff counsel; Suzanne Reed, staff assistant; and Thomas Nelson, assistant minority counsel.

Senator METCALF. The committee will come to order.

This is a meeting of the full committee of the Senate on Interior and Insular Affairs to consider S. 921, S. 2401 and S. 2743.

The bills and Department reports will be made part of the record at this point.

(The documents referred to follow:)

(1)

92^D CONGRESS
1ST SESSION

S. 921

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23 (legislative day, FEBRUARY 17), 1971

Mr. JACKSON (for himself, Mr. ANDERSON, Mr. CRANSTON, Mr. HART, Mr. HUMPHREY, Mr. MAGNUSON, Mr. METCALF, and Mr. NELSON) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the protection, development, and enhancement of the public lands; to provide for the development of federally owned minerals; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Public Domain Lands
- 4 Organic Act of 1971".

5 TITLE I—PUBLIC LAND ADMINISTRATION

- 6 SEC. 101. The Congress recognizes that (1) the public
- 7 lands administered by the Secretary of the Interior (herein-
- 8 after referred to in this title as the "Secretary"), through the
- 9 Bureau of Land Management, are vital national assets that
- 10 contain a wide variety of natural resource values including

1 soil, minerals, water, air, plants, and animals, and (2) these
2 lands should be administered, used, restored, improved, and
3 protected for multiple use and sustained yield of these re-
4 sources for the maximum long-term benefit of the general
5 public, and (3) sound ecological management of these lands
6 is vital to maintenance of a livable environment and essen-
7 tial to the well-being of the American people. Therefore,
8 the Congress directs that these lands and resources shall be
9 managed for tangible and intangible uses, including but not
10 limited to (1) food and habitat for domestic and wild
11 animals, (2) minerals and materials, (3) timber products,
12 (4) various forms of outdoor recreation, (5) human occu-
13 pancy and use, (6) the preservation of natural wilderness
14 values, (7) watershed protection, and (8) other public
15 values.

16 SEC. 102. As used in this title—

17 (1) "public lands" means all lands or interests in
18 lands administered by the Secretary through the Bureau
19 of Land Management, which shall be known after enact-
20 ment of this Act as "national resource lands".

21 (2) "multiple use" means the management of the
22 various surface and subsurface resources so that they are
23 utilized in the combination that will best meet the
24 present and future needs of the American people; the
25 most judicious use of land for some or all of these re-

1 sources or related services over areas large enough to
2 provide sufficient latitude for periodic adjustments in use
3 to conform to changing needs and conditions; the use
4 of some land for less than all of the resources; and har-
5 monious and coordinated management of the various re-
6 sources, each with the other, without impairment to the
7 environment or the productivity of the land, with con-
8 sideration being given to the relative values of the var-
9 ious resources and to the ecological relationships in-
10 volved, and not necessarily the combination of uses that
11 will give the greatest dollar return or the greatest unit
12 output;

13 (3) "sustained yield" means the achievement and
14 maintenance of a high-level annual or regular periodic
15 output of the various renewable resources of land with-
16 out impairment of the quality of the land and its environ-
17 mental values;

18 (4) "qualified governmental agency" means any of
19 the following, including their lawful agents and instru-
20 mentalities—

21 (A) the State, county, municipality, or other
22 local government subdivision within which the land
23 is located; and

24 (B) any municipality within convenient access

1 to the lands if the lands are within the same State
2 as the municipality.

3 (5) "qualified individual" means—

4 (A) any individual who is a citizen or other-
5 wise a national of the United States (or who has
6 declared his intention to become a citizen) aged
7 twenty-one years or more;

8 (B) any partnership or association, each of
9 the members of which is a qualified individual as
10 defined in subparagraph (A) ; and

11 (C) any corporation organized under the laws
12 of the United States or of any State thereof, and
13 authorized to hold title to real property in the State
14 in which the land is located.

15 SEC. 103. The Secretary is authorized and directed to
16 permit the use of the nonmineral resources of the public
17 lands to the maximum extent and under such terms and
18 conditions as the Secretary finds consistent with the prin-
19 ciples of section 101 of this Act and with the following goals
20 and objectives:

21 (1) Provision of an adequate supply of resources to
22 meet national, regional, and local requirements at reasonable
23 market prices in a timely fashion.

24 (2) Protection, development, and enhancement of their
25 outdoor recreational values for the maximum use and benefit

1 of the general public, within the basic framework of multi-
2 ple-use management, in a manner consistent with the Act
3 of May 28, 1963 (77 Stat. 49; 16 U.S.C. 4601—4601-3),
4 and in conformity with the statewide outdoor recreation
5 plans developed under the Act of September 3, 1964 (78
6 Stat. 901; 16 U.S.C. 4601-4, 4601-11).

7 (3) Preservation of a quality environment for present
8 and future generations of Americans.

9 (4) Management of Federal lands and resources under
10 principles of multiple use and sustained yield.

11 (5) Preparation, maintenance, and preservation of the
12 integrity of comprehensive and coordinated national, State,
13 and local land use plans.

14 (6) Maintenance of an interdisciplinary approach to
15 natural resources programs.

16 (7) Opportunity for the public to participate fully in
17 the conduct of the public business.

18 (8) Payment by users of public lands and resources
19 of fair market value.

20 (9) Adequate tenure and opportunity for resource
21 users to plan and develop use and development operations
22 and to secure a fair return for their risk and investment.

23 (10) Maintenance of competition in the allocation and
24 development of public resources.

1 (11) Prevention of undue concentration of ownership
2 of rights to public land resources.

3 (12) Encouragement of efficiency in resource use and
4 development and in protection and rehabilitation of the
5 environment.

6 SEC. 104. (a) The Secretary shall develop and promul-
7 gate regulations containing criteria by which he will deter-
8 mine and classify which of the public lands under certain
9 conditions and consistent with the goals and objectives of
10 this Act may be disposed of because they are more valuable
11 for residential, commercial, agricultural, industrial, or other
12 public uses or development in non-Federal ownership than
13 for management in Federal ownership. The criteria shall
14 give due consideration to all pertinent factors, including, but
15 not limited to, environmental quality, ecology, priorities of
16 use, and the relative values of the various resources in par-
17 ticular areas.

18 (b) No such regulation or any amendment thereto
19 promulgated pursuant to this section shall become effective
20 until the expiration of at least thirty days after the Secretary
21 or his designee has held a public hearing thereon. A notice
22 of such hearing shall be given at least thirty days in advance
23 through publication in the Federal Register.

24 (c) The Secretary or his designee shall give appro-
25 priate public notice of any proposed classification of lands

1 for disposal, including publication in the Federal Register
2 and in a newspaper having general circulation in the area
3 or areas in the vicinity of the affected lands at least sixty
4 days in advance of the proposed disposal. No such classifi-
5 cation for disposal shall become effective until the expiration
6 of at least thirty days after the Secretary or his designee
7 has held a public hearing thereon if the Secretary determines
8 that a timely and responsible request for such a hearing is
9 received.

10 SEC. 105. Any classification of public lands in effect on
11 the date of enactment of this Act is subject to review for
12 possible reclassification in accordance with the authority
13 granted by this Act.

14 SEC. 106. The Secretary of the Interior shall review
15 every roadless area of five thousand acres or more on na-
16 tional resource lands under his jurisdiction on the effective
17 date of this Act and shall report to the President his recom-
18 mendation as to the suitability or unsuitability of each such
19 area for preservation as wilderness, in accordance with the
20 Wilderness Act of 1964 (78 Stat. 890).

21 SEC. 107. The Secretary shall as soon as possible estab-
22 lish boundaries for units of the national resource lands and
23 shall provide adequate and appropriate means of public iden-
24 tification, including signs and maps.

25 SEC. 108. The Secretary is authorized to sell public lands

1 that have been classified for disposal in accordance with this
2 title. Such sales shall be in tracts not exceeding five thousand
3 one hundred and twenty acres each to qualified governmental
4 agencies at the appraised fair market value thereof as deter-
5 mined by the Secretary or to qualified individuals through
6 competitive bidding at not less than the appraised fair market
7 values as determined by the Secretary.

8 SEC. 109. At least ninety days prior to offering lands for
9 sale in accordance with this title, the Secretary shall notify
10 the head of the governing body of the political subdivision of
11 the State having jurisdiction over zoning in the geographic
12 area within which the lands are located or, in the absence of
13 such political subdivision, the Governor of the State, in order
14 to afford the appropriate body with the opportunity of zoning
15 for the use of the land in accordance with local planning and
16 development. All sales shall be consistent with State and
17 local land use plans and zoning.

18 SEC. 110. All patents or other evidences of title issued
19 under this title shall contain a reservation to the United States
20 of all mineral deposits. Patents and other evidences of title
21 may contain such reservations and reasonable restrictions as
22 are necessary to achieve the goals and objectives of this Act.

23 SEC. 111. (a) The Secretary is hereby authorized to
24 acquire by purchase, donation, exchange, or otherwise such
25 lands or interests therein as he deems necessary to provide

1 access or otherwise facilitate the administration of the public
2 lands.

3 (b) Notwithstanding any other provision of law, in ex-
4 ercising the exchange authority granted by subsection (a)
5 of this section, the Secretary may accept title to any non-
6 Federal property or interests therein and in exchange there-
7 for he may convey to the grantor of such property or
8 interest any public lands or interests therein under his juris-
9 diction and which he classifies as suitable for exchange or
10 other disposal and which is located in the same State as
11 the non-Federal property to be acquired. The values of the
12 land so exchanged either shall be approximately equal, or
13 if they are not approximately equal, the value shall be
14 equalized by the payment of money to the grantor or to the
15 Secretary as the circumstances require. The proceeds re-
16 ceived from any conveyance under this section shall be
17 credited to the Land and Water Conservation Fund in the
18 Treasury of the United States.

19 SEC. 112. Violations of the public land laws and regu-
20 lations of the Secretary relating to protection of the public
21 lands and the uses thereof shall be punishable by a fine of
22 not more than \$1,000 or imprisonment for not more than
23 six months, or both. Any person charged with the violation
24 of such laws and regulations may be tried and sentenced by
25 any United States commissioner or magistrate designated

1 for that purpose by the court by which he was appointed,
2 in the same manner and subject to the same conditions as
3 provided for in section 3401 of title 18, United States Code.

4 SEC. 113. The Secretary may authorize such persons
5 who are employed in the Bureau of Land Management as
6 he may designate to make arrests for the violation of the
7 laws and regulations referred to in sections 114 and 116 of
8 this Act. Upon sworn information by any competent person,
9 any United States commissioner or magistrate in the proper
10 jurisdiction shall issue a warrant for the arrest of any person
11 charged with the violation of said laws and regulations, but
12 nothing herein shall be construed as preventing the arrest
13 by any officer of the United States, without warrant, of any
14 person taken in the act of violating such laws and regulations.

15 SEC. 114. The Secretary is authorized to promulgate
16 such rules and regulations as he deems necessary to carry out
17 the purposes of this title.

18 SEC. 115. In order that the Secretary shall have the
19 benefit of the advice and assistance of others knowledgeable
20 with respect to matters within the purview of this title, he
21 may establish such multiple use, special use, or ad hoc ad-
22 visory boards or groups as he deems necessary.

23 SEC. 116. There is hereby authorized to be appropriated
24 such sums as are necessary to carry out the purposes of this

1 title. Any funds so appropriated shall remain available until
2 expended.

3 SEC. 117. (a) Subject to valid rights and liabilities ex-
4 isting at the date of approval of this title, the following Acts
5 or parts thereof are repealed:

6 (1) Chapter 7 of title 43, United States Code, sections
7 161-302, homesteads generally.

8 (2) Chapter 8 of title 43, United States Code, sections
9 315f and 315g, Taylor Grazing Act.

10 (3) Chapter 9 of title 43, United States Code, sections
11 321-338, desert land entries.

12 (4) Chapter 16 of title 43, United States Code, sections
13 671-700, sale and disposal of public lands.

14 (5) Chapter 17 of title 43, United States Code, sections
15 711-731, reservation and sale of townsites on public lands.

16 (6) Chapter 24 of title 43, United States Code, sections
17 1021-1048, under State laws, Minnesota and Arkansas.

18 (7) Chapter 26 of title 43, United States Code, sections
19 1071-1080, abandoned military reservations.

20 (8) Chapter 27 of title 43, United States Code, sections
21 1091-1134, public lands in Oklahoma.

22 (9) Chapter 28 of title 43, United States Code, sections
23 1153-1156, patents for private claims, Missouri.

1 (10) Chapter 28 of title 43, United States Code, sec-
2 tions 1171-1177, sale of isolated tracts.

3 (11) Chapter 28 of title 43, United States Code, sec-
4 tions 1191-1193, evidence of title.

5 (12) Sections 11 and 16 of the Act of March 3, 1891
6 (26 Stat. 1099, 1101; 48 U.S.C. 355, 43 U.S.C. 728),
7 townsites, Alaska.

8 (13) The fourth paragraph of section 1 of the Act of
9 March 12, 1914 (38 Stat. 307; 48 U.S.C. 303), townsites,
10 Alaska.

11 (14) Act of May 25, 1926 (44 Stat. 629; 48 U.S.C.
12 355a-355d), townsites, Alaska.

13 (15) Act of February 26, 1948 (62 Stat. 35; 48 U.S.C.
14 355e), townsites, Alaska.

15 (16) Act of August 30, 1949 (63 Stat. 679; 48 U.S.C.
16 364a-364e), sale of public domain, Alaska.

17 (17) Act of July 24, 1947 (61 Stat. 414; 48 U.S.C.
18 364), zoning of land, Alaska.

19 (b) The provisions of this title shall prevail over any
20 existing law not consistent with it and such laws or por-
21 tions thereof are hereby repealed.

22 SEC. 118. Appointments made on and after the date of
23 the enactment of this Act to the office of the Director of the
24 Bureau of Land Management, within the Department of the
25 Interior, shall be made by the President, by and with the
26 advice and consent of the Senate. The Director shall (1)

1 have a broad background and experience in public land
2 and natural resource management, (2) be selected from
3 the Federal civil service, and (3) be subject to removal
4 only for cause or disability.

5 TITLE II—MINERAL LEASING

6 SEC. 201. This title may be cited as the "Federal Land
7 Mineral Leasing Act of 1971".

8 SEC. 202. As used in this title—

9 (1) "Secretary" means the Secretary of the
10 Interior;

11 (2) "Head of department or agency" means the
12 head of an agency or the Secretary of a department
13 other than the Secretary of the Interior;

14 (3) "Federal lands" means all federally owned
15 lands except lands—

16 (A) Held in trust for Indians;

17 (B) Owned by Indians with Federal restric-
18 tions on the title; or

19 (C) Within units of the national park system;
20 or

21 (D) Administered pursuant to the Outer Conti-
22 nental Shelf Lands Act (67 Stat. 462; 43 U.S.C.
23 1331);

24 (4) "Federal mineral interests" means mineral
25 deposits in Federal lands and federally owned mineral
26 interests in non-Federal lands;

1 (5) "Person" means any of the following, includ-
2 ing their lawful agents and instrumentalities:

3 (A) any State, county, municipality, or other
4 local governmental subdivision within which the
5 land is located;

6 (B) any municipality within convenient access
7 to the lands if the lands are within the same State
8 as the municipality;

9 (C) any individual who is authorized to enter
10 into a contract for acquisition of title in real prop-
11 erty in the United States by himself or through his
12 guardian or trustee;

13 (D) any partnership or association, each of the
14 members of which is an individual as defined in sub-
15 paragraph (C); and

16 (E) any corporation organized under the laws
17 of the United States or of any State thereof, and
18 authorized to hold title to real property in the State
19 in which the land is located;

20 (6) "Mineral lease" means an exclusive right to ex-
21 plore for and develop a mineral deposit or deposits in
22 specified lands under this title;

23 (7) "Mineral license" is a right to mine and remove
24 a specified amount of minerals from specified public
25 lands; and

1 (8) "Mineral" is a substance that—

2 (A) is recognized as mineral, according to its
3 chemical composition, by the standard authorities on
4 the subject, or

5 (B) is classified as mineral produce in trade or
6 commerce except that helium, water, and geother-
7 mal steam are not minerals under this title.

8 SEC. 203. The Secretary is authorized and directed to
9 permit by the issuance of mineral leases and licenses under
10 this title, any person to prospect for, mine, and develop Fed-
11 eral mineral interests to the maximum extent and under such
12 terms and conditions as the Secretary finds consistent with
13 the following goals and objectives:

14 (1) Provision of an adequate supply of minerals to meet
15 national, regional, and local requirements at reasonable mar-
16 ket prices in a timely fashion.

17 (2) Preservation of a quality environment for present
18 and future generations of Americans.

19 (3) Management of Federal lands and resources under
20 principles of multiple use and sustained yield.

21 (4) Preparation, maintenance, and preservation of the
22 integrity of comprehensive and coordinated national, State,
23 and local land use plans.

24 (5) Maintenance of an interdisciplinary approach to
25 natural resources programs.

1 (6) Opportunity for the public to participate fully in
2 the conduct of the public business.

3 (7) Payment by users of public lands and resources
4 of fair market value.

5 (8) Adequate tenure and opportunity for mineral pros-
6 pectors and mining operations to plan and develop prospect-
7 ing and mining operations and to secure a fair return for their
8 risk and investment.

9 (9) Maintenance of a competitive environment in the
10 allocation and development of public resources.

11 (10) Prevention of undue concentration of ownership of
12 rights to Federal mineral interests.

13 (11) Encouragement of efficiency in prospecting and
14 production of minerals and in protection and rehabilitation of
15 the environment.

16 SEC. 204. (a) The Secretary may dispose of Federal
17 mineral interests in Federal lands which are not under
18 his jurisdiction only if the head of the department or
19 agency which administers the lands concurs with the pro-
20 posal to dispose of the Federal mineral interests and in the
21 proposed terms and conditions of disposal insofar as such
22 terms and conditions would affect such head's exercise of his
23 administrative responsibilities.

24 (b) The Secretary may dispose of Federal mineral in-
25 terests in non-Federal lands only after he has given the non-

1 Federal landowner an opportunity to review and comment
2 on the planned terms and conditions of the proposed disposal.
3 Insofar as they relate to conservation of natural resources,
4 the protection of the environment, and protection of and
5 compensation for private improvements on the land, the
6 Secretary shall, to the extent he deems feasible, include in
7 the proposed disposal the same terms and conditions that he
8 would include if the lands were Federal.

9 SEC. 205. The Secretary shall consult with the Federal,
10 State, and local governments, advisory boards and commit-
11 tees, and the general public to the extent he deems necessary
12 to secure full public participation in decisions related to the
13 disposal of Federal mineral interests. The head of any de-
14 partment or agency may render, without transfer of funds,
15 technical assistance to the Secretary in connection with the
16 Secretary's activities under this title.

17 SEC. 206. The Secretary shall publicize all proposals to
18 dispose of Federal mineral interests under this title to the
19 extent and by those means which he deems necessary to com-
20 ply with the goals, objectives, and other provisions of this
21 title. Notices of such proposals shall describe by incorpora-
22 tion or by reference the terms and conditions of disposals so
23 that the general public may knowledgeably comment on the
24 proposal and potential lessees and licensees will be fully in-

1 formed what their rights and obligations would be under the
2 proposal.

3 SEC. 207. (a) The Secretary may dispose of Federal
4 mineral interests by mineral lease and license under this title
5 in any manner which in his judgment will meet the goals, ob-
6 jectives, and other provisions of this title. He may utilize com-
7 petitive means of disposal whenever he finds that competitive
8 interest exists and competition would otherwise be consistent
9 with the requirements and goals and objectives of this title.
10 In competitive disposals, he may reserve the right to reject
11 any and all bids where he finds that acceptance would be in-
12 consistent with the goals and objectives of this title. Where
13 he finds that any person is dependent upon continued access
14 to Federal mineral interests by virtue of the location of their
15 mining and mineral recovery facilities he may accord such
16 person a preference right to meet the terms and conditions
17 of a proposal to issue a mineral lease or license. Such prefer-
18 ence right may include, in the discretion of the Secretary, the
19 right to match the highest bid for the contract when Federal
20 mineral interests are disposed of competitively.

21 (b) Whenever Federal lands are being drained of oil
22 and gas by wells drilled on adjacent lands, the Secretary
23 may negotiate contract agreements with the owners of those
24 wells and of the oil and gas in the adjacent lands to compen-
25 sate the United States for such drainage.

1 SEC. 208. The Secretary shall reserve to the United
2 States the ownership of and right to extract helium from all
3 gas produced under this title, and in the extraction of such
4 helium, he shall cause no substantial delay in the delivery
5 of the gas produced from the well to the purchaser thereof.

6 SEC. 209. In leases, licenses, and other contracts issued
7 under this title, the Secretary shall incorporate such terms
8 and conditions that he deems necessary or desirable to pro-
9 mote good business practices; to promote the conservation
10 of lands and other natural resources; to preserve and en-
11 hance the environment; to maintain ecological balances; to
12 protect the public health, safety, and welfare; to enable the
13 proper use of the lands; and otherwise to promote or be
14 consistent with the goals and objectives and other terms of
15 this title, including, but not limited to, provisions for—

- 16 (1) cancellation and forfeitures for cause;
- 17 (2) relinquishment of rights and privileges;
- 18 (3) bonds, deposits, or other good faith security;
- 19 (4) assignments and subleases, in whole or in part;
- 20 (5) renewals and extensions;
- 21 (6) removal of improvements;
- 22 (7) rentals and royalties;
- 23 (8) penalties for noncompliance;
- 24 (9) reinstatements;
- 25 (10) nondiscrimination;

- 1 (11) protection of health and safety of workers;
- 2 (12) protection and rehabilitation of natural re-
- 3 sources;
- 4 (13) prevention of air, water, and land pollution;
- 5 (14) adjustment of disputes;
- 6 (15) payments in kind;
- 7 (16) inspection of premises by Federal and State
- 8 officials;
- 9 (17) inspection of business records;
- 10 (18) joint enterprises;
- 11 (19) suspension, waiver, and reduction of rentals
- 12 or royalties in order to promote conservation of re-
- 13 sources;
- 14 (20) reasonable diligence;
- 15 (21) workmanlike performance;
- 16 (22) disposal of surface estate;
- 17 (23) uses of the lands and resources thereon by
- 18 third parties;
- 19 (24) uses of the lands and resources by the con-
- 20 tracting parties, including rentals to be paid by the
- 21 lessee or licensee;
- 22 (25) unitization, operating, and other cooperative
- 23 agreements; and
- 24 (26) submittal of plans of exploration, mining, and
- 25 rehabilitation operations for approval by the Secretary.

1 SEC. 210. The Secretary is authorized to issue such regu-
2 lations as he finds necessary or desirable to carry out the
3 goals, objectives, and other purposes of this title, including,
4 but not limited to, regulations to establish—

5 (1) the area or volume or kind of mineral rights
6 that may be held by any one qualified applicant, and

7 (2) the area or volume or kind of mineral rights
8 that may be acquired by any one person in any area or
9 at any sale.

10 SEC. 211. (a) All prior laws which relate to the dis-
11 position of Federal mineral deposits covered by this title
12 are hereby repealed except to the extent noted in subsection
13 (c) of this section. These laws include, but are not limited,
14 to—

15 (1) The Mining Law of 1872, as amended (30
16 U.S.C. 21-77).

17 (2) The Mineral Leasing Act of 1920, as amended
18 (30 U.S.C. 181-286).

19 (3) The Mineral Leasing Act for Acquired Lands
20 (30 U.S.C. 351-359).

21 (4) The Act of July 31, 1947, as amended, and
22 the Act of July 23, 1955, as amended (30 U.S.C.
23 601-615).

24 (5) The Right-of-Way Leasing Act of 1930 (30
25 U.S.C. 301-306).

1 (b) Any valid mining claim, lease, contract, or other
2 right acquired under any laws repealed by this title which
3 existed on the date of enactment of this title shall not be
4 affected by this title but shall remain subject to the provisions
5 of the law under which such rights were derived. The Secre-
6 tary is authorized in his discretion and upon application to
7 him by the owner of the right to issue a lease or license
8 under this title in exchange for a valid mining claim or valid
9 mineral lease, license, or permit issued under the authorities
10 repealed by subsection (a) of this section.

11 (c) The following provisions of law shall remain in
12 force and effect:

13 (1) Section 29 of the Mineral Leasing Act of 1920,
14 as amended (30 U.S.C. 185).

15 (2) Section 35 of the Mineral Leasing Act of 1920, as
16 amended (30 U.S.C. 191).

17 (3) The distribution of receipts provisions of section
18 3 of the Act of September 1, 1949 (30 U.S.C. 192c).

19 (4) The distribution of receipts provisions of the Act
20 of June 1, 1948 (30 U.S.C. 286).

21 (5) The distribution of receipts provisions of the Act
22 of June 12, 1926 (44 Stat. 740).

92^D CONGRESS
1ST SESSION

S. 921

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 1971

Referred to the Committee on Interior and Insular Affairs and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. JACKSON to S. 921, a bill to provide for the protection, development, and enhancement of the public lands; to provide for the development of federally owned minerals; and for other purposes, viz: On page 13, line 5, amend title II to read as follows:

1 TITLE II—MINERAL LEASING

2 SEC. 201. This title may be cited as the "Federal Hard-
3 rock Mineral Leasing Act of 1971".

4 SEC. 202. As used in this title—

5 (1) "Secretary" means the Secretary of the
6 Interior;

7 (2) "Head of department or agency" means the
8 head of an agency or the Secretary of a department other
9 than the Secretary of the Interior;

Amdt. No. 417

1 (3) "Federal lands" means all federally owned
2 lands except lands—

3 (A) Held in trust for Indians;

4 (B) Owned by Indians with Federal restric-
5 tions on the title;

6 (C) Within units of the national park system;
7 or

8 (D) Administered pursuant to the Outer Conti-
9 nental Shelf Lands Act (67 Stat. 462; 43 U.S.C.
10 1331);

11 (4) "Federal hardrock minerals" means mineral
12 deposits in Federal lands and federally owned mineral
13 deposits in non-Federal lands which immediately prior to
14 the effective date of this Act were subject to location
15 under the Mining Law of 1872 as amended and supple-
16 mented, and related Acts (30 U.S.C., chapters 2, 12A,
17 and 16 and sections 161 and 162);

18 (5) "Person" means any of the following, including
19 their lawful agents and instrumentalities:

20 (A) any State, county, municipality, or other
21 local governmental subdivision within which the
22 land is located;

23 (B) any municipality within convenient access
24 to the lands if the lands are within the same State
25 as the municipality;

1 (C) any individual who is authorized to enter
2 into a contract for acquisition of title in real prop-
3 erty in the United States by himself or through his
4 guardian or trustee;

5 (D) any partnership or association, each of the
6 members of which is an individual as defined in sub-
7 paragraph (C) ; and

8 (E) any corporation organized under the laws
9 of the United States or of any State thereof, and
10 authorized to hold title to real property in the State
11 in which the land is located;

12 SEC. 203. The Secretary is authorized to permit by the
13 issuance of prospecting permits and exploration, develop-
14 ment, and production leases under this title, prospecting,
15 exploration, development, and production of Federal hard-
16 rock minerals to the maximum extent and under such terms
17 and conditions as the Secretary finds consistent with the
18 following goals and objectives:

19 (1) Provision of an adequate supply of minerals to meet
20 national, regional, and local requirements at reasonable mar-
21 ket prices in a timely fashion.

22 (2) Preservation of a quality environment for present
23 and future generations of Americans.

24 (3) Management of Federal lands and resources under
25 principles of multiple use and sustained yield.

1 (4) Preparation, maintenance, and preservation of the
2 integrity of comprehensive and coordinated National, State,
3 and local land use plans.

4 (5) Maintenance of an interdisciplinary approach to
5 natural resources programs.

6 (6) Opportunity for the public to participate fully in
7 the conduct of the public business.

8 (7) Payment by users of public lands and resources
9 of fair market value.

10 (8) Adequate tenure and opportunity for mineral pros-
11 pectors and mining operations to plan and develop prospect-
12 ing and mining operations and to secure a fair return for their
13 risk and investment.

14 (9) Maintenance of a competitive environment in the
15 allocation and development of public resources.

16 (10) Prevention of undue concentration of ownership of
17 rights to Federal mineral interests.

18 (11) Encouragement of efficiency in prospecting and
19 production of minerals and in protection and rehabilitation of
20 the environment.

21 SEC. 204. (a) The Secretary may dispose of Federal
22 hardrock minerals in Federal lands which are not under his
23 jurisdiction only if the head of the department or agency
24 which administers the lands concurs with the proposal to
25 dispose of the Federal hardrock minerals and in the proposed

1 terms and conditions of disposal insofar as such terms and
2 conditions would affect such head's exercise of his adminis-
3 trative responsibilities.

4 (b) The Secretary may dispose of Federal hardrock
5 minerals in non-Federal lands only after he has given the non-
6 Federal landowner an opportunity to review and comment
7 on the planned terms and conditions of the proposed disposal.
8 Insofar as they relate to conservation of natural resources,
9 the protection of the environment, and protection of and
10 compensation for private improvements on the land, the
11 Secretary shall, to the extent he deems feasible, include in
12 the proposed disposal the same terms and conditions that he
13 would include if the lands were Federal.

14 SEC. 205. The Secretary shall consult with the Federal,
15 State, and local governments, advisory boards and commit-
16 tees, and the general public to the extent he deems necessary
17 to secure full public participation in decisions related to the
18 disposal of Federal hardrock minerals. The head of any de-
19 partment or agency may render, without transfer of funds,
20 technical assistance to the Secretary in connection with the
21 Secretary's activities under this title.

22 SEC. 206. The Secretary shall publicize all proposals to
23 dispose of Federal hardrock minerals under this title to the
24 extent and by those means which he deems necessary to com-
25 ply with the goals, objectives, and other provisions of this

1 title. Notices of such proposals shall describe by incorpora-
2 tion or by reference the terms and conditions of disposals so
3 that the general public may knowledgeably comment on the
4 proposal and potential permittees and lessees will be fully
5 informed what their rights and obligations would be under
6 the proposal.

7 SEC. 207. The Secretary is hereby authorized, under
8 such rules and regulations as he may prescribe, to grant to
9 any qualified applicant a prospecting permit for Federal
10 hardrock minerals. Such permit will give the permittee the
11 exclusive right to prospect for such minerals in the Federal
12 lands described in the permit. Each permit will contain such
13 terms and conditions as the Secretary deems appropriate to
14 carry out the goals and objectives of this title.

15 SEC. 208. (a) Upon showing to the satisfaction of the
16 Secretary that valuable deposits of hardrock minerals have
17 been discovered by a permittee in the Federal lands covered
18 by his prospecting permit, the permittee shall be entitled to
19 an exploration, development, and production lease for any or
20 all of the land embraced in the prospecting permit.

21 (b) The Secretary is hereby authorized, under such
22 rules and regulations as he may prescribe, to lease by com-
23 petitive bidding, and Federal lands known to contain valuable
24 deposits of hardrock minerals which are not subject to a
25 prospecting permit issued under this title.

1 (c) Each lease will contain such terms and conditions as
2 the Secretary deems appropriate to carry out the goals and
3 objectives of this title.

4 SEC. 209. In prospecting permits and exploration, de-
5 velopment and production leases under this title, the Secre-
6 tary shall incorporate such terms and conditions that he
7 deems necessary or desirable to promote good business prac-
8 tices; to promote the conservation of lands and other natural
9 resources; to preserve and enhance the environment; to
10 maintain ecological balances; to protect the public health,
11 safety, and welfare; to enable the proper use of the lands;
12 and otherwise to promote or be consistent with the goals and
13 objectives and other terms of this title, including, but not
14 limited to, provisions for—

- 15 (1) cancellation and forfeitures for cause;
- 16 (2) relinquishment of rights and privileges;
- 17 (3) bonds, deposits, or other good faith security;
- 18 (4) assignments and sublease, in whole or in part;
- 19 (5) renewals and extensions;
- 20 (6) removal of improvements;
- 21 (7) rentals and royalties;
- 22 (8) penalties for noncompliance;
- 23 (9) reinstatements;
- 24 (10) nondiscrimination;
- 25 (11) protection of health and safety of workers;

- 1 (12) protection and rehabilitation of natural re-
2 sources;
- 3 (13) prevention of air, water, and land pollution;
- 4 (14) adjustment of disputes;
- 5 (15) payments in kind;
- 6 (16) inspection of premises by Federal and State
7 officials;
- 8 (17) inspection of business records;
- 9 (18) joint enterprises;
- 10 (19) suspension, waiver, and reduction of rentals
11 or royalties in order to promote conservation of re-
12 sources;
- 13 (20) reasonable diligence;
- 14 (21) workmanlike performance;
- 15 (22) disposal of surface estate;
- 16 (23) uses of the lands and resources thereon by
17 third parties;
- 18 (24) uses of the lands and resources by the con-
19 tracting parties, including rentals to be paid by the
20 lessee or licensee;
- 21 (25) unitization, operating, and other cooperative
22 agreements; and
- 23 (26) submittal of plans of exploration, mining, and
24 rehabilitation operations for approval by the Secretary.
25 SEC. 210. The Secretary is authorized to issue such regu-

1 lations as he finds necessary or desirable to carry out the
2 goals, objectives, and other purposes of this title.

3 SEC. 211. (a) The mining law of 1872, as amended, and
4 supplemental and related Acts (30 U.S.C., chapters 2, 12A,
5 and 16 and sections 161 and 162) are hereby repealed.

6 (b) Any claim under the mining law of 1872 existing
7 on the effective date of this Act shall remain subject to the
8 provisions of that law if it is recorded with the Department
9 not more than one year after the issuance by the Secretary of
10 regulations prescribing the manner in which mining claims
11 will be recorded. Any mining claim not so recorded shall be
12 null and void. However, recordation will not render valid any
13 mining claim which is invalid on the effective date of this Act
14 or which becomes invalid thereafter.

15 (c) Any mining claim on which application for patent
16 has not been filed within three years after recordation shall
17 be null and void.

18 SEC. 212. All revenues received by the United States
19 from prospecting permits and exploration, development, and
20 production leases issued under this title shall be distributed in
21 the manner prescribed in section 35 of the Mineral Leasing
22 Act of 1920, as amended (30 U.S.C. 191).



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

051 1 2 1971

Dear Mr. Chairman:

This responds to your request for this Department's views on S. 921 "To provide for the protection, development and enhancement of public lands; to provide for the development of Federal minerals; and for other purposes."

We recommend that the bill not be enacted but that the Administration's proposed "National Resource Land Management Act of 1971" and "Mining Laws of 1971" be enacted instead.

S. 921 contains two titles. The first would provide comprehensive policy guidelines and management authority to the Secretary of the Interior to manage lands administered through the Bureau of Land Management. As such its purpose is the same as the Administration's proposed National Resource Land Management Act which is S. 2401. Many of the provisions of both bills are very similar. There are, however, a number of differences between them and for that reason we urge enactment of S. 2401 in lieu of title I of S. 921.

S. 2401 contains in section 3 a succinct statement of policy and a directive that the Secretary "shall manage the national resource lands under principles of multiple use and sustain yield in a manner which will, using all practicable means and measures, protect the environmental quality of the national resource lands to assure their continued value for present and future generations." It stresses, in addition to environmental protection, the principle that the national interests will best be served by retaining the national resource lands in Federal ownership except in those specific cases where the Act authorizes disposal.

A significant difference between the Administration's proposal and S. 921 is the criteria for disposal. S. 921 authorizes disposal of lands which the Secretary determines are more valuable for residential, commercial, agricultural, industrial or other public uses in non-Federal ownership than for management in Federal ownership. The Administration's bill would authorize disposal only when the Secretary finds that it (1) would significantly improve the management of the land, or (2) would serve important public objectives which cannot be achieved prudently and feasibly on land other than national resource land. We feel that the tighter disposal criteria of the Administration's proposal best express the basic public policy that the bulk of the public lands should be retained and managed for the maximum benefit to the general public, while recognizing the need in specific instances to dispose of public land for specific objectives.

Both bills require that sales be at fair market value, generally as determined by competitive bidding. The Administration's bill, however, recognizes limited exceptions for the sake of equity or public policy.

The Administration's bill requires the Secretary to develop and maintain land use plans for all national resource lands. These plans will provide the basis for land management, and are to give priority to the designation and protection of areas of critical environmental concern. In this way the planning and management of federally owned lands can be coordinated and consistent with land use plans for State and private lands such as would be developed under the Administration's proposed National Land Use Policy Act of 1971.

S. 921 makes no mention of land use planning; nor does it provide for an inventory of the lands and their resources as is contained in section 5 of the Administration's proposal.

The policy set forth in the Administration's proposal would apply to all discretionary activities taken by the Secretary on the national resource lands, including those taken with respect to mineral resources. S. 921 would apply the policy contained in title I to nonmineral resources only. We feel that multiple use management of the public lands, which is the principle embodied in both bills, must consider all the resources values of the land particularly those the development of which tends to exclude other uses.

Section 106 of S. 921 directs the Secretary to review roadless areas of 5,000 acres or more on national resource lands to determine their suitability for preservation as wilderness under the Wilderness Act of 1964. While we agree that the National Resource Lands contain wilderness values which should be protected, the authority to protect them as "areas of critical environmental concern" is contained in S. 2401. We feel that any expansion of the national wilderness preservation system should be accomplished through an amendment to the Wilderness Act.

Title II of S. 921 provides for revision of the mining laws. As requested by your committee, the comments in this report will be addressed to Amendment 417 printed on September 9, 1971, which amends title II in its entirety.

Both title II of S. 921 and the Administration's proposed Mining Law of 1971 would accomplish a much needed reform of the Mining Law of 1872. The stated objectives of both bills are similar. These are essentially to encourage the production of minerals, to preserve the quality of the environment, and to assure a fair return to the public.

The Administration's proposed bill retains the basic location-patent system with certain major modifications to protect the environment and the public interest. S. 921 substitutes a leasing system for the location system. It provides that the lease will contain such terms and conditions as the Secretary deems necessary to promote certain broad basic objectives including preserving and enhancing the environment.

We feel that the protection of the environment should be a major concern of any legislation to reform the mining laws. The Administration has proposed the "Mined Area Protection Act of 1971" which has been introduced as S. 993, to encourage States to regulate the environmental aspects of mining on State and private land. The proposed "Mining Law of 1971" contains a section which would apply parallel provisions to the public lands. It would require, among others, that the operator file an operation plan with the Secretary for approval before he commences any activity which might cause a significant disturbance of the environment. The plan would be in accord with regulations issued by the Secretary and designed to assure that the operation would not violate air and water quality standards and would control erosion, subsidence and other specified environmental damage. The regulations would require that reclamation be made an integral part of the operation, but would allow the operator maximum flexibility to determine the most economically feasible means of achieving the environmental objectives.

There are six basic differences between the two proposed bills.

(1) Scope. The Administration's bill would exclude lands in the National Wildlife Refuge Preservation System except as otherwise provided by law. It also excludes land in naval petroleum and oil shale reserves. These areas have been set aside for specific uses in the national interest. To open them to the public for mining would be inconsistent with the public interest.

(2) Prospecting license. The Administration's bill requires a prospecting license for nonexclusive prospecting on the public lands. Although this license will be issued to any person for a reasonable fee, it will contain certain conditions and restrictions which will give the Secretary some measure of control over commercial prospecting on Federal lands which under present law he does not have. S. 921 has no similar provision.

(3) Removal. The Administration's bill authorizes the Secretary to remove any land from the application of the Act where the head of the agency administering the land determines that it is necessary in order to provide for a higher use or to protect or enhance the environment. This provides statutory recognition of a management tool which we consider to be essential for the wise management of the Federal lands.

(4) Competitive bidding. Under the Administration's proposal competitive bidding is required where the Secretary has reason to believe the lands contain commercially valuable mineral deposits, or where two applications for a permit are filed on the same day. Under S. 921 the issuance of the permit is noncompetitive, although competitive bidding is authorized for leases on lands not covered by a prospecting permit which are "known to contain valuable deposits of hard rock minerals". The standard for competitive bidding in the Administrative bill therefore appears to be somewhat broader.

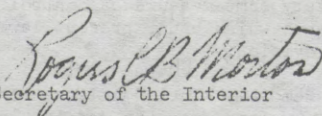
(5) Terms and conditions. S. 921 leaves all terms and conditions including rents and royalties, penalties, tenure, cancellation and surface rights to complete discretion of the Secretary, whereas the Administration's proposed bill spells them out in considerable detail. The reform of the mining laws will have a significant impact on a wide range of interests, both public and private. In order to achieve the proper balance between these interests, we feel that the critical terms and conditions under which a mining company will be required to operate should be spelled out in the statute, and not left totally to administrative discretion.

(6) Revenue sharing. The Administration's proposal provides that all revenues produced under this Act shall be divided between the States and Federal Government with each State getting 37-1/2 percent of the revenues from lands in that State. S. 921 would give 37-1/2 percent to every State except Alaska which would get 90 percent. We believe Alaska should be treated the same as the other 49 States.

For the reasons stated in this report we recommend that S. 921 not be enacted but that the Administration's proposals identified herein be enacted instead.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of the Administration's proposals will be in accord with the program of the President.

Sincerely yours,


Secretary of the Interior

Hon. Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

92^D CONGRESS
1ST SESSION

S. 2401

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 1971

Mr. JACKSON (for himself and Mr. ALLOTT) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the management, protection, and development of the national resource lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "National Resource Land
4 Management Act of 1971".

5 SEC. 2. DEFINITIONS.—As used in this Act:

6 (a) "The Secretary" means the Secretary of the
7 Interior.

8 (b) "National resource lands" means all lands and inter-
9 ests in lands (including the renewable and nonrenewable re-
10 sources thereof) now or hereafter administered by the Secre-

2

1 tary through the Bureau of Land Management, except the
2 Outer Continental Shelf.

3 (c) "Multiple use" means the management of the nat-
4 ural resource lands and their various surface and subsurface
5 resources so that they are utilized in the combination that
6 will best meet the present and future needs of the American
7 people; the most judicious use of the land for some or all
8 of these resources or related services over areas large enough
9 to provide sufficient latitude for periodic adjustments in use
10 to conform to changing needs and conditions; the use of some
11 land for less than all of the resources; a combination of re-
12 source uses that takes into account the long-term needs of
13 future generations for nonrenewable resources and the
14 achievement of diversity and balance for renewable resources;
15 and harmonious and coordinated management of the various
16 resources, each with the other, without impairment of the
17 productivity of the land or undue damage to irreplaceable
18 values, with consideration being given to the relative values
19 of the resources, and not necessarily the combination of uses
20 that will give the greatest economic return or the greatest
21 unit output.

22 (d) "Sustained yield" means the achievement and
23 maintenance in perpetuity of a high-level annual or regular
24 periodic output of the various renewable resources of land
25 without impairment of the productivity of the land.

1 (e) "Areas of critical environmental concern" means
2 areas where uncontrolled use or development could result in
3 irreversible damage to important historic, cultural, or
4 esthetic values, or natural systems or processes, or life and
5 safety as a result of natural hazards. Such areas shall include:

6 (1) coastal zones and estuaries. "Coastal zones"
7 means the land, waters, and lands beneath the waters in
8 close proximity to the coastline (including the Great
9 Lakes) and strongly influenced by each other, and in-
10 clude areas influenced or affected by water from an
11 estuary such as, but not limited to, salt marshes, coastal
12 and intertidal areas, sounds, embayments, harbors, la-
13 goons, inshore waters, channels, and all other coastal
14 wetlands. "Estuary" means the part of the mouth of a
15 river or stream or other body of water having unim-
16 paired natural connection with the open sea and within
17 which the sea water is measurably diluted with fresh
18 water derived from land drainage.

19 (2) shorelands and flood plains of rivers, lakes, and
20 streams;

21 (3) rare or valuable ecosystems;

22 (4) scenic or historic areas; and

23 (5) such additional areas of similar valuable or
24 hazardous characteristics which the Secretary deter-
25 mines to be of critical environmental concern.

1 SEC. 3. DECLARATION OF POLICY.—(a) Congress here-
2 by declares that the national resource lands are a vital na-
3 tional asset containing a wide variety of natural resource
4 values and that the national interest will best be served by re-
5 taining the national resource lands in Federal ownership ex-
6 cept where the Secretary determines that disposal of particu-
7 lar tracts of national resource lands is consistent with the
8 purposes, terms, and conditions of this Act.

9 (b) Congress hereby directs that the Secretary shall
10 manage the national resource lands under principles of
11 multiple use and sustained yield in a manner which will,
12 using all practicable means and measures, protect the en-
13 vironmental quality of the national resource lands to assure
14 their continued value for present and future generations.

15 SEC. 4. The use, occupancy, or development of any
16 portion of the national resource lands contrary to any regu-
17 lation of the Secretary or contrary to any order issued pur-
18 suant to any such regulations is unlawful and prohibited.

19 SEC. 5. INVENTORY.—The Secretary shall prepare and
20 maintain on a continuing basis an inventory of all national
21 resource lands and their resources, giving priority to areas
22 of critical environmental concern. This inventory shall re-
23 flect changes in conditions and in identifications of resource
24 values.

25 SEC. 6. LAND USE PLANS.—(a) The Secretary shall

1 with public participation develop, maintain, and, when ap-
2 propriate, revise land use plans for the national resource
3 lands consistent with the terms and conditions of this Act
4 and coordinated so far as he finds feasible and proper, or as
5 may be required by the National Land Use Policy Act of
6 1971 or other law, with the land use plans of State and local
7 governments and other Federal agencies.

8 (b) In the development and maintenance of land use
9 plans, the Secretary shall:

10 (1) use a systematic interdisciplinary approach to
11 achieve integrated consideration of physical, biological,
12 economic, and social sciences;

13 (2) give priority to the designation of areas of
14 critical environmental concern;

15 (3) rely, to the extent it is available, on the inven-
16 tory of the national resource lands and their resources;

17 (4) consider all present and potential uses of the
18 lands;

19 (5) consider the relative scarcity of the values in-
20 volved and the availability of alternative means includ-
21 ing the need for recycling and sites for realization of
22 those values;

23 (6) weigh long-term public benefits against more
24 immediate local or individual benefits; and

25 (7) consider the requirements of applicable pollu-

1 tion control laws including State or Federal air or water
2 quality standards and implementation plans.

3 SEC. 7. MANAGEMENT.—(a) The Secretary shall man-
4 age the national resource lands in accordance with the policies
5 and procedures of this Act and with any applicable land
6 use plans which he has prepared except to the extent that
7 other applicable law requires the Secretary to take specific
8 actions. Such management shall include:

9 (1) the regulation of all use, occupancy, or devel-
10 opment, through permits, licenses, or such other form
11 of authorization as the Secretary deems appropriate;

12 (2) requiring land reclamation as a condition of
13 use, and requiring performance bonds guaranteeing such
14 reclamation of any person permitted to engage in extrac-
15 tive or other activity likely to entail significant disturb-
16 ance to or alteration of the land;

17 (3) inserting in permits, licenses, or other authori-
18 zations to use, occupy, or develop the national resource
19 lands provision authorizing revocation or suspension
20 upon violation of any regulations issued by the Secre-
21 tary under this Act or upon violation of any applicable
22 State or Federal air or water quality standard and
23 implementation plans; and

24 (4) the prompt development of regulations for the
25 protection of areas of critical environmental concern.

1 SEC. 8. SALE OF LAND.—(a) Except as otherwise pro-
2 vided by law, the Secretary is authorized to sell national
3 resource lands when he finds that such sale will (1) lead to
4 a significant improvement in the management of the national
5 resource lands, or (2) serve important public objectives
6 which cannot be achieved prudently and feasibly on land
7 other than national resource lands. Sales of national resource
8 lands under this Act shall be at not less than the appraised
9 fair market value and shall be in accord with land use plans
10 when such plans have been prepared.

11 (b) The Secretary shall determine and establish the size
12 of tracts to be sold on the basis of the land use capabilities
13 and development requirements of the lands.

14 (c) Sales of land under this Act shall be conducted un-
15 der competitive bidding procedures to be established by the
16 Secretary, except that where he determines it necessary and
17 proper (1) to assure fair distribution among purchasers of
18 national resource lands, or (2) to recognize equitable con-
19 siderations or public policies, including but not limited to a
20 preference right to users, he is authorized to sell national
21 resource lands without competitive bidding, or with modified
22 competitive bidding. In no event shall the lands be sold for
23 less than the appraised fair market value as determined by
24 the Secretary.

25 (d) Until the Secretary has accepted an offer to pur-

1 chase, he may refuse to accept any offer or may withdraw
2 any land from sale under this Act when he determines that
3 consummation of the sale would not be in the public interest.

4 (e) At the end of each fiscal year the Secretary shall
5 report to Congress all sales of national resource lands con-
6 ducted by him during such fiscal year.

7 SEC. 9. CONDITIONS IN CONVEYANCES.—(a) Except
8 where the Secretary finds that (1) there are no mineral
9 values in the land or (2) reservation of the mineral rights
10 in the United States would interfere with or preclude the ap-
11 propriate development of the land and that such development
12 is a more beneficial use of the land than mineral develop-
13 ment, all conveyances of title issued by the Secretary under
14 this Act shall reserve to the United States all mineral de-
15 posits in the lands, together with the right to prospect for,
16 mine, and remove the deposits under applicable law and
17 such regulations as the Secretary may prescribe.

18 (b) The Secretary shall insert in any patent or other
19 documents of conveyance he issues under this Act such terms,
20 covenants, and conditions as he deems necessary to insure
21 proper land use, environmental integrity, and protection of
22 the public interest. In the event any area which the Secre-
23 tary has identified as an area of critical environmental con-
24 cern is conveyed out of Federal ownership, the Secretary
25 shall provide for the continued protection of such area in the
26 patent or other document of conveyance.

1 SEC. 10. ACQUISITION OF LAND.— (a) When public in-
2 terests will be benefited thereby, the Secretary is authorized
3 to acquire by purchase, exchange, donation, or otherwise
4 such lands or interests therein including, but not limited to,
5 the provision of access by the general public to national re-
6 source lands. Such acquisitions shall be consistent with such
7 land use plans as may apply to the area involved.

8 (b) Purchases designed primarily to provide outdoor
9 recreation opportunities shall be made by the Secretary with
10 funds from the land and water conservation fund.

11 (c) In exercising the exchange authority granted by
12 subsection (a) of this section, the Secretary may accept
13 title to any non-Federal land or interests therein and in ex-
14 change therefor he may convey to the grantor of such land or
15 interests any national resource lands or interests therein
16 which, under the terms and conditions of this Act, he finds
17 proper for transfer out of Federal ownership and which are
18 located in the same State as the non-Federal land to be ac-
19 quired. The values of the lands so exchanged either shall
20 be equal, or if they are not equal, the value shall be equal-
21 ized by the payment of money to the grantor or to the Secre-
22 tary as the circumstances require. When a land use plan
23 has been prepared, exchanges under this Act shall be in
24 accordance with such plans.

25 (d) Lands acquired by exchange under this section

1 within the boundaries of the national forest system may be
2 transferred to the Secretary of Agriculture for administra-
3 tion as a part of, and in accordance with laws, rules, and
4 regulations applicable to, the national forest system.

5 SEC. 11. ENFORCEMENT AUTHORITY.—(a) Violations
6 of regulations which may be adopted for the purpose of pro-
7 tecting the national resource lands, other public property,
8 and the public health, safety, and welfare and identified by
9 the Secretary as being subject to the sanctions provided for
10 by this section shall be deemed to be a misdemeanor and
11 shall be punishable by a fine of not more than \$10,000 or
12 imprisonment for not more than one year, or both. Any per-
13 son charged with the violation of such regulations may be
14 tried and sentenced by any United States commissioner or
15 magistrate designated for that purpose by the court by which
16 he was appointed, in the same manner and subject to the
17 same conditions as provided for in section 3401 of title 18.
18 United States Code.

19 (b) At the request of the Secretary, the Attorney Gen-
20 eral may institute a civil action in a district court of the
21 United States or the highest court in a United States terri-
22 tory for an injunction or other appropriate order to prevent
23 any person from utilizing the national resource lands in viola-
24 tion of regulations issued under this Act.

25 (c) The Secretary may designate and authorize em-

1 ployees as special officers who may make arrests or serve
2 citations for acts committed on the public lands which are in
3 violation of regulations identified pursuant to subsection
4 11 (a).

5 (d) Upon the sworn information by a competent per-
6 son, any United States commissioner, magistrate, or court
7 of competent jurisdiction may issue process for the arrest of
8 any person charged with the violation of law or the desig-
9 nated regulations. Nothing herein shall be construed as pre-
10 venting the arrest by any officer of the United States, with-
11 out process, of any person taken in the act of violating the
12 law or the designated regulations.

13 SEC. 12. STATE'S RIGHTS NOT CURTAILED.—(a) Noth-
14 ing in this Act shall be construed as a limitation upon any
15 State criminal statute, nor on the police power of the respec-
16 tive States.

17 (b) Nothing in this section shall be construed to dero-
18 gate the authority of a local police officer in the performance
19 of his duties.

20 SEC. 13. FEDERAL RIGHTS NOT CURTAILED.—Nothing
21 in this section shall be construed as limiting or restricting
22 the power and authority of the United States, or as affecting
23 in any way any law governing appropriations or use of, or
24 Federal right to, water on national resource lands.

25 SEC. 14. All actions by the Secretary under this Act

1 shall be subject to valid existing rights. The Secretary shall
2 not impair or diminish any valid existing rights except under
3 due process and upon payment of just compensation.

4 SEC. 15. PUBLIC HEARINGS.—(a) In exercising his
5 authorities under this Act, the Secretary, by regulation, shall
6 establish procedures, including public hearings where appro-
7 priate, to give the Federal, State, and local governments and
8 the public adequate notice and an opportunity to comment
9 upon the formulation of standards and criteria in the prepara-
10 tion and execution of plans and programs and in the manage-
11 ment of the national resource lands.

12 (b) Any proposed significant change in land use plans
13 and regulations pertaining to areas of critical environmental
14 concern shall be the subject of a public hearing.

15 SEC. 16. In providing for public participation in plan-
16 ning and programing for the national resource lands, the
17 Secretary may establish and consult such advisory boards
18 and committees as he deems necessary to secure full infor-
19 mation and advice on the execution of his responsibilities.

20 SEC. 17. The Secretary is authorized to promulgate such
21 rules and regulations as he deems necessary to carry out the
22 purposes of this Act. The promulgation of such rules and
23 regulations shall be governed by the Administrative Proce-
24 dures Act (5 U.S.C. 553).

25 SEC. 18. There is hereby authorized to be appropriated

1 such sums as are necessary to carry out the purposes of this
2 Act.

3 SEC. 19. REPEAL OF PRIOR LAWS.—(a) Subject to
4 valid rights existing at the date of approval of this Act, the
5 following statutes or parts of statutes as amended are
6 repealed:

1.—HOMESTEAD LAWS

Act of—	Sections	Statute	43 U.S.C.
Revised Statutes: 2288–2298, 2300–2302, 2304, 2311.....			161–164, 169, 171, 173–175, 183, 184, 191, 201, 211, 239, 254, 255, 271, 272, 274, 277, 278.
Mar. 3, 1875.....	15	18-420 ch. 131.....	189.
June 3, 1878.....		20-31.....	253.
Mar. 3, 1879.....		20-472 ch. 191.....	204.
Mar. 3, 1879.....		20-472 ch. 192.....	251.
July 1, 1879.....		21-46.....	205.
July 1, 1879.....	1	21-48.....	235.
May 14, 1880.....		21-170.....	166, 185, 202, 223.
June 8, 1880.....		21-166.....	172.
June 16, 1880.....		21-287.....	263.
July 4, 1884—last paragraph of section 1 only.....		23-96.....	190.
May 6, 1886.....		24-22.....	206.
Mar. 2, 1889.....	1, 3, 4, 6, 7	25-854.....	214, 234, 252, 681, 700.
Aug. 30, 1890—The following words of section 1 only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be per- mitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settle- ment on the public lands, or whose occupation, entry or settlement is vali- dated by this Act."		26-391.....	212.
Sept. 30, 1890.....		26-684.....	261.
Mar. 3, 1893—The following words only: "And provided further, That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."		27-593.....	275, 1076.
Aug. 18, 1894—Last paragraph of section headed "Surveying the Public Lands" only.....		28-397.....	276.
Mar. 2, 1895.....		28-744.....	176.
May 16, 1898.....		30-473 ch. 458.....	240.
May 17, 1900.....	1	31-179.....	179.
June 5, 1900.....	2, 3	31-269.....	188, 217.
Jan. 26, 1901.....		31-740.....	180.
May 22, 1902.....	2	32-203 ch. 821.....	187b.
June 13, 1902.....		32-384 ch. 1080.....	233.
Apr. 28, 1904.....		33-527 ch. 1776.....	213.
Apr. 28, 1904.....		33-547.....	224.
Feb. 19, 1909.....		35-639.....	218.
June 17, 1910.....		36-531 ch. 298.....	219.
Mar. 4, 1913—Last paragraph of section 1 headed "Public Land Service" only.....		37-925.....	256.
Apr. 6, 1914.....		38-312.....	167.
Aug. 22, 1914.....		38-704 ch. 270.....	231.
Sept. 5, 1914.....		38-712.....	182.
Oct. 17, 1914.....		38-740.....	168.
Oct. 22, 1914.....		38-766 ch. 335.....	170.
Mar. 4, 1915.....	1	38-1162.....	220.
July 3, 1916.....		39-341 ch. 214.....	232.
Aug. 21, 1916.....		39-518 ch. 361.....	207, 1075.
Dec. 29, 1916.....	1-9, 11	39-862.....	291-299, 301.
Feb. 20, 1917.....		39-925.....	215.
Dec. 20, 1917.....		40-430 ch. 6.....	236.
Feb. 25, 1919.....		40-1161 ch. 37.....	272a.
July 24, 1919—Next to last paragraph only.....		41-271.....	237.
Sept. 29, 1919.....		41-288 ch. 64.....	233.
Feb. 14, 1920.....		41-434.....	186.
Mar. 1, 1921.....		41-1193.....	167.

1.—HOMESTEAD LAWS—Continued

Act of—	Sections	Statute	43 U.S.C.
Mar. 1, 1921.....		41-1202 ch. 102.....	238, 331.
Mar. 4, 1921.....	1	41-1433 ch. 162.....	216.
April 6, 1922.....		42-491 ch. 122.....	273.
Mar. 4, 1923.....		42-1445 ch. 245.....	222, 302.
June 3, 1924.....		43-357 ch. 240.....	208.
Feb. 25, 1925.....		43-981 ch. 326.....	187.
June 8, 1926.....		44-709 ch. 501.....	177.
April 7, 1930.....		46-144 ch. 108.....	243.
Feb. 23, 1932.....		47-53 ch. 52.....	178.
Mar. 2, 1932.....		47-59.....	237a.
May 15, 1932.....		47-113 ch. 178.....	256a.
Mar. 1, 1933—The following words of section 1 only "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homestead be made in said county under the Act of July 4, 1884 (23 Stat. 96: U.S.C., title 43, sec. 190)."		47-1418 ch. 160.....	190a.
Mar. 3, 1933.....		47-1424.....	243a.
May 21, 1934.....		48-787 ch. 320.....	237b.
June 21, 1934.....		48-1185 ch. 690.....	187a.
May 22, 1935.....		49-286.....	237c.
Aug. 19, 1935.....		49-659 ch. 560.....	237d.
Aug. 27, 1935.....		49-909 ch. 770.....	256b.
April 20, 1936.....		49-1235 ch. 239.....	237e.
Aug. 28, 1937.....		50-575.....	1181c.
Sept. 27, 1944.....		58-747 ch. 421.....	279-284.
June 22, 1948.....		62-576.....	209, 210.
July 30, 1956.....		70-715, 716 ch. 778.....	237 f, g, h, 336a-d.
2.—EXCHANGE OF LAND			
June 28, 1934.....	8	48-1272.....	315g.
August 24, 1937.....		50-748.....	315p.
3.—DESERT LAND ENTRIES			
Mar. 28, 1908.....		35-52 ch. 112.....	324, 326, 333.
Apr. 30, 1912.....		37-106 ch. 101.....	334.
Mar. 4, 1915.....	5	38-1161 ch. 147.....	335, 337, 338.
Feb. 27, 1917.....		39-949 ch. 134.....	330.
Aug. 7, 1917.....		40-250.....	332.
Feb. 25, 1925.....		43-982 ch. 329.....	336.
Mar. 4, 1929.....		45-1548 ch. 687.....	339.
4.—SALE AND DISPOSAL LAWS:			
Revised Statutes: 2354, 2355, 2357, 2361-2363, 2365, 2366, 2368-2372, 2374-2376.....			673, 674, 676, 678, 688-699.
June 15, 1880.....	34	21-238.....	679, 680.
Mar. 3, 1891.....	9, 16	26-1099, 1101.....	671, 728.
May 18, 1898.....		30-418 ch. 344.....	675.
Mar. 1, 1907.....		34-1052 ch. 2286.....	682.
June 1, 1938.....		52-609 ch. 317.....	682a-e.
5.—TOWN SITE RESERVATION AND SALE			
Revised Statutes: 2380-2384, 2386-2389, 2391-2394.....			711-715, 717-721, 722-724.
Mar. 3, 1877.....	1, 3, 4	19-392 ch. 113.....	725-727.
Feb. 9, 1903.....		32-820 ch. 531.....	731.
July 9, 1914.....		38-454.....	730.
6.—DRAINAGE UNDER STATE LAWS			
May 20, 1908.....	1-7	35-169 ch. 181.....	1021-1027.
Mar. 3, 1919.....		40-1321 ch. 113.....	1028.
Jan. 17, 1920.....		41-392 ch. 47.....	1041-1048.
May 1, 1958.....		72-99.....	1029-1034.
7.—ABANDONED MILITARY RESERVATIONS			
July 5, 1884.....	5	23-104 ch. 214.....	1074.
Aug. 23, 1894.....		28-491 ch. 314.....	1077, 1078, 1081.
Feb. 15, 1895.....		28-964.....	1080.
Feb. 11, 1903.....		32-822 ch. 543.....	1079.
8.—PUBLIC LANDS IN OKLAHOMA			
May 2, 1890—Last paragraph of section 18 and sections 20-24, 27 only.....		26-89-93.....	1091-1097.
May 14, 1890.....		26-109.....	1111-1117.
Mar. 3, 1891.....	16, 37	26-1026.....	1098, 1099.
Sept. 1, 1893.....		28-11.....	1118.
May 11, 1896.....		29-116.....	1119.
Jan. 18, 1897.....	1, 2, 3, 7	29-490.....	1131-1134.
Aug. 7, 1946.....		60-872 ch. 772.....	1100-1101.
Aug. 3, 1955.....		69-445 ch. 498.....	1102, 1102a-g.

9.—PATENTS FOR PRIVATE CLAIMS

Act of—	Sections	Statute	43 U.S.C.
Revised Statutes: 2447-2448.....			1151, 1152.
June 6, 1874.....	1, 2.....	18:62 ch. 223.....	1153, 1154.
Jan. 28, 1879.....		20:274.....	1155.
May 30, 1894.....		28:84 ch. 87.....	1156.

10.—SALES OF ISOLATED TRACTS

Revised Statute: 2455, as amended.....			1171.
Feb. 4, 1919.....		40:1059.....	1172.
May 10, 1920.....		41:595 ch. 178.....	1173.
Aug. 11, 1921.....		42:159 ch. 62.....	1175.
May 19, 1926.....		44:566 ch. 337.....	1176.
Apr. 24, 1928.....		45:457 ch. 428.....	1171a.
May 23, 1930.....		46:377 ch. 313.....	1171b.
Feb. 14, 1931.....		46:1105 ch. 170.....	1177.

11.—EVIDENCE OF TITLE

Revised Statutes: 2471-2473.....			1191-1193.
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12.—LANDS IN ALASKA

Mar. 3, 1891.....	11.....	26:1099.....	732-738.
Mar. 12, 1914—Fourth paragraph of section 1 only.....		38:305.....	
May 25, 1926.....		44:629.....	732-738.
Feb. 26, 1948.....		62:35 ch. 72.....	
Aug. 30, 1949.....		63:679 ch. 521.....	
July 24, 1947.....		61:414 ch. 305.....	
May 14, 1898.....		30:413.....	270-270-17.

13.—PITTMAN ACT GRANTS

Sept. 22, 1922.....		42:1012.....	356.
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14.—INDIAN ALLOTMENTS

Feb. 8, 1887.....		24:389.....	334.
Feb. 28, 1891.....		26:795.....	336.

- 1 (b) Section 7 of the Act of June 28, 1934, as amended
- 2 (43 U.S.C. 315f), is revised to read as follows:
- 3 “The Secretary of the Interior is authorized, in his dis-
- 4 cretion, to examine and classify any lands withdrawn or
- 5 reserved by Executive order of November 26, 1934 (num-
- 6 bered 6910), and amendments thereto, and Executive order
- 7 of February 5, 1935 (numbered 6964), or within a grazing
- 8 district, which are more valuable or suitable for the produc-
- 9 tion of agricultural crops than for the production of native
- 10 grasses and forage plants, or more valuable or suitable for

1 any other use than for the use provided for under this Act,
2 or proper for acquisition in satisfaction of any outstanding
3 lien, exchange, or land grant, and to open such lands to dis-
4 posal in accordance with such classification under applicable
5 public land laws. Such lands shall not be subject to disposi-
6 tion until after the same have been classified and opened to
7 disposal."

8 (c) The Act of March 3, 1877, as amended (19 Stat.
9 377; 43 U.S.C. 321, 322, 323, 325, 327-329), is further
10 amended to read as follows:

11 "All surplus water over and above water actually ap-
12 propriated and used by persons on entries made under this
13 Act, together with the water of all lakes, rivers and other
14 sources of water supply upon the public lands and not navi-
15 gable, shall remain and be held free for the appropriation
16 and use of the public for irrigation, mining, and manufactur-
17 ing purposes subject to existing rights."

18 (d) This Act shall not be construed as repealing any
19 law not listed in this section.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 20 1971

Dear Mr. President:

Enclosed is a draft bill "To provide for the management, protection, and development of the national resource lands and for other purposes."

We recommend that the proposed bill be referred to the appropriate committee and that it be enacted.

In his message to Congress on the environment early this year, President Nixon stated:

"The Federal public lands comprise approximately one-third of the Nation's land area. This vast domain contains land with spectacular scenery, mineral and timber resources, major wildlife habitat, ecological significance, and tremendous recreational importance. In a sense, it is the 'breathing space' of the Nation.

"The public lands belong to all Americans. They are part of the heritage and the birthright of every citizen. It is important, therefore, that these lands be managed wisely, that their environmental values be carefully safeguarded, and that we deal with these lands as trustees for the future. They have an important place in national land use considerations."

This bill represents an historic proposal. The Department is proposing legislation which, for the first time, would state the national policies governing the use and management of 450 million acres of the public domain and provides specific guidelines for the management of these vast lands.

Simply put the bill declares a national policy that these lands be managed under the principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, protect the quality of the environment. It is also declared in the national interest that these lands be held in Federal ownership and that disposal be authorized only when the management of the public domain would be significantly improved, or when such disposal would serve important public objectives which cannot be prudently and feasibly achieved on non-Federal lands. This then sets a guiding principle for management in perpetuity.

In a very real sense the story of this country's growth and development is the story of the public domain. At one time the Federal government owned 80% of the present land mass of the United States. Thirty-one States were created out of public domain, railroads, schools, and other public works built, and much of the west was settled by grants of public land. For these and other purposes 1.1 billion acres of some of the richest land in this country was transferred out of Federal ownership.

Although the primary objective of Congress was to get Federal land into private ownership, it also recognized at an early date that certain natural resources should be preserved for the enjoyment of the Nation as a whole and generations to come. In 1872 Yellowstone National Park was created. In succeeding years, 18 million acres of public land became National Parks, 160 million acres became National Forests, and 2.3 million acres became wildlife refuges.

Today roughly 450 million acres of public domain remain without specific statutory designation. And while the Nation has come to regard this land as a permanent national asset to be, for the most part, retained and managed on a multiple use, sustained yield basis, the basic management tools available for this purpose remain those that were forged when Federal ownership was expected to be short-lived, and when the Federal role was that of a temporary custodian.

From 1812 to 1946 the principal custodian of the public land was the General Land Office. Its job was primarily to survey the land and convey it to successful applicants.

In 1934, the Taylor Grazing Act brought a measure of protection and management to the unreserved public domain. Among other things, this Act authorized the establishment of grazing districts to provide more orderly use of the public range lands. The Grazing Service was created to administer the grazing district management program. The General Land Office was given authority to classify public lands for disposal.

In 1946 by executive reorganization, the General Land Office and the Grazing Service were merged into the Bureau of Land Management.

Within the Department of the Interior the Bureau of Land Management has the responsibility to manage the 450 million acres of unreserved public land. In addition, BLM has some surface management responsibilities on millions of acres withdrawn for programs of other Federal agencies such as the Bureau of Reclamation, the Bureau of Sport Fisheries and Wildlife, and the Department of Defense. BLM and the Geological Survey have joint responsibilities for administration of the mineral laws on all public domain and acquired lands (including national forests and wildlife refuges), reserved mineral interests -- more than 800,000,000 acres in total -- and on the Outer Continental Shelf. BLM also keeps the basic public land records and does land boundary surveys for most Federal lands. Lands administered by BLM amount to about 60% of all Federal lands.

Despite the enormous responsibilities of the BLM, the definition of its mission and the authority to accomplish it have never been comprehensively enunciated by Congress. Rather its mission and authority must be gleaned from some three thousand land laws which have accumulated over some 170 years and which are often at cross purposes.

In 1964 Congress passed three laws as a first step in the process of placing public land management on an up-to-date, rational basis. The Public Land Law Review Commission Act established a commission to review the entire body of the land laws and administrative practices and recommend modifications in them to best enable the public land to be retained and managed, or disposed of, all for the maximum benefit to the general public. The Classification and Multiple Use Act authorized BLM to classify the public lands for disposal or retention for multiple use management. The Public Land Sale Act allowed sale of public land which was chiefly valuable for certain specified uses. The latter two Acts expired on December 23, 1970.

The Classification and Multiple Use Act and the Public Land Sale Act were intended as interim measures, pending evaluation and possible implementation of the PLLRC recommendations. When they expired on December 23, 1970, the Bureau of Land Management returned to the Taylor Grazing Act of 1934 for its basic classification authority. Since the Taylor Grazing Act does not apply to public lands in Alaska, the Department is without that essential management authority in that State.

During the six year life of the Classification and Multiple Use Act, 177 million acres were classified for multiple use management while roughly 3.5 million acres of land were classified for disposal. Two hundred and sixty two million acres remain unclassified, almost all of which is in Alaska.

The comprehensive management authority we are proposing for the public lands is in accord with many of the recommendations of the Public Land Law Review Commission, and would continue on a permanent basis the concepts approved by Congress in the two Acts which expired on December 23, 1970. It would provide for the first time a clear and comprehensive definition of the Department's mission with respect to these lands.

The proposed act would apply to all lands administered by the Department through the Bureau of Land Management including the revested Oregon and California Railroad lands and reconveyed Coos Bay Wagon Road lands in Oregon. It would adopt the name National Resource lands to designate adequately their importance.

The proposed act is designed to provide a broad framework for any legislative proposals dealing with specific uses or resources which may be made in the future. For this reason, it should be an initial step in any legislative program to reform the land laws.

It directs the Secretary of the Interior to inventory the national resource lands and to develop comprehensive land use plans for such lands giving priority to lands in critical environmental areas, which is defined to include among others flood plains, coastal zones and scenic or historic areas. The inventory will give priority to such critical resources as clean burning fossil fuels to assist this Nation's efforts to combat pollution. The identification of the most critical environmental areas will be given a high priority by this Department so that those areas may be given the protection they so urgently need. A thorough knowledge of the resources we possess and purposeful plans for their use will greatly assist us to arrest the destruction we have too long and too carelessly inflicted on our natural resources. The national resource lands are in a real sense our last frontier. We cannot afford to squander their riches.

The proposed bill would repeal the hodge-podge of land disposal laws and replace them with a modern disposal law authorizing the Secretary to sell for fair market value those lands meeting the standards set forth in the proposed bill.

The Mining and Mineral Leasing Laws and certain special purpose land disposal laws, including the Recreation and Public Purposes Act, would not be repealed, although this Act would govern the exercise of Secretarial discretion under those and any other laws.

Equally important to land management is the authority to acquire lands necessary for authorized programs, or for blocking up existing land holdings. One traditional method of doing this, land exchanges, is retained with the modification that where the lands are not of equal value, the value may be equalized by cash payment. This acquisition authority is not intended to initiate a major acquisition program.

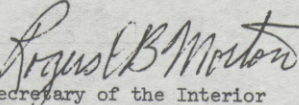
The proposed bill would significantly enhance the management of the national resource lands by making violation of laws or regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees.

The authority granted by the Act would pass to the Secretary of Natural Resources upon establishment of the Department of Natural Resources as proposed by President Nixon. The Act would not affect the present funding of operations on or the distribution of receipts from the national resource lands.

The national resource lands are a priceless and irreplaceable national asset. It is time to provide the Department of the Interior with the tools to manage and preserve them in accordance with their value to the American people.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,


Secretary of the Interior

Hon. Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Enclosure

92D CONGRESS
1ST SESSION

S. 2743

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1971

Mr. JACKSON (for himself and Mr. ALLOTT) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To establish a working capital fund for the Bureau of Land Management of the Department of the Interior, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That there is hereby established a public land management
4 working capital fund. This fund shall be available without
5 fiscal year limitation for expenses necessary for furnishing in
6 accordance with the Federal Property and Administrative
7 Services Act of 1949, as amended, and regulations promul-
8 gated thereunder, supplies and equipment services in support
9 of programs of the Secretary of the Interior which he ad-

1 ministers through the Bureau of Land Management, including
2 but not limited to the purchase or construction of buildings and
3 improvements and the purchase of motor vehicles, aircraft,
4 heavy equipment, and fire control equipment within the limi-
5 tations set forth in appropriations made for the Bureau of
6 Land Management.

7 SEC. 2. The initial capital of the fund shall consist of ap-
8 propriations made for that purpose together with the fair and
9 reasonable value at the fund's inception of the inventories,
10 equipment, receivables, and other assets, less the liabilities,
11 transferred to the fund. The Secretary is authorized to make
14 such subsequent transfers to the fund as he deems appropriate
15 in connection with the functions to be carried on through the
16 fund.

17 SEC. 3. The fund shall be credited with payments from
18 appropriations and funds of the Bureau of Land Manage-
19 ment, other agencies of the Department of the Interior,
20 other Federal agencies, and other sources as authorized by
21 law, at rates approximately equal to the cost of furnishing
22 the facilities, supplies, equipment, and services (including
23 depreciation and accrued annual leave). Such payments may

1 be made in advance in connection with firm orders, or by
2 way of reimbursements.

3 SEC. 4. There is hereby authorized to be appropriated
4 the sum of up to \$3,000,000 to provide initial capital.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 2 5 1971

Dear Mr. President:

Enclosed is a draft of a proposed bill "To establish a working capital fund for the Bureau of Land Management of the Department of the Interior, and for other purposes."

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

The Bureau of Land Management, like many government agencies whose operations involve long-range or unexpected commitments of funds, has long felt the need for a more stable and flexible source of working capital than is possible through annual appropriations. This proposed bill, patterned after the Act of August 3, 1956, as amended (16 U.S.C. 579b) which provided for a working capital fund for the United States Forest Service, would provide a more efficient method of financing and accounting for the various programs and service operations of the Bureau of Land Management: including grazing, forestry, outdoor recreation, wildlife habitat development, range improvement, cadastral survey, watershed treatment, lease and sale of land and mineral resources, weed control, construction, and maintenance of buildings and roads, and other conservation and environmental protection activities.

These programs affect more than 450 million acres of public lands -- approximately 20% of the total area of the United States.

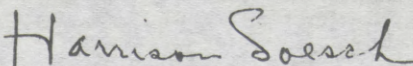
These programs require a variety of special supplies and equipment such as firefighting equipment, grass seed, tree seedlings, survey markers, pulaskis, rations, and fire retardants, which are not readily available and therefore must be purchased in advance, stored in convenient locations until needed and replenished when used.

Substantial economies can be achieved if purchases and repairs of such equipment can be accumulated to take advantage of quantity or seasonal purchasing. A working capital fund would also greatly simplify bookkeeping and contractual arrangements with suppliers, which when funding is based on annual appropriations not available for obligation beyond the end of the fiscal year, is rather complicated.

The \$3 million authorized in the bill will provide the initial capital to establish the fund. The initial capital is necessary to acquire the assets for "sale" to activities financed by annual appropriations. The working capital fund will be self sustaining. The small administrative cost of the fund will be recovered from the benefiting activities. The savings generated by the fund will more than offset the administrative costs.

The Office of Management and Budget has advised that this proposal is in accord with the President's program.

Sincerely yours,


Assistant Secretary of the Interior

Hon. Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Enclosure

Senator METCALF. My opening statement has been duplicated and is available to anyone who wants it. In the interest of time I am going to put it in the record, except I do want to call attention that I support Chairman Jackson's decision to move independently and separately on the organic legislation.

STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. This is an open public hearing before the full Committee on Interior and Insular Affairs to receive the views of Government witnesses concerning title I of S. 921, and S. 2401, bills to provide for the management, protection, and enhancement of the public domain lands. At this time, the committee is also considering S. 2743, a bill to establish a working capital fund for the Bureau of Land Management.

The committee has previously received the views of various interest groups and public witnesses concerning S. 921 and S. 2401. The nature of the testimony presented in 2 days of hearings revealed a broad based consensus that this Nation must develop a set of rational and comprehensive policies and practices if the public domain lands are to be managed in the best interests of the American people.

There are presently several bills pending before this committee which are specifically concerned with mining and mineral policies on the public lands. These measures include S. 2727, the Mining Law of 1971 and S. 2542, the Mineral Development Act of 1971. In addition, title III of S. 993, the Mined Area Protection Act of 1971 and title II of S. 921, the Federal Hard Rock Mineral Leasing Act of 1971 address the issue of mineral development on the public lands.

Because of the complexity of these issues and the number of legislative measures involved, it appears advisable to consider the questions of general management practices and mineral development policies separately at this time. I believe all of those interested in our great public domain lands agree on the urgency of providing a basic act for their administration. Therefore, I support Chairman Jackson's decision to move ahead separately on the organic legislation.

In June of 1970, The Public Land Law Review Commission completed its 5-year study of the policies, laws, and regulations governing the Nation's federally owned lands. In the Commission report submitted to the President on June 20, 1970 the Commission stated:

Throughout our work we were aware of the ever growing concern by the American people about the deterioration of the environment. We share that concern and have looked in vain to find assurance in the public land laws that the United States, as a landowner, had made adequate provision to assure that the quality of life would not be endangered by reason of activities on federally owned lands. We find to the contrary that, despite recent legislative enactments, there is an absence of statutory guidelines by which land management agencies can provide uniform, equitable, and economically sound provision for environmental control over lands retained in Federal ownership.

The task now before us is to develop a comprehensive management program for the federally owned lands. Guided by principles of multiple use and sustained yield, and committed to the management of these lands for the highest and best use, and not necessarily for the highest monetary gain, this committee will seek legislation to provide the appropriate guidelines and management criterion which will protect the public lands in the best interests of this and future generations.

I look forward to receiving the testimony of the distinguished witness present today and invite the continued assistance and cooperation of the administration as Congress seeks to develop a comprehensive public land use policy.

I have long called attention to the need of the Bureau of Land Management for extra appropriations and extra help.

That Bureau is administering some of the most valuable lands in America and some of the most vital lands in America, and sometimes it has been a stepchild of the Appropriations Committee and our resources management. So I am delighted to have the Interior Department up here defending its area of responsibility.

Senator Jackson has a statement also on behalf of this legislation. On behalf of the chairman of the full committee, I direct this statement be incorporated in the record at this point.

(The statement of Senator Jackson follows:)

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON, AND CHAIRMAN, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

This is an open public hearing before the full Committee on Interior and Insular Affairs to consider title I of S. 921 and S. 2401, bills to provide for the management, protection, and development of the national resource lands by the enactment of an organic act for the Bureau of Land Management and to consider S. 2743, a bill to establish a working capital fund for that Bureau.

On September 21 and 22, 1971, initial hearings on public land legislation, including the two bills, S. 921 and S. 2401, as well as S. 2450 and S. 2542 were held. Representatives of various interest groups and public witnesses were heard at that time. The purpose of the hearing today is to obtain the views of government witnesses.

The hearings in September considered the broad range of problems pertaining to the public domain lands including reformation of the mining law of 1872. Legislation relating to the revision of the Mining Act of 1872 is now being considered in S. 2727, cited as the "Mining Law of 1971", which calls for reform of the Mining Laws. Similarly, title III of S. 993, the "Mined Area Protection Act of 1971", calls for issuing of regulations to govern all types of mining operations on Federal lands. Therefore, it appears that it is advisable to consider the issues related to management of the public lands one step at a time by moving forward on the "organic act" at the present time and dealing with the issue of mineral development separately.

Shortly after the American Revolution, the concept of unclaimed land as public domain—and hence common property of all Nation's citizens—became national policy and the settling of these lands a national challenge.

The Nation's first challenge was exploration and acquisition of the westward lands. The second challenge was to settle and hold these new lands. This challenge was met by the westward migration along with improved transportation. Third, was the challenge to develop this vast frontier. Mineral lands were opened, herds of cattle were moved onto lands that earlier had supported herds of free roaming buffalo. The homesteaders tilled the land, cut the forests, drained the swamps, and founded towns which grew into cities. Very little, if any, planning or thought was given to the effects of this process upon the land. As a result of this development, a fourth challenge arose: that of repairing the damaged land and protecting it from the adverse effects of both man and nature. Efforts to provide this protection have continued to the present.

Now a fifth challenge has appeared: In the United States, a finite land area must serve all the demands of an active, mobile, and growing population. Modern technology has now changed the face of our land and, with it, the social and economic demands upon the land. Development practices in the past focused on quantity rather than quality with little or no understanding of the long term effects of our actions. We must now confront the fifth challenge and adopt measures which will bring forth a realistic balance in which we can achieve both quality and quantity; protect our environment and continue our economic progress.

The diversity of resources, of their location and of the demands upon them, calls for an imaginative approach to develop a cohesive, unified and comprehensive program of land management that is beneficial both to the local regions and to the Nation.

The impetus for this approach results in part from the general recommendations of the Public Land Law Review Commission which issued its final report in June 1970. In order to accomplish the changes recommended, certain underlying fundamental principles must be followed:

1. The functioning of Government in a manner that reflects the principles set forth in the constitution.
2. The balancing of all major interests in order to assure maximum benefit for the general public.
3. The providing of responsible stewardship of the public lands and their resources.
4. The serving of regional and local needs as well as national requirements from the public lands.

Statutory authority, under broad guidelines and policy set by Congress, must be given to accomplish these goals; goals which will be responsive to the specific user and the public in general.

I share the views of many others who are familiar with the problems facing the administration of our great public domain lands of over 450 million acres now managed by the Bureau of Land Management. These public domain lands have been administered by the government, under the 1812 Act which established the General Land Office, the 1934 Act which established the Grazing Service, and then under the 1946 Act which combined the Land Office and the Grazing Service into the Bureau of Land Management. Yet, no comprehensive plan for the use and protection of these lands and their resources has been developed and carried out.

I believe it is essential that a legislative policy be enacted to enable the BLM to exercise its stewardship over our public domain lands. Our national forest lands and the units of our national park system are guided by a set of principles contained in organic acts for each of the administrative agencies. Similarly, title I of S. 921 and S. 2401 both provide an organic act for the administration of our public domain lands by the Bureau of Land Management based upon concepts of multiple use and sustained yield.

I hope this hearing will provide a contribution toward the development of sound and productive management practices to administer this Nation's public domain lands.

Senator METCALF. The only witness on this legislation this morning is Assistant Secretary of Interior for Public Land Management, Mr. Harrison Loesch, a frequent visitor of ours, and often appearing before the committee.

If you will come forward, Mr. Secretary and identify your colleagues, we will be delighted.

STATEMENT OF HARRISON LOESCH, ASSISTANT SECRETARY, PUBLIC LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY BURTON W. SILCOCK, AND D. MICHAEL HARVEY

Mr. LOESCH. Thank you, Mr. Chairman. I am, of course, delighted to have the opportunity to testify on these bills since I consider the purpose behind them to be of the utmost importance.

I am accompanied this morning by Mr. Michael Harvey, the Legislative Counsel of the Bureau of Land Management, who sits on my right, and Mr. Burton W. Silcock, Director of the Bureau, who sits on my left. In the event of questions which I cannot handle, I will call upon them.

Senator METCALF. That will be the day when we ask you a question you can't handle.

Mr. LOESCH. Thank you, sir.

All of us have recognized the great importance of this legislation, President Nixon himself, in both his environmental message of February 8th, and his state of the Union message last January, mentioned that we have been without this kind of legislation for far too long.

The lands owned by the Federal Government comprise one-third of the area of our Nation. Over the years, Congress has established goals and objectives for large areas of these lands, in the national forest, national park, and national wildlife refuge systems. There are other special lands of much smaller nature. However, a comprehensive set of goals and objectives has not been established for 60 percent of these lands—the 450 million acres administered by the Secretary of the Interior through the Bureau of Land Management.

Both S. 2401 and title I of S. 921 are specifically designed to fill this major gap in public land policy and to provide the management tools needed to carry out such policy. They would serve as an organic act for the public lands administered by BLM. We are aware of and appreciate this committee's interest in and support for a BLM organic act. We also appreciate the strong support for such an act by the witnesses at the committee's hearings on these bills last year. A BLM organic act is an idea whose time has come.

Secretary Morton's executive communication transmitting the National Resource Land Management Act, S. 2401, explains its basic objectives and provisions in detail. I think, by the way, that has been a matter of record, Mr. Chairman, since July of last year. The Department's report on S. 921 indicates why the Department prefers S. 2401 to title I of S. 921. I will simply highlight our position this morning.

The Department believes that public land statutes should set out guidelines for the public land administrator in terms of goals and objectives, and provide the administrator with the authority necessary to reach those goals and objectives by appropriate means.

As we see it, specific guidelines in statutes which are not broadly goal oriented circumscribe the authority of the administrator in such a way as to prevent him from achieving the objectives of the policy, or at least hampering him in that effort.

Specific guidelines can equally frustrate those who seek to use the public lands when the law sets conditions not responsive to the needs as they emerge even though the use sought is in the public's interest and the user's. In addition, they also create, or tend to create, loopholes through which the objectives of the law can be evaded by those who seek to subvert public policy. Thus, the effort to finitely define tends to be self-defeating.

We recognize that broad grants of authority can be abused by the Secretary and those under his direction. The same can be true with the application of specific guidelines, such as acreage limitations. The answer to both of these is our democratic system of government, with its high quality policy officers, professional civil service, active public vigilance, real public participation opportunities, and congressional oversight. I might digress from my statement here, Mr. Chairman, to say that certainly my experience in any job has been if I got out of line with public concerns and congressional concerns I have soon heard about it to the extent which could result in a reversal of some previous decision.

Senator METCALF. Mr. Secretary, you are in the Department of Interior. If you were over in the Office of Management and Budget you couldn't say that.

Mr. LOESCH. Perhaps not, Mr. Chairman.

S. 2401 was drafted with these principles in mind. It is designed to establish statutory goals and objectives which provide for comprehensive land use planning, management under principles of multiple use, and sustained yield, environmental protection, intergovernmental coordination, public participation, and sound administrative procedures. Title I of S. 921 is designed to achieve the same objectives.

S. 2401 is also designed to complement the proposed National Land Use Policy Act which deals with non-Federal lands, and the proposed Department of Natural Resources. It will provide a broad framework for any legislative proposals dealing with specific uses or resources which may be made in the future.

S. 2401 would apply to all lands administered by the Department through the Bureau of Land Management. It would adopt the name National Resource lands to designate adequately their importance. It declares a national policy that these lands be managed under the principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, protect the quality of the environment. Disposal would be authorized only when the management of the public domain would be significantly improved thereby or when such disposal would serve important public objectives which cannot be prudently and feasibly achieved on non-Federal lands.

S. 2401 directs the Secretary of the Interior to inventory the national resource lands and to develop and maintain comprehensive land use plans for them. These inventories and plans would provide the basis for land management, and would give priority to the identification and protection of areas of critical environmental concern. In this way, the planning and management of federally owned lands could be coordinated and consistent with land use plans for State and private lands such as would be developed under the administration's proposed National Land Use Policy Act.

S. 2401 would repeal the hodgepodge of land disposal laws and replace them with a modern disposal law authorizing the Secretary to sell for fair market value those lands meeting the standards set forth in the proposed bill.

Certain special purpose land disposal laws, including the Recreation and Public Purposes Act, would not be repealed.

Equally important to land management is the authority to acquire lands necessary to effectively carry out authorized programs, or for blocking up existing land holdings. One traditional method of doing this, land exchanges, would be retained with the modification that where the lands are not of equal value, the value may be equalized by cash payment. Of course, Mr. Chairman, this is in line with the authorities which other land managing agencies have and which BLM does not.

S. 2401 would significantly enhance the management of the national resource lands by making violation of laws or regulations pertaining to them a crime and by vesting enforcement authority in certain designated departmental employees. BLM is the only public land management agency without enforcement authority. At this point, Mr. Chairman, let me digress again from my statement and say we do not envisage a new army of enforcement officials on the western public lands, but in areas of critical, environmental concern, and I think perhaps one of the best illustrations is southern California desert at this point; it becomes an impossible task to administer those lands for

protection without on-the-spot enforcement authority. If you get 500 motorcycles on a delicate desert environment, you have damage that may last for years. If you have any concentration of public use, and the people are there, it is not that we are trying to develop something, the people are there, and if we won't manage the land to preserve their environmental values with some regulations as to where and how those vehicles are used, for instance, we are in trouble and our people have to go somewhere, maybe miles away, to get a warrant, and by the time they are back with the proper law enforcement officers it is a waste of their time. I look on this enforcement authority as being just one of the facets of the act, but one of great importance to the future of public lands.

The policy set forth in S. 2401 would apply to all discretionary actions taken by the Secretary on the national resource lands. We feel that multiple use management of the public lands must consider all the resource values of the land particularly those whose development tends to exclude other uses.

This committee and the 92d Congress have the opportunity to make an historic contribution to public land policy, by the passage of either of the acts under discussion.

The national resource lands are a priceless and irreplaceable national asset. It is time to provide the Department of the Interior with the tools to manage and preserve them in accordance with their value to the American people. The proposed National Resource Land Management Act is designed to do this in a manner consistent with pending national land use policy and executive reorganization proposals.

We strongly urge your approval of S. 2401.

With that, Mr. Chairman, I will try to answer the committee's questions.

Senator METCALF. Thank you very much, Mr. Secretary, for a strong statement in favor of this legislation. You have directed yourself largely to the administration bill, but you have directed yourself, of course, to the problems with which we are concerned.

Senator GRAVEL.

Senator GRAVEL. I have no questions. As usual, Secretary Loesch presented a very able and articulate argument.

Senator METCALF. Senator Hatfield.

Senator HATFIELD. I have no questions.

Senator METCALF. Mr. Secretary, S. 2401 provides for an inventory of all land. Does the Bureau of Land Management have an inventory?

Mr. LOESCH. It is engaged in a continuous process of inventorying lands. Mr. Chairman. The process of such inventory did not begin long enough ago nor has the funding level been high enough to get at it in a fast and really efficient way, I think. We are, however, steadily inventorying lands and, of course, this act will require us to do so and undoubtedly furnish us a little more muscle to get the funds and men to do it with.

Senator METCALF. You do have, however, authority to conduct an inventory if you had the appropriation?

Mr. LOESCH. Yes; we do.

Senator METCALF. And you had previously temporary legislation which directed such an inventory?

Mr. LOESCH. You may be speaking of the classification and of the multiple uses act, Mr. Chairman, which basically provided for the classification and reclassification of lands as you are well aware, for

various purposes, for multiple use or single use. I don't recall that it is stated as a policy, but it certainly implied that an inventory would be necessary in order to carry out the purpose of the act. That act, of course, expired in 1970, and we have been without classification authority since that time, except as to areas which might have been tentatively classified just before the act expired and for which we have authority to finally classify up to 21 years following the expiration of the act.

Senator METCALF. When does your authority to take care of the temporary classification expire?

Mr. LOESCH. Well, the last positive day will be December 23, 1972, but that is not the definitive date. The definitive date is 2 years after the proposed classification, whenever that may be. We have some areas in Alaska classified—it has been superseded by the Alaskan Native Claims Act.

Senator METCALF. Superseded by the classification you just made?

Mr. LOESCH. Yes.

At the present time all of the areas which we have tentatively classified, and some of them which we finally classified have been withdrawn under one or more provisions of the Alaskan Native Claims Act, some for identification as lands being included in the 80 million acres of the forest systems in that act. And the rest of it has been withdrawn under what—section 17(D)(1); we refer to those lands and public interest lands for study and future classifications.

Senator METCALF. I know that you have the same contingency that we have, with many interests and much concern experienced with access to public domain lands. Have you ever had an inventory as to public domain lands to which access is now blocked by private landowners?

Mr. LOESCH. I don't think we have what you can call a whole catalog of such lands, Mr. Chairman, but in particular States, particular areas which come to our attention, we certainly do have such an inventory. I have been recently involved with a little right-of-way question in my own backyard in western Colorado, where there is a lack of access to a rather large area of public lands.

Senator METCALF. This is a matter of great concern to people all over the country?

Mr. LOESCH. Yes.

Senator METCALF. We have approached some of this with easement suggestions. How many miles of easements would we have to have to give access to these public lands?

Mr. LOESCH. I don't have any idea. We might be able to furnish that for the record, Mr. Chairman, but I doubt if we would be able to give a definitive answer, because I don't think at this moment we probably have a sufficient inventory to do it.

Senator METCALF. I am sure until you have an inventory of the lands blocked and so forth, you wouldn't have it. Can you give us an educated guess?

Mr. LOESCH. Well, Mr. Chairman, the difficulty is this. Suppose you have a small area of public land, as public lands go, say 2 or 3,000 acres, that may be blocked off. This may not come to our attention as a public concern because nobody particularly desires to use that rather smallish parcel, so it might not get into an inventory of what is blocked off. Major areas, we are certainly acquainted with. I can give you a horseback guess that we probably need perhaps somewhere

in the neighborhood of 2,000 miles of easements to get to more or less major areas that may be blocked, but that is pretty much—

Senator METCALF. It seems pretty small.

Mr. LOESCH. What I did, to tell you the honest truth, was in my head decide that the mileage that I knew about was probably somewhere near 10 percent of—

Senator METCALF. I can think of some BLM land along the Madison, along the Jefferson.

Mr. LOESCH. I think we can furnish you some figures.

Senator METCALF. We will understand it is only a horseback estimate.

Mr. LOESCH. Yes.

(The information follows:)

The Bureau of Land Management has an inventory of access needs under way. Based on preliminary incomplete review, we have identified approximately 20 million acres of public land to which public access is not available. Our preliminary estimate is that approximately 10,000 miles of easements will be needed to provide public access to these lands. Both of these figures will probably increase as our review is completed.

Senator METCALF. Do you have authority to acquire land if you can get an appropriation? Do you have the necessary authorization for appropriation?

Mr. LOESCH. No.

Senator METCALF. So you need further legislation for both a request for appropriation and acquisition of that land?

Mr. LOESCH. Yes; we need that at the present time. Either of these acts would provide the authority that we need.

Senator METCALF. So—

Mr. LOESCH. Then it would solely become a matter of getting the money to do it.

Senator METCALF. Right now you don't have the authorization to go to the appropriation committee to get the money?

Mr. LOESCH. That's correct.

Senator METCALF. And neither of these acts gives you that necessary authorization?

Mr. LOESCH. No; both of the acts give it to us.

Senator METCALF. Yes; that is what I thought. I misunderstood. As I understand it, both of these acts give you authorization that you do not have now to go to the appropriation committee to get the necessary money for acquisition of easements?

Mr. LOESCH. Yes, sir.

Senator METCALF. Section 7 of S. 2401 grants authority to require land reclamation. Do you not now have authority to require land reclamation as a condition of use?

Mr. LOESCH. It depends, Mr. Chairman. In some cases we do, in some cases we don't. It depends on the particular situation.

This is the trouble with the BLM right now, that is to say, this is the reason why there is a great feeling for overall policy, because at the present time our authorizations are in a patchwork situation, deriving from various acts for various special circumstances, and we have no overall policy directive, and that, of course, is the purpose of both of these acts.

Senator METCALF. Then there are areas in the law, not geographic areas, but there are parts of the law that do permit you to have author-

ity to require reclamation legislation but it is not clear and not universal and these acts will give you that authority?

Mr. LOESCH. That is exactly right.

Senator METCALF. What conditions do you impose now on persons seeking access to Federal lands?

Mr. LOESCH. Seeking access?

Senator METCALF. Yes.

Mr. LOESCH. It depends on the purpose, and Mr. Harvey reminds me, Mr. Chairman, if it is for recreation there may be one set of requirements, if it is grazing lease, grazing permits, another. At the moment, as you may be well aware, we are engaged in a kind of business of developing some regulations in connection with grazing permits that are rather stern in connection with the use of intoxicants on public lands. When we are in the coal-leasing business, we may have quite severe regulations and we certainly have the authorization for that to require reclamation and replacement of top soil. We are having a kind of hassle up in your State at the present time over the requirement that on strip mining you have to separately stockpile the topsoil and put it back separately so that the land would be revegetated properly.

Senator METCALF. We are having a more difficult problem, Mr. Secretary, than that. We are now having the mining companies moving in on private land and condemning the surface rights. As I understand it, the Bureau of Land Management and I will make this a record because it is a matter of local concern; but, it is a matter of quite a bit of concern. As I understand it, when you lease land that belongs to the Federal Government and the surface rights belong to you, that proposal is for reclaiming that land and restoring it, rather than just to give surface ownership to the person leasing the land.

Mr. LOESCH. Yes; indeed.

Senator METCALF. And the usual custom in many public domain States is that, under the homestead laws, a private individual would own the surface rights and the Federal Government would retain the mineral rights.

Mr. LOESCH. Yes; this depends on how and when the surface rights would be obtained.

Senator METCALF. Let's take a grazing homestead where someone acquired the surface rights and the Federal Government retained the mineral rights. The whole concept of the law is that that man will retain his surface rights.

Mr. LOESCH. Yes.

Senator METCALF. And it is the responsibility of the person exploiting the mineral rights to pay damages and so forth for the damages he causes to the surface rights as a result of his developing the mineral rights.

Mr. LOESCH. Yes.

Senator METCALF. Now, in Montana we have a different State law. The mining company can exercise the right of eminent domain on the surface rights that is, acquire the surface rights in order to exploit the mineral rights. Let me tell you how that happens. In the city of Butte we have the Berkley Pit and the Anaconda Co., of course, is expanding the Berkley Pit which is a huge and vital operation within the confines of the city itself. A few years ago the legislature decided, almost unanimously, that it would not be in the public interest for the

owner of a local bar to stop operation of that huge development. And so they said this mining corporation can acquire the surface rights. Now we have an activity in eastern Montana on public domain where we have various areas, and rather than do the kind of restoration that is necessary to take care of a livestock producer, a farming operation or something, the mining companies are moving into Montana and by eminent domain acquiring surface rights and then they can go in—

Mr. LOESCH. Let me ask a question here, sir. Are the mineral rights held by the Government and have they already obtained a mineral lease?

Senator METCALF. Some of the mineral rights are held by the Government and some were sold by the Government. Largely, this developed, as you know, on the Crow and Cheyenne Reservations where the Indians retained their rights.

Mr. LOESCH. Yes.

Senator METCALF. I bring this up because this is one of the problems we run into with this separate Federal and State jurisdiction on laws such as eminent domain. You can see the vast problem involved in these huge areas in Montana, where a company would rather pay \$150 an acre and buy out the surface owner and not worry about the landowner looking over our shoulder, but the public interest is not served very well in that way.

Mr. LOESCH. No; it seems to me, Senator, that the passage—although I have to say I don't think it has enough teeth at this time, it seems to me the passage of the National Land Use Policy Act would greatly encourage a reformation of this problem.

Senator METCALF. I am going to bring the problem up in a letter, it has just come to my attention, to think of something we can do at a Federal level, because it is a matter of great public interest and concern, not to have one or more coal companies acquire the surface rights of huge areas of Montana just for the purpose of strip mining coal.

Mr. LOESCH. Right. Of course, Senator, it would make a difference to us who owned the surface, whether the Federal Government did or a private person did. If the Federal Government owned the mineral rights and BLM were leasing the mineral rights, and this would primarily be in the area of coal, of course, we would not have the same reclamation and rehabilitation requirements in our leases if a farmer or rancher owned the surface.

Senator METCALF. Now, that is helpful.

Mr. LOESCH. Yes. This would only arise where either a lease from the Government was obtained a number of years ago, before our regulations were fully developed. Our current regulations for surface protection and reclamation do not apply where the United States is not the surface owner.

Senator METCALF. I have digressed from this bill with the cooperation of my friend from Oregon. This is a matter of a great deal of concern that has arisen and I propose to take it up with you and your staff in more detail to see if there is some Federal legislation that we can call into effect.

Mr. Secretary, can you give me an example of the situation that would justify authorizing the Secretary to sell national resource land without competitive bidding, that is section 8, S-2401?

Mr. LOESCH. Yes; I think so, Mr. Chairman. We frequently have cause, and perfectly legitimate cause, for very small acreages of public land to be added to a school playground, for example, or to a small municipal government for some purpose.

Senator METCALF. Would that be surplus land?

Mr. LOESCH. No. The national resource lands that are managed by BLM are not ever characterized as surplus land except, for instance, if it has a headquarters or building or warehouse somewhere, that is past usefulness, that is different. But the public lands are not surplus lands.

Senator METCALF. I see. The enactment of any of this legislation would repeal the provision for giving surplus lands to any municipalities?

Mr. LOESCH. No; It would have a totally different effect.

Senator METCALF. There are instances when it is desirable in your opinion to dispose of public lands under your administration, BLM lands, without competitive bidding?

Mr. LOESCH. Yes; I don't think it would serve any purpose. Mr. Chairman, if I want to dispose of a piece of public land that is urgently needed by Helena, Mont., let's say, or Pueblo, Colo., or any other town for instance, to install a piece of pumping system to its water sprinkler or something like that, you wouldn't want to put that up for bid. In the first place, somebody might try to hold up the city and you are aiming at the disposition of it for a different kind of public service.

Senator METCALF. But it would be appraised and sold?

Mr. LOESCH. Yes; it would be.

Senator METCALF. At the going market rate?

Mr. LOESCH. Yes; the only time that we sell lands or dispose of land not at the full market value is when we are disposing of it under the Recreation and Public Purposes Act, which act itself would not be repealed by either of the acts we are considering today. It provides that local governments, for park purposes or outdoor recreation purposes, can, in proper circumstances only when the land is not more urgently needed for a Federal program, obtain at less than the fair market value. The amount that such a government or entity can obtain for it, maybe anything from zero to 100 percent, depending on a judgment by the Director and the Secretary.

Senator METCALF. And none of those allied laws would be repealed by this?

Mr. LOESCH. No, sir.

Senator METCALF. Now we have some land all over the West where mineral rights are different as we discussed, from the surface rights. The Government has the surface rights or the Government let the surface rights go, mineral rights in the lands of the Government, different holdings of the two estates. Does this give authority to convey mineral rights to private citizens.

Mr. LOESCH. You mean the legislation we are considering?

Senator METCALF. Yes.

Mr. LOESCH. No; I don't think either 921 or 2401 does. Let me check that.

Senator METCALF. Look at section 9, in 2401. It would seem to me that would prevent the Secretary, except where the Secretary finds no mineral values in the land—and would preclude you from conveyance of mineral rights, is that correct?

Mr. LOESCH. Yes. Let me ask Mr. Harvey to respond to this.

Mr. HARVEY. There is no intent, Senator Metcalf, that section 8 would authorize the sale of reserved mineral interests. The basic provision in section 9 is that all of the sales under this act would reserve the minerals, except under those two conditions listed in the beginning, where there are no mineral values or reservations to interfere with the development. Those tests are taken out of a number of private bills, which the Congress has passed in the past few years.

Senator METCALF. As I recall, Congress has found there is not any mineral interest involved.

Mr. HARVEY. Yes; in those cases, we would convey the full fee title, otherwise we would reserve the mineral interests of the United States in the sale.

Senator METCALF. Over in section 10, when the United States owns a mineral estate can it be exchanged or sold?

Mr. HARVEY. Yes; it could be exchanged.

Senator METCALF. Under section 10?

Mr. HARVEY. That is correct, sir.

Mr. LOESCH. If I could interject here, Senator, I might bring to your attention the fact that exchange of mineral interests could be of great value in blocking up areas for either private or public development. I am specifically thinking at this moment of oil shale. There are a lot of complexities in such an exchange, I may say, but it could be very valuable.

Senator METCALF. How many acres of land could one individual acquire under your bill, 2401?

Mr. LOESCH. There is no limit.

Senator METCALF. No limit?

Mr. LOESCH. No.

Senator METCALF. Just subject to the discretion of the Secretary and the resources of the individual?

Mr. LOESCH. Of course neither bill sets an acreage limit that could be acquired by one individual, but both bills set up purposes for disposition. I think it is fair to say that everyone in our department recognizes that the era of large-scale disposition of the public lands is long gone and it is probable that from now on—and it certainly is the thrust of both 2401 and 921—that the land shall be retained for our descendants as a national trust, and that only in instances of either overriding public interest or for truly important management reasons, should public land be disposed of to individuals.

Now the small acreages of land might be disposed of to municipalities or States, but the private individual's obtaining public land is about gone. I have not been able, for instance, to transfer desert land that I personally consider ought to be transferred because of the public concern about such transfers.

Senator METCALF. But you would have, if this legislation were enacted?

Mr. LOESCH. No, sir. This legislation, in the first place, would repeal the Desert Act entirely, as well as the homestead law and provide me with much stricter guidelines than I have.

At the present time the only limits on my authority to dispose of public land are the acreage provisions of the desert land entry law and that applications meet other requirements of that act. But as a practical matter, it seems so clear that public opinion, not only congressional, by the way, but just the man in the street is against such

dispositions under the Desert Land Act that I am effectually prevented now from making such decisions as I am by the law. Of course, I don't consider that you should do, by either administrative fiat or inaction what ought to be stated by the Congress.

Senator METCALF. Mr. Secretary, some of us are concerned by some language that came out of the Public Land Law Review Report. That is the question of dominant uses, and that, of course, appears in S. 2401, your legislation.

Would you give us a little broader discussion of the definition of your concept of "dominant use" in classifying resource land?

Mr. LOESCH. Yes. Of course, that term does not appear in the bill. I think there may have been—based on my discussions with various persons—there may have been some misunderstanding of the use of that term. Certainly, I believe that the older concept—well, I guess it is—

Senator METCALF. The older concept was dominant use.

Mr. LOESCH. The concept of multiple use of the public lands is certainly what we subscribe to in the Department, with the exception, of course, of such things as national parks, which essentially are dedicated to a single use, the recreation and preservation—I think sometimes the term multiple uses is used in too narrow a sense.

For example, in Senator Hatfield's State we have some of the most valuable timberland in the country under BLM. Just by the nature of things you might describe the use of those lands as being dominantly for commercial production of timber. But, at the same time, there are other values in it, at least some of these lands, including recreation and wildlife habitat, to some degree, although wildlife doesn't frequent the deeper forests as much as people are inclined to think. Those uses we try our very best to preserve, of making use of the land for commercial timber production.

Of course, in the issue now before the public on clear cutting for example, while it may look for a few years as if a particular area is used for nothing but timber production, as the new growth comes up it becomes extremely attractive to wildlife, if we do it properly, and it shouldn't hurt the watershed because of water pollution and so on, and over a longer cycle we may not be using that land as a dominant use anyway. We subscribe the idea that all values in the public lands should be preserved, used, and wisely husbanded, whatever the first purpose might be.

Senator METCALF. I certainly commend you on that. That is, I think, the concept of most of the members of this committee and of Congress when we passed the Multiple Use Act.

What criteria do you apply when there are conflicting uses? How do you resolve these conflicting uses?

Mr. LOESCH. Of course, it depends on each particular situation. Generally, and far more strictly now than ever before in history, our regulations provide that if we at a particular time or in a particular time, for example, use land for a particular purpose that it will be put back in the same condition as it was before we used it for that purpose, so that other values will, if damaged or destroyed during this period, return and this is true of course in the timber area, in the coal mining area where you are talking about stripping. Recreation generally, if properly managed, doesn't hurt the land value, not much.

We had a discussion a moment ago about the use of vehicles in some delicate areas that you have to watch. Generally you can interlay recreational values with other values that constitute the multiple use

of the land. I don't know if you have a particular thing in mind, Senator.

Senator METCALF. I was going back to a question I asked you before. We sometimes have locatable minerals on BLM land.

Mr. LOESCH. Yes; until and unless the mining law of 1872 is changed BLM has little authority, if a mineral location is made, to require rehabilitation and reclamation. There are before the Congress at this time at least two other acts which would remedy that situation. I may say, Senator, that—you are very well aware, that the whole question of land use and the structure of our legislation to make land use better in this country is—all of this is before you at this time. The problem is, Senator, so far as I am concerned, that I feel as a foundation stone for that legislation we have got to have an organic act, and that the other uses, the sale uses, the mining, timbering, whatever the uses may be can be addressed in separate acts by the Congress, and that is the way it ought to be.

Until you have the general policy framework laid out so that we know what we ought to be doing as a policy thing on these lands, so we can say to the members of the public, "look that is not the policy, the policy is whatever you may determine," until we do that, there is going to be continuous squabbling throughout the public sectors, and even on the Hill here, and perhaps at times even within the Department, because they say, "Loesch, you are doing this by administrative fiat that you have no right to do. The law says you shall grant homesteads under certain conditions. You haven't granted a homestead since you have been here. The same with certain land entries.

"You are accused of irresponsibly disposing of the public lands under outstanding law, or else of irresponsibly keeping them when the law says you are supposed to dispose of them." This is what has caused, it seems to me, the great push both in the administration and on the Hill and in the public sector for some attention to what we call national resource land and the policy in connection with this land.

Senator METCALF. Senator Hatfield.

Senator HATFIELD. Mr. Secretary, you mentioned the Mining Act of 1872. Do I assume there are claims or claims can be established on BLM land under the mining law of 1872?

Mr. LOESCH. You may certainly assume so.

Senator HATFIELD. Then starting from that basis, what is there in this particular bill that would limit or repeal or invalidate that mining law of 1872 as it relates to BLM land as we did in the case of modifying the 1872 mining law under the wilderness law.

Mr. LOESCH. Nothing.

Senator HATFIELD. Shouldn't there?

Mr. LOESCH. No; Senator. As I said a minute ago, I think that basically a separate charter, an organic act stating policy that the Congress believes is the correct policy should be passed by itself.

Senator HATFIELD. On mining, you mean?

Mr. LOESCH. No; I am speaking now of 921 or 2401, then I think a separate act should be passed to reform the 1872 Mining Act.

There are before the Congress now two bills, administration bills, one addressing itself to the 1872 Locatable Minerals Act and the other addressing itself to the Mineral Leasing Act for the leasable minerals. There are also before the Congress other bills proposed by Members; I think Senator Jackson has one, which addresses the same subject in a slightly different manner.

Senator HATFIELD. Mr. Secretary, you distinguish then between the Mining Act of 1872 and all of the various disposal acts which you have listed here on pages 13 to 15 where you have sought to modify or repeal the disposal acts?

Mr. LOESCH. Yes.

Senator HATFIELD. You distinguish them from taking action on the disposal acts and taking action on the mining law of 1872?

Mr. LOESCH. Yes; I do. Most of them apply just to BLM.

Senator HATFIELD. And therefore that is the reason why you incorporate them, because they apply exclusively to the BLM, whereas the Mining Act of 1972 transcends your act and applies to others?

Mr. LOESCH. Yes; this is the reason. Also, Senator Hatfield, that eventually we came to the position of 2401 when we started off or when there were other proposals before the Congress that covered land belonging to all of the other land managing agencies. No agreement could be arrived at among the land management agencies, and consequently we came down for a BLM act.

Senator HATFIELD. The title of the bill is not correct, when you say to provide for the management or protection or development of national resource lands or to provide for the protection or development of public lands, or provide for the development of federally owned minerals, because you still have a situation in the Mining Act of 1872 which could bring about the same situation we faced under the Forestry Department with regard to the Three Sisters Wilderness Area in Oregon. The U.S. Borax has laid claim there, but where there is or could possibly be a situation to destroy the very wilderness that this whole Wilderness Act sought to set up, by mining of the pumice. Could that situation apply on the BLM lands?

Mr. LOESCH. Yes, sir; it will if you don't also pass a mining act reform bill.

Senator HATFIELD. Really this bill is still subject to contradictions and violations and invalidation or anything else under the continued existence of the 1872 Act and you have not even modified it as the Wilderness Act did by saying such claims must be made by 1984.

Mr. LOESCH. S. 921 does give us broader authority to withdraw from mining; we can classify and as part of classification we can withdraw it from mining. My own view is that this is not going to really help very much. Because while it becomes possible to withdraw from mining, you invariably get into a huge conflict and public uproar when you do. Since the 1872 mining law remains the way it is, it is going to cause a continuing potboiling proposition.

Senator HATFIELD. You are saying the only answer to that is to attack that matter separately from this or any other land use situation.

Mr. LOESCH. Yes, sir; that is my belief.

Senator HATFIELD. The chairman has been very gracious to let me ask two other questions before I have to attend another meeting.

Mr. Secretary, I understood you to say a while ago that in sections 8 and 9, where you are talking about the sale and conveyance, that there are or there is here in subsection 20, page 7, section 8, an exemption that you can apply to the matter of competitive bids and market values of lands. Did I understand you correctly?

Mr. LOESCH. Senator, let me correct one question. Without competitive bidding, yes, but not below market value. You will find in no event shall lands be sold for less than the appraised fair market value. Which means a normal appraisal.

Senator HATFIELD. Which means all of the land you dispose of will be at the fair market value?

Mr. LOESCH. Yes. There is one exception to this, and that is under the Recreation and Public Purposes Act, which this act does not repeal, which allows us to dispose for park or recreation purposes, to proper entities for local park or recreation purposes. We could do that at below fair market value.

Senator HATFIELD. Would the same rationale apply in the case of small farmers, new community developments?

Mr. LOESCH. No, sir.

Senator HATFIELD. Why?

Mr. LOESCH. I don't say we couldn't do it without competitive bidding, we couldn't do it without fair market value.

Senator HATFIELD. If you are going to make an exception for parks, why couldn't you let it apply for new community developments?

Mr. LOESCH. The Congress provides a scale which in this purpose, and this purpose only the Secretary could dispose of land at less than fair market value. But in the private sector for development and all, I would certainly hold tight to the idea that with or without competitive bidding we ought to get fair market value for the land.

Senator HATFIELD. On page 3 of your testimony, you talk about the matter of these inventories and plans providing the basis for land management and giving priority to the identification and protection of areas of critical environmental concern. In this way, the planning and management of federally owned lands could be coordinated and consistent with land use plans for State and private lands such as would be developed under the administration's proposed National Land Use Policy Act.

You make constant reference to the administration land use program. What I want to ask is this. When you talk about developing plans for the State and so forth—areas of critical environment concern—are you talking about a process of developing plans or are you talking about actual implementation and actual criteria for establishing and administering such plans? Some of us get hung up in the language. The administration's bill has in the land use whether or not the States are required to merely develop a process of identifying and classifying or whether there is an actual feature there that requires the States to follow through.

Mr. LOESCH. Mr. Hatfield, both. I mentioned a while ago that in my view, certainly not the official view, I guess, I thought that the Land Use Planning Act proposed by the administration is not full of teeth. Of course, it was designed to encourage institutional reform by the States without just beating them over the head. But certainly there is no point in planning whatsoever unless you effectuate the plan at sometime or another. We in the BLM, you know, under the Classified Multiple Use Act, not only identified the areas of critical environmental concern and classified them and so on, but then implemented management plans to retain the values that we found. I sort of question if the thrust that I have in my Bureau for an organic act for BLM, would have developed with the speed it has, if the Classification and Multiple Use Act had not expired. It furnished us with a good number of tools that we could and did use, and no longer have.

Senator HATFIELD. When you are proposing legislation of this type, you are not proposing legislation for merely developing plans, classifying, and identifying, but you have a desire and request of this

committee to put real teeth into such legislation so it can be firmly established, administered and perpetuated.

Mr. LOESCH. Yes, sir. I feel that with regard to the acts or two bills that we are discussing this morning. I naturally am not authorized to say—

Senator HATFIELD. I wanted to tie it down to this particular legislation because when the similarity of nomenclature appears, and then when we found in the land use bill of the administration, they meant what they said but didn't go much further than stating the real policy—didn't have real teeth in it.

Thank you, Mr. Chairman. That is all I have.

Senator METCALF. Before the Senator goes, I would like to touch a very sore spot that occurred before Senator Hatfield got into this business. Wasn't Al Sarena on BLM land?

Senator HATFIELD. Yes.

Mr. LOESCH. It was forest land but I believe that the BLM was involved in it in the mining end of things.

Senator HATFIELD. Can we get the record clear on this, Mr. Chairman, I would like to know—by the way, Al Sarena was not the name of the man, as you know.

Senator METCALF. It was forest land but under the jurisdiction of the Bureau of Land Management, as I recall.

VOICE. Mr. Chairman, I would affirm it was on national forest land. The Bureau of Land Management administers that.

Senator HATFIELD. I remember the BLM was involved. Therefore, I assume it was BLM land.

VOICE. I happen to be the gentleman that signed against the Al Sarena claim.

Senator HATFIELD. I might say it cost the State of Oregon a Congressman and Senator both.

Senator METCALF. Thank you very much. I have only one more question. I want to go back to this question of access. Here is a man who gets a mineral location high in the mountains and it is an exploitable mineral and he wants to develop it and he has to build a road across BLM land. What requirements and what conditions and what provisions does he have to build that road?

Mr. LOESCH. We have regulations on that, Mr. Chairman. It depends on the situation. Again, this is something that I do not consider proper to do entirely administratively. We can either make it pretty easy for that man to build his road and get his access, or we can make it just awfully hard for him to. This means, Mr. Chairman, that the public or members of the public are unable to see a cohesive pattern in the management and consequently believe that favoritism and so on may exist and leaves us out on a limb.

In other words, if we evaluate an area as having values that would be seriously injured by operating and having a mining venture going, we can fill a whole lot of ruts in the road. But doing it on an area that has a lot of mines in it, and the general values in the area are not going to be hurt too much, we can be quite cooperative. Of course, I would point out this generally happens in Forest Service, more than it does in BLM.

Senator METCALF. I am talking about locating minerals too.

Mr. LOESCH. The question of access in high mountain country is much more the problem of Forest Service than it is to us. They are in the same position we are. We know of circumstances in which the

Forest Service has administratively prevented access or at least long delayed perfectly legitimate mining men under our present law. We know of circumstances in which they have not prevented access. It comes down to the judgment of the individual situation; and I personally would prefer to see a reform of the mining law to the extent that you could as a general rule require reclamation, rehabilitation, and so on, and then you wouldn't be so worried about the total permanent destruction of other values in error as you are today—where you don't know what the miner does after he gets through the claim and starts to operate.

Senator METCALF. Senator Bellmon.

Senator BELLMON. Thank you, Mr. Chairman. I know Mr. Secretary that in your statement you refer to the fact that, if there is an exchange of land where the lands are not of equal value, there is cash payment. You are talking about exchange of public land for private land?

Mr. LOESCH. Yes.

Senator BELLMON. What happens if BLM wishes to exchange lands with the Forest Service and the lands are not of equal value?

Mr. LOESCH. It is not an exchange, Senator Bellmon. We have rarely entered into an exchange as such with the Forest Service. Sometimes the Forest Service needs to acquire a piece of BLM land and we can make it available to them.

Mr. HARVEY. If I can clarify this a little bit. If we get in what you are talking about, that is, an interagency transfer of jurisdiction. Actually adding lands to a National Forest, with rare exceptions requires an act of Congress. There are some exceptions to that that I don't think we need to go into. Lands can be taken out of the National Forest by an Executive order.

Senator BELLMON. We have a situation in Oklahoma, where the Forest Service manages a large tract of grassland and we have been trying to trade a tract of State-owned forest land which is adjacent to the national forest. Are we going to have to exchange dollars to do this, a State-owned tract of land in exchange for a federally owned tract of land?

Mr. HARVEY. This law wouldn't apply to that transaction at all.

Senator BELLMON. What if you want to exchange from a State-owned land—

Mr. HARVEY. The case you are talking about is undoubtedly land acquired under the Bankhead-Jones Farm Tenant Act, but are actually not in a national forest as such. They can transfer those under the terms of the Bankhead-Jones Act. That authorizes exchanges. I can't recall offhand whether there is a cash equalization provision in there.

Senator BELLMON. As I read the act, you have in here provisions covering the exchange of private land for Federal land with the value being equalized by compensation in dollars. What about the transaction as between a State and a Federal agency. Do we need to cover this?

Mr. HARVEY. No; this is non-Federal lands, so it could cover State for example.

Senator BELLMON. In S. 921, on page 9, line 11, it says the values of the land to exchange either shall be approximately equal, or if not approximately equal, that it shall be equalized with payment of money. What is the similar language in S. 2401?

Mr. HARVEY. Essentially the same language applies to acquire non-Federal land in both cases, which would include State and local government owned as well as private land.

Senator BELLMON. So to work out an exchange, it would be a trade of two tracts of land—

Mr. HARVEY. Yes; our problem now in the Bureau of Land Management is we can only exchange if the values are equal.

Senator BELLMON. It seems to me we ought to make a special dispensation here for exchanges between a State and Federal agency because—so we don't require payment of dollars. After all, the role of the two levels of government ought to be practically the same.

Mr. LOESCH. Of course, Senator Bellmon, you wouldn't have any problem if it was equal acreage and the acreage was of equal value, but if you didn't have that situation it seems to me there might be trouble either way, either on the State or Federal side. We would be in trouble if we tried to let it go for less than fair market value unless it were under the Recreation and Public Purposes Act and the State probably would be in the same circumstance. I doubt if the State would want to let its land go for less than fair market value.

Senator BELLMON. If we were dealing with General Motors and had a board of directors expecting us to come up with a profit every year, but as it is we are dealing with a public that owns the land either through their State government or Federal Government, and it seems to me it is in the public interest, the land is managed by whichever entity can do the best job. Wouldn't the State exchange land worth x number of dollars or Federal lands worth y number of dollars? It is in the public interest to make this exchange. I don't know that the value comes into it in the case I am talking about. The grass lands don't have that much value.

Mr. LOESCH. Let me give you an illustration of the kind of thing and difficulties I run into on a similar concept. You are aware of the fact that a number of States have State selection rights to land that they have not yet set, either under their State development act or wartime condemnation or something or the other. We are presently involved in a situation in Utah which has some 165,000 acres of land that it is entitled to under the law. The land that the Government acquired for the bombing range in World War II was classified—the State of Utah decided to exchange for that land, oil shale land on the east side of Utah, which while I personally do not believe it is of particular value, because I don't think that the values can be demonstrated until you can exploit the resource or develop the resource, we are faced with the proposition that a large number of people believe oil shale lands to be of very, very great value. They also are classified as minerals in nature, but, of course, a different mineral and potentially of far greater value of the mineral in natural lands that the Government acquired. So the question then arises don't we have to look at the fair market value of the land we propose to give the State, in exchange for those the Government acquired in years past. To date there has been no definitive resolution of the question, in spite of the fact that the act which allows the State selection says nothing whatsoever about that, about value but only acreage.

I think you are running into the same problem, Senator, in exchange of any types of lands with the State.

Senator BELLMON. It seems to me, if the Secretary of Interior and the Governor of the State of Oklahoma could agree that an exchange of land was in the public interest that they should have authority to make such an exchange without the necessity of legislation or have Congress appropriate money to make this exchange possible.

Mr. LOESCH. I am not prepared to say you are mistaken on this, Senator Bellmon. I want to bring to your attention that so far as the Federal public lands are concerned, the question of the management and ownership goes far beyond the States in which those lands are located any more and people in New York and Philadelphia and Baltimore and Washington feel——

Senator BELLMON. Mr. Secretary, the Secretary of Interior will have those considerations in mind when he agrees to such a transaction.

Mr. LOESCH. Presumably I believe so. I guess I am raising the question of practicality, as much as I am the concept. It seems to me that any Secretary of the Interior would be most reluctant, if he received a difference in value, to make such an exchange, but if he determined it within the public interest he might do so.

Senator BELLMON. It seems to me we should amend this act to give the Secretary discretion. Assume the value is not particularly significant, maybe only a few thousand, you can't get two appraisers to come out right on the money. This puts you in the position of having to go through a long legislative process to get a very insignificant sum of money. If we could work out an amendment to allow some discretion on the part of the Secretary in making the exchanges between the Federal Government and other governmental entities, would the Department be able to accept the language?

Mr. LOESCH. I don't know, Senator. I would have to consult with our legislative counsel. I have an idea in this instance, he would go by the—the Secretary would go by mine and the legislative counsel's recommendation on it. We would have to think up some language, first of all. I wouldn't be prepared to say whether we could support such an amendment or not.

Senator BELLMON. Also, in your statement, this is my last question, on page 3, you said or note that S. 2401 directs the Secretary of Interior to inventory the national resource lands and to develop and maintain comprehensive land use plans for them. These inventories and plans would provide the basis for land management, would give priority to the identification and protection of areas of critical environmental concern.

Is it contemplated in the development of such comprehensive land plans, you might decide that grazing of forest lands or mountain lands is not in the public interest and stop grazing?

Mr. LOESCH. No, sir; I don't think that is within the realm of possibility. I don't say that in particular small areas whose chief value might be for something else, we might not prohibit grazing at least temporarily. For example, I am thinking of a couple of our recreation areas, developed recreation areas, around the lake, for instance, where we can put in a sanitary facility and camping sites where we might not want cattle or sheep to be. It would be a small place. We find, and I think it is unanimous opinion, that the property will be used and under the concept of continual production and all, that the domestic livestock greatly enhanced wildlife values. Some people who are not informed believe that if you took livestock off the public lands that

wildlife, deer, elk, big game of all kinds would have substantially increased. This is by no means true. Many times we have found, and it is scientifically proven that proper management of cattle for instance can cause deer to increase fourfold in the same area. This is because if you don't have grazing the grass drowns out what the deer exist on, which is particularly true in winter feeding areas and the cattle don't eat the brouse, they eat the grass. If you have a proper balance of grazing your wildlife are increased and so on. We look upon properly managed grazing as one of the best management tools we have for the other values of the same public entity.

Senator BELLMON. Mr. Secretary, I am curious as a relatively new Member of the Senate whether or not we need both the Forest Service and the Bureau of Land Management managing the public lands. Do you have a comment?

Mr. LOESCH. Well, of course, Senator Bellmon, we are heartily in favor of the administration's concept of the Department of National Resources instead of the Department of Interior and a portion of that concept is that all land management agencies would be under one head. I don't think we have progressed really in any official position as to the next step which would be consolidation of the Forest Service and BLM. I have a hunch that both of those bureaus would resist the idea. There are good reasons for having a separate thing, depending on the mission. I perhaps think that it would be more logical rather than consolidating Forest Service and BLM, to put the grassland which you were referring to, under the Forest Service, under BLM and perhaps changing O and C land in Oregon under Forest Service. It would make a neat package so far as commercial timber production is concerned, it would make a neater package so far as range is concerned, but you are never going to be able to avoid the Forest Service, managing grasslands. Grazing lands are intermixed with Forest lands.

Senator BELLMON. This legislation would apply to both the BLM and Forest Service?

Mr. LOESCH. No, sir; 2401 and 921 both apply only to BLM. The reason for that, Senator Bellmon, is that the Forest Service already has an organic act. What we are trying to do here is get a broad congressionally stated policy which operates as a charter for BLM, which just goes as far as the authorities are concerned.

Senator BELLMON. That is all. Thank you.

Senator METCALF. Thank you very much, Senator Bellmon.

I have a statement from the American National Cattlemen's Association which will be incorporated in the record at this point, with comments on the various bills before us.

(The statement follows:)

STATEMENT OF AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION, NATIONAL WOOL GROWERS ASSOCIATION, PUBLIC LANDS COUNCIL .

We are pleased to have this opportunity to present comments on S. 921 and related legislation to the committee on behalf of the American National Cattlemen's Association, the National Wool Growers Association, and the Public Lands Council.

The Public Lands Council is a nonprofit corporation representing thousands of public land grazing permittees. Many of its members are also members of the American National Cattlemen's Association and the National Wool Growers Association. The members of each of these organizations are vitally concerned with the proper management and conservation of our public land resources.

Each of our organizations participated in the work of the Public Land Law Review Commission. The Commission has presented to the President and to Congress recommendations which, if implemented, will restructure the public land laws in a manner which we believe will best serve the national interest for many generations.

We recognize as a necessary and first logical step in this process a pronouncement by Congress of general policies and objectives for a new body of public land law.

We believe that, of the proposals under consideration at this time by this committee, the approach taken by S. 2450 introduced by Senator Allott is to be preferred. Both S. 921 and S. 2401, for example, would be applicable to lands under the jurisdiction of the Secretary of the Interior and administered through the Bureau of Land Management.

We can see no reason for differing policies on federally owned lands simply because the management responsibility happens to be lodged in one agency, rather than another, unless the lands have been set aside by Congress, or under congressional authority, for a distinct and special purpose.

The Public Land Law Review Commission found that many of the existing laws were obsolete or inadequate. Both S. 921 and S. 2401 would repeal a number of these which were singled out by the Commission, such as the homestead acts and the Desert Land Act.

Both would, however, place almost unlimited discretion on the Secretary of the Interior to manage the public lands under his jurisdiction under the most general principles and objectives. To this extent, the bills are inconsistent with the findings and recommendations of the Public Land Law Review Commission which found in almost every instance a need for more statutory guidelines, rather than fewer.

While the approach of these bills may, at first glance, seem to solve the problems created by the existing mass of inadequate and obsolete laws, it is doubtful that many years would pass before it would be found to be inadequate in its own right.

Agency discretion is an almost insurmountable barrier to a citizen aggrieved by an action so committed, even though the action may be inequitable. The courts are so limited in their right to review such actions that the aggrieved person frequently finds himself with only one possible source of relief—Congress.

Nor is it an infrequent occurrence for an administering agency, finding itself besieged from all sides by complaints directed to its exercise of statutory discretion, to seek relief in more definitive congressional guidelines.

If Congress responds to the citizen complaints, or to the agency request for guidelines, it generally does so by a statute directed at a specific situation.

Thus, any legislation which commits the future management of the public lands to such total discretion under the most general of guidelines, is more likely, in the longrun, to compound, rather than solve, the errors of the past.

Many of the principles and objectives for public land management enunciated in S. 921 and S. 2401, as well as many of those set forth in S. 2450, are designed to and, we believe, will serve the public interest.

We support, for example, the principle of multiple use, payment by users of public lands and resources of fair market value, and adequate tenure.

However, we believe that the administrator must be supplied with some guidelines for resolving conflicts between competing uses when such conflicts occur on lands classified for multiple use.

We do not believe that the determination of what is "fair market value" is properly a matter to be committed to agency discretion. As to differing commodities and uses, Congress should provide at least the method whereby the fee or charge is to be determined.

The only solution to the problem of tenure, we believe, is for Congress to provide statutory tenure. Adequate tenure implies security of tenure and we are doubtful that any real security of tenure can exist when tenure is a matter of administrative regulation only.

We believe, therefore, that in order to avoid the difficulties created by the piecemeal approach of the past and the lack of congressional guidelines in existing public land legislation there must now be enacted a general policy act which, to the extent possible, lays down definitive guidelines for future public land management. Further, we believe that as a next logical step, there must be within the framework of such general legislation, specific legislation with even more detailed guidelines as to each consumptive and nonconsumptive use of the public lands.

In addition to these general comments, we wish to offer some suggestions as to particular provisions in S. 921, S. 2401 and S. 2450.

We are concerned, for example, about the limitations which would be placed upon the President in appointing a director for the Bureau of Land Management by section 118 of S. 921.

The requirement that the director be selected from the Federal civil service would disqualify many otherwise qualified individuals. Not all of the expertise in this field lies within the ranks of the Federal civil service. There are persons in state governments, in the academic communities, in industry and in the Congress itself who are qualified for this position.

Furthermore, to so limit the selection of the director, and further provide that the director be subject to the removal only for cause or disability ignores the fact that the director is more than an administrator and that his functions are more than ministerial. He is a policy advisor and he is expected to implement the policy decisions of his superiors. Under the provisions of section 118, a director, rather than being responsive to the policies of the administration, could very well frustrate those policies and, in theory at least, the will of the majority of the electorate.

Our industry has been a consistent supporter of the principle of multiple use management of the public lands. S. 2450 would retain this management principle but would require that multiple use lands be examined to determine whether the area or any subareas are chiefly valuable for some particular use and, if so, such area or subarea shall be classified for their highest and best uses. In those instances where an area or subarea is classified to indicate that it is chiefly valuable for one particular use, that use shall be referred to as the dominant use. These areas would be managed under the principle of multiple use except that, in the event of a conflict between uses, the dominant use shall, during the period of conflict only, prevail unless in the interim there is a reclassification of the area or subarea.

The classification of lands for a dominant use is a practical tool for the resolution of conflicts when they arise between competing uses.

The concept of "dominant use" has, however, caused concern. Some are fearful that economic factors only will determine the classifications while others are equally fearful that those interested primarily in nonconsumptive uses will control the determination through the sheer weight of numbers.

We believe that the fears which have been expressed over the dominant use concept will largely dissipate if it is clearly understood that the classifications are not immutable; if the designation of dominant use areas is made only after a careful examination of all of the factors which might indicate the true highest and best use of the land; if the decision is made free of emotionalism and political pressure; and, if adequate statutory guidelines are furnished for the decisionmaking process.

We most strongly urge that S. 2450 be amended to require that in classifying lands for dominant use, consideration be given to prior or historical use and to the economic impact, if any, of any proposed change of use.

For some time the Bureau of Land Management has been engaged in developing management plans for a number of its grazing allotments. In many areas where these plans have been developed in cooperation with the grazing permittees, they have been well received.

We feel that, in order for a grazing allotment management plan to be successfully designed and implemented, it must be done in cooperation with and with the active participation of the permittee. Practical experience, as well as theory, is a necessary ingredient of any successful plan. Frequently, such practical experience can only be furnished by the permittee.

We therefore feel that management plans for grazing allotments should not be unilaterally imposed by the managing agency as seems to be implied in section 12(c) of S. 2450. The deletion of the phrase "focusing each plan on the smallest unit of public lands deemed by the agency to constitute a manageable entity" from the first paragraph of the subsection and substitution of the phrase "land use plans" for the phrase "management plans" where that phrase occurs elsewhere in the section would alleviate the concern we have expressed without doing violence to what we believe is the real intent of the section.

Section 5(j) of S. 2450 would establish as a matter of policy that public land users who pay fair market value for their use receive a grant assuring occupancy for a period commensurate with their projected investment and that equitable compensation be paid in the event that the lease, permit or other grant is terminated before the expiration of its term. The section specifically provides that no user shall have or acquire any right in the land except as authorized by statute and as set forth in the permit, lease or other grant.

We believe this to be one of the most important provisions of the bill and we strongly urge its enactment. It is of particular importance to grazing permittees who, heretofore, have had no security of tenure on lands administered under the Taylor Act by the Department of the Interior or on national grasslands and forest lands administered by the Department of Agriculture.

This provision would not impair the right of the Government to the use of its lands for other public purposes. It would, however, provide assurance to the stockman that his investment in the base properties he is required to own or control in order to qualify for a grazing permit and his continuing investments in improving the Federal range will not be lost to him should the Government cancel his permit in whole or in part in order to devote the lands covered thereby to another public purpose.

Enactment of this provision, which is not without statutory precedent, would encourage even greater investment by livestock operators in range improvement, would increase the security value of the permittee's ranching unit, and would give grazing permits the same status and dignity that other users, as, for example, mineral lessees, now enjoy.

There has long been a need for more meaningful judicial review of Federal land management agency decisions. For the most part, the courts have been foreclosed from making a decision as to the merits of an agency action. We are pleased that S. 2450 makes provision for judicial review of agency actions and we suggest that specific jurisdiction be concerned upon the district courts to try cases which challenge agency action upon the merits as well as upon the law.

We do not, however, believe that standing to sue should evolve from the mere act of submitting views to an agency upon proposed rulemaking or in connection with some proposed action. Such a provision could open the floodgates to litigation. We suggest that standing to sue should be reserved to those who have suffered a legal wrong or are actually adversely affected or aggrieved.

We interpret the provisions of section 10(a) of S. 2401 to confer an extremely broad condemnation authority upon the Secretary of the Interior. Such a provision could well lead to the unnecessary expansion of Federal holdings through condemnation of privately owned lands.

Authority to acquire access by purchase or condemnation should be limited to those instances where such access is necessary to the proper management of the public lands and to those instances wherein the public has a legitimate interest in being on the public lands and cannot otherwise gain access to them. The authority conferred upon the Secretary should be further conditioned by a requirement that access routes acquired by condemnation shall be so located as to serve the greatest public interest and do the least damage to private interests.

The experience of the past as well as the work of the Public Land Law Review Commission demonstrate the need for revision of the public land laws. They demonstrate as well that the task will be an arduous one—one which cannot be accomplished without the cooperation of all of the public land users, nor without cooperation among users.

We appreciate the opportunity which has been afforded our organizations to participate in the initial efforts which are being made to accomplish a revision of the public land laws and we are prepared to continue our cooperation with the Congress, the agencies, and with other users to the end that the new body of law which will be developed will best serve all of the National Interests.

Senator METCALF. Mr. Secretary, you have a statement on S. 2743?

Mr. LOESCH. Yes. May I ask it simply be placed in the record?

Senator METCALF. I have read your statement and it is substantially the message from the Secretary that prompted the legislation. I don't have any questions. I don't believe there are going to be any questions. So without objection your statement on S. 2743 will be incorporated in the record.

(The statement follows:)

STATEMENT OF HARRISON LOESCH, ASSISTANT SECRETARY, PUBLIC LAND
MANAGEMENT, DEPARTMENT OF THE INTERIOR

S. 2743 would establish a public land management working capital fund for the Bureau of Land Management. It is patterned after the act of August 3, 1956 which provided a working capital fund for the U.S. Forest Service.

In business and government organizations working capital funds are general suppliers of common use items for two or more activities of the organization.

All costs of the fund are recoverable from the customers of the fund. The customers of the fund are the regular activities of the particular organization. When small amounts of money are involved, these funds are frequently called "petty cash" funds.

Under Federal appropriation practice, the normal bureau activity is funded to meet the requirements of 1 fiscal year. Funds appropriated from one activity cannot be used to purchase and stock common use items for the benefit of another activity. Funds appropriated to an activity cannot be used to purchase items for use beyond the end of a fiscal year. This limits BLM's ability to save by quantity buying or off-season contracting. It requires complicated bookkeeping.

The Bureau of Land Management is responsible for a wide variety of land management programs and service operations. These include grazing, forestry, outdoor recreation, wildlife habitat development, range improvement, cadastral survey, watershed treatment, lease and sale of land and mineral resources, weed control, construction, and maintenance of buildings and roads, and other conservation and environmental protection activities.

At present, these programs affect more than 450 million acres of public lands—approximately 20 percent of the total area of the United States. They require a variety of special supplies and equipment such as firefighting equipment, grass seed, tree seedlings, survey markers, pulaskis, rations, and fire retardants. These are not readily available and therefore must be purchased in advance, stored in convenient locations until needed and replenished when used.

The proposed BLM working capital fund would permit substantial economies and simplify bookkeeping. At the time of purchase it would be unnecessary to identify the particular activity which will be the ultimate consumer. The fund could be used to purchase and stock items in 1 fiscal year for use in subsequent years. As the items are used or consumed in normal operations, the fund would be reimbursed by the using activity, thus the fund remains intact at all times. The fund has either cash, accounts receivable or other assets to account for its capitalization. All expenditures would be within the limitation set forth in appropriations made for the Bureau.

The \$3 million authorized in the bill, together with the value of the inventories, equipment and other assets transferred to the fund, will provide the initial capital to establish the fund. The initial capital is necessary to acquire the assets for "sale" to activities financed by annual appropriations. The small administrative cost of the fund will be recovered from the benefitting activities. The savings generated by the fund will more than offset the administrative costs.

We recommend that S. 2743 be enacted.

Mr. LOESCH. Thank you, Mr. Chairman.

Senator METCALF. Thank you very much for a very helpful morning. I think we have made a good record on this legislation and you have been most helpful. Thank you very much.

(Whereupon, at 11:55 a.m., March 22, 1972, the hearing was adjourned.)



