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# MANAGEMENT OF NATIONAL RESOURCE LANDS

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## HEARING

BEFORE THE

### SUBCOMMITTEE ON PUBLIC LANDS

OF THE

### COMMITTEE ON

## INTERIOR AND INSULAR AFFAIRS

## UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

### S. 424

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

### S. 1041

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

JULY 23, 1973

### PART 2



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# MANAGEMENT OF NATIONAL RESOURCE LANDS

MONDAY, JULY 23, 1973

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. Floyd K. Haskell, chairman, presiding.

Present: Senators Haskell [presiding], McClure, Fannin, and Hansen.

Also present: Jerry Verkler, staff director; Steven P. Quarles, special counsel; D. Michael Harvey, special counsel; and Harrison Loesch, minority counsel.

## OPENING STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. The hearing of the Subcommittee on Public Lands concerning S. 424 and S. 1041, the National Resource Lands Management Acts, will open.

As the committee members and the administration know, we held a hearing on S. 424 [Jackson and 11 cosponsors] on March 1, 1973. At that time S. 1041 had been submitted by the administration and introduced by Senators Jackson and Fannin [by request].

[The texts of S. 424 and S. 1041 with an amendment of the Department of the Interior to S. 1041 follow:]

**S. 424**

## IN THE SENATE OF THE UNITED STATES

JANUARY 18, 1973

Mr. JACKSON (for himself, Mr. BENNETT, Mr. CHURCH, Mr. GURNEY, Mr. HASKELL, Mr. HUMPHREY, Mr. INOUE, Mr. METCALF, Mr. MOSS, Mr. PASTORE, and Mr. TUNNEY) 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 Lands  
4       Management Act of 1973".

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  
9       interests in lands (including the renewable and nonrenewable  
10       resources thereof) now or hereafter administered by the

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

3 (c) "Multiple use" means the management of the na-  
4 tional resource lands and their various quantifiable and non-  
5 quantifiable resource values so that they are achieved in the  
6 combination that will best meet the present and future needs  
7 of the American people; making the most judicious use of the  
8 land for some or all of these resources or related services over  
9 areas large enough to provide sufficient latitude for periodic  
10 adjustments in use to conform to changing needs and condi-  
11 tions; the use of some land for less than all of the resources; a  
12 combination of resource uses that take into account the long-  
13 term needs of future generations for recreation, scenic values  
14 and nonrenewable resources and the achievement of diversity  
15 and balance for renewable resources; and harmonious and  
16 coordinated management of the various resources without  
17 permanent impairment of the quality of the land or the  
18 environment, with consideration being given to the relative  
19 values of the resources and to the ecological relationships  
20 involved and not necessarily to the combination of uses  
21 that will give the greatest economic return or the greatest  
22 unit output.

23 (d) "Sustained yield" means the achievement and  
24 maintenance in perpetuity of a high-level annual or regular  
25 periodic output of the various renewable resources of land

1 without permanent impairment of the quality of the land or  
2 its environmental values.

3 (e) "Areas of critical environmental concern" means  
4 areas within the national resource lands where uncontrolled  
5 use or development could result in irreversible damage to im-  
6 portant historic, cultural, or scenic values, or natural sys-  
7 tems or processes, or life and safety as a result of natural  
8 hazards.

9 SEC. 3. DECLARATION OF POLICY.—(a) Congress  
10 hereby declares that—

11 (1) the national resource lands are a vital national  
12 asset containing a wide variety of natural resource  
13 values;

14 (2) sound ecological management of these lands  
15 is vital to maintenance of a livable environment and  
16 essential to the well-being of the American people;  
17 and

18 (3) the national interest will best be served by  
19 retaining the national resource lands in Federal owner-  
20 ship unless, as a result of the land use planning process  
21 provided for in this Act, the Secretary determines that  
22 disposal of particular tracts of national resource lands will  
23 achieve a greater benefit for the general public than the  
24 retention thereof and is consistent with the purposes,  
25 terms, and conditions of this Act.

1 (b) Congress hereby directs that the Secretary shall  
2 manage the national resource lands under principles of multi-  
3 ple use and sustained yield in a manner which will, using  
4 all practicable means and measures, protect the environmen-  
5 tal quality of such lands to assure their continued value for  
6 present and future generations; protect the quality of scientific  
7 scenic, historical, and archeological values; preserve and pro-  
8 tect certain areas in their natural condition; provide habitat  
9 for fish and wildlife; provide for outdoor recreation; balance  
10 various demands on such lands; assure payment of fair mar-  
11 ket value by users of such lands; and provide maximum op-  
12 portunity for the public to participate in decisionmaking  
13 concerning such lands.

14 SEC. 4. INVENTORY.—The Secretary shall prepare and  
15 maintain on a continuing basis an inventory of all national  
16 resource lands, and their resource and other values (includ-  
17 ing outdoor recreation and scenic values) giving priority to  
18 areas of critical environmental concern. This inventory shall  
19 reflect changes in conditions and in identifications of resource  
20 and other values. Such inventory shall include identification  
21 of boundaries for all units of the national resource lands. The  
22 Secretary shall provide adequate and appropriate means of  
23 public identification of such boundaries, including signs and  
24 maps. Wherever possible data from such inventory shall be  
25 made available to State and local governments for purposes

1 of planning and regulating the uses of non-Federal lands in  
2 proximity to national resource lands.

3       SEC. 5. LAND USE PLANS.—(a) The Secretary shall  
4 with public participation develop, maintain, and, when ap-  
5 propriate, revise land use plans for the national resource  
6 lands consistent with the terms and conditions of this Act  
7 and coordinated so far as he finds feasible and proper, or as  
8 may be required by the enactment of a National Land Use  
9 Policy or other law, with the land use plans, including the  
10 statewide outdoor recreation plans developed under the Act  
11 of September 3, 1964 (78 Stat. 901), of State and local  
12 governments and other Federal agencies.

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

15             (1) use a systematic interdisciplinary approach to  
16 achieve integrated consideration of physical, biological,  
17 economic, and social sciences;

18             (2) give priority to the designation of areas of  
19 critical environmental concern;

20             (3) rely, to the extent it is available, on the inven-  
21 tory of the national resource lands, their resources, and  
22 other values;

23             (4) consider all present and potential uses of the  
24 lands;

25             (5) consider the relative scarcity of the values in-

1       volved and the availability of alternative means, materi-  
2       als, techniques, and sites for realization of those values;

3           (6) weigh long-term public benefits, including  
4       those of outdoor recreation and scenic values, against  
5       short term local or individual benefits; and

6           (7) consider the requirements of applicable pollu-  
7       tion control laws including State or Federal air or water  
8       quality standards and implementation plans.

9       (c) Any classification of national resource lands in  
10      effect on the date of enactment of this Act is subject to  
11      review in the land use planning process and such lands are  
12      subject to inclusion in land use plans pursuant to this  
13      section.

14      SEC. 6. MANAGEMENT.—(a) The Secretary shall man-  
15      age the national resource lands in accordance with the policies  
16      and procedures of this Act and with any land use plans de-  
17      veloped pursuant to section 5 of this Act which he has  
18      prepared except to the extent that other applicable law  
19      provides otherwise. Such management shall include:

20           (1) requiring land reclamation as a condition of  
21      use, and requiring performance bonds guaranteeing such  
22      reclamation of any person permitted to engage in extrac-  
23      tative or other activity likely to entail significant disturb-  
24      ance to or alteration of the land;

25           (2) inserting in permits, licenses, or other authori-

1 zations to use, occupy, or develop the national resource  
2 lands provision authorizing revocation or suspension  
3 upon violation of any regulations issued by the Secre-  
4 tary under this Act or upon violation of any applicable  
5 State or Federal air or water quality standard and im-  
6 plementation plans; and

7 (3) the prompt development of regulations for the  
8 protection of areas of critical environmental concern.

9 SEC. 7. SALE OF LAND.—(a) Except as otherwise  
10 provided by law, and subject to the requirements of section 3  
11 of this Act, the Secretary is authorized to sell national  
12 resource lands. The national resource lands may be sold only  
13 if the Secretary, in accordance with the guidelines he has es-  
14 tablished for sale of national resource lands and after prepa-  
15 ration pursuant to section 5 of this Act of a land use plan  
16 which includes any tract of such lands identified for sale,  
17 determines that the sale of such tract will not cause needless  
18 degradation of the environment; and that—

19 (1) such tract is isolated land difficult to manage as  
20 part of the national resource lands and is not suitable for  
21 management by another Federal agency; or

22 (2) having been acquired for a specific purpose,  
23 such tract is no longer required for that or any other  
24 Federal purpose; or

25 (3) sale of such tract will serve important pub-

1       lic objectives which cannot be achieved prudently and  
2       feasibly on land other than national resource lands and  
3       which outweigh all public objectives and values, includ-  
4       ing recreation and scenic values, which would be served  
5       by maintaining such tract in Federal ownership.

6       (b) Sales of national resource lands under this Act shall  
7       be at not less than the appraised fair market value.

8       (c) The Secretary shall determine and establish the  
9       size of tracts to be sold on the basis of the land use capabilities  
10      and development requirements of the lands.

11      (d) Sales of land under this Act shall be conducted  
12      under competitive bidding procedures to be established by  
13      the Secretary, except that where he determines it necessary  
14      and proper (1) to assure fair distribution among purchasers  
15      of national resource lands, or (2) to recognize equitable  
16      considerations or public policies, including but not limited  
17      to a preference right to users, he is authorized to sell national  
18      resource lands without competitive bidding, or with modified  
19      competitive bidding.

20      (e) Until the Secretary has accepted an offer to  
21      purchase, he may refuse to accept any offer or may with-  
22      draw any land from sale under this Act when he determines  
23      that consummation of the sale would not be in the public  
24      interest.

25      (f) Not later than one hundred and twenty days after

1 the close of each fiscal year the Secretary shall report to  
2 Congress all sales or exchanges of national resource lands  
3 and their related resources conducted by him during such  
4 fiscal year together with the reasons therefor.

5       SEC. 8. CONDITIONS IN CONVEYANCES.—(a) All con-  
6 veyances of title issued by the Secretary under this Act  
7 shall reserve to the United States all minerals in the lands,  
8 together with the right to prospect for, mine, and remove  
9 the minerals under applicable law and such regulations  
10 as the Secretary may prescribe: *Provided*, That, where  
11 prospecting, mining, or removing minerals reserved to the  
12 United States would interfere with or preclude the appro-  
13 priate use or development of such land, the Secretary may  
14 enter into covenants which provide that such activities shall  
15 not be pursued for a specified period or, where necessary,  
16 convey minerals in the conveyance of title.

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

1 not make sales of land under this Act which would not be in  
2 conformity with State and local land use plans, programs,  
3 zoning, and regulations. At least ninety days prior to offering  
4 land for sale under this Act, the Secretary shall notify the  
5 Governor of the State within which such land is located and  
6 the head of the governing body of any political subdivision  
7 of the State having zoning or other land use regulatory juris-  
8 diction in the geographical area within which such land is  
9 located, in order to afford the appropriate body the oppor-  
10 tunity of zoning or otherwise regulating, or changing or  
11 amending existing zoning or other regulations concerning,  
12 the use of such land prior to such sale.

13       SEC. 9. ACQUISITION OF LAND.—(a) The Secretary  
14 is authorized to acquire by purchase, exchange, donation, or  
15 otherwise lands or interests therein needed for the manage-  
16 ment of the national resource lands including, but not limited  
17 to, lands needed to provide access by the general public to  
18 national resource lands. Such acquisitions shall be consistent  
19 with such land use plans as may apply to the area involved.

20       (b) Purchase designed primarily to provide outdoor  
21 recreation opportunities shall be made by the Secretary with  
22 funds appropriated from the Land and Water Conserva-  
23 tion Fund.

24       (c) In exercising the exchange authority granted by  
25 subsection (a) of this section, the Secretary may accept

1 title to any non-Federal land or interests therein and in  
2 exchange therefor he may convey to the grantor of such land  
3 or interests any national resource lands or interests therein  
4 which, under the terms and conditions of this Act, he finds  
5 proper for transfer out of Federal ownership and which are  
6 located in the same State as the non-Federal land to be ac-  
7 quired. The values of the lands so exchanged either shall  
8 be equal, or if they are not equal, the value shall be equal-  
9 ized by the payment of money to the grantor or to the Secre-  
10 tary as the circumstances require. When a land use plan  
11 which is applicable to any tract which is to be included in a  
12 proposed exchange under this Act has been prepared, such  
13 exchange shall be consistent with such plan.

14 (d) Lands acquired by exchange under this section  
15 within the boundaries of the national forest system may  
16 be transferred to the Secretary of Agriculture for administra-  
17 tion as a part of, and in accordance with laws, rules, and  
18 regulations applicable to, the national forest system.

19 SEC. 10. USE OF LANDS.—The use, occupancy, or de-  
20 velopment of any portion of the national resource lands con-  
21 trary to any regulation of the Secretary issued pursuant to  
22 and in conformity with this Act or contrary to any order  
23 issued pursuant to any such regulations is unlawful and  
24 prohibited.

25 SEC. 11. ENFORCEMENT AUTHORITY.—(a) Violations

1 of regulations which may be adopted for the purpose of  
2 protecting the national resource lands, other public property,  
3 and the public health, safety, and welfare and are identified  
4 in said regulations by the Secretary as being subject to the  
5 sanctions provided for by this section shall be deemed to be  
6 a misdemeanor and shall be punishable by a fine of not more  
7 than \$1,000 or imprisonment for not more than one year, or  
8 both. Any person charged with the violation of such regula-  
9 tions may be tried and sentenced by any United States com-  
10 missioner or magistrate designated for that purpose by the  
11 court by which he was appointed, in the same manner and  
12 subject to the same conditions as provided for in section 3401  
13 of title 18, United States Code.

14 (b) At the request of the Secretary, the Attorney Gen-  
15 eral may institute a civil action in a district court of the  
16 United States or the highest court in a United States terri-  
17 tory for an injunction or other appropriate order to prevent  
18 any person from utilizing the national resource lands in vio-  
19 lation of regulations issued under this Act.

20 (c) The Secretary may designate and authorize em-  
21 ployees as special officers who may make arrests or serve  
22 citations for acts committed on the national resource lands  
23 which are in violation of regulations identified pursuant to  
24 subsection (a) of this section.

25 (d) Upon the sworn information by a competent person,

1 any United States commissioner, magistrate, or court of  
2 competent jurisdiction may issue process for the arrest of  
3 any person charged with the violation of law or the desig-  
4 nated regulations. Nothing herein shall be construed as pre-  
5 venting the arrest by any officer of the United States, without  
6 process, of any person taken in the act of violating the law  
7 or the designated regulations.

8       SEC. 12. STATE'S RIGHTS NOT CURTAILED.—(a)  
9 Nothing in this Act shall be construed as a limitation upon  
10 any State criminal statute, nor on the police power of the  
11 respective States.

12       (b) Nothing in this Act shall be construed to derogate  
13 the authority of a local police officer in the performance of his  
14 duties.

15       SEC. 13. FEDERAL RIGHTS NOT CURTAILED.—Noth-  
16 ing in this Act shall be construed as limiting or restricting  
17 the power and authority of the United States, or—

18               (a) as affecting in any way any law governing ap-  
19 propriations or use of, or Federal right to, water on  
20 national resource lands;

21               (b) as expanding or diminishing Federal or State  
22 jurisdiction, responsibility, interests, or rights in water  
23 resources development or control;

24               (c) as displacing, superseding, limiting, or modify-  
25 ing any interstate compact or the jurisdiction or respons-

1        bility of any legally established joint or common agency  
2        of two or more States or of two or more States and the  
3        Federal Government;

4            (d) as superseding, modifying, or repealing, except  
5        as specifically set forth in this Act, existing laws ap-  
6        plicable to the various Federal agencies which are au-  
7        thorized to develop or participate in the development of  
8        water resources or to exercise licensing or regulatory  
9        functions in relation thereto; or

10            (e) as modifying the terms of any interstate com-  
11        pact.

12        SEC. 14. VALID EXISTING RIGHTS.—All actions by the  
13        Secretary under this Act shall be subject to valid existing  
14        rights. The Secretary shall not impair or diminish any  
15        valid existing rights except under due process and upon  
16        payment of just compensation.

17        SEC. 15. PUBLIC PARTICIPATION.—(a) In exercising  
18        his authorities under this Act, the Secretary, by regulation,  
19        shall establish procedures, including public hearings where  
20        appropriate, to give the Federal, State, and local govern-  
21        ments and the public adequate notice and an opportunity to  
22        comment upon the formulation of standards and criteria in  
23        the preparation and execution of plans and programs and in  
24        the management of the national resource lands.

25        SEC. 16. RULES AND REGULATIONS.—(a) The Sec-

1 retary is authorized to promulgate such rules and regula-  
2 tions as he deems necessary to carry out the purposes of  
3 this Act. The promulgation of such rules and regulations  
4 shall be governed by the Administrative Procedure Act  
5 (5 U.S.C. 553).

6 (b) Such rules and regulations shall include:

7 (1) criteria and standards for the preparation and  
8 execution of plans and programs for, and for the man-  
9 agement, sale, conveyance, and acquisition of, national  
10 resource lands which shall embody all pertinent factors  
11 including, but not limited to environmental, recreational,  
12 scenic, and resource values, and;

13 (2) procedures including public hearings, to give  
14 the Federal, State, and local governments and the public  
15 adequate notice and opportunity to comment upon such  
16 rules and regulations and significant actions of the Sec-  
17 retary of the Interior or any agency under his juris-  
18 diction thereof concerning the national resource lands.

19 SEC. 17. APPROPRIATIONS.—There is hereby authorized  
20 to be appropriated such sums as are necessary to carry out  
21 the purposes of this Act.

22 SEC. 18. DIRECTOR.—Appointments made on or after  
23 the date of the enactment of this Act to the Office of the  
24 Director of the Bureau of Land Management, within the  
25 Department of the Interior, shall be made by the President,

- 1 by and with the advice and consent of the Senate. The
- 2 Director shall have a broad background and experience in
- 3 public land and natural resource management.

93<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1041

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 1973

Mr. JACKSON (for himself and Mr. FANNIN) (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, development, and sale 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 Lands  
4        Management Act of 1973".

5        SEC. 2. DECLARATION OF CONGRESS.—Congress hereby  
6        declares (a) that the national resource lands are a vital  
7        national asset containing a wide variety of resource values,  
8        (b) that the uses of such lands shall be balanced in a man-  
9        ner which will, using all practical means and measures, pro-  
10        tect the environmental quality of such lands for future  
11        generations, and (c) that the national interest will best be

VII—O

1 served by retaining the national resource lands in Federal  
2 ownership except where disposal would be consistent with  
3 the purposes and conditions of this Act.

4 SEC. 3. DEFINITIONS.—As used in this Act—

5 (a) “Secretary” means the Secretary of the Interior.

6 (b) “National resource lands” means all lands and inter-  
7 ests in lands (including the renewable and nonrenewable re-  
8 sources thereof) now and hereafter administered by the Sec-  
9 retary through the Bureau of Land Management, except the  
10 Outer Continental Shelf.

11 (c) “Multiple use” means: the management of the na-  
12 tional resource lands and their various surface and subsurface  
13 resources so that they are utilized in the combination that  
14 will best meet the present and future needs of the American  
15 people; the most judicious use of the land for some or all of  
16 these resources or related services over areas large enough  
17 to provide sufficient latitude for periodic adjustments in use  
18 to conform to changing needs and conditions; the use of  
19 some land for less than all of the resources; a combination  
20 of resource uses that takes into account the long-term needs  
21 of future generations for nonrenewable resources and the  
22 achievement of diversity and balance for renewable re-  
23 sources; and harmonious and coordinated management of  
24 the various resources, each with the other, without perma-  
25 nent impairment of the productivity of the land or undue

1 damage to irreplaceable values, with consideration being  
2 given to the relative values of the resources, and not neces-  
3 sarily the combination of uses that will give the greatest  
4 economic return or the greatest unit output.

5 (d) "Sustained yield" means the achievement and  
6 maintenance in perpetuity of a high-level annual or regular  
7 periodic output of the various renewable resources of land  
8 without permanent impairment of the productivity of the  
9 land and its environmental values.

10 (e) "Areas of critical environmental concern" means  
11 those national resource lands as designated by the Secretary  
12 where uncontrolled development could result in irreversible  
13 damage to important historic, cultural, or esthetic values, or  
14 natural systems or processes, or could unreasonably endanger  
15 life and property as a result of natural hazards. Such areas  
16 shall include—

17 (1) coastal wetlands, marshes, and other lands inun-  
18 dated by the tides;

19 (2) beaches and dunes;

20 (3) significant estuaries, shorelands, and flood plains  
21 of rivers, lakes, and streams;

22 (4) areas of unstable soils and high seismic activity;

23 (5) rare or valuable ecosystems;

24 (6) significant agricultural, grazing, and watershed  
25 lands;

1           (7) forests and related land which require long  
2 stability for continuing renewal;

3           (8) scenic or historic areas; and

4           (9) such additional areas as the Secretary deter-  
5 mines to be of critical environmental concern, including  
6 lands having the characteristics described in section 2 (c)  
7 of the Act of September 3, 1964 (78 Stat. 890).

8       SEC. 4. RULES AND REGULATIONS.—The Secretary is  
9 authorized to promulgate such rules and regulations as he  
10 deems necessary to carry out the purposes of this Act.

11       SEC. 5. APPROPRIATIONS.—There is hereby authorized  
12 to be appropriated such sums as may be necessary to carry  
13 out the purposes of this Act.

14       TITLE I—GENERAL MANAGEMENT AUTHORITY

15       SEC. 101. MANAGEMENT.—The Secretary shall manage  
16 the national resource lands in accordance with section 2 of  
17 this Act and with principles of multiple use and sustained  
18 yield in a manner which will assure payment of fair market  
19 value by users of such lands, unless otherwise provided for  
20 by law, and which will provide maximum opportunities for  
21 the public to participate in decisionmaking concerning such  
22 lands. The Secretary shall manage the national resource  
23 lands also in accordance with any applicable land use plans  
24 which he has prepared pursuant to section 103, except to the  
25 extent that other Federal laws require the Secretary to take

1 specific actions. Management of the national resource lands  
2 shall include the authority to—

3 (a) regulate, through permits, licenses, leases, or  
4 such other instruments as the Secretary deems appropri-  
5 ate, the use, occupancy, or development of the national  
6 resource lands not provided for by other laws;

7 (b) require land reclamation as a condition of use,  
8 and require performance bonds guaranteeing such rec-  
9 lamation in a timely manner from any person permitted  
10 to engage in extractive or other activity likely to cause  
11 significant disturbance to or alteration of the national  
12 resource lands;

13 (c) insert in permits, licenses, leases, or other instru-  
14 ments to use, occupy, or develop the national resource  
15 lands, provisions authorizing revocation or suspension  
16 upon violation of any regulations issued by the Secretary  
17 under any Act applicable to the national resource lands  
18 or upon violation of any applicable State or Federal  
19 air or water quality standard and implementation plans;  
20 and

21 (d) develop regulations for the protection of areas  
22 of critical environmental concern.

23 SEC. 102. INVENTORY.—The Secretary shall prepare  
24 and maintain on a continuing basis an inventory of all na-  
25 tional resource lands and their resources giving priority to

1 areas of critical environmental concern. This inventory shall  
2 reflect changes in conditions and in identifications of resource  
3 values. The Secretary, where he determines it to be appropriate  
4 (a) may provide means of public identification of  
5 national resource lands, including signs and maps, and (b)  
6 may provide State and local governments with data from  
7 the inventory for the purpose of planning and regulating  
8 the uses of non-Federal lands in proximity of the national  
9 resource lands.

10 SEC. 103. LAND USE PLANS.—(a) The Secretary shall  
11 develop, maintain, and, when appropriate, revise land use  
12 plans for the national resource lands, coordinated so far as  
13 he finds feasible and proper, or as may be required by law,  
14 with the land use plans of State and local governments and  
15 other Federal agencies.

16 (b) In the development and maintenance of land use  
17 plans, the Secretary shall—

18 (1) use a systematic interdisciplinary approach to  
19 achieve integrated consideration of physical, biological,  
20 economic, and social sciences;

21 (2) give priority to the designation and protection  
22 of areas of critical environmental concern;

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

25 (4) consider present and potential uses of the lands;

1           (5) consider the relative scarcity of the values in-  
2           volved and the availability of alternative means (includ-  
3           ing recycling) and sites for realization of those values;

4           (6) weigh long-term public benefits against short-  
5           term local and individual benefits; and

6           (7) consider the requirements of applicable pollu-  
7           tion control laws including State or Federal air and  
8           water quality standards, noise standards, and imple-  
9           mentation plans.

10          SEC. 104. DISPOSAL CRITERIA.—(a) A tract of national  
11          resource lands may be transferred out of Federal ownership  
12          under this Act only where, as a result of land use planning  
13          required under section 103, the Secretary determines that—

14           (1) such tract of national resource lands is isolated  
15           land which is difficult to manage as part of the national  
16           resource lands and is not suitable for management by  
17           another Federal agency; or

18           (2) such tract of national resource lands was ac-  
19           quired for a specific purpose and the tract is no longer  
20           required for that or any other Federal purpose; or

21           (3) disposal of such tract of national resource lands  
22           will serve important public objectives which cannot be  
23           achieved prudently or feasibly on land other than  
24           national resource lands and which outweigh other public  
25           objectives and values, including recreation and scenic

1 values, which would be served by maintaining such tract  
2 in Federal ownership.

3 SEC. 105. PUBLIC HEARINGS.—The Secretary, by regu-  
4 lation, shall establish procedures, including public hearings  
5 where appropriate, to give Federal, State, and local govern-  
6 ments and the public adequate notice and an opportunity  
7 to comment upon the formulation of standards and criteria  
8 in the preparation and execution of plans and programs and  
9 in the management of the national resource lands.

10 SEC. 106. ADVISORY BOARDS AND COMMITTEES.—In  
11 providing for public participation in planning and program-  
12 ing for the national resource lands, the Secretary may estab-  
13 lish under applicable law and consult such advisory boards  
14 and committees as he deems necessary to secure full infor-  
15 mation and advice on the execution of his responsibilities.  
16 The membership of such boards and committees shall be  
17 representative of a cross section of groups interested in man-  
18 agement of the national resource lands and the various types  
19 of use and enjoyment of such lands.

## 20 TITLE II—SALE AUTHORITY

21 SEC. 201. AUTHORITY TO SELL.—The Secretary is au-  
22 thorized to sell national resource lands under the terms of this  
23 title and section 104 of this Act.

24 SEC. 202. SIZE OF TRACTS.—The Secretary shall deter-  
25 mine and establish the size of tracts to be sold on the basis

1 of the land use capabilities and development requirements of  
2 the lands.

3       SEC. 203. COMPETITIVE BIDDING PROCEDURES.—Ex-  
4 cept as to sales under section 206 hereof, sales of national  
5 resource lands under this Act shall be conducted under com-  
6 petitive bidding procedures to be established by the Secre-  
7 tary. However, where the Secretary determines it necessary  
8 and proper (a) to assure fair distribution among purchasers  
9 of national resource lands, or (b) to recognize equitable con-  
10 siderations or public policies, including but not limited to a  
11 preference right to users, he is authorized to sell national re-  
12 source lands without competitive bidding, or with modified  
13 competitive bidding. In no event shall national resource lands  
14 be sold under this title for less than the appraised fair market  
15 value as determined by the Secretary.

16       SEC. 204. RIGHT TO REFUSE OR REJECT OFFER OF  
17 PURCHASE.—Until the Secretary has accepted an offer to  
18 purchase, he may refuse to accept any offer or may withdraw  
19 any land or interest in land from sale under this Act when he  
20 determines that consummation of the sale would not be con-  
21 sistent with this Act or other applicable law.

22       SEC. 205. RESERVATION OF MINERAL INTERESTS.—  
23 Except where the Secretary finds that (a) there are no  
24 mineral values in the land or (b) reservation of the mineral

1 rights in the United States would interfere with or preclude  
2 the appropriate development of the land and that such de-  
3 velopment is a more beneficial use of the land than mineral  
4 development, all conveyances of title issued by the Secretary  
5 under this title shall reserve to the United States all mineral  
6 deposits in the lands, together with the right to prospect  
7 for, explore for and remove the mineral deposits under ap-  
8 plicable Federal law and such regulations as the Secretary  
9 may prescribe.

10 SEC. 206. CONVEYANCE OF RESERVED MINERAL IN-  
11 TERESTS.—(a) The Secretary may convey mineral interests  
12 owned by the United States where the surface is in non-  
13 Federal ownership, regardless of which Federal agency may  
14 have administered the surface, if he finds that (1) there are  
15 no mineral values in the land, or (2) that the reservation of  
16 the mineral rights in the United States is interfering with or  
17 precluding appropriate development of the land and that such  
18 development is a more beneficial use of the land than mineral  
19 development.

20 (b) Sales of mineral interests owned by the United  
21 States where the surface is in non-Federal ownership shall  
22 be made only to the record owner of the surface, upon pay-  
23 ment of administrative costs and the fair market value of  
24 the interests being conveyed.

25 (c) Before considering an application for conveyance

1 of mineral interests pursuant to this section the Secretary  
2 shall require the deposit of a sum of money which he deems  
3 sufficient to cover administrative costs including, but not  
4 limited to, costs of conducting an exploratory program to  
5 determine the character of the mineral deposits in the land,  
6 evaluating the data obtained under the exploratory program  
7 to determine the fair market value of the mineral rights to  
8 be conveyed, and preparing and issuing the documents of  
9 conveyance. If the administrative costs exceed the deposit,  
10 the applicant shall pay the outstanding amount; and if the  
11 deposit exceeds the administrative costs, the applicant shall  
12 be given a credit for or refund of the excess.

13 (d) Moneys paid to the Secretary for administrative  
14 costs shall be paid to the agency which rendered the service  
15 and deposited to the appropriation then current.

16 SEC. 207 TERMS OF PATENT.—The Secretary shall  
17 insert in any patent or other documents of conveyance he  
18 issues under this title, such terms, covenants, conditions, and  
19 reservations as he deems necessary to insure proper land  
20 use, environmental integrity, and protection of the public  
21 interest. In the event any area which the Secretary has iden-  
22 tified as an area of critical environmental concern is con-  
23 veyed out of Federal ownership pursuant to this title, the  
24 patent or other document of conveyance shall provide for

1 the continued protection of such area and the features which  
2 prompted the identification.

3 TITLE III—MANAGEMENT IMPLEMENTING

4 AUTHORITY

5 SEC. 301. STUDIES, COOPERATIVE AGREEMENTS, AND  
6 CONTRIBUTIONS.—(a) The Secretary may conduct investi-  
7 gations, studies, and experiments, on his own initiative or in  
8 cooperation with others, involving the management, pro-  
9 tection, development, and sale of the national resource lands.

10 (b) The Secretary may enter into contracts or coopera-  
11 tive agreements, involving the management, protection, de-  
12 velopment, and sale of the national resource lands.

13 (c) The Secretary may accept contributions or dona-  
14 tions of money, services, and property, real, personal, or  
15 mixed, for the management, protection, development, and  
16 sale of the national resource lands, including the acquisition  
17 of rights-of-way for such purposes. He may accept contribu-  
18 tions for cadastral surveying performed on federally con-  
19 trolled or intermingled lands. Moneys received hereunder  
20 shall be credited to a separate account in the Treasury and  
21 are hereby appropriated and made available until expended,  
22 as the Secretary may direct, for payment of expenses inci-  
23 dent to the function toward the administration of which the  
24 contributions were made and for refunds to depositors of

1 amounts contributed by them in specific instances where  
2 contributions are in excess of their share of the cost.

3 SEC. 302. SERVICE CHARGES AND EXCESS PAY-  
4 MENTS.—(a) Notwithstanding any other provision of law,  
5 the Secretary may establish reasonable filing fees, service  
6 fees and charges, and commissions with respect to applica-  
7 tions and other documents relating to national resource  
8 lands, and may change and abolish such fees, charges, and  
9 commissions.

10 (b) In any case where it shall appear to the satisfaction  
11 of the Secretary that any person has made a payment under  
12 any statute relating to the sale, lease, use, or other disposi-  
13 tion of the national resource lands which is not required or is  
14 in excess of the amount required, by applicable law and the  
15 regulations issued by the Secretary, the Secretary, upon ap-  
16 plication or otherwise, may cause a refund to be made from  
17 applicable funds.

18 SEC. 303. WORKING CAPITOL FUND.—(a) There is  
19 hereby established a national resource lands management  
20 working capital fund. This fund shall be available without  
21 fiscal year limitation for expenses necessary for furnishing  
22 in accordance with the Federal Property and Administrative  
23 Services Act of 1949 (63 Stat. 377), as amended, and  
24 regulations promulgated thereunder, supplies and equipment

1 services in support of Bureau of Land Management programs,  
2 including but not limited to, the purchase or constructiton of  
3 storage facilities, equipment yards, and related improvements  
4 and the purchase, lease, or rent of motor vehicles, aircraft,  
5 heavy equipment, and fire control equipment within the lim-  
6 itations set forth in appropriations made to the Bureau of  
7 Land Management.

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

16 (c) The fund shall be credited with payments from  
17 appropriations and funds of the Bureau of Land Manage-  
18 ment, other agencies of the Department of the Interior,  
19 other Federal agencies, and other sources as authorized by  
20 law, at rates approximately equal to the cost of furnishing the  
21 facilities, supplies, equipment, and services (including depre-  
22 ciation and accrued annual leave). Such payments may be  
23 made in advance in connection with firm orders, or by way of  
24 reimbursement.

25 (d) There is hereby authorized to be appropriated not

1 to exceed \$3,000,000 as initial capital of the working capital  
2 fund.

3       SEC. 304. DEPOSITS AND FORFEITURES.—(a) Any  
4 moneys received by the United States as a result of the for-  
5 feiture of a bond or deposit by a timber purchaser or permit-  
6 tee who does not fulfill the requirements of his contract or  
7 permit or does not comply with the regulations of the  
8 Department, or as a result of a compromise or settlement of  
9 any claim whether sounding in tort or in contract involving  
10 present or potential damage to timberlands, shall be credited  
11 to a separate account in the Treasury and are hereby appro-  
12 priated and made available, until expended as the Secre-  
13 tary may direct, to cover the cost to the United States of  
14 any forest improvement, protection, or rehabilitation work,  
15 which has been rendered necessary by the action which has  
16 led to the forfeiture, compromise, or settlement.

17       (b) The Secretary may require a user or users of roads  
18 or trails under the jurisdiction of the Bureau of Land Man-  
19 agement to maintain such roads or trails in a satisfactory  
20 condition commensurate with the particular use requirements  
21 and the use made by each, the extent of such maintenance  
22 to be shared by the users in proportion to such use or, if  
23 such maintenance cannot be so provided, to deposit sufficient  
24 money to enable the Secretary to provide such maintenance.  
25 Such deposits shall be credited to a separate account in the

1 Treasury and are hereby appropriated and made available  
2 until expended, as the Secretary may direct, to cover the  
3 cost to the United States of the maintenance of any road  
4 or trail under the jurisdiction of the Bureau of Land  
5 Management.

6 (c) Any moneys collected under this Act in connection  
7 with lands administered under the Act of August 28, 1937  
8 (50 Stat. 874), as amended, shall be expended for the bene-  
9 fit of such land only.

10 (d) If any portion of a deposit or amount forfeited un-  
11 der this Act is found by the Secretary to be in excess of the  
12 cost of doing the work authorized under this Act, the amount  
13 in excess shall be transferred to miscellaneous receipts.

14 SEC. 305. CONTRACTS FOR CADASTRAL SURVEY OPER-  
15 ATIONS AND FIRE PROTECTION.—(a) The Secretary is au-  
16 thorized to enter into contracts for the use of aircraft, and  
17 for supplies and services, prior to the passage of an appropri-  
18 ation therefor for airborne cadastral survey and fire protec-  
19 tion operations of the Bureau of Land Management. He may  
20 renew such contracts annually, not more than twice, without  
21 additional competition. Such contracts shall obligate funds  
22 for the fiscal years in which the costs are incurred.

23 (b) Each such contract shall provide that the obligation  
24 of the United States for the ensuing fiscal years is contingent  
25 upon the passage of an applicable appropriation, and that no

1 payment shall be made under the contract for the ensuing  
2 fiscal years until such appropriation becomes available for  
3 expenditure.

4 SEC. 306. ACQUISITION OF LAND.—(a) When public  
5 interests will be benefited thereby, the Secretary is authorized  
6 to acquire by purchase, exchange, donation, or otherwise,  
7 lands or interests therein including, but not limited to, the  
8 right of access by the general public to national resource  
9 lands. Such acquisitions shall be consistent with applicable  
10 land use plans prepared by the Secretary under section 103  
11 of this Act.

12 (b) In exercising the exchange authority granted by  
13 subsection (a) of this section, the Secretary may accept title  
14 to any non-Federal land or interests therein and in exchange  
15 therefor he may convey to the grantor of such land or inter-  
16 ests any national resource lands or interests therein which,  
17 under section 104 of this Act, he finds proper for transfer  
18 out of Federal ownership and which are located in the same  
19 State as the non-Federal land to be acquired. The values of  
20 the lands so exchanged either shall be equal, or if they are  
21 not equal, the values shall be equalized by the payment of  
22 money to the grantor or to the Secretary as the circum-  
23 stances require.

24 (c) Lands acquired by exchange under this section or

1 section 301 (c) which are within the boundaries of the na-  
2 tional forest system may be transferred to the Secretary of  
3 Agriculture for administration as part of, and in accordance  
4 with laws, rules, and regulations applicable to the national  
5 forest system.

6 (d) Lands and interests in lands acquired pursuant to  
7 this section or section 301 (c) shall, upon acceptance of  
8 title, become national resource lands, and for the administra-  
9 tion of public land laws not repealed by this Act, shall be-  
10 come public lands. If such acquired lands or interests in lands  
11 are located within the exterior boundaries of a grazing dis-  
12 trict established pursuant to section 1 of the Taylor Grazing  
13 Act (48 Stat. 1269) , as amended, they shall become a part  
14 of that district.

15 SEC. 307. AUTHORITY TO ISSUE AND CORRECT DOCU-  
16 MENTS OF CONVEYANCE.—Consistent with his authority to  
17 dispose of national resource lands, the Secretary is authorized  
18 to issue deeds, patents, and other indicia of title, and to correct  
19 such documents where necessary. In addition, the Secretary  
20 is authorized to make corrections on any documents of con-  
21 veyance which have heretofore been issued on lands which  
22 would, at the time of their conveyance, have met the  
23 description of national resource lands.

24 SEC. 308. RECORDABLE DISCLAIMERS OF INTEREST IN  
25 LAND.—(a) After consulting with any affected Federal

1 agency, the Secretary is authorized to issue a document of  
2 disclaimer of interest or interests in any lands in any form  
3 suitable for recordation, where the disclaimer will help  
4 remove a cloud on the title of such lands and where (1) a  
5 record interest of the United States in lands has terminated  
6 by operation of law; or (2) the lands lying between the  
7 meander line shown on a plat of survey approved by the  
8 Bureau of Land Management or its predecessors and the  
9 actual shoreline of a body of water are not lands of the  
10 United States; or (3) accreted, relicted, or avulsed lands  
11 are not lands of the United States.

12 (b) No document of disclaimer shall be issued pursuant  
13 to this title until the applicant therefor has paid to the Secre-  
14 tary the administrative costs of issuing the disclaimer as de-  
15 termined by the Secretary. All receipts shall be credited to  
16 the appropriation from which expended.

17 (c) Issuance of a document of disclaimer by the Secre-  
18 tary pursuant to the provisions of this title and regulations  
19 promulgated thereunder, shall have the same effect as a quit-  
20 claim deed from the United States.

21 SEC. 309. UNAUTHORIZED USE.—The use, occupancy,  
22 or development of any portion of the national resource lands,  
23 contrary to any regulation of the Secretary or other respon-  
24 sible authority, or contrary to any order issued pursuant to  
25 any such regulation is unlawful and prohibited.

1        SEC. 310. ENFORCEMENT AUTHORITY.—(a) Any vio-  
2 lation of regulations which the Secretary issues with respect  
3 to the management, protection, development, and sale of the  
4 national resource lands and property located thereon and  
5 which the Secretary identifies as being subject to this section  
6 shall be punishable by a fine of not more than \$500 or im-  
7 prisonment for not more than six months, or both. Any  
8 person charged with a violation of such regulation may be  
9 tried and sentenced by any United States magistrate desig-  
10 nated for that purpose by the court by which he was  
11 appointed, in the same manner and subject to the same  
12 conditions and limitations as provided for in section 3401  
13 of title 18 of the United States Code.

14        (b) At the request of the Secretary, the Attorney Gen-  
15 eral may institute a civil action in any United States district  
16 court for an injunction or other appropriate order to pre-  
17 vent any person from utilizing the national resource lands  
18 in violation of regulations issued under this Act.

19        (c) The Secretary may designate and authorize any  
20 employee to make arrests on national resource lands without  
21 warrant for any misdemeanor or violation of any law or  
22 regulation committed in his presence or view, or for any  
23 felony if the arresting officer has probable cause to believe  
24 that the person arrested has committed or is committing  
25 such felony and a delay in obtaining a warrant would jeopar-  
26 dize the possibility of his apprehension. Such authorized

1 employee may execute on the national resource lands any  
2 warrant or other process issued by a court or officer of  
3 competent jurisdiction for the enforcement of the provisions  
4 of any Federal law or regulation. Such authorized employee,  
5 while engaged in carrying out his official duties, may carry  
6 such firearms as are authorized by the Secretary. Such  
7 employee may also pursue and arrest outside national re-  
8 source lands a person fleeing from national resource lands  
9 to avoid an arrest or service of process which the employee  
10 is authorized to make on national resource lands.

11 SEC. 311. COOPERATION WITH STATE AND LOCAL  
12 LAW ENFORCEMENT AGENCIES.—In connection with ad-  
13 ministration and regulation of the use and occupancy of the  
14 national resource lands, the Secretary is authorized to co-  
15 operate with the regulatory and law enforcement officials of  
16 any State or political subdivision thereof. Such cooperation  
17 may include reimbursement to a State or its subdivision for  
18 expenditures incurred by it in connection with activities  
19 which assist in the administration and regulation of use and  
20 occupancy of national resource lands.

21 TITLE IV—AUTHORITY TO GRANT  
22 RIGHTS-OF-WAY

23 SEC. 401. DEFINITIONS.—As used in this title—

24 (a) “Right-of-way” means an easement, lease, permit,  
25 or license to occupy, use, or traverse lands.

1 (b) "Federal lands" means all lands owned by the  
2 United States except (1) lands in the national park system,  
3 (2) lands in the national wildlife refuge system, (3) lands  
4 on the Outer Continental Shelf, (4) lands in national wilder-  
5 ness preservation system, and (5) lands held by the United  
6 States in trust for any Indian or Indian tribe, and lands held  
7 or owned by any Indian or Indian tribe under a limitation or  
8 restriction on alienation requiring the consent of the United  
9 States.

10 (c) "Holder" means any State or local governmental  
11 entity or agency, individual, partnership, corporation, as-  
12 sociation, or other business entity receiving a right-of-way  
13 hereunder.

14 SEC. 402. AUTHORIZATION TO GRANT RIGHTS-OF-  
15 WAY FOR OIL AND GAS PIPELINES.—(a) The Secretary  
16 may grant, or issue, or renew rights-of-way over, upon, or  
17 through all Federal lands for pipeline purposes for the trans-  
18 portation of oil or natural gas and storage and terminal facili-  
19 ties in connection therewith. Such rights-of-way shall extend  
20 to (1) the lands occupied by the pipeline and its appurte-  
21 nances, including but not limited to the line of pipe, valves,  
22 pump stations, supporting structures (including berms),  
23 monitoring devices, surge and storage tanks, and terminals;  
24 (2) the lands occupied by facilities necessary for the opera-  
25 tion or maintenance of the pipeline and its appurtenances;

1 and (3) such adjacent lands as are necessary to provide for  
2 access, operation, maintenance, or public safety.

3 (b) Where the surface of the Federal lands is admin-  
4 istered by another Federal agency, the consent of the head  
5 of that agency shall first be obtained.

6 (c) Pipelines and terminals on such rights-of-way shall  
7 be constructed, operated, and maintained as common car-  
8 riers, and the owners or operators thereof shall accept, con-  
9 vey, transport, or purchase, without discrimination, oil or  
10 natural gas produced from Federal lands in the vicinity of  
11 the pipeline in such proportionate amounts as the Secretary  
12 may, after a full hearing with due notice thereof to the inter-  
13 ested parties and a proper finding of facts, determine to be  
14 reasonable; however, the common carrier provisions of this  
15 section shall not apply to any natural gas pipeline operated  
16 by any person subject to regulation under the Natural Gas  
17 Act or by any public utility subject to regulation by a State  
18 or municipal regulatory agency having jurisdiction to regu-  
19 late the rates and charges for the sale of natural gas to con-  
20 sumers within the State or municipality.

21 (d) Hereafter, no right-of-way shall be granted, issued,  
22 or renewed over, upon, or through Federal lands, as defined  
23 herein, for the transportation of oil or natural gas except  
24 under and subject to the provisions, limitations, and condi-  
25 tions of this section and sections 404-409 of this Act.

1           (e) Nothing in this section shall be deemed to limit in  
2 any way the authority of the Secretary to make grants,  
3 issue leases, licenses, or permits, or enter into contracts under  
4 other provisions of law, for purposes ancillary or complemen-  
5 tary to the construction, operation, maintenance, or termina-  
6 tion of such a pipeline.

7           SEC. 403. AUTHORIZATION TO GRANT RIGHTS-OF-  
8 WAY FOR OTHER PURPOSES.—The Secretary may grant,  
9 issue, or renew rights-of-way over, upon, or through the  
10 national resource lands for—

11           (a) reservoirs, canals, ditches, flumes, laterals,  
12 pipes, pipelines, tunnels, and other facilities and systems  
13 for the impoundment, storage, transportation, or distri-  
14 bution of water;

15           (b) pipelines and other systems for the transporta-  
16 tion or distribution of liquids and gases, other than oil,  
17 water, and natural gas, and for storage and terminal fa-  
18 cilities in connection therewith;

19           (c) pipelines, slurry and emulsion systems, and  
20 conveyor belts for transportation and distribution of  
21 solid materials, and facilities for the storage of such ma-  
22 terials in connection therewith;

23           (d) systems for generation, manufacture, transmis-  
24 sion, and distribution of electric power and energy, ex-  
25 cept insofar as the Federal Power Commission has

1 jurisdiction under the Act of June 10, 1920, as amended  
2 (16 U.S.C. 796, 797) ;

3 (e) systems for transmission or reception of radio,  
4 television, telegraph, and other electronic signals, and  
5 other means of communication; and

6 (f) roads, trails, highways, railroads, canals, tram-  
7 ways, airways, livestock driveways, or other means of  
8 transportation.

9 SEC. 404. GENERAL PROVISIONS.—(a) The Secretary  
10 shall specify the boundaries of each right-of-way as precisely  
11 as is practical. Each right-of-way granted, issued, or renewed  
12 pursuant to this title shall extend to the ground occupied by  
13 the facilities which the Secretary determines to constitute  
14 the project or portions of the project for which the right-of-  
15 way is given. The Secretary by lease, license, or permit may  
16 authorize the use of such additional lands as he determines to  
17 be necessary for the construction, operation, maintenance, or  
18 termination of the project or a portion thereof, or for access  
19 thereto.

20 (b) The Secretary shall determine the duration of each  
21 right-of-way or other authorization to be granted, issued, or  
22 renewed pursuant to this title, and shall also determine  
23 whether the right-of-way shall confer exclusive or nonex-  
24 clusive use.

25 (c) Rights-of-way granted, issued, or renewed pursuant

1 to this title shall be given under such regulations and subject  
2 to such terms and conditions as the Secretary may prescribe  
3 regarding extent, duration, application, charge, survey, loca-  
4 tion, construction, operation, maintenance, and termination.

5 (d) The Secretary, prior to granting, issuing, or renew-  
6 ing a right-of-way pursuant to this title which may have a  
7 significant impact on the environment, shall require the ap-  
8 plicant to submit a plan of construction, operation, and re-  
9 habilitation which shall comply with regulations issued by  
10 the Secretary designed to insure that the use of the right-of-  
11 way will have the minimum adverse impact on the environ-  
12 ment. The Secretary shall issue regulations which shall  
13 include, but shall not be limited to requirements to insure that  
14 activities in connection with the right-of-way will not violate  
15 applicable air and water quality standards; and require-  
16 ments to control or prevent (1) damage to the environ-  
17 ment (including damage to fish and wildlife habitat), (2)  
18 damage to public or private property, and (3) hazards to  
19 public health and safety. Such regulations shall be regularly  
20 revised. The issuance or revision of such regulations shall be  
21 applicable to every right-of-way granted, issued, or renewed  
22 pursuant to this title, irrespective of whether that right-of-way  
23 was granted, issued, or renewed prior to the issuance or  
24 revision of such regulations.

25 (e) Mineral and vegetative materials, including timber,

1 within or without a right-of-way, may be used or disposed of  
2 in connection with construction or other purposes only if  
3 authorization to remove or use such materials has been ob-  
4 tained pursuant to applicable laws.

5 (f) No right-of-way shall be issued for less than the  
6 fair market value thereof, except that rights-of-way may be  
7 granted, issued, or renewed to State or local governments or  
8 agencies or instrumentalities thereof, or to nonprofit associa-  
9 tions or nonprofit corporations, for such lesser charge as the  
10 Secretary finds equitable and in the public interest.

11 (g) The Secretary shall promulgate regulations specify-  
12 ing the extent to which holders of rights-of-way under this  
13 title shall be liable to the United States for damage or injury  
14 incurred by the United States in connection with the right-  
15 of-way. The regulations shall also specify the extent to which  
16 such holders shall indemnify or hold harmless the United  
17 States for liabilities, damages, or claims arising in connection  
18 with the right-of-way.

19 (h) Where he deems it appropriate, the Secretary may  
20 require a holder of a right-of-way to furnish a bond, or other  
21 security, satisfactory to the Secretary, to secure all or any  
22 of the obligations imposed by the terms and conditions of the  
23 right-of-way or by any rule or regulation of the Secretary.

24 (i) The Secretary shall grant, issue, or renew a right-  
25 of-way under this title only when he is satisfied that the

1 applicant has the technical and financial capability to con-  
2 struct the project for which the right-of-way is requested.

3       SEC. 405. TERMS AND CONDITIONS.—Each right-of-  
4 way shall contain such terms and conditions as the Secretary  
5 deems necessary to carry out the purposes of this title and  
6 rules and regulations hereunder; implement other Federal  
7 statutes and regulations, particularly any which in any way  
8 affect the right-of-way itself or the project for which the  
9 right-of-way is required; protect the environment; protect  
10 Federal property and monetary interests; manage efficiently  
11 Federal lands or national resource lands which are subject to  
12 the right-of-way or adjacent thereto; protect lives and prop-  
13 erty; implement Federal programs and policies; and protect  
14 the public interest.

15       SEC. 406. SUSPENSION OR TERMINATION OF RIGHT-  
16 OF-WAY.—(a) The Secretary may suspend or terminate any  
17 right-of-way granted, issued, or renewed pursuant to this  
18 title if, after due notice to the holder of the right-of-way  
19 and an appropriate administrative proceeding, he determines  
20 that such action is appropriate; however, no administrative  
21 proceeding shall be required where the right-of-way by its  
22 terms provides that it exists at the will of the Secretary.

23       (b) Abandonment of the right-of-way or noncompliance  
24 with any provision of this title, condition of the right-of-way,  
25 or applicable rule or regulation of the Secretary, may be  
26 grounds for termination of the right-of-way. Failure of the

1 holder of the right-of-way to use the right-of-way for the  
2 purpose for which it was granted, issued, or renewed, for any  
3 two-year period, shall be presumed to constitute abandon-  
4 ment of the right-of-way.

5 SEC. 407. RIGHTS-OF-WAY FOR FEDERAL AGENCIES.—

6 (a) The Secretary may set aside for the use of any depart-  
7 ment or agency of the United States a right-of-way over,  
8 upon, or through the national resource lands, subject to such  
9 terms and conditions as he may impose. The provisions of  
10 sections 404–409 of this title shall be applicable to such  
11 rights-of-way to the extent the Secretary deems necessary.

12 (b) Where a right-of-way has been set aside for the use  
13 of any department or agency of the United States, other  
14 than the Department of the Interior, the Secretary shall take  
15 no action to terminate, or otherwise limit, that use without  
16 the consent of the head of that other department or agency.

17 SEC. 408. CONVEYANCE OF LANDS.— (a) If the Secre-  
18 tary decides to transfer out of Federal ownership by patent,  
19 deed, or otherwise, any national resource lands covered in  
20 whole or in part by a right-of-way, the lands may be con-  
21 veyed subject to the right-of-way; however, if the Secretary  
22 determines that the right-of-way is of such a nature that con-  
23 tinued Federal control is necessary in the public interest,  
24 he may (1) reserve to the United States that portion of  
25 the lands which lies within the boundaries of the right-of-  
26 way, or (2) convey the lands, including that portion within

1 the boundaries of the right-of-way, subject to the right-of-  
2 way and reserving to the United States the right to enforce all  
3 or any of the terms and conditions of the right-of-way,  
4 including the right to renew it or extend it upon its termi-  
5 nation and to collect rents.

6 (b) Where the Secretary determines to transfer out  
7 of Federal ownership national resource lands covered in  
8 whole or in part by a right-of-way, he may offer the holder of  
9 the right-of-way a preference right to purchase that por-  
10 tion of the lands which are within the boundaries of the right-  
11 of-way, if in the judgment of the Secretary such action is  
12 (1) necessary to protect the holder's rights in the right-of-  
13 way and (2) not contrary to the public interest.

14 SEC. 409. EXISTING RIGHTS-OF-WAY.—Nothing in this  
15 Act shall have the effect of terminating any existing right-of-  
16 way authorized pursuant to any statute hereby repealed.  
17 However, with the consent of the holder thereof, the Secre-  
18 tary may cancel such a right-of-way and in its stead issue a  
19 right-of-way pursuant to this Act.

20 TITLE V—PRESERVATION OF VALID EXISTING  
21 RIGHTS AND REPEAL OF OBSOLETE AND  
22 SUPERSEDED LAWS

23 SEC. 501. PRESERVATION OF RIGHTS.—(a) FEDERAL  
24 RIGHTS NOT CURTAILED.—Nothing in this Act shall be  
25 construed as limiting or restricting the power and authority

1 of the United States, or as affecting in any way any law  
2 governing appropriation or use of, or Federal right to, water  
3 on national resource lands.

4 (b) STATE'S RIGHTS NOT CURTAILED.—Nothing in this  
5 Act shall be construed as a limitation upon any State criminal  
6 statute, nor on the police power of the respective States, nor  
7 to derogate the authority of a local police officer in the per-  
8 formance of his duties, nor to deprive any State or political  
9 subdivision thereof of any right it may have to exercise civil  
10 and criminal jurisdiction on the national resource lands.

11 (c) VALID EXISTING RIGHTS.—All actions by the Sec-  
12 retary under this Act shall be subject to valid existing  
13 rights.

14 SEC. 502. CONSTRUCTION OF LAW.—The authority  
15 conferred upon the Secretary by this Act is in addition to  
16 all other authority vested in him by law, and nothing in  
17 this Act shall be deemed to repeal any such other authority  
18 by implication. However, the Secretary may exercise the  
19 authority granted herein, notwithstanding any other provision  
20 of law.

21 SEC. 503. LAWS RELATING TO DISPOSAL OF NATIONAL  
22 RESOURCE LANDS.—(a) Subject to valid existing rights on  
23 the date of approval of this Act, the following statutes or  
24 parts of statutes are repealed:

Act of	Section	Statute	43 U.S. Code
<b>1. Homesteads:</b>			
Revised Statutes 2289, 2290, 2295, 2291			161-164.
May 14, 1880	3	21:140	166.
Apr. 6, 1914		38:312	167.
Mar. 1, 1921		41:1193	167.
Oct. 17, 1914		38:740	168.
Revised Statutes 2297			169.
Oct. 22, 1914		38:706, ch. 335	170.
Revised Statutes 2289, 2292			171.
June 8, 1880		21:166	172.
Revised Statutes 2301			173.
Revised Statutes 2288			174.
Revised Statutes 2286			175.
May 17, 1900		31:170	179.
Jan. 26, 1901		31:740	180.
Sept. 5, 1914		38:712	182.
Revised Statutes 2300			183.
Revised Statutes 2302			184.
May 14, 1880	2	21:141	185.
Feb. 14, 1920		41:331	186.
Feb. 25, 1925		43:981, ch. 326	187.
June 21, 1931		48:1185, ch. 640	187a.
May 22, 1902	2	32:203, ch. 821	187b.
June 5, 1900	3	31:270	188.
Mar. 3, 1875	15	18:420, ch. 131	189.
July 4, 1884	(1)	23:96	190.
Mar. 1, 1933		47:1418, ch. 160	190a.
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 a further Indian homestead be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C., title 43, Sec. 191)."			
Revised Statutes 2310, 2311			191.
Revised Statutes 2302			201.
May 14, 1880	1	21:140	202.
June 13, 1902		32:384, ch. 1080	203.
Mar. 3, 1879		20:472, ch. 191	204.
July 1, 1879		21:46	205.
May 6, 1886		24:22	206.
Aug. 21, 1916		39:518, ch. 361	207.
June 3, 1924		43:357, ch. 240	208.
June 24, 1948		62:576	209, 210.
Revised Statutes 2298			211.
Aug. 30, 1890		26:391	222.
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 permitted 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 rights of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement is validated by this Act."			
Apr. 28, 1904		33:527, ch. 1776	213.
Mar. 2, 1889	6	25:854	214.
Feb. 20, 1917		34:925	215.
Mar. 4, 1921		41:1433, ch. 122	216.
June 5, 1900	2	31:269	217.
Feb. 19, 1909		35:039	218.
June 17, 1910		36:381, ch. 298	219.
Mar. 4, 1915	1	38:1162	220.
Mar. 4, 1923		42:1445, ch. 245	222.
May 14, 1880	3	21:141	223.
Apr. 28, 1904		33:517	224.
Aug. 22, 1914		38:701, ch. 270	231.
July 3, 1916		39:341, ch. 214	232.
Sept. 29, 1919		41:288, ch. 61	233.
Apr. 6, 1922	2	42:491, ch. 122	234.
Mar. 2, 1889	3	25:854	234.
July 1, 1879	1	21:48	235.
Dec. 20, 1917		40:430, ch. 6	236.
July 24, 1919 (next to last paragraph only)		41:271	237.
Mar. 2, 1932		47:59	237a.
May 21, 1934		48:787, ch. 320	237b.
May 22, 1935		49:286	237c.
Aug. 19, 1935		49:859, ch. 560	237d.
Apr. 20, 1939		49:1235, ch. 239	237e.
July 30, 1956	1, 2, 4	70:715, 716, ch. 778	237 f, g, h.
Mar. 1, 1921		41:1202, ch. 102	238.
Revised Statutes 2308			239.
June 16, 1898		30:473, ch. 438	240.
Apr. 7, 1930		46:144, ch. 108	243
Mar. 3, 1933		47:1424	243a.
Mar. 3, 1879		20:472, ch. 192	251.
Mar. 2, 1889	7	25:355	252.
June 3, 1878		20:91	253.
Revised Statutes 2294			254.
Revised Statutes 2293			255.
Mar. 4, 1913		37:925	256.
Last paragraph of section 1 headed "Public Land Service" only.			
May 13, 1932		47:153, ch. 178	259a.
Aug. 27, 1935		49:901, ch. 770	259b.
Sept. 30, 1840		26:684	261.
June 16, 1830		21:287	262.
Revised Statutes 2304			271.
Revised Statutes 2305			272.
Feb. 25, 1919		40:1161, ch. 37	272a.
Apr. 6, 1922		42:491, ch. 122	273.
Revised Statutes 2306			274.
Mar. 3, 1893		27:593	275.

Act of	Section	Statute	43 U.S. Code
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 rights 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."			
Aug. 18, 1894.....		28-397.....	276.
Last paragraph of section headed "Surveying the Public Lands" only.			
Revised Statutes 2309.....			277.
Revised Statutes 2307.....			278.
Sept. 27, 1944.....		68-747, ch. 421.....	279-284.
Dec. 29, 1916.....	1-8	39-862.....	291-298.
Mar. 4, 1922.....	2	42-1448, ch. 245.....	302.
Aug. 21, 1916.....		39-518, ch. 361.....	1075.
Aug. 28, 1937.....	3	50-875.....	1181c.
<b>2. Desert Land Entries:</b>			
Mar. 28, 1908.....	2	35-52, ch. 112.....	324.
Mar. 28, 1908.....	1	35-52, ch. 112.....	326.
Feb. 27, 1917.....	1	39-940, ch. 184.....	339.
Dec. 15, 1921.....		42-348, ch. 3.....	331.
Aug. 7, 1917.....		40-250.....	332.
Mar. 28, 1908.....		35-52, ch. 112.....	333.
Apr. 30, 1912.....		37-106, ch. 101.....	334.
Mar. 4, 1918.....	5	38-1161, ch. 147.....	335.
Feb. 25, 1925.....		43-982, ch. 329.....	336.
July 30, 1956.....		70-716, ch. 778.....	336a-d.
Mar. 4, 1915.....	5	38-116, ch. 147.....	337, 338.
Mar. 4, 1929.....		45-1848, ch. 687.....	339.
<b>3. Sale and Disposal Laws:</b>			
Mar. 3, 1891.....	9	26-1099.....	671.
Revised Statutes 2354.....			673.
Revised Statutes 2355.....			674.
May 18, 1898.....		30-418, ch. 344.....	675.
Revised Statutes 2365.....			676.
Revised Statutes 2357.....			678.
June 15, 1880.....	3, 4	21-288.....	679, 680.
Mar. 2, 1889.....		25-854.....	682.
Mar. 1, 1907.....	4	34-1052, ch. 2286.....	681.
June 1, 1938.....		52-609, ch. 317.....	682a-c.
Revised Statutes 2361-2363.....			688-690.
Revised Statutes 2336.....			691.
Revised Statutes 2336.....			692.
Revised Statutes 2369.....			693.
Revised Statutes 2371.....			695.
Revised Statutes 2374.....			696.
Revised Statutes 2372.....			697.
Revised Statutes 2375, 2376.....			698, 699.
Mar. 2, 1880.....	1	25-854.....	700.
<b>4. Townsite Reservation and Sale:</b>			
Revised Statutes 2380-2384.....			711-715.
Revised Statutes 2386-2389.....			717-723.
Revised Statute 2391-2394.....			721-724.
Mar. 3, 1877.....	1, 3, 4	19-392.....	725-727.
Mar. 3, 1891.....	16	26-1101.....	728.
July 9, 1914.....		38-454.....	730.
Feb. 9, 1903.....		38-820, ch. 531.....	731.
<b>5. Drainage Under State Law:</b>			
May 20, 1938.....	1-7	35-169, ch. 181.....	1027.
Mar. 3, 1919.....		40-1321, ch. 113.....	1028.
May 1, 1958.....		72-599.....	1029-1034.
Jan. 17, 1920.....		41-1392, ch. 47.....	1041-1048.
<b>6. Abandoned Military Reservations:</b>			
July 5, 1884.....	5	23-104, ch. 214.....	1074.
Mar. 3, 1893.....		27-593, ch. 208.....	1076.
Aug. 23, 1894.....		28-491, ch. 314.....	1077-1078.
Feb. 11, 1903.....		32-822, ch. 543.....	1079.
Feb. 15, 1895.....		28-964.....	1080.
Aug. 23, 1814.....		33-306.....	1081.
<b>7. Public Lands in Oklahoma:</b>			
May 2, 1890.....		26-89-93.....	1091-1094.
Last paragraph of section 18 and sections 20-22.			
May 2, 1890.....	24, 27	26-92.....	1096, 1097.
Mar. 3, 1891.....	16	26-1026.....	1098.
Aug. 7, 1946.....		60-872, ch. 772.....	1100-1101.
Aug. 3, 1955.....	1-4	69-445, ch. 498.....	1102-1102e.
Aug. 3, 1955.....	6	69-446, ch. 498.....	1102e.
May 14, 1890.....		26-109.....	1111-1117.
Sept. 1, 1932.....		28-11.....	1118.
May 11, 1896.....		29-116.....	1119.
Jan. 18, 1897.....	1, 2, 3, 4	29-490.....	1131-1134.
<b>8. Sales of Isolated Tracts:</b>			
Revised Statute 2455, as amended.....			1171.
Apr. 24, 1928.....		45-457, ch. 428.....	1171a.
May 23, 1930.....		46-377, ch. 318.....	1171b.
Feb. 4, 1919.....		40-1055.....	1172.
May 10, 1920.....		41-595, ch. 178.....	1173.
Aug. 11, 1921.....		42-159, ch. 62.....	1175.
May 19, 1926.....		44-569, ch. 337.....	1176.
Feb. 14, 1931.....		46-1105, ch. 170.....	1177.
<b>9. Lands in Alaska:</b>			
Mar. 3, 1891.....	11	26-1099.....	732.
May 25, 1928.....		44-529.....	733, 736.
Feb. 26, 1948.....		62-36, ch. 72.....	737.
July 24, 1947.....		61-414, ch. 305.....	738.
May 14, 1898.....	1	30-409.....	270.
May 14, 1898.....	10	30-413.....	270-4.
May 19, 1950.....	3, 3, 4	64-95.....	270-5-270-7.
Apr. 29, 1950.....	1, 2	39-362, ch. 228.....	270-8-10.

Act of	Section	Statute	43 U.S. Code
Mar. 8, 1922.....	2	42:415.....	270-11.
Mar. 8, 1922.....	3	42:415.....	270-13.
Aug. 17, 1961.....		75:384.....	
July 8, 1916.....		39:352.....	270-14.
June 28, 1918.....		40:538.....	270-15.
Apr. 13, 1928.....	1	44:243.....	270-16.
Oct. 28, 1921.....	1	42:208.....	270-17.
Apr. 13, 1926.....		44:244.....	687a-2,
May 14, 1898.....	10	30:413.....	687a-3, 687a-5.
Apr. 29, 1950.....	5	64:95.....	687a-1.
Mar. 3, 1891.....	13	26:1100.....	687a-6.
Aug. 30, 1949.....		63:679.....	687b-687b-4.
July 19, 1963.....		77:80.....	687b-5.
10. Pittman Act Grants:			
Sept. 22, 1972.....		42:1012.....	366.
11. Indian Allotments:			25 U.S.C.
Feb. 8, 1887.....		24:389.....	334.
Feb. 28, 1891.....		26:795.....	336.
12. Exchanges:			
June 28, 1934.....	8	48:1272.....	315g.
July 9, 1962.....		76:140.....	315g-1.

<sup>1</sup> Last paragraph of Sec. 1 only.

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 re-  
5 served by Executive order of November 26, 1934 (numbered  
6 6910), and amendments thereto, and Executive order of  
7 February 5, 1935 (numbered 6964), or within a grazing  
8 district, which are more valuable or suitable for any other use  
9 than for the use provided for under this Act, or proper for  
10 acquisition in satisfaction of any outstanding lien, exchange  
11 or land grant, and to open such lands to disposal in accord-  
12 ance with such classification under applicable public land  
13 laws. Such lands shall not be subject to disposition until after  
14 the same have been classified and opened to disposal."

15 (c) The Act of March 3, 1877, as amended (19 Stat.  
16 377; 43 U.S.C. 321, 322, 323, 325, 327-329) is further  
17 amended in its entirety to read as follows:

1 "All surplus water over and above water actually ap-  
2 propriated and used by persons on entries made under this  
3 Act, together with the water of all lakes, rivers, and other  
4 sources of water supply upon the public lands and not navi-  
5 gable, shall remain and be held free for the appropriation and  
6 use of the public for irrigation, mining, and manufacturing  
7 purposes subject to existing rights."

8 (d) Section 2 of the Act of March 8, 1922, as amended  
9 (43 U.S.C. 270-12), is further amended to read:

10 "The coal, oil, or gas deposits reserved to the United  
11 States in accordance with the Act of March 8, 1922 (42  
12 Stat. 416, as added, 75 Stat. 384, as amended, 76 Stat.  
13 740), shall be subject to disposal by the United States in  
14 accordance with the provisions of the laws applicable to  
15 coal, oil, or gas deposits or coal, oil, or gas lands in Alaska  
16 in force at the time of such disposal. Any person qualified  
17 to acquire coal, oil, or gas deposits, or the right to mine or  
18 remove the coal or to drill for and remove the oil or gas  
19 under the laws of the United States shall have the right at  
20 all times to enter upon the lands patented, as provided by  
21 the provisions hereof, for the purpose of prospecting for coal,  
22 oil, or gas therein, upon the approval by the Secretary of  
23 the Interior of a bond or undertaking to be filed with him  
24 as security for the payment of all damages to the crops and  
25 improvements on such lands by reason of such prospecting.

1 Any person who has acquired from the United States the  
2 coal, oil, or gas deposits in any such land, or the right to  
3 mine, drill for, or remove the same, may reenter and occupy  
4 so much of the surface thereof as may be required for all  
5 purposes reasonably incident to the mining and removal of  
6 the coal, oil, or gas therefrom, and mine and remove the  
7 coal or drill for and remove oil and gas upon payment of  
8 the damages caused thereby to the owner thereof, or upon  
9 giving a good and sufficient bond or undertaking in an action  
10 instituted in any competent court to ascertain and fix said  
11 damages: *Provided*, That the owner under such limited patent  
12 shall have the right to mine the coal for use on the land  
13 for domestic purposes at any time prior to the disposal by  
14 the United States of the coal deposits: *Provided, further*,  
15 That nothing in this Act shall be construed as authorizing  
16 the exploration upon or entry of any coal deposits withdrawn  
17 from such exploration and purchase.”

18 (e) Section 3 of the Act of August 30, 1949 (43 U.S.C.  
19 687b-2) is amended to read:

20 “Notwithstanding the provisions of any Act of Con-  
21 gress to the contrary, any person who prospects for, mines,  
22 or removes any minerals from any land disposed of under  
23 the Act of August 30, 1949 (63 Stat. 679) shall be liable  
24 for any damage that may be caused to the value of the land  
25 and tangible improvements thereon by such prospecting

1 for, mining, or removal of minerals. Nothing in this section  
 2 shall be construed to impair any vested right in existence on  
 3 August 30, 1949.”

4 SEC. 505. REPEAL OF PRIOR LAWS PERTAINING TO  
 5 RIGHTS-OF-WAY.—(a) Subject to valid rights existing on  
 6 the date of approval of this Act, the following statutes or  
 7 parts of statutes are repealed insofar as they apply to national  
 8 resource lands:

Act of	Section	Statute	43 U.S. Code
Revised Statutes 2339			661.
The following words only: "and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."			
Revised Statutes 2340			661.
The following words only: " , or rights to ditches and reservoirs used in connection with such water rights,".			
Feb. 25, 1897		29-599	664.
Mar. 3, 1899	1	30-1289, ch. 427	665, 958 (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."			
Mar. 3, 1875	1, 2, 4, 5, 6	18-482	934, 935, 937, 938, 989.
May 14, 1898	2-9	30-409, 412, 413, ch. 299 as amended.	942-1-942-9.
Feb. 27, 1901		31-815, ch. 614	943.
June 26, 1906		34-481, ch. 3548	944.
Mar. 3, 1891	18-21	26-1101, ch. 561 as amended	946-949.
Mar. 1, 1921		41-1194, ch. 53	950.
May 11, 1898	2	30-404, ch. 292 as amended	951.
Jan. 13, 1897		29-484, ch. 11 as amended	952-955.
Jan. 21, 1895		28-635, ch. 37 as amended	956-957.
Feb. 15, 1901		31-790, ch. 372	969 (16 U.S.C. 79, 522).
Mar. 4, 1911		36-1253, ch. 238	961 (16 U.S.C. 5, 420, 523).
May 21, 1896		29-127, ch. 212	962-965.
Apr. 12, 1910		36-296, ch. 155	966-970.
Oct. 23, 1962		76-1129	40 U.S.C. 319-319c.

9 (b) Notwithstanding the provisions of subsection (a) of  
 10 this section, the following statutes are repealed in their  
 11 entirety:

Act of	Section	Statute	43 U.S. Code
Feb. 25, 1920	28	41 Stat. 449 as amended	30 U.S.C. 185.
Revised Statutes 2477			43 U.S.C. 982.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

APR 27 1973

Dear Mr. Chairman:

On February 27, 1973 the Department of the Interior submitted to Congress the Administration's proposed "National Resource Lands Management Act of 1973" which was subsequently introduced as S. 1041 and H.R. 5441.

Title V of the bill in part repeals or amends many obsolete or superseded laws pertaining to the public lands. After a reexamination of Title V, we feel that the list of these laws should include not only the original statutes which are now obsolete, but also subsequent legislation which amends those statutes. This will ensure that obsolete legislation is amended or repealed in its entirety.

Enclosed are twenty copies of a new Title V redrafted to reflect this change. We request that this new Title V be inserted in the bill which was introduced and that the Title V presently a part of the bill be deleted.

We have also reorganized sections 501 and 502 in Title V. This reorganization will further improve the Title.

Sincerely yours,

*(Signature)* John H. Kyle  
Assistant Secretary of the Interior

Hon. James A. Haley  
Chairman, Committee on  
Interior and Insular Affairs  
House of Representatives  
Washington, D.C. 20515

Enclosures

cc:  
Secy RF (2)  
Under Secy  
BLM  
GS  
A/Sec-CPA; PDB; LWR; EM  
A/Sol-FL  
Mr. Brown

Mr. Findlay  
HOLD

CWFindley:lrp 4/27/73

## TITLE V

## CONSTRUCTION OF LAW, PRESERVATION OF VALID EXISTING RIGHTS AND REPEAL OF LAWS

## SEC. 501. Construction of Law.

(a) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States, or as affecting in any way any law governing appropriation or use of, or Federal right to, water on National Resource Lands.

(b) Nothing in this Act shall be construed as a limitation upon any State criminal statute, nor on the police power of the respective States, nor to derogate the authority of a local police officer in the performance of his duties, not to deprive any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the National Resource Lands.

(c) The authority conferred upon the Secretary by this Act is in addition to all other authority vested in him by law, and nothing in this Act shall be construed to repeal any such other authority by implication. However, the Secretary may exercise the authority granted herein notwithstanding any other provision of law.

SEC. 502. Valid Existing Rights. This Act shall be subject to valid rights existing on the date of approval of this Act.

SEC. 503. Repeal of Laws Relating to Disposal of National Resource Lands.

(a) The following statutes or parts of statutes are repealed:

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
<u>1. Homesteads</u>				
Revised Statute 2289				161, 171
Mar. 3, 1891	561	5	26:1096	161, 162
Revised Statute 2290				162
Revised Statute 2295				163
Revised Statute 2291				164
June 6, 1912	153		37:123	164, 169, 218
May 14, 1880	89		21:141	166, 185, 202, 223
June 6, 1900	821		31:683	166, 223
Aug. 9, 1912	280		37:267	
Apr. 6, 1914	51		38:312	167
Mar. 1, 1921	90		41:1193	
Oct. 17, 1914	325		38:740	168
Revised Statute 2297				169
Mar. 3, 1881	153		21:511	
Oct. 22, 1914	335		38:766	170
Revised Statute 2292				171
June 8, 1880	136		21:166	172
Revised Statute 2301				173
Mar. 3, 1891	561	6	26:1098	
June 3, 1896	312	2	29:197	
Revised Statute 2288				174
Mar. 3, 1891	561	3	26:1097	
Mar. 3, 1905	1424		33:991	
Revised Statute 2296				175
Apr. 28, 1922	155	42:502		
May 17, 1900	479	1	31:179	179
Jan. 26, 1901	180		31:740	180

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
Sept. 5, 1914	294		38:712	182
Revised Statute 2300				183
Aug. 31, 1918	166	8	40:957	
Sept. 13, 1918	173		40:960	
Revised Statute 2302				184, 201
July 26, 1892	251		27:270	185
Feb. 14, 1920	76		41:434	186
Jan. 21, 1922	32		42:358	
Dec. 28, 1922	19		42:1067	
June 12, 1930	471		46:580	
Feb. 25, 1925	326		43:981	187
June 21, 1934	690		48:1185	187a
May 22, 1902	821	2	32:203	187b
June 5, 1900	716		31:270	188, 217
Mar. 3, 1875	131	15	18:420	189
July 4, 1884	180		23:96	190
	Only last paragraph of section 1			
Mar. 1, 1933	160	1	47:1418	190a
The following words 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 homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 43, sec. 190)."				
Revised Statutes 2310, 2311				191
June 13, 1902	1080		32:384	203
Mar. 3, 1879	191		20:472	204
July 1, 1879	60		21:46	205
May 6, 1886	88		24:22	206

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
Aug. 21, 1916	361		39:518	207
June 3, 1924	240		43:357	208
Revised Statute 2298				211
Aug. 30, 1890	837		26:391	212

The following words 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 permitted 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 settlement on the public lands, or whose occupation, entry or settlement, is validated by this act:"

Mar. 3, 1891	561	17	26:1101	
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The following words only: "and that the provision of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "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 permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."

Apr. 28, 1904	1776		33:527	213
Aug. 3, 1950	521		64:398	
Mar. 2, 1889	381	6	25:854	214
Feb. 20, 1917	98		39:925	215
Mar. 4, 1921	162	1	41:1433	216

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
Feb. 19, 1909	160		35:639	218
June 13, 1912	166		37:132	
Mar. 3, 1915	84		38:953	
Mar. 3, 1915	91		38:957	
Mar. 4, 1915	150	2	38:1163	
July 3, 1916	220		39:344	
Feb. 11, 1913	39		37:666	218, 219
June 17, 1910	298		36:531	219
Mar. 3, 1915	91		38:957	
Sept. 5, 1916	440		39:724	
Aug. 10, 1917	52	10	40:275	
Mar. 4, 1915	150	1	38:1162	220
Mar. 4, 1923	245	1	42:1445	222
Apr. 28, 1904	1801		33:547	224
Mar. 2, 1907	2527		34:1224	
May 29, 1908	220	7	35:466	
Aug. 24, 1912	371		37:499	
Aug. 22, 1914	270		38:704	231
Feb. 25, 1919	21		40:1153	
July 3, 1916	214		39:341	232
Sept. 29, 1919	64		41:288	233
Apr. 6, 1922	122		42:491	233, 272, 273
Mar. 2, 1889	381	3	25:854	234
Dec. 29, 1894	14		28:599	

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S. Code</u>
July 1, 1879	63	1	21:48	235
Dec. 20, 1917	6		40:430	236
July 24, 1919	26	Next to last paragraph only	41:271	237
Mar. 2, 1932	69		47:59	237a
May 21, 1934	320		48:787	237b
May 22, 1935	135		49:286	237c
Aug. 19, 1935	560		49:659	237d
Mar. 31, 1938	57		52:149	
Apr. 20, 1936	239		49:1235	237e
July 30, 1956	778	1,2,4	70:715	237f, g, h
Mar. 1, 1921	102		41:1202	238
Apr. 7, 1922	125		42:492	
Revised Statute 2308				239
June 16, 1898	458		30:473	240
Aug. 29, 1916	420		39:671	
Apr. 7, 1930	108		46:144	243
Mar. 3, 1933	198		47:1424	243a
Mar. 3, 1879	192		20:472	251
Mar. 2, 1889	381	7	25:855	252
June 3, 1878	152		20:91	253
Revised Statute 2294				254
May 26, 1890	355		26:121	
Mar. 11, 1902	182		32:63	
Mar. 4, 1904	394		33:59	
Feb. 23, 1923	105		42:1281	
Revised Statute 2293				255
Oct. 6, 1917	86		40:391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service"	37:925	256
May 13, 1932	178		47:153	256a
June 16, 1933	99		48:274	
July 26, 1935	419		49:504	
June 16, 1937	361		50:303	
Aug. 27, 1935	770		49:909	256b

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 US.Code</u>
Sept. 30, 1890	J.Res.59		26:684	261
June 16, 1880	244		21:287	263
Apr. 18, 1904	25		33:589	
Revised Statute 2304				271
Mar. 1, 1901	674		31:847	271, 272
Revised Statute 2305				272
Feb. 25, 1919	37		40:1161	272a
Dec. 28, 1922	19		42:1067	
Revised Statute 2306				274
Mar. 3, 1893	208		27:593	275
The following words only: " <u>And provided further:</u> 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."				
Aug. 18, 1894	301	Only last paragraph of Section headed "Surveying the Public Lands"	28:397	276
Revised Statute 2309				277
Revised Statute 2307				278
Sept. 21, 1922	357		42:990	
Sept. 27, 1944	421		58:747	279-283
June 25, 1946	474		60:308	279
May 31, 1947	88		61:123	279, 280, 282
June 18, 1954	306		68:253	279, 282
June 3, 1948	399		62:305	283, 284
Dec. 29, 1916	9	1-8	39:862	291-298
Feb. 28, 1931	328		46:1454	291
June 9, 1933	53		48:119	291
June 6, 1924	274		43:469	292
Oct. 25, 1918	195		40:1016	293
Sept. 29, 1919	63		41:287	294, 295
Mar. 4, 1923	245	2	42:1445	302
Aug. 21, 1916	361		39:518	1075
Aug. 28, 1937	876	3	50:875	1181c

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
<u>2. Desert Land Entries</u>				
Mar. 3, 1877	107	2,3	19:377	322-323, 325,
Mar. 3, 1891	561	2	26:1096	327-329
Except the words: ". . . all acts and parts of acts in conflict with this act are hereby repealed."				
Jan. 6, 1921	12		41:1086	
Mar. 28, 1908	112		35:52	324, 326, 333
Feb. 27, 1917	134		39:946	330
Mar. 1, 1921	102		41:1202	331
Dec. 15, 1921	3		42:348	
Aug. 7, 1917	48		40:250	332
Apr. 30, 1912	101		37:106	334
Feb. 25, 1925	329		43:982	336
July 30, 1956	778		70:715	336a-d
Mar. 4, 1915	147	5	38:1161	335,337,338
Mar. 21, 1918	26		40:458	
Mar. 4, 1929	687		45:1548	339
Feb. 14, 1934	9		48:349	
<u>3. Sale and Disposal Laws</u>				
Mar. 3, 1891	561	9	26:1099	671
Revised Statute 2354				673
Revised Statute 2355				674
May 18, 1898	344	2	30:418	675
Revised Statute 2365				676
Revised Statute 2357				678
June 15, 1880	227	3,4	21:238	679,680
Mar. 2, 1889	381	4	25:854	681
Mar. 1, 1907	2286		34:1052	682
June 1, 1938	317		52:609	682a-e
July 14, 1945	298		59:467	
June 8, 1954	270		68:239	

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
Revised Statute 2361				688
Revised Statute 2362				689
Revised Statute 2363				690
Revised Statute 2368				691
Revised Statute 2366				692
Revised Statute 2369				693
Revised Statute 2370				694
Revised Statute 2371				695
Revised Statute 2374				696
Revised Statute 2372				697
Feb. 24, 1909	181		35:645	
May 21, 1926	353	The two provisos only	44:591	
Revised Statute 2375				698
Revised Statute 2376				699
Mar. 2, 1889	381	1	25:854	700

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
<u>6. Abandoned Military Reservation</u>				
July 5, 1884	214	5	23:104	1074
Aug. 21, 1916	361		39:518	1075
Mar. 3, 1893	208		27:593	1076
The following words only: "Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."				
Aug. 23, 1894	314		28:491	1077, 1078
Feb. 11, 1903	543		32:822	1079
Feb. 15, 1895	92		28:664	1080, 1077
Apr. 23, 1904	1496		33:306	1081
<u>7. Public Lands: Oklahoma</u>				
May 2, 1890	182		26:90	1091-1094, 1096, 1097
			Last paragraph of section 18 and sections 20, 21, 22, 24, 27	
Mar. 3, 1891	543	16	26:1026	1098
Aug. 7, 1946	772	1,2	60:872	1100-1101
Aug. 3, 1955	498	1-8	69:445	1102-1102g
May 14, 1890	207		26:109	1111-1117
Sept. 1, 1893	J.Res.4		28:11	1118
May 11, 1896	168	1,2	29:116	1119
Jan. 18, 1897	62	1-3,5,7	29:490	1131-1134
June 23, 1897	8		30:105	
Mar. 1, 1899	328		30:966	
<u>8. Sales of Isolated Tracts</u>				
Revised Statute 2455				1171
Feb. 26, 1895	133		28:687	
June 27, 1906	3554		34:517	
Mar. 28, 1912	67		37:77	
Mar. 9, 1928	164		45:253	
June 28, 1934	865	14	48:1274	
July 30, 1947	383		61:630	

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
<u>4. Townsite Reservation and Sale</u>				
Revised Statute 2380				711
Revised Statute 2381				712
Revised Statute 2382 Aug. 24, 1954	904		68:792	713
Revised Statute 2383				714
Revised Statute 2384				715
Revised Statute 2386				717
Revised Statute 2387				718
Revised Statute 2388				719
Revised Statute 2389				720
Revised Statute 2391				721
Revised Statute 2392				722
Revised Statute 2393				723
Revised Statute 2394				724
Mar. 3, 1877	113	1,3,4	19:392	725-727
Mar. 3, 1891	561	16	26:1101	728
July 9, 1914	138		38:454	730
Feb. 9, 1903	531		32:820	731
<u>5. Drainage Under State Laws</u>				
May 20, 1908	181	7	35:171	1027
May 1, 1958	P.L.85-387		72:99	1029-1034
Jan. 17, 1920	47		41:392	1041-1048

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
Apr. 24, 1928	428		45:457	1171a
May 23, 1930	313		46:377	1171b
Feb. 4, 1919	13		40:1055	1172
May 10, 1920	178		41:595	1173
Aug. 11, 1921	62		42:159	1175
May 19, 1926	337		44:566	1176
Feb. 14, 1931	170		46:1105	1177
<u>9. Alaska Special Laws</u>				
Mar. 3, 1891	561	11	26:1099	732
May 25, 1926	379		44:629	733-736
May 29, 1963	P.L. 88-34		77:52	
July 24, 1947	305		61:414	738
May 14, 1898	299	1	30:409	270
Mar. 3, 1903	1002		32:1028	
Apr. 29, 1950	137	1	64:94	
August 3, 1955	496		69:444	270, 687a-2
April 29, 1950	137	2-5	64:95	270, 270-5,
July 11, 1956	571	2	70:529	270-6, 270-7, 687a-1
July 8, 1916	228		39:352	270-8, 270-9,
June 28, 1918	110		40:632	270-10, 270-13, 270-14
July 11, 1956	571	1	70:528	
Mar. 8, 1922	96	1	42:415	270-11
Aug. 23, 1958	P.L. 85-725	1, 4	72:730	
Aug. 17, 1961	P.L. 87-147		75:384	270-13
Oct. 3, 1962	P.L. 87-742		76:740	
April 13, 1926	121		44:243	270-15,
April 29, 1950	134	3	64:93	270-16, 270-17

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S. Code</u>
May 14, 1898	299	10	30:413	270-4,
Mar. 3, 1927	323		44:1364	687a-1 to
May 26, 1934	357		48:809	687a-5
Aug. 23, 1958	P.L. 85-725	3	72:730	
Mar. 3, 1891	561	13	26:1100	687a-6
Aug. 30, 1949	521		63:679	687b to 687b-4
July 19, 1963	P.L. 88-66		77:80	687b-5

10. Pittman Underground Water Act

Sept. 22, 1922	400		42:1012	356
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11. Indian Allotments

				<u>25 U.S. Code</u>
Feb. 8, 1887	119	4	24:389	334
Feb. 28, 1891	383	4	26:795	336
June 25, 1910	431	17*	36:860	

\* Only to the extent it amends section 4 of the Act of February 28, 1891, 26 Stat 794, 25 U.S.C. § 336.

(b) Section 7 of the Taylor Grazing Act, 48 Stat. 1272, Chapter 865, as amended by section 2 of the Act of June 26, 1936, 49 Stat. 1976, Chapter 842, Title I, 43 U.S.C., §315f, is further amended to read as follows:

"The Secretary of the Interior is authorized, in his discretion, to examine and classify any lands withdrawn or reserved by Executive Order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive Order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange or land grant, and to open such lands to disposal in accordance with such classification under applicable public land laws. Such lands shall not be subject to disposition until after the same have been classified and opened to disposal".

(c) Section 1 of the Act of March 3, 1877, 19 Stat. 377, Chapter 107, as amended by section 2 of the Act of March 3, 1891, 26 Stat. 1096, Chapter 561, 43 U.S.C. §321, is repealed except the following language:

"All surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights."

or drill for and remove oil and gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: Provided, that the owner under such limited patent shall have the right to mine the coal for use on the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits; Provided, further, that nothing in this Act shall be construed as authorizing the exploration upon or entry of any coal deposits withdrawn from such exploration and purchase."

(e) Section 3 of the Act of August 30, 1949, 63 Stat. 679, Chapter 521, 43 U.S.C. §687b-2, is amended to read:

"Notwithstanding the provisions of any Act of Congress to the contrary, any person who prospect for, mines or removes any minerals from any land disposed of under the Act of August 30, 1949, 63 Stat. 679, Chapter 521, shall be liable for any damage that may be caused to the value of the land and tangible improvements thereon by such prospecting for, mining, or removal of minerals. Nothing in this section shall be construed to impair any vested right in existence on August 30, 1949."

(d) Section 2 of the Act of March 8, 1922, 42 Stat. 416, Chapter 96, as amended by section 2 of the Act of August 23, 1958, 72 Stat. 730, P.L. 85-725, 43 U.S.C. §270-12, is further amended to read:

"The coal, oil or gas deposits reserved to the United States in accordance with the Act of March 8, 1922, 42 Stat. 415, Chapter 96, as added to by the Act of August 17, 1961, 75 Stat. 384, P.L. 87-147, and amended by the Act of October 3, 1962, 76 Stat. 740, P.L. 87-742, shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil or gas deposits or coal, oil or gas lands in Alaska in force at the time of such disposal. Any person qualified to acquire coal, oil, or gas deposits, or the right to mine or remove the coal or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times to enter upon the lands patented under the Act of March 8, 1922, as amended, and in accordance with the provisions hereof, for the purpose of prospecting for coal, oil or gas therein, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal, oil or gas deposits in any such land, or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal

## SEC. 504. Repeal of Laws Relating to Administration of National Resource Lands.

The following statutes or parts of statutes are repealed:

	<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
1.	March 2, 1895	174		28:744	176
2.	June 28, 1934	865	8	48:1272	315g
	June 26, 1936	842	3	49:1976, Title I	
	June 19, 1948	548	1	62:533	
	July 9, 1962	P.L. 87-524		76:140	315g-1
3.	August 24, 1937	744		50:748	315p
4.	March 3, 1909	271	2nd proviso only	35:845	772
	June 25, 1910	J. Res. 40		36:884	
5.	June 21, 1934	689		48:1185	871a
6.	Revised Statute	2447			1151
	Revised Statute	2448			1152
7.	June 6, 1874	223		18:62	1153, 1154
8.	January 28, 1879	30		20:274	1155
9.	May 30, 1894	87		28:84	1156
10.	Revised Statute	2450			1161
	February 27, 1877	69	1	19:244	
	The following words only: "Section twenty-four hundred and fifty is amended by striking out, in the fourth line, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'".				
	Revised Statute	2451			1162
	February 27, 1877	69	1	19:244	
	The following words only: "Section twenty-four hundred and fifty-one is amended by striking out, in the first and second lines, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior'".				
	Revised Statute	2456			1163
	September 20, 1922	350		42:857	
	The words: "... and sections 2450, 2451, and 2456 be amended to read as follows:" and all words following in the Act.				
	Revised Statute	2457			1164

	<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
11.	March 3, 1891	561	7	26:1098	1165
12.	Revised Statute	2471			1191
	Revised Statute	2472			1192
	Revised Statute	2473			1193
13.	July 14, 1960	P.L.86-649	101-202(a), 203-204(a), 301-303	74:506	1361, 1362, 1363-1383
14.	September 26, 1970	P.L.91-429		84:885	1362a
15.	July 31, 1939	401	1,2	53:1144	

SEC. 505. Repeal of Laws Relating to Rights-of-Way.

(a) The following statutes or parts of statutes are repealed insofar as they apply to National Resource Lands:

	<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S.Code</u>
	Revised Statutes	2339			661

The following words only: "and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage."

	Revised Statutes	2340			661
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The following words only: ", or rights to ditches and reservoirs used in connection with such water rights,".

	Feb. 26, 1897	335		29:599	664
	Mar. 3, 1899	427	1	30:1233	665, 958 (16 U.S.C. 525)

The following words only: "that in the form provided by existing law the Secretary of the Interior may file and

approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>43 U.S. Code</u>
Mar. 3, 1875	152		18:482	934-939
May 14, 1898	299	2-9	30:409	942-1 to 942-9
Feb. 27, 1901	614		31:815	943
June 26, 1906	3548		34:481	944
Mar. 3, 1891	561	18-21	26:1101	946-949
Mar. 4, 1917	184	1	39:1197	
May 28, 1926	409		44:668	
Mar. 1, 1921	93		41:1194	950
Jan. 13, 1897	11		29:484	952-955
Mar 3, 1923	219		42:1437	
Jan. 21, 1895	37		28:635	951, 956, 957
May 14, 1896	179		29:120	
May 11, 1898	292		30:404	
Mar. 4, 1917	184	2	39:1197	
Feb. 15, 1901	372		31:790	959 (16 U.S.C. 79, 522)
Mar. 4, 1911	238		36:1253	961 (16 U.S.C. 5, 420, 523)
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service".				
May 27, 1952	338		66:95	
May 21, 1896	212		29:127	962-965
Apr. 12, 1910	155		36:296	966-970

(b) Notwithstanding the provisions of subsection (a) of this section, the following statutes are repealed in their entirety:

<u>Act of</u>	<u>Chapter</u>	<u>Section</u>	<u>Statute at Large</u>	<u>U.S. Code</u>
Feb. 25, 1920	85	28	41:449	30 U.S.C. 185
Aug. 21, 1935	599	1*	49:678	
*Only to the extent it amends section 28 of the Act of Feb. 25, 1920, 41 Stat. 449, 30 U.S.C. 185.				
Aug. 12, 1953	408		67:557	
Revised Statute 2477				43 U.S.C. 932

Senator HASKELL. We are very fortunate to have with us today as our first witness Assistant Secretary Horton. My colleagues and I welcome him. He is from a neighboring State.

**STATEMENT OF HON. PAUL J. FANNIN, A U.S. SENATOR FROM THE STATE OF ARIZONA**

Senator FANNIN. Thank you, Mr. Chairman. We do welcome the witnesses this morning. I understand we have some conflicts in that we must go to another meeting. Senator Hansen and I have a markup of the pension plan in the Finance Committee.

We have neglected that committee because of the pressing business in the Interior activities and we regret it very much, as both of us have a great interest to serve the committee as well.

It is an executive session and I regret very much that we will not be here for the testimony but we will carefully review the transcript and we want to be of all the assistance possible on this legislation.

Again I apologize for not being able to stay with you.

Thank you.

Senator HASKELL. Senator Hansen.

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

Senator HANSEN. Mr. Chairman, thank you very much for this opportunity to join with Senator Fannin in adding my word of welcome to the distinguished panel this morning. I am particularly proud of the fact of course that Jack Horton comes from Saddlestring, Wyo., where his grandfather, a late Member of the Congress of the United States, has held forth for many years as a dude ranch operator and it is one of the best in the whole country, that includes Colorado and Arizona.

Mr. Chairman, I might say that Senator Fannin has expressed completely the dilemma that he and I face in having to go on to another meeting.

I regret very much that we cannot be here to ask some questions that I am certain would be prompted by the testimony. We will study the record and he and I each have staff members present to monitor the hearings and to call to our attention what transpires.

Senator HASKELL. I am sorry gentlemen, but I certainly understand.

Senator FANNIN. Thank you.

Senator HASKELL. I will place in the record at this point a letter from Senator Frank Moss of Utah to Senator Jackson, chairman of the full committee.

U.S. SENATE,  
Washington, D.C., July 23, 1973.

HON. HENRY M. JACKSON,  
*Chairman, Interior and Insular Affairs Committee,  
New Senate Office Building,  
Washington, D.C.*

DEAR MR. CHAIRMAN: I would like to take this opportunity to state again for the record my strong support for a National Resource Lands Management Act and to urge prompt action by the Interior Committee in reporting the bill.

Prudent management of the public lands requires a sophistication far beyond the simple restraints which earlier Congresses at the turn of the century wrote into the public land laws.

Those of us who represent a constituency west of the one-hundredth meridian, where the public lands constitute at least 50% of our land mass, recognize that a modern set of management tools is essential. I hope this legislation will have a high priority.

Sincerely,

FRANK E. MOSS,  
*U.S. Senator.*

Senator HASKELL. Mr. Secretary, would you introduce your panel and then proceed in whatever way you desire?

**STATEMENT OF JACK HORTON, ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY ASSISTANT SECRETARY JOHN KYL; CHARLES FINDLAY, ATTORNEY ADVISER, OFFICE OF LEGISLATION; ASSOCIATE DIRECTOR GEORGE TURCOTT, BUREAU OF LAND MANAGEMENT; AND IRVING SENZEL, ASSISTANT DIRECTOR, BUREAU OF LAND MANAGEMENT**

Mr. HORTON. Thank you very much, Mr. Chairman.

Of course it is a great pleasure for all of us to be here.

I would like with your permission to introduce first Assistant Secretary John Kyl of the Department, well known to the committee, one of the very important members of the Public Land Law Review Commission which has been totally involved with the proposals for BLM since its inception; Mr. Charles Findlay to my immediate left is from the Office of the Legislative Counsel; to my immediate right is Mr. George Turcott, the Associate Director of the Bureau of Land Management, and Mr. Irving Senzel, an Assistant Director of the Bureau.

It is a pleasure once again for all of us to appear before you in support of S. 1041 as modified by our letter of April 27, 1973.

The national resource lands and their resource values are among the Nation's greatest assets. They encompass mountains, rangelands, forests, and lakes and provide some of the most spectacular scenery on Earth.

They are a source of food, timber, minerals, and water and offer almost unlimited recreational values.

\* The national resource lands, which are the lands administered by the Bureau of Land Management, constitute 60 percent of all federally owned lands.

\* Yet, unlike the remaining Federal estate, Congress has not established a basic mission for the lands nor has it provided adequate authority for effective management of the lands.

To remedy this, we recommend enactment of S. 1041, which is consistent with but more comprehensive than S. 424.

The national resource lands were initially used as a means of developing the West, through homesteading, railroad grants, grants to States, and other disposal programs.

Some of the lands were set aside for national parks, wildlife refuges, and national forests. It is unfortunate that highly valuable resources of the public domain were not considered worthy of protective administration unless and until they were placed in these special categories.

A major administrative response to this situation has been the protective withdrawal.

Congressional action (to correct this) began in 1934 with the enactment of the Taylor Grazing Act. This act brought some measure of protection to the lands, and stated a congressional policy: " \* \* \* to promote the highest use of the public lands."

The next major congressional step was the Classification and Multiple Use Act of 1964, interim legislation, pending implementation of the recommendations of the (Public Land Law Review Commission Act) enacted the same day.

The Commission Act stated a congressional policy that the public lands be retained and managed or disposed of in a manner to provide the maximum benefit for the general public.

The Classification Act called for a program of inventory and classification which have provided the basis for the Bureau of Land Management's present system of land use planning.

(S. 1041) would serve as the basic mission statement for the national resource lands and would grant the Secretary of the Interior sorely needed authority to perform diverse and varied functions related to the administration of the lands.

It would repeal many of the 3,000 land laws which have accumulated over the last 170 years, but which are now obsolete.

It would provide in one statute an orderly, systematic, planned approach to land management, with guidelines, criteria, and basic procedures.

The format of the bill is designed to accommodate long range needs for a legislative base for the management of the national resource lands.

Each title is designed to permit separate consideration of its provisions. The value of this approach has been underscored by the separate consideration of title IV, the right-of-way bill.

If a general right-of-way bill is enacted, title IV of S. 1041 can be deleted in its entirety.

Conversely, new titles covering other subject matter can be added to the bill. Recommendations for new titles will be made by the Department after S. 1041 is enacted as a base for future proposals.

(S. 1041) commences with a declaration of Congress that it is in the national interest to retain the national resource lands in Federal ownership and that the lands shall be managed so as to protect their environmental quality.

The bill requires the Secretary to maintain an inventory of the lands and to develop land use plans which are coordinated with the plans of State and local governmental agencies.

It provides for management of the lands under principles of multiple use and sustained yield with opportunity for public participation in management policy decisions.

It authorizes the sale of national resource lands and reserved mineral interests in lands in accordance with specified criteria. All conveyances would be for fair market value.

S. 1041 also grants some specific new administrative authorities which will allow for more economic and effective management of the lands.

- \* For example, [it establishes a working capital fund. It authorizes the acquisition of lands by purchase, donation, or exchange and as to exchanges, it allows for equalization of land values by payment of cash.]
- \* [It provides enforcement authority for violation of laws pertaining to the national resource lands and it authorizes the making of cooperative agreements with State and local law enforcement officials.]
- The bill contains a title relating to rights-of-way, but hopefully future enactment of S. 1081 will obviate the necessity of further consideration of that matter.
- \* Finally, [S. 1041 would repeal many obsolete laws or laws superseded by this proposed legislation. Notwithstanding the long list of laws repealed, valid rights existing on the date of enactment of S. 1041 would be preserved.]

Implementation of S. 1041 would not conflict with the President's proposal for a Department of Energy and Natural Resources, nor would the bill repeal or modify any law or segment of law not specifically listed in the repealer sections.

For example, the bill does not affect the Recreation and Public Purposes Act, the Color of Title Act, the grazing provisions of the Taylor Grazing Act, the O. and C. and Coos Bay Acts, the mining laws, the Outer Continental Shelf Leasing Act or legislation dealing with other Federal land systems such as national forests, national wildlife refuges, or national parks.

S. 1041 would complement S. 268, the Land Use Policy and Planning Assistance Act, as passed by the Senate. Both proposals require the development of land use plans and the management and use of lands in accordance therewith.

S. 1041 applies to Federal lands and S. 268 applies to non-Federal lands. Both bills specifically provide for the coordination of Federal, State, and local plans.

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

We urge enactment of this legislation as soon as possible in order to provide the Bureau of Land Management with management authority available to other Federal land managing agencies.

- \* Mr. Chairman, I would like to interject at this point and reemphasize that [the BLM now has jurisdiction over 20 percent of all the lands in this country, 60 percent of all the Federal lands—450 million acres that it has direct jurisdiction over and another 500 million acres which it has had limited management responsibility for, and over 800 million acres of the Outer Continental Shelf.]

In 1897 the U.S. Congress gave the U.S. Forest Service its own Organic Act. We are very hopeful in the Department and in the administration that in addition to the landmark years of 1812 when the General Land Office was established, in the year 1934 when the Grazing Service was established, 1946 when the BLM was established, that 1973 will be a hallmark year at which time the Congress gives to the BLM a set of policies, a set of objectives and a set of management tools.

Thank you very much. We are prepared at this time for whatever questions you may have.

Senator HASKELL. Thank you very much, Mr. Secretary. I appreciate your testimony and I certainly concur and I am sure that other members of the committee concur that it is indeed high time that the Interior Department be given an Organic Act.

Now, the bill which your Department has forwarded and which you commented on is S. 1041. The other bill which the chairman of the Interior Committee and others have introduced is S. 424.

Would you care to comment on the substantive differences in the two bills and reasons for the substantive difference?

Mr. HORTON. Mr. Chairman, we prepared a briefing paper on the major points of differences between S. 1041 and S. 424. These can be provided for the record.

[The paper referred to above follows:]

MAJOR POINTS OF DIFFERENCE BETWEEN S. 1041 AND S. 424

S. 1041

S. 424

§ 3(e)—Definition of "areas of critical environmental concern" specifically identifies nine types of areas to be included.

Same General definition—no specific listings. (§ 2(e)).

§ 4 *Rules and Regulations*—No such specific requirement.

Requires compliance with Administrative Procedure Act. Has other specific requirements. (§ 16).

§ 101—*Management*—Objectives broadly stated.

In addition to general objectives lists several specifics—protect quality of scientific, scenic, historical and archeological values; preserve and protect certain areas in their natural condition; provide habitat for fish and wildlife; provide for outdoor recreation (§ 3(b)).

No similar provision.

§ 101(a)—Specifically authorizes Secretary to regulate through permits, etc. the use, occupancy or development of national resource lands not provided for by other laws.

§ 102 *Inventory*—Providing means of public identification of national resource lands is discretionary.

Identification of boundaries of units of national resource lands is mandatory (§ 4).

Providing States and local governments with inventory data is discretionary with Secretary.

Wherever possible, inventory data shall be made available to States and local governments (§ 4).

§ 104 *Disposal Criteria*—no similar provision.

Contains additional requirement: sale of tract will not cause needless degradation of environment.

No similar provision.

§ 106 *Advisory Boards and Committees*—Secretary may establish. Membership shall be cross section.

Requires annual report to Congress of sales or exchanges (§ 7(f)).

§ 201—204 *Sale Authority*—No similar provision.

§ 205 *Reservation of Mineral Interests*—Requires reservation of minerals except where no mineral values in land or reservation interferes with development which is more beneficial use of land than mineral development.

Requires reservation of minerals except that where mining, etc. would interfere with appropriate use or development. Secretary may covenant that such activities shall not be pursued for specified period, or, where necessary may convey minerals in conveyance of title.

No similar authority.

§ 206 *Conveyance of Reserved Mineral Interests*—Gives Secretary discretionary authority to convey reserved mineral interests where surface has previously been conveyed, if criteria described in § 205 are met.

## S. 1041

§ 207 *Terms of Patent*—No similar provision.

§ 301, 302, 304—Reenacts pertinent provisions of Public Land Administration Act, omitting obsolete parts.

§ 303 *Working Capital Fund* authorized.

§ 305 *Contracts for Cadastral Survey Operations and Fire Protection*—Enlarges coverage of 1970 Act reinterfiscal contracts to include cadastral survey operations.

§ 306 *Acquisition of Land*—(a) authorizes acquisition “when public interests will be benefited thereby.”

No similar provision.

(d) Lands acquired under this Act become national resource lands or public lands and where appropriate, part of grazing district under Taylor Grazing Act.

§ 307 *Authority to issue and correct documents of conveyance.*

§ 308 *Recordable Disclaimers of Interest in Land*—Authority given to issue.

§ 311 *Cooperation with State and Local Law Enforcement Agencies*—authority granted to enter into contracts.

Title IV—Authority to Grant Rights-of-Way.

*Director*—No similar requirement.

Title V *Construction of Law, Preservation of Valid Existing Rights and Repeal of Laws*—repeals statutes relating to disposal of national resource lands, to administration of such lands, and to rights-of-way.

## S. 424

Prohibits Secretary from making sale which would not be in conformity with State and local land use plans, programs, zoning, regulations. Requires 90 day notice to Governor or head of local governing body prior to offering for sale to afford opportunity to zone or regulate.

No similar provision.

No similar provision.

No similar provision.

Authorizes acquisition “needed for the management of the national resource lands” (§ 9(a)).

Purchases for outdoor recreation purposes to be made with Land and Water Conservation Funds (§ 9(b)).

No similar provision.

No similar provision.

No similar provision.

No similar provision.

No similar provisions (S. 1081 is similar).

Requires appointment of Director, BLM be made by President with consent of Senate (§ 18).

No similar provision.

## SIGNIFICANCE OF POINTS OF DIFFERENCE

The most significant difference is that S. 424 omits a number of provisions which the Department has included in S. 1041 as essential to the effective management of the national resource lands. These are identified in the above chart by the term “No similar provision”.

The reason for inclusion of these provisions in S. 1041 are included in the Section-by-Section Analysis of S. 1041 submitted by the Department.

The other differences noted in the chart are essentially harmonious as to objectives and substance. Exceptions are the mandatory requirement in S. 424 for identification of boundaries (not feasible except over a long period); mandatory requirement in S. 424 for reports on sales and exchanges (informal arrangements can be made for any type of report desired by the Committee); authority in S. 1041 to convey lands without mineral reservation when there are no minerals in the lands (to avoid need to consider private bills); prohibition in S. 424 of sales not in conformity with State and local plans, etc., and requirement for 90-day notice to the governor or head of local governing body (specific requirements do not appear necessary in view of requirements in both bills for coordination of land use planning and programs); provision in S. 424 that purchases for outdoor recreation purposes

must come from Land and Water Conservation Funds (appears to be an unnecessary limitation on the authority of Congress to appropriate funds); and provision in S. 424 for Presidential appointment of Director (this is being considered in separate legislation).

Mr. HORTON. We might ask Mr. Charles Findlay to delineate any of those which are of particular significance, but many of these are simply minor wording approaches.

Senator HASKELL. I really am not concerned about the minor word differences but I am interested in your personal opinion on the major substantive differences. And I presume your inclination is toward your own bill. Therefore I would be really interested in your personal opinion as to why you felt some of the major provisions in your bill which differ from language in S. 424 are preferable.

Mr. HORTON. In my reading of both of those bills, and I must admit that I have concentrated more on ours than on Senator Jackson's, the two in principle and intent are so similar that there should be no major points of controversy between the two.

I have not examined Senator Jackson's bill in the depth that I should have.

Senator HASKELL. In your opinion then I gather, Mr. Secretary, the substantive differences are relatively minor in the two bills based upon your personal study of them?

Mr. HORTON. As far as major principles are concerned, that is the reading that I have gotten through the Department; yes, sir. Our bill, however, covers some abstract areas of concern.

Senator HASKELL. Well, I have a few questions which I would like to ask you.

As you know, this committee and Congress in general, are becoming more sensitive to the increasing demands for open government and full, effective citizen participation. One way to insure this is to provide that BLM actions be subject to the (Administrative Procedures Act.) Of course, I know that the APA does not now apply to such actions \* because matters "relating to \* \* \* public property" do not fall within the rulemaking provisions of the APA.

However, last year, in your proposal, S. 2401, you had section 17 which stated:

The secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this act. The promulgation of such rules and regulations shall be governed by the Administrative Procedures Act.

Why did the Department this year choose to delete any reference to the APA in its new proposal, S. 1041? Why should not the APA apply to the BLM?

Mr. HORTON. In terms of public participation certainly the main objective of our bill in title 1 is thorough public participation, public hearings, review of policy before it actually is declared.

Why that was omitted, I do not know. Mr. Findlay, do you know the answer to that?

Mr. FINDLAY. There was no particular reason except that we do make these decisions in accordance with the Administrative Procedures Act.

Senator HASKELL. You would feel that it would be appropriate, I would assume, to state as you did last year that the promulgation of rules and regulations shall be governed by the Administrative Procedures Act? I presume that would be unobjectionable to the Department?

Mr. FINDLAY. We would have no objection to reincluding that provision.

Senator HASKELL. Thank you.

Now, in your bill, S. 1041, section 306(c) provides that lands which are acquired by exchange and which are within the national forest system may be transferred to the Secretary of Agriculture for administration.

I wondered why you limited it to exchanges within boundaries of the national forest system because there are other public lands that could be acquired by exchange which would normally fall within the administration of other bureaus and agencies, Mr. Secretary. Do you have any thought on that?

Mr. HORTON. The Department, Mr. Chairman, operates very closely with the Department of Agriculture in making these types of transfers. Generally they are of small isolated tracts, some tracts contained within the forest. We were focusing there on a specific issue that has much greater prominence in terms of the daily operation of the BLM than others.

Senator HASKELL. I presume then—well I will not presume, I will ask you. Let us assume that some lands exchanged fell within the normal jurisdiction of some other bureaus or department other than the Department of Agriculture or fell under his jurisdiction even though not in the national forest, you would have no objection, I assume, to expanding 306(c) to provide for transferring the administrative authority?

Mr. HORTON. That is correct, Mr. Chairman, we would have no objection to the expansion of that section.

Senator HASKELL. I assume you feel that section is necessary in that you do not have such authority at the present time, is that correct?

Mr. TURCOTT. Mr. Chairman, 306(c) is merely a restatement of the existing law. With respect to such entities as national wildlife refuges or national wildlife ranges the Secretary has the authority, pursuant to the statutes that set up those entities, to include lands acquired by exchange within the refuges and wildlife ranges.]

\* It takes a particular statute to establish any particular national park, but with respect to that we have had programs of exchanges to acquire in-holdings within national parks and those are accommodated also.

But, if your committee wishes to state it as a matter of statute, as the Secretary said, we have no objections. All we are doing now in S. 1041 is restating the act of July 9, 1962, 43 United States Code, 315 G-1.

Senator HASKELL. It just seemed to me while we are doing this that the right to transfer lands to other agencies should be established. I am afraid if we put this in here and zero in only on the national forest system, the implication is that then there is no authority to transfer other lands to other agencies or other lands to the Department of Agriculture.

But, I gather, Mr. Secretary, you have no objection to the broadening of that particular section?

Mr. HORTON. No, Mr. Chairman. I think you have posed an excellent question and we will certainly examine that. But as we stand now we have no objection at all to expanding that provision.

[Subsequent to the hearing, Mr. Horton supplied the following information:]

Reference to other types of reservations was omitted because authority now exists to add lands acquired by exchanges to these reservations either by exercise of withdrawal authority or by the terms of exchange laws which apply to those reservations. However, we know of no objection to the suggested expansion of the provision in question.

Senator HASKELL. Thank you, sir.

Now, I would like to come to an area that I believe S. 1041 does not address itself to at least in the same manner as S. 424 does. S. 424 provides several provisions which safeguard the environment and local government prerogatives when sales are made.

For example, subsection 8(b) of S. 424 directs the Secretary to insert in any patent terms, covenants, or conditions to "insure proper land use, environmental integrity, and protection of the public interest." The Secretary, in S. 424, is given special responsibility to do so when "areas of critical environmental concern" are conveyed out of Federal ownership.

Furthermore, subsection 8(b) of S. 424 gives the local governmental authorities, including States, a 90-day warning so that they can take appropriate zoning action on lands to be disposed of. Finally, in S. 424 but not necessarily in S. 1041, the Secretary is directed not to sell lands which "would not be in conformity with State and local land use plans, programs, zonings, and regulations."

The thrust in other words, of S. 424 is to be sure that the Secretary of the Interior, when he intends to sell public lands, takes environmental matters into consideration and takes the wishes of local governments into consideration and also allows the local governments leadtime to zone the lands to be disposed of so as to conform with the use of the surrounding lands.

Now, I do not find that idea or that general thrust in S. 1041. First I would like, and maybe I have overlooked something, so if I have, I would appreciate, Mr. Secretary, your correcting me. Second, if I have not overlooked something I wonder why this concept is missing in S. 1041.

Mr. HORTON. Mr. Chairman, I think I would disagree slightly with you. An important thrust of the administration's proposal is indeed total conformity with the National Land Use Policy Act provisions, recognizing the importance of consideration of Federal with State and local land use planning, consultation, and what not.

So, the thrust in the two bills is the same; the wording is different.

As far as I can see, we would not object to the inclusion of Senator Jackson's language in our bill. It seems to me it is the language we are talking about, the location in the bill as opposed to the objective of the legislation.

I would point, however, that if language requiring advance notice were inserted in the administration's bill or in any legislation enacted by the Congress, that it would require or entail greater delays in some of these lands going to patent, and that might be a desirable thing.

Senator HASKELL. Now, let us see. I think you lost me. Just for my ignorance, what do you mean delay certain lands currently going to patent? Yes, I can see how that could happen, and as you have indicated that might be desirable in certain cases.

Mr. HORTON. Under S. 424 the language would require a 90-day notice to the Governor or the head of local governing bodies prior to offering for sale.

Senator HASKELL. Right.

Mr. HORTON. That might be a desirable delay.

Senator HASKELL. It would occur to me so because it would give the State and its subdivisions a chance to plan. And I gather that you are in agreement on that particular phrase.

How about the thought in S. 424 that the Secretary must include in patents proper language that will insure proper land use, environmental integrity, and protection of the public interest? Do you have any reaction to that? That is in section 8(b) of S. 424.

Mr. HORTON. It seems to me that we covered that rather thoroughly in title I of our proposal both in terms of principles and objectives, and also in section 207.

And I will just quote:

The Secretary shall insert in any patent or other documents of conveyance he issues under this title, such terms, covenants, conditions and reservations as he deems necessary to insure proper land use, environmental integrity, and protection of the public interest.

Senator HASKELL. Good, it would seem then the two bills are in conformance on that particular item.

In section 101(c) of S. 1041, BLM management authority is said to include the authority to:

Require land reclamation as a condition of use, and require performance bonds guaranteeing such reclamation in a timely manner from any person permitted to engage in extractive or other activity likely to cause significant disturbance to or alteration of the national resource lands.

Yet in section 304, concerning forfeiture of bonds or deposits, reference is made to "a timber purchaser or permittee" and to "damage to timberlands".

Now, this on a preliminary reading, to me indicates that section 304 may well curtail the authority under subsection 101(c), in that section 304 merely talks about a forfeiture where timberlands are concerned.

Is that purposeful or inadvertent? In other words, would the Secretary object to having the forfeiture authority run to all instances, timberlands or otherwise? Mr. Horton, I will ask Mr. Turcott to answer that.

Mr. TURCOTT. The language in section 304 is again basically a restatement of the Public Land Administration Act which was passed in the 1960's. At that time the only reason for having it in was the problem with the bonds on timber sales.

We have now moved into the area of great environmental concern with respect to energy development, minerals development, et cetera.

And, to the extent I can do it as a staff adviser, we have no objections to making section 304 all-inclusive. The Department is working with CEQ and OMB on a very high level staff study of the requirements for mined land reclamation under the Mineral Leasing Act of 1920.

This business of performance bonding, forfeiture, adequacy of bonds, et cetera, is under close study for the very purposes you are talking about.

Senator HASKELL. Again, I am glad we agree because since we are giving authority in this area we should not limit ourselves to past

statutes. Rather, we should have authority, the Secretary should, for forfeiture in all areas where the terms of the bond are not carried out. So, we are in agreement on that.

Now, how about the penalty provisions of the statute? As I read the proposed statute, the penalty for not doing as we should do is a criminal penalty with a \$500 fine or 6 months in jail.

We are really not hoping to put people in jail. On the other hand, I wonder in view of the value of some of the lands whether we are making the punishment fit the crime so to speak. Is \$500 enough of a deterrent to a person?

Mr. HORTON. I think, Mr. Chairman, we agree the penalty should certainly fit the crime. I am not qualified personally to indicate whether it is or not.

I do not know just what discussion took place in the derivation of this. I concur with the thrust of your question, though: Is the penalty sufficient?

Senator HASKELL. Perhaps one of the other gentlemen would like to comment.

Mr. FINDLAY. I would add that the penalty provisions here conform with the Organic Act for the Forest Service and the Park Service, and that is the only reason.

Senator HASKELL. That is the only reason?

Mr. FINDLAY. I think that probably if any changes were made it would be made across the board as to all these land managing agencies.

Senator HASKELL. Well, we are talking here about the Department of the Interior; we do not have any jurisdiction here over the Department of Agriculture and I think we ought to try to tailor a bill for you gentlemen to administer and therefore I think just because it is in the Organic Act for National Forest Service—just because it is that way there is not a good and sufficient reason for it to be that way here. Do you concur with me on that?

Mr. FINDLAY. Yes.

Senator HASKELL. We might give that some thought and maybe you gentlemen would give it some thought and perhaps submit for the record some suggestions along these lines.

Would you care to do that?

Mr. HORTON. I think, Mr. Chairman, we would be happy to do that. We will still, nonetheless, have to face the internal inconsistency. If these penalties were amplified in this particular proposal, the inconsistency with the National Park Service and perhaps the Fish and Wildlife Service, the penalty for the same crime on BLM lands would be higher than those on Park Service lands and I do not think that we could amend their Organic Act in the BLM Organic Act.

Senator HASKELL. I see. Yet, in your bill last year, S. 2401, you had, I believe, a \$10,000 fine and now we have only a \$500 penalty.

In any event, I would appreciate a suggestion of what you think should be the criminal penalties.

[The information supplied by Mr. Horton follows:]

The penalty provisions of S. 1041 are consistent with the penalty provisions relating to the National Park System and the National Forest System. They are applicable to each offense. These penalties are in addition to the civil liability for damages to the national resource lands, their improvements and resources. Considering these factors, they may be sufficient to have the necessary deterrent effect needed to protect the public property.

And, my next question relates to a civil as opposed to a criminal lever that the Department should have. I did not see in your bill the option in the Secretary of the Interior to cancel an option or forfeit a permit in the event of a violation. Maybe I overlooked some reading of the bill, but it seems to me that authority should be in the Department of the Interior.

Mr. HORTON. We agree with you. It is in section 101(c) "insert in permits, licenses, leases, or other instruments to use, occupy or develop the national resource lands, provisions authorizing revocation or suspension upon violation of any regulations."

Senator HASKELL. Yes, I just overlooked that.

Now, would you have any objection for instance to adding language to give additional flexibility by providing for a partial revocation or suspension of operations or allowing operations on a probationary basis until compliance?

For instance, it seems to me that many times you want to stop short of completely canceling the permit, but you might very well want to make the permittee suspend operations until he is in compliance.

Would you have any objections to that type of thing?

Mr. HORTON. I think, Mr. Chairman, that authority is provided in that particular section but I see in principle no reason that we should oppose that. But, I think that is provided in this more general or categorical provision.

Senator HASKELL. As long as you will look at the language of the proposal I will also have the staff do so and if we do not feel that we have such a thing as a suspension of operations or if we do not have the possibility of a probationary use permit to see that the person or company is going to operate correctly—if we do not find that as a matter of technicality, you have no objection to its insertion?

Mr. HORTON. Not at all, Mr. Chairman, we will provide you in writing if there are any reasons to think that we do not have the authority.

[Subsequent to the hearing Mr. Horton supplied the following:]

SEC. 101(c) provides for revocation or suspension for violations. We believe this gives us the authority we need, including the right to establish a probationary period for a violator to demonstrate that he is willing and able to operate correctly.

Senator HASKELL. I would appreciate that.

In section 202 of your bill there is authority to sell tracts of land to be vested in the Secretary and there is no limitation on the size of the tracts.

I am not even sure that S. 424 has any limitation. But, is it wise to give the Secretary the discretionary power to sell tracts of any size?

Mr. HORTON. Mr. Chairman, I am going back to Title I, General Management Authority. It seems to me that the general principle is that the Secretary is constrained, that tracts can be sold if they are isolated, or upon the determination that it is in the public interest, after thorough land use planning, that they be disposed of.

There is another reference and I will let Mr. Findlay help me find it or Mr. Turcott.

Mr. TURCOTT. This is the same question, Mr. Chairman, that came up recently when we were up here testifying on Senate bill 2013 which would take the constraints off acreage in Recreation and Public Purposes Act conveyances. I generally answered it this way, that constraints on size of tracts are something like price controls.

The applicant more than likely will try to get the maximum. The maximum might be too much, it might not be enough. And then we have that problem.

But, I feel that under contemporary standards today of the professionalism in land management, the full round of public participation, the full scope of professional land use planning, and the discretion of the Secretary, we can, in working with the applicants, better tailor the size of the tract to the applicant's needs than he can by putting in these (arbitrary constraints on size of tracts.)

In other words, I am saying, let us use the full professional science and art of land use planning to determine these needs rather than put in these constraints, which invariably cause problems later and especially down the road 10 or 20 years when we find it is not enough or that it was too much. ] \*

Senator HASKELL. I am inclined actually to agree with that because what in one situation might be too big in another situation might be too little.

Now, can you inform me a little bit on—let us say the Secretary wants to sell a piece of land, an isolated tract, is there then notice and hearing to the public, is that the way it goes? What is the procedure, can you tell me what the procedure is?

Mr. TURCOTT. Under the current Public Sale Act there are two provisions. This is an old, old statute going back to the 1840's. On sales of an isolated tract of 1,520 acres maximum or a tract that is too rough or mountainous for cultivation, limited to 760 acres, there is a petition-application that is filed by an applicant.

There is a field review, a land examination. Subsequently, all else being regular, there is an actual land classification made and if a determination is made to dispose of the tract there is a public notice procedure.

It generally requires for the notice of the sale to be published by legal description, legal attributes and the rest in the newspaper of local circulation.

This must be done for four consecutive weeks at least.

Senator HASKELL. General circulation.

Mr. TURCOTT. Yes, then if protests are filed as a result of that the adjudicating officer reviews the protests; he may dismiss them or he may make some modification in the proposed sale.

In addition, at that point the applicant does have the right of review of his protest by the Secretary of the Interior. It skips the Director of the Bureau of Land Management and goes directly to the Assistant Secretary for Land and Water Resources.

Senator HASKELL. Is the notice of sale given reasonably wide publicity? I bear in mind an experience I had several years back of a lawsuit. There had to be public notice and the judge said, "Well now, Mr. Haskell, what newspaper do you want this buried in?"

So, do you feel that you have got real public notice here?

Mr. TURCOTT. Our regulations require that it be a newspaper in the general locality and if you are from the kind of small town I am, I can assure you that the people read those notices.

Senator HASKELL. The word gets around.

Mr. HORTON. That should also be said, Mr. Chairman, with respect to my hometown which has a population of two.

Senator HASKELL. Is there a definition of isolated tract?

Mr. TURCOTT. Yes, sir, there is and I would like to defer to Mr. Senzel on that.

Mr. SENZEL. Over the years there has been developed an accepted definition of isolated tract. It is lands that are isolated from other lands available for disposal.

The type of situation that isolates a tract is either private lands or lands dedicated to permanent reservations, such as national forests.

Senator HASKELL. So, in the BLM itself there has been sort of a body of a definition grown up through a series of decisions so that for example you would not call the whole State of Alaska an isolated tract.

Mr. SENZEL. That is correct, sir. It is in the legal literature of the Department.

Senator HASKELL. Right, thank you.

He would like to inquire what alternatives if any is the administration willing to support instead of repeal of the Desert Land Act? This is Senator Hansen's question, I do not know who would answer it.

Mr. HORTON. Mr. Chairman, with our overall goal, of course, being to have the legislation enacted we have given that extensive consideration. Mr. Turcott has analyzed several alternatives with respect to desert land entries.

We, of course, appreciate that if the Desert Land Act is repealed, how an application now filed might be handled is a very sensitive issue.

We have laid out several alternatives and I will ask Mr. Turcott to review those for you. But, our basic posture here is once again a total willingness, an offer to work closely with all members of the committee to work out any particular points on this.

Mr. TURCOTT. Of course, always in any set of alternatives the first would be that there is no change. However, I would like to talk to the alternatives for just a moment in a very general fashion.

To some people there would be an advantage that there be no change in laws, regulations, procedures or practices that we now have. However, these institutional arrangements we find are very expensive to administer not only to the Department but to the applicant.

In addition we have various legal problems that result from the old \*Desert Land Act. These stem mainly from the fact that in terms of the amount of risk capital that is necessary now under modern agricultural economics it is very difficult for any one applicant to obtain sufficient capital without entering into some type of group venture. And, the group venture arrangements under the old Desert Land Act are very difficult legally. I am not an attorney and I will not attempt to get into them except to say that any one person in a group entity must be able to prove by the various legal documents setting up that group venture that he is indeed able to act on his own. That is very difficult when there is this much risk capital involved.

In fact, there is litigation in the District Court in Idaho now over this very point. All of this takes tremendous amounts of time, administration, and sometimes heartbreak and frustration for the applicant.

A second alternative would be to retain the Desert Land Act as it is but provide for its termination in 5 years.

We would have the same problems I just enunciated. The advantage would be that no change would be necessary for the given period of time, the public would be on notice of the termination date but in addition to that we might be swamped with applications in certain States to beat the termination date.

A third alternative would be to repeal the Desert Land Act now but permit adjudication under the terms of the Desert Land Act of all applications pending as of the date of the repeal of the statute.

The advantage would be that we would be keeping maximum faith with the people who have applied under the Desert Land Act and have been awaiting action, some of them for some time.

The disadvantage would be that we still have this very complex, difficult adjudication process to go through. However, we have advised the secretarial offices in the Department and our staff people in the Bureau that we could go with this. We would be willing to accept it to get the repeal of the old statute.

It is probably as far as we could go.

The fourth and fifth alternative have some appeal to me personally. No. 4 would be to enact S. 1041 as recommended and permit the Secretary to exercise discretionary authority to sell lands to applicants at fair market value if lands are classified as suitable for irrigated agriculture.

The advantage there would be that we would accomplish transfer of land that is classified for agricultural development at reasonable costs to both the Government and the entrepreneur.

A fifth alternative, which has high appeal to me, is to enact S. 1041 as recommended but with the specific requirement that the Secretary grant a preference right to a desert land applicant when and if he decides to sell.

Senator HASKELL. I personally am not sufficiently familiar with the Desert Land Act to know what the problems are.

I appreciate your detailed answer. Senator Hansen obviously is familiar with the act and I am sure he will consider those.

He had one more question which I think you touched on in your fourth response or maybe it was your third.

This question is, would the administration be willing to grandfather all existing applications? Now, I assume he means by existing, as of the date of introduction of the bill, not as of the date of passage because you might have a rush of applications.

I think you made this as one of your alternatives.

Mr. TURCOTT. It is alternative three.

Senator HASKELL. As of the date of the introduction of the bill?

Mr. HORTON. I think that would be preferable and would be a refinement of our alternative three, and I am sure that we would accept that as a very good way to go.

Senator HASKELL. I am sure that members of the committee will wish to listen to Senator Hansen because as I say I am not personally familiar enough with the Desert Land Act to know what the problems are.

Mr. HORTON. Mr. Chairman, to assist in the review of the committee and Senator Hansen we could provide for the record an outline framework of alternatives that Mr. Turcott has just outlined to you.

In addition to that we have delineated the estimated cost in terms of time and dollars to the Government and to the applicant of the application procedures for one desert land entry. The average DLE requires 5 years and 3½ months to process.

The patent would cost the applicant on the average of \$96,800 and the cost to the Department of the Interior is \$1,650.

These are major administrative difficulties that we have in examining these applications.

Senator HASKELL. You say it costs the average applicant \$96,000?

Mr. HORTON. These are costs—development costs for the well, irrigation, fencing and other requirements before a DLE can be patented.

Senator HASKELL. I think it would be helpful, Mr. Secretary if, you would submit it in writing although you have articulated it well for the record, but perhaps you would want to elaborate on it.

[The information referred to above follows:]

#### ALTERNATIVES RELATING TO DESERT LAND ACT

##### ASSUMPTIONS

(1) There is still some opportunity for irrigated agriculture on the public lands. The main limiting factor is water. The amount of "new" lands which go into irrigated agriculture is strictly limited.

(2) Ordinarily, development of irrigated agriculture requires large capital investments.

##### ALTERNATIVES

(1) Retain Desert Land Act without change.

Advantage.—No change necessary in law, regulations, procedures, or practices.

Disadvantage.—The Desert Land Act is expensive to administer. Costs are high related to lands patented. Various legal problems result from the fact that 320 acres of land can't support the capital investment necessary to develop lands in accordance with the Act. Group ventures are necessary.

(2) Retain Desert Land Act as is, but provide for its termination in 5 years.

Advantage.—No change would be necessary for the given period of time.

Public would be on notice of termination date.

Disadvantage.—Same as under Alternative 1.

(3) Repeal Desert Land Act now, but permit adjudication under the terms of the Desert Land Act of all applications pending as of the date of the repealer statute.

Advantage.—Keeps faith with people who have applied under DLA and been waiting for action.

Disadvantage.—BLM would have to go through the whole classification, examination and compliance procedure.

(4) Enact S. 1041 as recommended and permit the Secretary to exercise discretionary authority to sell lands to applicant at fair market value if lands are classified as suitable for irrigated agriculture.

Advantage.—Accomplishes transfer of land for agricultural development at reasonable cost to both the Government and the enterprise.

Disadvantage.—None to Federal Government.

(5) Enact S. 1041 as recommended but with specific requirement that the Secretary grant preference right.

Advantage.—Applicant is more certain of acquiring land than under 4.

Disadvantage.—Language would have to be carefully worked out to make it acceptable to all parties.

## ESTIMATED COST OF PROCESSING AN AVERAGE SUCCESSFUL 320-ACRE DESERT LAND ENTRY

Action or item	Timespan	Cost to entryman	Cost to Department
Preparation of application.....	2 weeks.....	\$100	
Filing of application and preadjudication.....	1 month.....	100	\$100
Classification of land.....	6 months.....		1,000
Adjudication and allowance.....	3 months.....	100	200
Period of allowance.....	4 years.....		100
Development costs.....		96,000	
Well.....		(32,000)	
Irrigation system.....		(48,000)	
Clearing.....		(3,200)	
Leveling.....		(6,400)	
Fencing.....		(3,000)	
Other.....		(3,000)	
Final proof and issuance of patent.....	5 months.....	500	250
Total (5 years, 3½ months).....		96,800	1,650

## ADDITIONAL COST FACTORS OF MAINTAINING THE DESERT LAND ACT

(1) Costs of processing petition-applications which are eventually denied, including the appeals process. Of applications filed during the 1950's, only 20% were approved. Improved procedures since that time have eliminated many unallowable applications.

(2) Costs of processing entries which fail, including appeals and hearings processes. Of the filings during the 1950's, about 40% of the entries failed to go to patent. Improved classification standards since that time may have reduced this amount of failure.

(3) Costs of maintaining expertise, regulations, procedures, etc., to receive and process petition-applications, determine rights of heirs, and other related matters.

(4) Costs of maintaining information materials and personnel to answer inquiries of the general public.

(5) Costs of quashing "bunco" schemes based on "free land" concept. Cost studies have not been made to determine net savings of substitution of a general sale law for the current variety of disposal laws.

A slightly different subject concerning S. 424 and S. 1041 is the difference as I view it in the definitions of multiple use and sustained yield; S. 424 adds the words "quantifiable and unquantifiable" to surface and subsurface resources. Perhaps "tangible and intangible" would be a better definition. But, in my opinion it seems to mean that we must make it clear that resources in this day and age are something more than strictly economic resources. The recreational resource, the environmental resource, are just as much of resources today as probably water and oil and gas and minerals are.

S. 1041 refers to "permanent impairment of the productivity of the land or undue damage to irreplaceable value." S. 424 defines irreplaceable values as something more than economic.

There is a difference in emphasis in the two bills and I wonder, Mr. Secretary, if you would care to comment on this difference in emphasis bearing in mind that hopefully we will get an organic act passed and hopefully it will last for a long, long time.

Do you have a reaction? There is a difference in thrust in the two bills, at least as I read them, in this area and I would like to have your views on it.

Mr. HORTON. Mr. Chairman, I think we agree there is a difference in words. At this point until we analyze these in more depth, I am not so sure that there is a difference in thrust.

But in any event it was my understanding that our proposal was generated from the Classification and Multiple Use Act which included within the definition of multiple use and sustained yield a proviso that this definition is not necessarily the combination of uses that would give the greatest economic return.

[Subsequent to the hearing Mr. Horton supplied the following information:]

COMPARISON OF DEFINITIONS OF "MULTIPLE USE"

(c) "Multiple use" means: the management of the national resource lands and their various [quantifiable and nonquantifiable] *surface and subsurface resources* [resource values] so that they are utilized in the combination that will best meet the present and future needs of the American people; [making] the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of resource uses that [take] *takes* into account the long-term needs of future generations for [recreation, scenic values and] nonrenewable resources and the achievement of diversity and balance for renewable resources; and harmonious and coordinated management of the various resources, *each with the other*, without permanent impairment of the [quality] *productivity* of the land or *undue damage to irreplaceable values* [the environment] with consideration being given to the relative values of the resources, and [to the ecological relationships involved and] not necessarily [to] the combination of uses that will give the greatest economic return or the greatest unit output.

[NOTE.—The base text is the definition in S. 1041. Bracketed words appear in S. 424. Words in italic do not appear in S. 424.]

We see from this no difference in basic thrust of the two definitions. We would have no objection to incorporation of language specifically relating to quantifiable and nonquantifiable; recreation and scenic values; quality; the environment; and ecological relationships.

Mr. HORTON. On that point I think we are in total agreement that it is not simply the economic or the quantifiable assets that we are looking at, but indeed the intangibles.

And, it was my understanding that our bill was drafted to incorporate that principle. I am sure that we would have no objections to refining our language if in fact there was a disagreement on the basic thrust of the definition.

Senator HASKELL. We agree in principle that today resources include the intangible as well as the tangible. I assume we are in agreement on that, Mr. Secretary?

Mr. HORTON. We are in agreement.

Senator HASKELL. I think that answers the question and we will review both bills in that light and you will do so also. If you think that language should be inserted in yours to emphasize that. I would appreciate hearing from you and I am sure the committee would also.

Mr. HORTON. I might just add here for further amplification, if you look under section 3 of our proposal—section 3(c)—

Senator HASKELL. Is that 301(c)?

Mr. HORTON. No, it is section 3 of the introductory section. It provides not necessarily the combination of uses that will give the greatest economic return or the greatest unit output.

Senator HASKELL. Right. The Declaration of Purposes and Definitions. I think the committee and I am sure the Department will look at both bills with this in mind to be sure that we have a balance here.

Now, this is a very small question but I refer to the lawyer of the

group to section 204. What is the reason for section 204? I guess Mr. Findlay probably would answer that.

Could not the Secretary do that anyway?

Mr. FINDLAY. Yes, Senator, that is true. The reason for this section, though, is that apparently there is very often a misunderstanding and applicants to purchase land or acquire land often feel that they have a right to purchase the land. This is to set that straight.

Senator HASKELL. Say that again.

Mr. FINDLAY. They often approach the Department with the feeling that they have a right to purchase the land or acquire it in accordance with certain laws. This is to make it clear that in considering an application or in considering the sale of land, the Secretary would have the opportunity to refuse an offer to purchase.

Senator HASKELL. In other words, some private individuals, even though the Secretary has discretion—in your experience—some private individuals feel they have a right to purchase, is that the reason for it?

Mr. FINDLAY. That is right.

Mr. HORTON. And, Mr. Chairman, if the 90-day proviso was to be included in the legislation, this particular section would be particularly important to underline the options open to the Secretary giving him the authority to refuse as well as the authority to sell.

Senator HASKELL. Right.

Thank you very much.

There is no provision, at least that I have spotted in 1041, giving States or local governments the first opportunity to acquire tracts that the Interior Department would like to dispose of. I am not even sure that is necessarily a desirable provision but I would like to hear your comments on the subject.

Mr. HORTON. Your understanding, Mr. Chairman, is correct. They would have the same opportunity as any private applicant. They would not have a privileged opportunity to apply in advance.

Senator HASKELL. And in your view—and I say I do not have any previous position one way or the other—I gather it is your considered opinion or it is the considered opinion of the Department that they should not have a prior right? I mean, the matter was considered, I assume, am I correct in that?

Mr. TURCOTT. Well, the bill does—one key part does provide that the Secretary in any one situation can establish a preference.

Senator HASKELL. In his discretion?

Mr. TURCOTT. In his discretion, yes.

Another point I would like to bring out though, neither this bill, nor S. 424 affects those States that have in lieu selection rights resulting from being cut short on the amount of State lands that they were to acquire under their State enabling acts.

So I really feel the States are quite well covered in this.

Senator HASKELL. But, you have addressed your thinking to the problem and you concluded that they should not have any first right of refusal that they do not already have under the In Lieu Act or some other act like that?

Mr. TURCOTT. Yes, sir.

Mr. HORTON. Mr. Chairman, Assistant Secretary Kyl has a very important addition to this in terms of recreation.

Mr. KYL. There are other statutes of course which give priority in recreation and hospitals and education and so on on surplus lands. As a matter of fact, they do have a first call after the Federal agencies have a chance to look at it. Under the parks for people program a lot of this land is transferred without cost to the subdivision of government.

Senator HASKELL. Well, I gather that the Department's thinking is that there is no reason to broaden that right to States and local government, is that right, Mr. Kyl?

Mr. KYL. I believe that is true. In the first place if we are talking about a detached piece of land as defined some time ago by Mr. Senzel the city would often not be interested in that because it is as a matter of fact detached from the city and unless the State had some particular reason, had some adjacent lands that were part of the park, they would not be interested in it.

As a matter of fact, if they did have a State holding next to that piece of property it would not be a detached piece of property.

Senator HASKELL. All right, sir, I just wanted to be sure that the Department had considered the problem and come to a decision.

Now, this is not a question but I wonder if you would mind submitting, Mr. Secretary, for the record something that I think would be very helpful to the committee and that would be—this is in the enforcement—a description of the problems that you have in enforcement on public lands, what they are, how you do it, who will do it, and then your considered opinion as to whether you have the adequate personnel to really enforce the authority of the Department on public lands?

Mr. HORTON. We would be happy to, Mr. Chairman. We have already started on an initial analysis of those responsibilities and we would be happy to provide that in writing.

[The information referred to above follows:]

#### ENFORCEMENT AUTHORITY AND AUTHORITY TO COOPERATE WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES

The Bureau of Land Management is facing an alarming situation. Crimes against persons, vandalism and destruction of private and Federal property, thefts, and other unlawful acts are increasing rapidly on the Bureau's lands, and in many situations are "out of control" or nearly so.

\* The Bureau's present capability to enforce the lawful use of the national resource lands which it administers is almost non-existent. Unlike other Federal agencies such as the National Park Service and the Forest Service, the Bureau generally lacks authority to require persons using its lands to follow the rules and regulations which have been issued for the proper use and management of these Federal lands. While the majority of users may follow the rules, an ever increasing number seem to delight in such "past-times" as tearing out toilet shelves and deodorizers, wrecking toilet doors and roofs, polluting springs and campground waters, cutting livestock fences, breaking guzzlers which supply water to wildlife, defacing archeological sites, painting rocks, cutting plastic water pipe, dynamiting petroglyphs, pulling out survey stakes and markers, burning signs, defacing trees, shooting water tanks, windmills, signs, garbage cans, livestock and wildlife, harassing other people, and similar acts of rowdyism. These problems are increasing at a faster rate than even the rapidly increasing use of the national resource lands.

\* While basic law enforcement traditionally is a state problem and most major categories of public and private offenses are adequately covered by state law, such laws do not apply to the enforcement of special rules and regulations on Bureau administered lands. It is in this area that the most glaring deficiency exists in both state and Federal laws. As an example, in the State of California, there is a

special section of the State Code which covers specialty regulations, but this section is applicable only to state parks and recreation areas and cannot be applied to BLM lands.

To date, the Bureau's attempts to solve such problems by using the only tools available to it, persuasion, cooperation, and education, have not been successful. Every evidence indicates that without enforcement authority and authority to cooperate with State and local law enforcement agencies, as spelled out in Sections 310 and 311 of S. 1041, the Bureau's situation will continue to deteriorate. Some examples of past problems are shown below.

It may not be known generally that the Charles Manson group involved in the Sharon Tate murders were apprehended on Bureau land.

In the El Cajon area of California, a group of motorcyclists refused to obtain a permit for an ORV event and openly defied the Bureau personnel.

Also in California, some visitors to a Bureau campground were engaged in unauthorized shooting. They were asked by the Bureau's maintenance man to desist. Not long thereafter, two \$1,500 concrete block toilets were dynamited, a picnic table was burned, three stoves were torn out, a cattle guard was torn down, signs were twisted out of shape, and garbage and trash were scattered throughout the campground. The investigating Sheriff's deputy who arrived later could not locate or identify the vandals and no arrest was made.

#### AUTHORITY TO COOPERATE WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES

Visitors and property on national resource lands are entitled to protection under State law as any other citizen, but as a practical matter a Sheriff's first consideration is people protection and services. Usually, he is short of funds and manpower. Most BLM areas are relatively remote from centers of population and local law enforcement personnel rarely get to such areas except during rescue operations or special calls.

There is no statutory authority for BLM to pay the Sheriff and other local law enforcement forces for services which would protect people and property on the national resource lands and thus relieve BLM personnel of policing duties. Requested legislation would help improve protection of the national resource lands, their resources and users by a combination of federal effort and state and/or local law enforcement.

The authority requested by BLM is similar to that which the Forest Service now has under the State and Local Law Enforcement Act of August 1971. 85 Stat. 303. With proper authority, BLM could contract with local law enforcement agencies for enhanced protection on its lands. It might be desirable in some problem locations to set up Sheriff substations whose forces would provide special protection services to certain BLM lands. BLM would pay the county for such services.

#### PLAN OF OPERATION

BLM plans to rely to the maximum extent possible on State and local law enforcement personnel. By recruitment and training by law enforcement agencies, it intends also to have a small corps of enforcement personnel to plan and manage enforcement programs and, where other enforcement personnel are not available, to perform on-the-ground enforcement activities in areas and seasons of heavy use and in areas of significant and irreplaceable values.

Senator HASKELL. Well, thank you very much, and thanks Mr. Secretary and to all of you. You have been very responsible and very helpful. I hope we will get a decent bill out.

Mr. HORTON. Thank you, sir, you have been very helpful. It was a privilege being here.

Senator HASKELL. Thank you.

Our next witness is Mr. Edwards, vice president and secretary of the Anaconda Co., and you represent, I gather, the American Mining Congress?

Mr. EDWARDS. That is right.

Senator HASKELL. Very glad to have you.

STATEMENT OF HOWARD L. EDWARDS, VICE PRESIDENT AND SECRETARY, THE ANACONDA CO., REPRESENTING THE AMERICAN MINING CONGRESS

Mr. EDWARDS. Mr. Chairman and members of the committee, I am Howard L. Edwards, vice president and secretary of the Anaconda Co. I appear before you today as a spokesman for the American Mining Congress on S. 1041 and S. 424, bills to provide an Organic Act for the Bureau of Land Management, Department of the Interior.

The American Mining Congress is a national association of mineral producers and processors whose membership, comprising both large and small companies, produce a large proportion of our Nation's domestic supplies of metals, coal, and industrial and agricultural minerals in all 50 States.

First off, I would like to assure you that the American Mining Congress recognizes the need for an Organic Act for the Bureau of Land Management.

\* The Bureau has administrative responsibility for more than 450 million acres of federally owned lands and their resources, not including the Outer Continental Shelf. In addition, the Bureau has administrative responsibility for development, or lack of development, of the federally reserved interests in the mineral resources of an additional 60 million acres, title to the surface of which has passed from the Federal Government.

In recent years, the federally owned lands have been subject to ever-increasing demands and pressures for new and specialized uses. Sometimes these uses are incompatible and as the Public Land Law Review Commission report points out, the Bureau has been forced to operate under a multitude of laws, many of which were enacted a century or more ago to meet particular circumstances in very different times and under very different conditions than those of today.

I mention these well-known facts merely to highlight my statement that the American Mining Congress recognizes the need for a BLM Organic Act, and is not opposing legislation for that purpose as such.

However, what we are asking for is a true Organic Act for the public lands—one that takes cognizance of all of their basic resources and uses, and the needs of the American people for those resources and uses.

Neither S. 424 nor S. 1041 is such a bill. Both have the fatal weakness of omitting any recognition or cognizance of the fact that mineral resources are one of the basic resources of BLM lands.

The bills also fail to recognize that the use of public lands for the development of certain of these minerals is essential to our national security and well-being.

\* The arguments for use of public lands for mineral development are even more cogent today than in our Nation's past. Our ever-increasing dependence on basic minerals of foreign origin, the consequent effect on our national security and our balance of trade accentuate the validity of those arguments.

The entire thrust of both measures is preservation, rather than conservation in its true sense and use. In neither bill are mineral resources even mentioned as a primary resource—S. 1041 does refer to "subsurface resources" in defining multiple use, but that is all.

Neither bill mentions mineral development as a primary use of the national resource lands in either the policy provisions or the management provisions.

This glaring omission exists despite the fact that less than 3 years ago this committee considered and favorably reported the bill that became the Mining and Minerals Policy Act. This is Public Law 91-631. The statute is very short, and I ask, Mr. Chairman, that its text be included as a part of my presentation here today. The text of the Mining and Minerals Policy Act is:

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in one, the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, two, the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, three, mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and four, the study and development of methods for the disposal control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

For the purpose of this Act "minerals" shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.

It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this Act.

For this purpose the Secretary of the Interior shall include in his annual report to the Congress a report on the state of the domestic mining, minerals, and mineral reclamation industries, including a statement of the trend in utilization and depletion of these resources, together with such recommendations for legislative programs as may be necessary to implement the policy of this Act.

It should be noted that just a month ago the Senate adopted unanimously a floor amendment to S. 268, the land use bill, setting forth that there must be included in State land use plans, projections of the nature, quantity, and compatibility of land needed for mineral development and mining.

This amendment was sponsored on the floor by Senator Bartlett of Oklahoma, and is found in section 202(a)(3) of S. 268.

While the provision placed as it is in the planning section, is far short of the policy declaration that should be in the BLM Organic Act, it is at least a recognition that mineral development is an integral part of land use planning.

Surely the Federal Government should not demand more of the individual States than it does of itself.

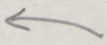
The American Mining Congress most earnestly urges that the principles of the Mining and Minerals Policy Act be incorporated into the BLM Organic Act, both as to policy and as to management.

Failure to do so would negate the stated purpose of the legislation—to provide for the management, protection and development of the national resource lands.

It would reduce the bill to another preservation and environmental measure, keeping it from being a true BLM Organic Act.

In this connection, I call to this committee's attention the very recent final report of the (National Commission on Materials Policy,) the title of which is "Material Needs and the Environment Today and Tomorrow." The Materials Policy Commission was established by the 91st Congress in 1970 in title II of the Resource Recovery

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Act, Public Law 91-512. It was composed of a distinguished group from industry, the academic world, and Government, including the Secretaries of Interior and Commerce.

The Commission's final report quotes the U.S. Bureau of Mines that of the land area of the United States—

\* Total land disturbed in the entire history of the Nation by all types of mining including coal, oil, gas, stone, sand and gravel, cement rock, and metal and nonmetallic ores has been less than three tenths of one percent—

and that one-third of that three-tenths of 1 percent has been reclaimed by man or restored by nature.]

\* The report points out that in 1972 the estimated U.S. deficit in the balance of trade for minerals and processed materials of mineral origin was some \$6 billion.]

No mining man was a member of the Commission. Yet the Commission's report states:

The Government has a responsibility to oversee exploration of mineral resources within public lands. Development of these resources is in the public interest, for they can add substantially to the Nation's reserves. . .

We recognize the need to protect public monuments, unique and irreplaceable natural wonders, and parks. Vast areas of the public domain, however, have been so restricted, with their status so uncertain, that the risk of exploration cannot be economically justified by the prospect of success.

Without entry to these lands and without assurance of tenure in the event of a discovery, no mining group can calculate the relative costs and benefits which would permit determination of the most effective use of the land.

There are indeed numerous examples of places where better use of the land has been made with respect to mineral extraction than was made before.

As the Congress develops the urgently needed legislation governing public lands, we recommend that . . . U.S. statutes recognize without equivocation that final judgements on the value of publicly owned lands cannot be made until the subsurface has been explored thoroughly, and that the laws assure:

Land be used in a way that will optimize its future material contribution; and

In the future when values change a tract of land may be used for purposes far different from the present. . . .

Mr. Chairman, these findings and recommendations were not written by a mining man, or by a group on which mining was even represented. They are the findings and recommendations of citizens from private and public life, including the Secretary of the Interior, who were serving under a policymaking law enacted by the Congress of the United States.

Permit me to commend to this committee's attention the "Material Needs and the Environment Today and Tomorrow" report of the National Commission on Materials Policy.

Mr. Chairman, the announcement of these hearings stated they were on both S. 424 and on the administration bill, S. 1041.

Senator HASKELL. Yes; both bills are considered. We are focusing primarily on S. 1041 because we have had a hearing before on S. 424.

Mr. EDWARDS. Everything I have said up to this point is equally applicable to both bills; namely, we do need an organic act for the BLM administered lands, but such an act, if it is to be meaningful and fulfill the Nation's need, must take into account the fact that mineral resources are an essential, basic resource of our public lands and that the use of this basic resource is a primary use of the public lands.

However, since S. 424 is almost identical to S. 2401 of the 92d Congress which was reported to the Senate by this committee, it appears reasonable to assume that this committee will follow to no small extent the path it hewed last year. Therefore, I am keying our proposals for specific amendment to the format of S. 424.

Submitted with my statement is a copy of a markup of S. 424 setting forth proposed amendments that the American Mining Congress believes are essential if we are to have a meaningful organic act for the BLM lands, the national resource lands.

[The marked-up copy of S. 424 submitted by the American Mining Congress follows:]

REPRODUCED BY THE AMERICAN MINING CONGRESS

95<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION**S. 424***NOTE: AMC recommendations are identified by underscoring.***IN THE SENATE OF THE UNITED STATES**

JANUARY 18, 1973

Mr. JACKSON (for himself, Mr. BENNETT, Mr. CHURCH, Mr. GURNEY, Mr. HASKELL, Mr. HUMPHREY, Mr. INOUE, Mr. METCALF, Mr. MOSS, Mr. PASTORE, and Mr. TUNNEY) 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 Lands  
 4 Management Act of 1973".

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  
 9 interests in lands (including the renewable and nonrenewable  
 10 resources thereof) now or hereafter administered by the

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

3 (c) "Multiple use" means the management of the na-  
4 tional resource lands and their various quantifiable and non-  
5 quantifiable resource values so that they are utilized in the  
6 combination that will best meet the present and future needs  
7 of the American people; making the most judicious use of the  
8 land for some or all of these resources or related services over  
9 areas large enough to provide sufficient latitude for periodic  
10 adjustments in use to conform to changing needs and condi-  
11 tions; the use of some land for less than all of the resources; a  
12 combination of resource uses that take into account the long-  
13 term needs of future generations for recreation, scenic values  
14 and nonrenewable resources and the achievement of diversity  
15 and balance for renewable resources; and harmonious and  
16 coordinated management of the various resources without  
17 permanent impairment of the quality of the land or the  
18 environment, with consideration being given to the relative  
19 values of the resources and to the ecological relationships  
20 involved and not necessarily to the combination of uses  
21 that will give the greatest economic return or the greatest  
22 unit output.

23 (d) "Sustained yield" means the achievement and  
24 maintenance in perpetuity of a high-level annual or regular  
25 periodic output of the various renewable resources of land

1 without permanent impairment of the quality of the land or  
2 its environmental values.

3 (e) "Areas of critical environmental concern" means  
4 areas within the national resource lands where uncontrolled  
5 use or development could result in irreversible damage to im-  
6 portant historic, cultural, or scenic values, or natural sys-  
7 tems or processes, which are of more than local significance,  
8 or life and safety as a result of natural hazards.

9 SEC. 3. DECLARATION OF POLICY.—(a) Congress  
10 hereby declares that—

11 (1) the national resource lands are a vital national  
12 asset containing a wide variety of natural resource  
13 values;

14 (2) sound ecological management of these lands  
15 is vital to maintenance of a livable environment and  
16 essential to the well-being of the American people;  
17 and

18 (3) the national interest will best be served by  
19 retaining the national resource lands in Federal owner-  
20 ship unless, as a result of the land use planning process  
21 provided for in this Act, the Secretary determines that  
22 disposal of particular tracts of national resource lands will  
23 achieve a greater benefit for the general public than the  
24 retention thereof and is consistent with the purposes,  
25 terms, and conditions of this Act.

1 (b) Congress hereby directs that the Secretary shall  
2 manage the national resource lands under principles of multi-  
3 ple use and sustained yield in a manner which will, using  
4 all practicable means and measures, protect the environmen-  
5 tal quality of such lands to assure their continued value for  
6 present and future generations; carry out the policy declared  
by Congress in the Mining and Minerals Policy Act of 1970  
(P. L. 91-631); protect the quality of scientific

7 scenic, historical, and archeological values; preserve and pro-  
8 tect certain areas in their natural condition; provide habitat  
9 for fish and wildlife; provide for outdoor recreation; balance  
10 various demands on such lands; assure payment of fair mar-  
11 ket value by users of such lands; and provide maximum op-  
12 portunity for the public to participate in decisionmaking  
13 concerning such lands.

14 SEC. 4. INVENTORY.—The Secretary shall prepare and  
15 maintain on a continuing basis an inventory of all national  
16 resource lands, and their resource and other values (includ-  
17 ing outdoor recreation and scenic values) giving priority to  
18 areas of critical environmental concern. This inventory shall  
19 reflect changes in conditions and in identifications of resource  
20 and other values. Such inventory shall include identification  
21 of boundaries for all units of the national resource lands. The  
22 Secretary shall provide adequate and appropriate means of  
23 public identification of such boundaries, including signs and  
24 maps. Wherever possible data from such inventory shall be  
25 made available to State and local governments for purposes

1 of planning and regulating the uses of non-Federal lands in  
2 proximity to national resource lands. The preparation and  
maintenance of such inventory shall not delay nor prevent  
the use of resource development of national resource lands  
pursuant to other law.

3 SEC. 5. LAND USE PLANS.—(a) The Secretary shall  
4 with public participation develop, maintain, and, when ap-  
5 propriate, revise land use plans for the national resource  
6 lands consistent with the terms and conditions of this Act  
7 and coordinated so far as he finds feasible and proper, or as  
8 may be required by the enactment of a National Land Use  
9 Policy or other law, with the land use plans, including the  
10 statewide outdoor recreation plans developed under the Act  
11 of September 3, 1964 (78 Stat. 901), of State and local  
12 governments and other Federal agencies.

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

15 (1) use a systematic interdisciplinary approach to  
16 achieve integrated consideration of physical, biological,  
17 economic, and social sciences;

18 (2) give priority to the designation of areas of  
19 critical environmental concern;

20 (3) rely, to the extent it is available, on the inven-  
21 tory of the national resource lands, their resources, and  
22 other values;

23 (4) consider all present and potential uses of the  
24 lands;

25 (5) consider the relative scarcity of the values in-

1       volved and the availability of alternative means, materi-  
2       als, techniques, and sites for realization of those values;

3           (6) weigh long-term public benefits, including  
4       those of outdoor recreation and scenic values, against  
5       short term local or individual benefits; and

6           (7) consider the requirements of applicable pollu-  
7       tion control laws including State or Federal air or water  
8       quality standards and implementation plans.

9       (c) Any classification of national resource lands in  
10      effect on the date of enactment of this Act is subject to  
11      review in the land use planning process and such lands are  
12      subject to inclusion in land use plans pursuant to this  
13      section.

14      SEC. 6. MANAGEMENT.—(a) The Secretary shall man-  
15      age the national resource lands in accordance with the policies  
16      and procedures of this Act and with any land use plans de-  
17      veloped pursuant to section 5 of this Act which he has  
18      prepared except to the extent that other applicable law  
19      provides otherwise. Such management shall include:

20           (1) requiring land reclamation as a condition of  
21      use, and requiring performance bonds guaranteeing such  
22      reclamation of any person permitted to engage in extrac-  
23      tive or other activity likely to entail significant disturb-  
24      ance to or alteration of the land except where such dis-  
            turbance or alteration will have no significantly dele-  
            terious effect upon the ecology and environment of the  
            national resource lands, or their esthetic and scenic values.

25           (2) ~~inserting in permits, licenses, or other authori-~~

1        ~~zations to use, occupy, or develop the national resource~~  
2        ~~lands provision authorizing revocation or suspension~~  
3        ~~upon violation of any regulations issued by the Secre-~~  
4        ~~tary under this Act or upon violation of any applicable~~  
5        ~~State or Federal air or water quality standard and im-~~  
6        ~~plementation plans; and~~

(2) inserting in permits, licenses, or other authoriza-  
tions to use, occupy, or develop national resource lands  
provision for revocation or suspension, after notice and  
hearing, of such permit, license, or other authorizations  
covering lands on which there have been willful violations  
by the holder of such permit, license, or other authority  
of regulations issued by the Secretary under this Act, or  
upon willful violations on such land of any applicable  
State or Federal air or water quality standard and imple-  
mentation plan; Provided, that where other applicable law  
contains specific provisions covering access to or use of  
such lands, or for suspension, revocation, or cancellation  
of a permit, license, or other authorization to use, occupy,  
or develop the national resource lands, the specific pro-  
visions of such law shall prevail; Provided, further, that  
no license, permit, or other authorization shall be required  
for exploration for minerals in national resource lands not  
specifically withdrawn or reserved from such exploration.

7 (3) the prompt development of regulations for the  
8 protection of areas of critical environmental concern, and

(4) recognition of the Nation's need for domestic  
sources of energy fuels and other minerals from the  
national resource lands.

9 SEC. 7. SALE OF LAND.—(a) Except as otherwise  
10 provided by law, and subject to the requirements of section 3  
11 of this Act, the Secretary is authorized to sell national  
12 resource lands. The national resource lands may be sold only  
13 if the Secretary, in accordance with the guidelines he has es-  
14 tablished for sale of national resource lands and after prepa-  
15 ration pursuant to section 5 of this Act of a land use plan  
16 which includes any tract of such lands identified for sale,  
17 determines that the sale of such tract will not cause needless  
18 degradation of the environment; and that—

19 (1) such tract is isolated land difficult to manage as  
20 part of the national resource lands and is not suitable for  
21 management by another Federal agency; or

22 (2) having been acquired for a specific purpose,  
23 such tract is no longer required for that or any other  
24 Federal purpose; or

25 (3) sale of such tract will serve important pub-

1       lic objectives which cannot be achieved prudently and  
2       feasibly on land other than national resource lands and  
3       which outweigh all public objectives and values, includ-  
4       ing recreation and scenic values, which would be served  
5       by maintaining such tract in Federal ownership.

6       (b) Sales of national resource lands under this Act shall  
7       be at not less than the appraised fair market value.

8       (c) The Secretary shall determine and establish the  
9       size of tracts to be sold on the basis of the land use capabilities  
10      and development requirements of the lands.

11      (d) Sales of land under this Act shall be conducted  
12      under competitive bidding procedures to be established by  
13      the Secretary, except that where he determines it necessary  
14      and proper (1) to assure fair distribution among purchasers  
15      of national resource lands, or (2) to recognize equitable  
16      considerations or public policies, including but not limited  
17      to a preference right to users, he is authorized to sell national  
18      resource lands without competitive bidding, or with modified  
19      competitive bidding.

20      (e) Until the Secretary has accepted an offer to  
21      purchase, he may refuse to accept any offer or may with-  
22      draw any land from sale under this Act when he determines  
23      that consummation of the sale would not be in the public  
24      interest.

25      (f) Not later than one hundred and twenty days after

1 the close of each fiscal year the Secretary shall report to  
2 Congress all sales or exchanges of national resource lands  
3 and their related resources conducted by him during such  
4 fiscal year together with the reasons therefor.

5       SEC. 8. CONDITIONS IN CONVEYANCES.—(a) All con-  
6 veyances of title issued by the Secretary under this Act  
7 shall reserve to the United States all minerals in the lands,  
8 together with the right to prospect for, mine, and remove  
9 the minerals under applicable law and such regulations  
10 as the Secretary may prescribe: *Provided*, That, where  
11 prospecting, mining, or removing minerals reserved to the  
12 United States would interfere with or preclude the appro-  
13 priate use or development of such land, the Secretary may  
14 enter into covenants which provide that such activities shall  
15 not be pursued for a specified period or, where necessary,  
16 convey minerals in the conveyance of title.

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

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1 not make sales of land under this Act which would not be in  
2 conformity with State and local land use plans, programs,  
3 zoning, and regulations unless such sales are required by the  
4 overall national interest. At least ninety days prior to offering  
5 land for sale under this Act, the Secretary shall notify the  
6 Governor of the State within which such land is located and  
7 the head of the governing body of any political subdivision  
8 of the State having zoning or other land use regulatory juris-  
9 diction in the geographical area within which such land is  
10 located, in order to afford the appropriate body the oppor-  
11 tunity of zoning or otherwise regulating, or changing or  
12 amending existing zoning or other regulations concerning,  
13 the use of such land prior to such sale.

14 SEC. 9. ACQUISITION OF LAND.—(a) The Secretary  
15 is authorized to acquire by purchase, exchange, donation, or  
16 otherwise lands or interests therein needed for the manage-  
17 ment of the national resource lands including, but not limited  
18 to, lands needed to provide access by the general public to  
19 national resource lands. Such acquisitions shall be consistent  
20 with such land use plans as may apply to the area involved.

21 (b) Purchase designed primarily to provide outdoor  
22 recreation opportunities shall be made by the Secretary with  
23 funds appropriated from the Land and Water Conserva-  
24 tion Fund.

25 (c) In exercising the exchange authority granted by  
subsection (a) of this section, the Secretary may accept

1 title to any non-Federal land or interests therein and in  
2 exchange therefor he may convey to the grantor of such land  
3 or interests any national resource lands or interests therein  
4 which, under the terms and conditions of this Act, he finds  
5 proper for transfer out of Federal ownership and which are  
6 located in the same State as the non-Federal land to be ac-  
7 quired. The values of the lands so exchanged either shall  
8 be equal, or if they are not equal, the value shall be equal-  
9 ized by the payment of money to the grantor or to the Secre-  
10 tary as the circumstances require. When a land use plan  
11 which is applicable to any tract which is to be included in a  
12 proposed exchange under this Act has been prepared, such  
13 exchange shall be consistent with such plan.

14 (d) Lands acquired by exchange under this section  
15 within the boundaries of the national forest system may  
16 be transferred to the Secretary of Agriculture for administra-  
17 tion as a part of, and in accordance with laws, rules, and  
18 regulations applicable to, the national forest system.

19 SEC. 10. USE OF LANDS.—The use, occupancy, or de-  
20 velopment of any portion of the national resource lands con-  
21 trary to any regulation of the Secretary issued pursuant to  
22 and in conformity with this Act or contrary to any order  
23 issued pursuant to any such regulations is unlawful and  
24 prohibited.

25 SEC. 11. ENFORCEMENT AUTHORITY.—(a) Violations

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1 of regulations which may be adopted for the purpose of  
2 protecting the national resource lands, other public property,  
3 and the public health, safety, and welfare and are identified  
4 in said regulations by the Secretary as being subject to the  
5 sanctions provided for by this section shall be deemed to be  
6 a misdemeanor and shall be punishable by a fine of not more  
7 than \$1,000 or imprisonment for not more than one year, or  
8 both. Any person charged with the violation of such regula-  
9 tions may be tried and sentenced by any United States com-  
10 missioner or magistrate designated for that purpose by the  
11 court by which he was appointed, in the same manner and  
12 subject to the same conditions as provided for in section 3401  
13 of title 18, United States Code.

14 (b) At the request of the Secretary, the Attorney Gen-  
15 eral may institute a civil action in a district court of the  
16 United States or the highest court in a United States terri-  
17 tory for an injunction or other appropriate order to prevent  
18 any person from utilizing the national resource lands in vio-  
19 lation of regulations issued under this Act.

20 (c) The Secretary may designate and authorize em-  
21 ployees as special officers who may make arrests or serve  
22 citations for acts committed on the national resource lands  
23 which are in violation of regulations identified pursuant to  
24 subsection (a) of this section.

25 (d) Upon the sworn information by a competent person,

1 any United States commissioner, magistrate, or court of  
2 competent jurisdiction may issue process for the arrest of  
3 any person charged with the violation of law or the desig-  
4 nated regulations. Nothing herein shall be construed as pre-  
5 venting the arrest by any officer of the United States, without  
6 process, of any person taken in the act of violating the law  
7 or the designated regulations.

8       SEC. 12. STATE'S RIGHTS NOT CURTAILED.—(a)  
9 Nothing in this Act shall be construed as a limitation upon  
10 any State criminal statute, nor on the police power of the  
11 respective States.

12       (b) Nothing in this Act shall be construed to derogate  
13 the authority of a local police officer in the performance of his  
14 duties.

15       SEC. 13. FEDERAL RIGHTS NOT CURTAILED.—Noth-  
16 ing in this Act shall be construed as limiting or restricting  
17 the power and authority of the United States, or—

18       (a) as affecting in any way any law governing ap-  
19 propriations or use of, or Federal right to, water on  
20 national resource lands;

21       (b) as expanding or diminishing Federal or State  
22 jurisdiction, responsibility, interests, or rights in water  
23 resources development or control;

24       (c) as displacing, superseding, limiting, or modify-  
25 ing any interstate compact or the jurisdiction or respons-

1 bility of any legally established joint or common agency  
2 of two or more States or of two or more States and the  
3 Federal Government;

4 (d) as superseding, modifying, or repealing, except  
5 as specifically set forth in this Act, existing laws ap-  
6 plicable to the various Federal agencies which are au-  
7 thorized to develop or participate in the development of  
8 water resources or to exercise licensing or regulatory  
9 functions in relation thereto; or

10 (e) as modifying the terms of any interstate com-  
11 pact.

12 SEC. 14. VALID EXISTING RIGHTS.—All actions by the  
13 Secretary under this Act shall be subject to valid existing  
14 rights. The Secretary shall not impair or diminish any  
15 valid existing rights except under due process and upon  
16 payment of just compensation.

17 SEC. 15. PUBLIC PARTICIPATION.—(a) In exercising  
18 his authorities under this Act, the Secretary, by regulation,  
19 shall establish procedures, including public hearings where  
20 appropriate, to give the Federal, State, and local govern-  
21 ments and the public adequate notice and an opportunity to  
22 comment upon the formulation of standards and criteria in  
23 the preparation and execution of plans and programs and in  
24 the management of the national resource lands.

25 SEC. 16. RULES AND REGULATIONS.—(a) The Sec-

1 retary is authorized to promulgate such rules and regula-  
2 tions as he deems necessary to carry out the purposes of  
3 this Act. The promulgation of such rules and regulations  
4 shall be governed by the Administrative Procedure Act  
5 (5 U.S.C. 553).

6 (b) Such rules and regulations shall include:

7 (1) criteria and standards for the preparation and  
8 execution of plans and programs for, and for the man-  
9 agement, sale, conveyance, and acquisition of, national  
10 resource lands which shall embody all pertinent factors  
11 including, but not limited to environmental, recreational,  
12 scenic, and resource values, and;

13 (2) procedures including public hearings, to give  
14 the Federal, State, and local governments and the public  
15 adequate notice and opportunity to comment upon such  
16 rules and regulations and significant actions of the Sec-  
17 retary of the Interior or any agency under his juris-  
18 diction thereof concerning the national resource lands.

19 SEC. 17. APPROPRIATIONS.—There is hereby authorized  
20 to be appropriated such sums as are necessary to carry out  
21 the purposes of this Act.

22 SEC. 18. DIRECTOR.—Appointments made on or after  
23 the date of the enactment of this Act to the Office of the  
24 Director of the Bureau of Land Management, within the  
25 Department of the Interior, shall be made by the President,

- 1 by and with the advice and consent of the Senate. The
- 2 Director shall have a broad background and experience in
- 3 public land and natural resource management.

Mr. EDWARDS. We have tried to keep our recommendations for amendment to a bare minimum of essentials, although many members disagree vigorously with other provisions.

Most important is, of course, writing into the policy declaration of this proposed legislation the policy already adopted by the Congress in the Mining and Minerals Policy Act of 1970.

We suggest that this be inserted into section 3(b) of S. 424, found on page 4, line 6, of the markup copy.

We also urge that the policy be reaffirmed in the land use planning section, found on page 7-A, line 8, of our markup.

Land use planning, as the materials policy report recommends, most certainly must take into account mineral values.

Now, to start at the beginning, we are not submitting a change in the rather mysterious definition of "multiple use" in section 2(c). Mineral resource management is not mentioned as a use.

There are the words "quantifiable and nonquantifiable resource values." The term is not defined anywhere in the bill. Frankly, I am not at all sure what the words mean in the context in which they are used.

Is a mineral deposit that has not been explored a "quantifiable resource," especially when mineral uses are not mentioned as being one of the multiple uses in the definition?

We would much prefer the definition of multiple use found in section 503(k) of H.R. 7211, 92d Congress, last year's land use bill approved by the House Interior Committee. A copy of this section is submitted with my statement.

[Section 503(k) of H.R. 7211, 92d Congress, referred to above follows:]

SECTION 503(k), H.R. 7211 (92D CONGRESS)

(k) The term "multiple use" means use of the various surface and subsurface resources in a balanced combination that will best meet the needs of the American people now and in future generations; the judicious use of the land resources in units large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; recognition that some land will be used for less than all of the resources; harmonious and coordinated use of the various resources, in a manner that does not permanently impair the productivity or environment of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output. The term includes but is not limited to the following uses: domestic livestock grazing, fish and wildlife development and utilization, mineral production, outdoor recreation, timber production, watershed protection, and various occupancy uses.

Mr. EDWARDS. If this committee does not see fit to adopt the definition approved by the House committee, then we recommend the definition of multiple use in S. 1041, or, better still, the language in your BLM Organic Act of last year, S. 2401, 92d Congress.

In section 2(e), we propose broadening the definition of "areas of critical environmental concern" by adding the words "which are of more than local significance" on page 3, line 7.

We all realize that sometimes values of an area can be a matter of highly subjective, individual taste and concern.

Under the language of the definition as written an individual might be able to require the Secretary to list his particular scenic value as an area of critical environmental concern. On page 5, line 2 of our markup we have added precautionary words to permit the use of the lands

which already are subject to other law to go forward pending completion of the inventory. Such an inventory might take years to complete.

In the Management Section, we propose what appears to us a "common sense" amendment to 6(a)(1), line 24. In some areas, a change in the landscape from mining operations is not necessarily a change for the worse.

This provision covering management of the lands—we have added a section which says:

Except for such disturbance or alternation having a significantly deleterious effect upon the ecology and environment of the national resource lands or their esthetic and scenic values.

We propose a rewriting of paragraph 2 of section 6(a), found on page 7, line 6 of cur markup. The language of the bill as written would permit cancellation of a lease, license, or permit for a single violation of a Federal or State regulation, no matter how trivial or how unintentional.

Such cancellation could be summary, without notice to the holder, without opportunity to be heard. Thus, an individual could be deprived of property without any process other than a secretarial order in the issuance of which he had no notice of opportunity to be heard.

We propose a rewriting that would require a notice and hearing before cancellation.

Senator HASKELL. I think that is fair. Is not that in the law in the present time?

Mr. EDWARDS. It is not included in any provision of S. 424 as introduced. In order that there will not be any ambiguity on it we do have a recommended amendment that would provide specifically that there must be notice and hearing before cancellation or suspension could take place.

Senator HASKELL. I just assumed it would have to be such.

Mr. EDWARDS. We certainly do not want such a provision to escape the attention of the committee.

We also recommend that where existing law provides enforcement means, the provisions of such existing law shall prevail. The Mineral Leasing Act is a good example. And we have tried to make clear that the proposed legislation is not intended to amend the mining law by requiring special authorization to explore for minerals on lands open to such exploration.

Our amendment on page 10 of our markup, in regard to prohibition of sales of land not in conformity with State and local land use plans, is self-explanatory.

It provides that such sales could be made when required by the national interest. Quite possibly the Federal Government's existing power over Federal lands does not require such explicit spelling out that national interests must supersede State and local plans.

However, time and taxpayers funds might be saved by the express language set forth in our proposal.

Mr. Chairman and members of the committee, in closing I repeat that the American Mining Congress is not opposing a BLM Organic Act, per se. Rather, what we are asking for is an act that takes cognizance of and gives recognition to all of the basic resources and uses of the national resource lands—the publicly owned lands.

The mineral resources of these lands should not be ignored nor made secondary to the current enthusiasm for preservation of the environment, essential as is that concern.

But the public need for an assured supply of minerals at a reasonable cost is also an important concern.

These uses of the publicly owned lands are not incompatible at all at the Materials Policy Commission report, the Public Land Law Review Commission report, and other findings by other informed, public-spirited citizens have found.

It just is that both S. 424 and S. 1041 both ignore one of the basic, historic uses of our public lands in their single-minded concentration on preservation.

Thank you for this opportunity.

Senator HASKELL. Thank you, Mr. Edwards, and I heartily concur that there has to be a balance and if these bills have ignored mining on public lands as one of the uses I hope it was not intentional. It certainly should not be because I consider that—and I am sure you would also agree with the other side of the coin—that mining alone or timbering alone, economic values alone are not the only rules but certainly they are important.

So, if there is not a balance in this bill we will see if we cannot get to a balanced bill.

I thank you for your testimony. I particularly thank you for submitting your markup because then we will see what your point of view is on specific sections and be assured that they will be taken into consideration with some real thought.

I am not assuring you that it will not be adopted, but they will be taken into consideration.

Mr. EDWARDS. I am sure they will and thank you very much.

Senator HASKELL. Thank you for appearing.

Next we have Mr. Cavanaugh, the general counsel of the Public Lands Council, representing the American National Cattlemen's Association and the National Wool Growers' Association.

**STATEMENT OF THOMAS J. CAVANAUGH, GENERAL COUNSEL,  
PUBLIC LANDS COUNCIL, REPRESENTING AMERICAN NATIONAL  
CATTLEMEN'S ASSOCIATION AND THE NATIONAL WOOL GROWERS'  
ASSOCIATION**

Mr. CAVANAUGH. Thank you, Mr. Chairman.

My name is Thomas J. Cavanaugh and I am general counsel on the Public Lands Council and I am representing the American National Cattlemen's Association and the National Wool Growers here this morning.

Mr. Chairman, you may recall that we submitted a statement on S. 424 and that I testified at that time as a part of a panel.

We have a statement which is primarily directed to S. 1041 this morning and I would like to have that statement included in the record.

Senator HASKELL. That will be included in full in the record.

Mr. CAVANAUGH. Just summarizing that statement briefly, Mr. Chairman, we do find that most of the remarks that we made as to S. 424 are equally applicable to many of the provisions of S. 1041.

Most of our comments for example are comments and objections to provisions of section 9 of S. 424 which gives the Secretary a general condemnation authority and are equally applicable to section 306 of S. 1041 and we renew these objections to the granting of such a broad and unnecessary authority to the Secretary.

We agree that the Secretary needs some such authority but only to a limited extent, primarily for the acquisition of right-of-way which would give access to the public lands.

As we interpret both S. 424 and S. 1041 the Secretary would be given a general condemnation authority which we think is unnecessary and undesirable.

We also agree that the Secretary needs some additional enforcement authority and this is particularly true I think in some areas of the Southwest where they have a considerable problem with massive numbers of people coming out of the larger cities, for instance the Los Angeles area, and using the public lands.

They simply do not have the necessary personnel for enforcement and the local authorities as I understand it are not really equipped to take care of these problems.

Senator HASKELL. I do not know if you were here, Mr. Cavanaugh, but I asked Secretary Horton to submit information which certainly would include that problem.

Mr. CAVANAUGH. Yes, I was, Mr. Chairman.

The only objection we have is to the provision in S. 1041 which would permit the Secretary to designate employees who might bear arms. This is maybe a minor thing but nevertheless we feel that when there are crimes of that magnitude committed the Secretary does have available to him Federal marshals, and in certain cases the Federal Bureau of Investigation, and also in many cases where there is concurrent jurisdiction, the local authorities who are trained in this.

I do not think the provision in S. 424 is similar in that respect.

Now, we also are somewhat concerned we said in our opportunity to limit the withdrawal authority of the Secretary. In that respect the two bills are similar; the withdrawal authority is not mentioned and certainly is not limited.

If the chairman will remember I think I submitted a letter to the subcommittee subsequent to our testimony on S. 424 in which we supplied some language which would limit the withdrawal authority of the Secretary.

I do not think that this should be passed by. I think it is an opportunity for the Congress to speak to that matter and I would refer the committee in that respect perhaps to the report of the Public Land Law Review Commission which suggested that this authority should be limited also.

Now, as to the section which provides for the cancellation or suspension of permits in the event of violations of certain Federal and State water or air quality laws and implementation standards, again as with S. 424 it is our belief that this provision in S. 1041 is much too broad.

I think it could be interpreted to create additional penalties for violations which are totally unrelated to the use of the public lands and to the particular licenses, permits, or other authorizations.

I think we did submit language, and we have some in our statement which I will not read, which would limit this authority to those violations which are permitted and are directly attributable to the use of the public lands under the license, lease or permit.

Also in this respect we question the competency of the Secretary \* perhaps to determine whether a violation has been committed of a law or a regulation not directly under his jurisdiction such as, for example, a State law or regulation governing air or water quality standards.]

We do not question his authority to determine violations of his own regulations or his competency but we do believe that he should not, and this provision seems to indicate that he might be able to do this, cancel a permit or suspend the operation of a permit, license or lease if he finds that there has been a violation of some of these without first having such a finding on the competent jurisdiction as, for an example, the State court.

So, we believe that that provision should be amended. We also, and this is not in our statement, are of the opinion that the violation which leads to a cancellation of a permit, license, or lease should be willful.

This is a very serious matter, it can destroy somebody economically, for example, a grazing permittee, cancellation of their permit can destroy them economically and we believe that there should not only be sufficient due process but that the violation should be willful in such an event.

Now, in the sales of lands it has been the practice as I understand it in the Department that at an auction, a public auction, for example, when the lands are sold at competitive bidding, the Department under its regulations, as I recall them, eventually issues to the purchaser at the sale a final certificate of purchase or a certificate.

Very often the issuance of this takes place many months, I think in some cases perhaps even into a year or two after the sale has been held.

In the meantime there has been a deposit of a required amount and what has happened under the present practices of the Department is that because of the administrative delay involved in the issuance of the final certificate, in the meantime the land has appreciated in value and the Secretary has taken the position that it is no longer in the public interest to convey the land at a purchase price at the time of the sale.

In this it is my feeling that the Department is acting in selling these \* lands in this manner in a proprietorial capacity and it ought to be bound to some extent by the same rules which govern the contract or general business practices and that mere appreciation of value over a period of time and the administrative processes should not be a cause for cancellation of the sales.]

And I think the provisions, although I heard the testimony this morning, I interpreted one of the provisions of the bill to give the Secretary this authority.

Fortunately—

Senator HASKELL. Just a minute, excuse me. This is that section 204. It seems to me it says "until the Secretary has accepted an offer to purchase, he may refuse \* \* \*."

Mr. CAVANAUGH. I think generally that is true, until you accept an offer there is no contract of course. But, I interpret this also to apply to sales at competitive bidding and perhaps I am wrong. The Department might straighten me out on this but when you have a sale at competitive bidding the offer originally I think is made by the Secretary.

Senator HASKELL. It depends on the terms of the offer.

Mr. CAVANAUGH. Yes, it does. But of course they can make an offer at competitive bidding reserving the right to refuse also.

I may be overlooking something or may be interpreting this section incorrectly but I do think that when a sale is made at competitive bidding generally the Department appraises the land and has a refusal price I think on it when the sale is made at competitive bidding and the property is knocked down, whether it is by auction or auctioneer in the general course of events the offer is made, the administrative delay should not be reason for subsequently canceling merely because the property may have appreciated in value. That is what I am getting at and perhaps my interpretation—

Senator HASKELL. That sounds reasonable. I will ask the staff to look into that.

Mr. CAVANAUGH. Thank you.

We do know that there are two provisions—there is one provision in S. 1041, and I think we talked to this during our last testimony that we believe that the bill should list those bills which it specifically repeals and this is in 1041 and I am happy to see that.

Senator HASKELL. Yes, they have listed a great number.

Mr. CAVANAUGH. We do not have so much of a problem therefore as by a repealed application if this was enacted.

Another provision in S. 1041 which we endorse is that provision which would permit the Secretary to issue disclaimers to lands or interests, the land where the U.S. Government does not in fact have an interest. He has not had this authority before.

Sometimes we will have a cloud on title which cannot be removed. Well now of course you have an act which permits a title against the Government but prior to that time it could not be removed without a private bill from Congress and this act would permit that and we think it is a good thing and we endorse the provision which would permit the Secretary to issue a disclaimer of title where the United States does not have title in order to remove a cloud on the title.

We are a little concerned that S. 1041 would amend section 7 of the Taylor Grazing Act relating to the classification of lands within those areas withdrawn for inclusion within grazing districts.

In 1934 at the time of the enactment of the Taylor Grazing Act that provision originally provided that the classification could be for lands which were more suitable, I think, for other agricultural purposes.

This has been enlarged somewhat as to other purposes but the original section—whereas the section now provides that notice must be given to the grazing permittees, it does not give them any specific right except to have a notice, presumably so that they will be aware of what is happening and they will be able to protest the action.

I cannot understand why this was deleted, it seems to me to be a fair provision and we would hope that when the committee works on the bill that it might reinsert that part of section 7 of the Taylor Grazing Act with the other amendments rather than what is in S. 1041.

Now, that concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Cavanaugh follows:]

PREPARED STATEMENT OF THOMAS J. CAVANAUGH, REPRESENTING THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION AND THE PUBLIC LANDS COUNCIL

We appreciate the opportunity to appear before the Subcommittee on Public Lands for the purpose of commenting upon S. 424 and S. 1041.

Inasmuch as we have previously testified before the Subcommittee on S. 424 and furnished additional views there on by letter to the Chairman of the Subcommittee, the comments made in this statement will be directed to the provisions of S. 1041, a bill To Provide for the Management, Protection, Development, and Sale of the National Resource Lands.

We do wish to point out that many of the statements we made before the Committee on S. 424 are also applicable to S. 1041.

Our comments and objections to the provisions of Section 9, of S. 424 which gives the Secretary a general condemnation authority, are equally applicable to Section 306 of S. 1041 and we renew those objections to the granting of such a broad and unnecessary authority to the Secretary.

We are concerned that S. 1041 in no way deals with the Secretary's withdrawal authority, just as S. 424 does not speak to this matter. We invite the Subcommittee's attention to our comments on the subject of executive withdrawals in our previous statement and the language we suggested as an amendment to S. 424 in our supplementary letter to the Chairman which would limit this authority.

While we agree that the Secretary needs additional enforcement authority and that some offenses committed on public lands in violation of the regulations governing the protection of those lands should be subject to criminal sanctions, we seriously question the need to authorize all employees who might be given arrest authority the additional authority to bear arms.

Few Federal agencies are authorized to arm their employees and, in those instances when this has been done, the authorization has been confined to personnel whose primary function are either law enforcement or security and who are specifically trained in those functions and in the use of firearms.

The authority granted in S. 1041 would, however, authorize the Secretary to permit an employee whose enforcement duties are only incidental to other duties, to carry arms.

[If crimes are committed of sufficient magnitude to require enforcement by some sort of armed intervention, the Bureau of employees would still have available the assistance of Federal marshals, in some instances the Federal Bureau of Investigation and, where jurisdictionally appropriate, the local law enforcement officials, who have been properly trained in law enforcement and the use of firearms.]

Subsection 6(a) (2) of S. 424 is similar in content to Subsection 101(c) of S. 1041. Both permit the cancellation or suspension of a permit, license, lease or other authorization to use the public lands upon the violation of a regulation issued by the Secretary, or upon violation of an applicable State or Federal air or water quality standard or implementation plan.

The language of these sections, we believe, is entirely too broad. They could conceivably be interpreted to create additional penalties for violations which are totally unrelated to the use of such lands under such leases, licenses, permits or other authorizations.

While the Secretary is competent to determine violation of the laws and regulations governing the management of the lands under his disposal, it is questionable that he should rely solely on his own judgement as to whether or not there have been violations of laws or regulations as to matters not within his jurisdiction. Accordingly, we suggest that Subsection 101(c) or S. 1041, be revised as follows:

(c) Insert in permits, licenses, leases or other instruments to use, occupy, or develop the national resource lands, provision authorizing revocation or suspension upon violation of any of the laws or regulations relating to the use of such lands under such permit, license, lease or other authorization or upon finding by a court of competent jurisdiction that in the use of such lands under such permit, license, lease, or other authorization there has been a violation of an applicable State or Federal air or water quality standard and implementation plans;

Section 204 of S. 1041, reserves to the Secretary the right to refuse an offer for the purchase of lands or withdraw lands or any interest therein from sale whenever he determines that the consumation of the sale would not be consistent with the Act or other applicable law, unless he has previously accepted the offer.

Under existing practice, there is very often a considerable time lag, often over a period of months and even years, between the actual sale of lands and a acceptance of the offer by the Secretary. In such instances, it is our understanding, that, if the lands have appreciated in value between the time of the sale and completion of the administrative work leading to the issuance of a certificate of sale, the Secretary will cancel the sale and refuse to issue the certificate on the grounds that the sale is not in the public interest. This is done, notwith-

standing the fact that the sale may have been at public auction with competitive bidding and that the potential purchaser may have been required to make a substantial deposit on the purchase price.

It is our belief that, when the government acts in respect to its lands in a proprietary capacity, as it does when selling such lands, it ought to be bound by the ordinary rules governing contract and business and should not be permitted to profit by its own administrative delay. We suggest, therefore, that the following be added to Section 204:

"Mere appreciation in the value of such land between the time the offer to purchase is made and the time of acceptance shall not be grounds for refusal to accept such offer when the offer is made through competitive bid at the invitation of the Secretary."

Section 308 of S. 1041 would permit the Secretary to issue disclaimers to lands or interests therein in the nature of a quit claim on behalf of the government where the United States has no interest in the lands and the disclaimer would remove a cloud on title. We endorse this provision. We suggest, however, that as an additional safeguard in the exercise of authority, the applicant be required to file his request for a disclaimer in writing and that public notice of the application be given before the disclaimer is issued. Subsection 308(b), we believe, should be amended to read as follows:

(b) No document of disclaimer shall be issued pursuant to this title unless the applicant therefore has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefore has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be credited to the appropriation from which expended.

When we testified on S. 424, we suggested that the bill, if enacted should be specific as to those laws which it would repeal or amend. We are pleased to note that S. 1041 does list those laws which would be specifically repealed or amended and provides further, in Section 502 that nothing therein would repeal any other authority by implication. We find the last sentence of Section 502 confusing, however. The Section provides that the Secretary may exercise the authority granted in this bill, notwithstanding any other provision of law. It thus seems that, if the Secretary finds something in this law which might be interpreted to be contrary to the authority, or limitation placed upon his authority, by some other Act, he can disregard such other Act, even though neither specifically repealed or amended in this bill.

We can appreciate the fact that there are a great many public land laws and that it may be that the draftsmen of this bill overlooked some which might conflict with the provisions of this bill. However, it seems to us that, if necessary, such a situation can be readily remedied through the legislative process and that the provision of Section 502 in this respect is much too broad. It comes close to granting the Secretary legislative power of his own and we earnestly submit that the last sentence of Section 502 should be deleted.

S. 1041 would amend Section 7 of the Taylor Grazing Act relating to the classification of lands within those areas withdrawn for inclusion within grazing districts. Presently, Section 7 of the Taylor Act provides that notice be given to grazing permittees who would be affected by a proposed reclassification of lands embraced in their permits. We cannot understand the reason for the deletion of this provision which simply requires that a permittee have notice of a proposed action affecting his permit and an opportunity to protest such proposed action. We believe this to be an eminently fair provision and request that it be included in any amendment of Section 7.

While we have directed these remarks primarily to the provisions of S. 1041, we feel that most of the comments made in our testimony on S. 424 are equally applicable to S. 1041 and we respectfully refer the Subcommittee to that testimony. We are particularly concerned that the Congress should exercise caution in granting discretionary authority to the Secretary.

\* Constitutionally, the Congress is charged with regulating the management and disposition of Federal properties. The Secretary of the Interior is the agent of Congress in managing those lands under his jurisdiction. We do not believe that the Congress should abdicate virtually all of its authority and responsibility to its agent. As we stated in regard to S. 424, we believe that these bills should be revised to provide more specific guidelines, to limit the authority delegating along the lines we have suggested and to leave the door open to additional Congressional action fixing specific policy for specific public land uses.

Mr. CAVANAUGH. I thought I heard Secretary Horton explain in his testimony this morning that the Department intends to submit other legislation so that I assume that they do not mean for S. 1041 to be all inclusive but to leave the door open for dealing perhaps with specific commodities and specific problems and I was pleased to hear that testimony.

Senator HASKELL. I think of course the Department always has this prerogative and this is meant to be a general management bill.

We will certainly look at your testimony on S. 424 in conjunction with S. 1041 and as I understand it you have submitted a markup copy of S. 424.

Mr. CAVANAUGH. Now, Mr. Chairman, at the time we testified on it we had some suggestions for amendments without specific language and I submitted a specific language as to those sections we were interested in by letter to you at a later date.

Senator HASKELL. In any event, we have it on record?

Mr. CAVANAUGH. Yes, I have an acknowledgment from you so I am sure you do.

Senator HASKELL. O.K.; all right, sir, thank you.

[The letter referred to above appears on p. 113 of the Mar. 1, 1973, hearing record.]

Senator HASKELL. I really do not have any questions. I must say that your suggestion or your thought, an offer of exceptions which can be rejected based upon inadequacy of price due to a lag in administration, is a great inequity and I will ask the staff to see if you are right in your interpretation as to whether that could take place or not.

Mr. CAVANAUGH. I think it has taken place under the present administrative practices, Mr. Chairman. How often, or whether it is really a serious problem, I would not want to say.

Senator HASKELL. Thank you very much, Mr. Cavanaugh.

Senator HASKELL. Mr. George Alderson, legislative director, Friends of the Earth.

#### STATEMENT OF GEORGE ALDERSON, LEGISLATIVE DIRECTOR, FRIENDS OF THE EARTH

Mr. ALDERSON. Thank you, Mr. Chairman. If my statement can be included in the record I will touch on just a few of the points.

We did not previously testify on either of these bills so this is our first testimony on them.

I am George Alderson, legislative director of Friends of the Earth.

Friends of the Earth is a strong proponent of giving the Bureau of Land Management a statutory charter with enough authority to carry out the management of the public domain lands. This is the most neglected aspect of our public land stewardship.

Charles H. Stoddard, former director of the BLM, presented the testimony of Friends of the Earth at a House Interior Committee hearing in July 1971.

Although neither of the bills before us today meets all of these objectives he outlined, we find that they do most of the job.

We also endorse the specific comments on S. 1041 that are being submitted this morning by Boyd Rasmussen of the National Wildlife Federation.

They indicate some of the advantages for abolishing or repealing the absolute laws and establishing the working capital funds for the Bureau.

This legislation is essential to bring BLM lands under multiple use to reverse the trend of deterioration that has plagued them in the past. It is needed to provide for more intensive management and it is needed to get the BLM lands blocked up. It is needed to get rid of the archaic disposal laws.

Turning now, Mr. Chairman, to the wilderness provisions, Friends of the Earth also strongly supports a provision of the bill reported out by this committee last year, which is not in either of these bills, making BLM lands eligible for inclusion in the National Wilderness Preservation System.

We favor extending that provision to give the six existing "primitive areas" of the BLM full wilderness status upon passage of this bill.

We support the basic concepts of this bill, but unless it is amended to make BLM lands eligible for wilderness status, we believe it would do more harm than good.

This is because all the other programs being carried out by the Bureau of Land Management would get a fresh new impetus from this bill, and wilderness would get none.

If the other management programs go ahead there will be many, many decisions made for more intensive management and development. There will be no framework, however, for decisions to protect wilderness. We believe that wilderness is so perishable a resource, so easy to destroy, that it should receive full and equal consideration as the BLM tools up for the new job under this bill.

We want to make sure that the wilderness resources are not sacrificed because they are not given full and equal consideration in this process.

The Bureau of Land Management was the only major public land agency that was not included in the Wilderness Act of 1964.

\* The BLM lands include some of the wildest and most untouched areas that remain in the United States but not a single acre can be designated as wilderness.

In the entire history of the BLM only six areas have been given protection similar to wilderness status. These are the BLM's primitive areas—all of them in Utah, Arizona and Montana.

We believe it is time to give these areas wilderness status and to set up a review procedure that will allow Congress to place the best of the BLM wild lands into our National Wilderness Preservation System.

If this is not done now, we fear that the same foot-dragging that has delayed wilderness protection in the national parks and national forests will infect the BLM and put this program far behind what it should be.

\* I would like to comment briefly on the (BLM primitive areas). These six areas have already been thoroughly studied by the Bureau, and were established by the Secretary of the Interior. However, they have no statutory sanction. If the Secretary decided today to abolish them, he would unquestionably have the power to do so. What we are proposing for these six areas is identical to the treatment given

the existing wilderness areas and wild areas on passage of the Wilderness Act in 1964.

At that time, this committee and the Congress as a whole recognized that those areas had been studied to a fare thee well, and all conflicts had been resolved as satisfactorily as possible. Consequently they were given full wilderness status on enactment of the Wilderness Act. The six BLM primitive areas have also been thoroughly studied; field hearings have been held by the Bureau on these. I include a list of these six areas at this point in my statement.

Senator HASKELL. Your statement will be included in full.

Mr. ALDERSON. Thank you.

Aside from these six primitive areas under our proposal all further additions to the wilderness system from BLM lands could be made only by individual acts of Congress, as is the case with wilderness proposals in the national forests, national parks, and national wildlife refuges.

Our recommendation is that language be added to either of these bills, whichever is the basis of the markup, to make BLM lands eligible for wilderness status, and to provide for an inventory of BLM lands over the next several years to locate lands of wilderness potential that would be suitable for designation as part of the National Wilderness Preservation System.

As we see it, this should not be a new major burden for BLM, because they will have to inventory the lands anyway as part of the classification process required by sections 4 and 5 of S. 424 and the corresponding provisions of 1041.

Our proposal is that the wilderness be included as part of this process and that as a result of the process already included in the bill that the Bureau submit wilderness proposals to Congress.

Mr. Chairman, we favor the objectives of these bills. We also believe that this is the last chance to bring the de facto wilderness of the public domain lands into eligibility for statutory protection, before the rising tide of development engulfs them.

If we delay this wilderness provision, the classification work will already have been done. If we delay, there will be many more miles of road, and many more acres disturbed by off-road vehicles.

You name it, these developments are going to be invading these lands before you can get around to the studies. Let's give Congress the opportunity to give permanent protection to the best BLM wildlands.

If this wilderness provision is included in S. 424 or 1041 we will be happy to support the bill. Without it, we feel that the BLM wilderness is going to lose its best opportunity for protection.

So, our plea is to include a wilderness provision as part of this process so that the opportunities are not lost by our failure to act at this time.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Alderson follows:]

PREPARED STATEMENT OF GEORGE ALDERSON, LEGISLATIVE DIRECTOR, FRIENDS  
OR THE EARTH

I am George Alderson, Legislative Director of Friends of the Earth, a national citizens' organization of 20,000 members, dedicated to the preservation, restoration and rational use of the earth. Our Washington office is at 620 C Street, S.E.

Friends of the Earth is a strong proponent of giving the Bureau of Land Management a statutory charter, with enough authority to carry out the management of the public domain lands. This is the most neglected aspect of our public land stewardship.

Charles H. Stoddard, former director of the BLM, presented the testimony of Friends of the Earth at a House Interior Committee hearing in July 1971, emphasizing the following recommendations:

- (1) Enact an organic act for the BLM, based on the multiple-use concept.
- (2) Enact legislation to set criteria for classification of land to be retained by the Federal government.
- (3) Repeal all outmoded disposal legislation such as the 1872 Mining Act and the homestead acts.
- (4) Enact a new public sale act to apply only to lands classified for disposal.
- (5) Enact new legislation revising the methods of distributing revenues from public lands.

Although neither of the bills before us today meets all of these objectives, we find that S. 424 does most of the job. We note that separate legislation is pending before the Committee on revision of the Mining Law, and we look forward to supporting that bill at the proper time.

Perhaps the most basic objective here is to resolve the tenure problem and bring the BLM lands under a multiple-use framework. This will make it possible to classify most of these lands for retention, and to institute more intensive management. In its custodial role, without such directives, BLM has generally not received over five cents per acre in appropriations for management and conservation measures, compared to a dollar per acre for the same purposes in the Forest Service.

Tremendous land areas, and tremendous public values are at stake here. The BLM now administers some 451 million acres. After the Alaskan Natives, State selection, and new national interest areas are established, BLM will still have more than 275 million acres, in our estimate. These lands are important to all of our citizens, because they are the watersheds for some of the most watershed regions of the country. If they are allowed to be overgrazed (as they have been in the past), the watersheds will be impaired, and existing reservoirs will be silted-in faster than normal.

BLM lands are also important as outdoor recreation lands. Even without adequate development for this purpose, these lands have been receiving heavy recreational use. Here again, lack of authority has prevented the Bureau from policing the lands against improper or excessive use. Many acres of the California desert, for example, have been torn up by overuse from off-road vehicles of various kinds.

Grazing by domestic livestock will always be an important use of BLM lands, but it requires careful management, both to protect the land itself and to increase the yield of forage. Wildlife also are heavily dependent on BLM lands, and so are many citizens who visit BLM lands either to see or to hunt these animals.

Timber production is a major use on some BLM lands, chiefly in the O & C and Coos Bay Wagon Road lands in southern Oregon. The Bureau here again must meet its responsibilities to protect the other land values as well as the timber.

All of these multiple values are reflected in the multiple-use directive contained in S. 424. This legislation is essential to bring BLM lands under multiple use, to reverse the trend of deterioration that has plagued them in the past. It is needed to provide for more intensive management. It is needed to get the BLM lands blocked up, through land exchanges in areas where alternate sections are privately owned. It is needed to get rid of the archaic disposal laws, which are still being tried by unscrupulous citizens as a means of grabbing some public land.

#### WILDERNESS PROVISIONS

Friends of the Earth also strongly supports a provision of the bill reported out by this Committee last year, making BLM lands eligible for inclusion in the National Wilderness Preservation System. We favor extending that provision to give the six existing "primitive areas" of the BLM full wilderness status upon passage of this bill.

We support the basic concepts of this bill, but unless it is amended to make BLM lands eligible for wilderness status, we believe it would do more harm than good.

The Bureau of Land Management was the only major public land agency not included in the Wilderness Act of 1964. BLM lands include some of the wildest,

most untouched areas that remain in the United States, but not a single acre can be designated as wilderness. Unless this situation is remedied soon, these last wild lands will be invaded by roads, before the public even finds out what's at stake.

The pressure on these wild lands is already mounting, with jeep roads every year creeping into areas that never heard the sound of a gasoline engine before, except an occasional airplane flying overhead. Enactment of this bill without a wilderness provision would let this attrition continue.

In the entire history of the BLM, only six areas have been given protection similar to wilderness status. These are BLM's primitive areas—all of them in Utah, Arizona and Montana. It is time to give these areas wilderness status, and to set up a review procedure that will allow Congress to place the best of the BLM wild lands into our National Wilderness Preservation System.

If this is not done now, we fear that the same foot-dragging that has delayed wilderness protection in the national parks and national forests will infect the BLM. Unless BLM is given a firm directive by Congress in this bill, these great wild lands are mostly going to be lost to roads and development.

The six "primitive areas" have already been thoroughly studied by the Bureau, and were established by the Secretary of the Interior. However, they have no statutory sanction. If the Secretary decided today to abolish them, he would unquestionably have the power to do so. What we are proposing for these six areas is identical to the treatment given the existing "wilderness areas" and "wild areas" on passage of the Wilderness Act in 1964. At that time, this committee and the Congress as a whole recognized that those areas had been studied to a fare-the-well, and all conflicts had been resolved as satisfactorily as possible. This is also the case with the six BLM primitive areas. I include a list of these six areas at this point in my statement:

#### BLM PRIMITIVE AREAS

Name and State	Acres	Date designated
Aravaipa Canyon, Ariz.....	5,580	May 6, 1971.
Paria Canyon, Utah-Ariz.....	27,515	May 6, 1971.
Dark Canyon, Utah.....	74,317	Sept. 18, 1970.
Grand Gulch, Utah.....	29,480	Sept. 27, 1970.
Humbug Spires, Mont.....	7,041	Sept. 13, 1972.
Beartrap Canyon, Mont.....	2,761	Sept. 13, 1972.

So we recommend that these six areas be established as wilderness upon passage of this legislation. All further additions to the Wilderness System from BLM lands could be made only by individual Acts of Congress, as is the case with wilderness proposals in the national forests, national parks, and national wildlife refuges.

Our recommendation is that language be added to S. 424 to make BLM lands eligible for wilderness status, and to provide for an inventory of BLM lands over the next several years to locate lands of wilderness potential that would be suitable for designation as part of the National Wilderness Preservation System. This is not a new major burden for BLM, because they will have to inventory the lands anyway as part of the classification process required by Sections 4 and 5 of S. 424. We would favor adoption of the same basic procedure, including local public hearings, specified in the Wilderness Act. However, we believe that a requirement of 60 days' advance notice in the Federal Register should be included in the law, because the Interior Department has, in its regulations, provided only a 30-day advance notice. Thirty days is simply not adequate to give citizens time to analyze a wilderness proposal; such a short notice only tends to polarize the issue, because it does not allow time for different user groups to try and resolve possible conflicts before the hearing.

Mr. Chairman, we favor the objectives of S. 424. We also believe that this is the last chance to bring the *de facto* wilderness of the public domain lands into eligibility for statutory protection, before the rising tide of development engulfs them. If we delay this wilderness provision, the classification work will already have been done. If we delay, there will be many more miles of road, and many more acres disturbed by off-road vehicles.

It is going to require several years to bring any of these potential wilderness areas into statutory wilderness status, even if the procedure is set up by this Act. Land is going to be lost even during this period.

Our plea is to minimize this loss. Let's hold it to the absolute minimum, and give Congress the opportunity to give permanent protection to the best BLM wildlands. If this wilderness provision is included in S. 424, we will be happy to support the bill. Without it, the BLM wilderness is going to lose its best opportunity for protection.

Senator HASKELL. Thank you, Mr. Alderson.

As I said to Mr. Edwards, representing the American Mining Congress, the users of our public lands should be both the tangible economic and the intangible noneconomic which you are talking about.

Of course I think that there is no reason why BLM lands should not be considered in certain areas for classification as wilderness. By the same token I agree with Mr. Edwards and I hope you would agree that we should recognize in the bill that one of the uses of public lands is mining.

So, I think that your suggestion here is in line with proper public lands management. We should look at both the tangible and the intangible values in use of the public lands.

Whether as a practical matter your suggestion could be incorporated is something that I do not know but I think it makes good sense that if the BLM lands or some of them are suitable for wilderness the possibility should be included. And obviously if public lands are suitable for mining operations then a statement should be made to the effect that we recognize the mining as a proper use for the public lands.

So, we are looking at different sides of the coins but I think we have to look at the broadest spectrum of uses and I appreciate your statement, Mr. Alderson.

Mr. ALDERSON. Thank you.

Well, Mr. Chairman, actually because the mining still proceeds under the Mining Law of 1872 it would appear that they have quite a bit of authority already and freedom to operate on these lands.

The problem is that there is not any similar authority to provide for wilderness protection and we hope that this could be worked out in a way similar to the way that mining and wilderness was handled in the national forests.

Of course the subcommittee recently had hearings on that very question. So, we would certainly hope that this could be worked out.

Senator HASKELL. Thank you very much, Mr. Alderson. I should mention before I forget it that Mr. Harry Crandall of the Wilderness Society will submit a statement for the record and Mr. Robert Eisenbud, assistant counsel, National Parks and Conservation Association also will submit a statement for the record.

[The material referred to above was not received in time to be incorporated in the record.]

Senator HASKELL. Our next witness is Mr. Boyd Rasmussen of the National Wildlife Federation.

**STATEMENT OF BOYD RASMUSSEN, NATIONAL WILDLIFE  
FEDERATION, WASHINGTON, D.C.**

Mr. RASMUSSEN. Nice to be here, Senator.

Mr. Chairman, I have a prepared statement which I will submit for the record.

Senator HASKELL. It will be included.

Mr. RASMUSSEN. Just briefly I would like to cover some of the points in it that I wish to make.

The public lands are part of the American heritage and every citizen should be interested in our future land use. For many years it provided a reservoir of land for the use of land grants of all kinds, the Homestead Act was a real milestone in the settling of the West. The disposal acts were used well for specific purposes but now is the time to move and the time for a change.

It is time that the public lands were taken out of the custodial status and put into a management program. S. 424 and S. 1041 provide greatly needed policy direction and management authorization.

We endorse the basic concepts stated in S. 1041 because it incorporates practically all of the provisions of S. 424 without changes in principle.

In addition it includes some needed revision of law which severely hampers management of the land even though management authority is provided in S. 424.

It would establish a working capital fund for the Bureau of Land Management and would provide a better method of accounting for programs and service operations of the Bureau.

It contains a repeal of obsolete laws which we consider of extreme importance.

In summary we urge the passage of a combined S. 424 and S. 1041 statute. The legislation is timely and needed.

Thank you.

[The prepared statement of Mr. Rasmussen follows:]

PREPARED STATEMENT OF BOYD RASMUSSEN, NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Boyd L. Rasmussen, a member and consultant for the National Wildlife Federation, which has its headquarters at 1412 Sixteenth Street, N.W., here in Washington, D.C.

The objectives of our organization are to create and encourage an awareness among the people of this Nation of the need for wise use and proper management of those resources of the earth upon which the lives and welfare of men depend; the soils, plant life, and the wildlife.

The National Wildlife Federation is a private organization which seeks to attain conservation goals through educational means. It is composed of independent affiliates in all States, Guam, Puerto Rico, and the Virgin Islands. These affiliates in turn, are made up of local groups and individuals who, when combined with associate members and supporters of the National Wildlife Federation, number an estimated 3½ million persons.

On March 1, 1973, Mr. Kimball and I testified on S. 424. We had not seen the Administration bill S. 1041.

It is a pleasure to appear before this committee and extend our remarks on both S. 424 and S. 1041.

The National Wildlife Federation testimony endorsed the concepts expressed in S. 424 with some minor additions. We wish to re-emphasize the importance of S. 424, to the American people. It is a historic proposal and a mile stone in the history of the public lands. We consider it of extreme importance that these public lands have Congressional policy direction and authorization as stated in S. 424 and S. 1041.

The American people now and in the future have a great stake in the public lands. The public lands have come of age. They are a great national asset. If they are to serve the nation well and meet the terms of the Environmental Policy Act new policy direction and management authority is urgently needed.

All of this great public resource of public lands needs common objectives, the tools for managing under like procedures and the means to enforce the regulations adopted. This direction is needed now if we are to realize the maximum public

benefits in the future. The west is settled. It is time to move from the past custodial program to the wise use and management of these public lands such as S. 424 and S. 1041 provides.

\* Congress has provided wise policy direction for public lands ever since they were created. As this nation grew and moved westward, laws were enacted to meet the needs of the time. Separate laws were passed concerning homesteads, grants to states, grants to railroads, grazing, mining, leasing, timber and many others. More than a billion acres were transferred out of Federal ownership under various land laws. These laws, many of which are still on the books, have met the needs of time. \* But as the Public Land Law Review Commission pointed out that some 3,000 public land laws are still in effect and repeal is needed. Many of these laws provide for disposal of the public domain under exacting circumstances which are difficult to meet today, only a few touch the question of management and use in relation to the environment. A great deal of time and effort is being spent on laws which should be repealed. Bureau personnel must be prepared to deal with cases which come up even though they will not lead to fruition. This is discouraging to both the public and the government. For these reasons we urge the inclusion of Title V of S. 1041.

Essentially the administration bill S. 1041 is patterned after S. 424. The administration bill regroups portions of S. 424 and has added a few sections and expanded others.

We endorse the basic concepts stated in S.1041 because:

(1) It incorporates practically all of the provisions of S.424 without changes in principle.

(2) In addition, it includes some needed revision of law which severely hampers management of the land even though management authority is provided in S.424.

(3) It would establish a working capital fund for the Bureau of Land Management and would provide a better method of accounting for programs and service operations of the Bureau.

(4) It contains a repeal of obsolete laws. In the following comments on S.1041, we do not attempt to identify the many similar provisions of S.424 and W.1041. Rather we address ourselves to the new or expanded items in S.1041 and such changes as we suggest. We do like the arrangement by title of S.1041.

We make the following comments on specific sections of S.1041:

#### *Sec. 3—Definitions—As used in this Act*

Basically, this is an expansion of Section 2 of S. 424. Items (c) & (d) follow closely the explanation of multiple use and sustained yield as stated in PL 88-607. A standard version is needed.

Item (e) gives examples of "areas of critical environmental concern" and includes item (9) lands having wilderness characteristics. We suggest that item (e) (8) be expanded to add "*habitat critical to the welfare and survival of wild animals.*"

The public lands contain 60% of the Nation's Federal land wildlife habitat. There are many areas which are critical to the wildlife and endangered species. Recognition of these areas is significant to the wildlife population. We believe section 3(e) would be strengthened by the addition of this language.

#### TITLE I—GENERAL MANAGEMENT AUTHORITY

##### *Section 102—Inventory*

Item (a) eliminates the need for identification of boundaries for each and every unit of the National Resource Lands.

Due to the scattered and fragmented nature of some units not all units can be identified without extraordinary costs such as new cadastral surveys.

Item (b) uses the word "may" instead of "shall" shown on line 24 page 4, S. 424. This puts the sentence more in context.

##### *Section 104—Disposal Criteria*

Item (a) (1) both S. 424 and S. 1041 use the word "isolated" we suggest it be dropped.

##### *Section 106—Advisory Boards and Committees*

Provides for advisory boards and committees as determined by the Secretary. We approve such authorization.

#### TITLE II—SALE AUTHORITY

##### *Section 206—Conveyance of Reserved Mineral Interests*

This is a new section concerning conveyance of mineral interest.

This section is consistent with current congressional policy on private legislation. We believe it is needed.

TITLE III—MANAGEMENT IMPLEMENTARY AUTHORITY

Much of this title is a reenactment of 43 U.S.C. Chapter 30 Administration of Public Lands. If it will clarify matters we have no objection.

*Section 303.*—This is a new section establishing a working capital fund similar to that provided for the Forest Service. We believe it will provide more efficient operations.

*Section 305.*—This is a new section providing authority to make renewable contracts for advance cadastral survey operations similar to those provided for fire protection. (43 U.S.C. & 1362a). This is a needed authorization which will provide more efficient operation.

*Section 307.*—This provides authority to issue and correct documents of conveyance. We believe the authority is needed.

*Section 308.*—This is a new section authorizing the Secretary to issue recordable disclaimers of interest in land. We believe the authority is needed.

*Section 311.*—This is a new section authorizing cooperation with state and local enforcement authorities. We believe the authority is needed.

*Section 402.*—Authorization to grant rights-of-way for oil and gas pipe lines. In view of S. 1081 we suggest it be dropped.

TITLE V

Title V has been redrafted by the Administration. We suggest it be added to S. 424.

In summary, we urge the passage of a combined S. 424 and S. 1041 bill with such amendments as we have suggested. The legislation is timely and needed.

Senator HASKELL. Thank you very much, Mr. Rasmussen. I appreciate your submitting your statement for the record and I appreciate your support of the bill.

This idea of a working fund which I saw in S. 1041 is new to me, but do you feel that is a desirable addition to S. 424?

Mr. RASMUSSEN. Yes, I think it is an extremely desirable addition; it enables the Bureau to plan its equipment purchases and this type of thing over a period of time rather than when your car breaks down you have to get it out of the current appropriation.

Senator HASKELL. I see; thank you very much.

You mentioned one other addition that you felt—

Mr. RASMUSSEN. Well, it establishes some new management.

Senator HASKELL. I am thinking of the additions to S. 1041 which are absent in S. 424. I think there were three additions and I forget what the third one was that you said was desirable.

Mr. RASMUSSEN. Some revision of law which severely hampers management of the land even though management authority is provided in S. 424.

Senator HASKELL. You think S. 1041 is broader than S. 424?

Mr. RASMUSSEN. I do.

Senator HASKELL. Thank you very much. I appreciate your testimony.

Mr. RASMUSSEN. Thank you.

Senator HASKELL. Our next witness is not scheduled but I believe he is here, Mr. Karl Landstrom, who was formerly Director of the Bureau of Land Management.

Mr. Landstrom.

STATEMENT OF KARL LANDSTROM, FORMER DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. LANDSTROM. Thank you, Mr. Chairman.

I was not here in March, Mr. Chairman, when the hearing was held on S. 424; I was out of the city. I did not know until this morning

about this hearing so I have no prepared statement but I would like to make a brief oral statement and then follow it up with a written statement for the record.

Senator HASKELL. I would appreciate that.

Mr. LANDSTROM. I, of course, have great interest in the subject matter of this pending legislation. My regret is that Congress did not see fit to enact legislation of this type much earlier, for example in 1961 and 1962, when the Department of Interior first proposed this type of legislation.

However, I think that much has been learned in the meantime through the operations of the Public Land Law Review Commission and the passage of time and undoubtedly there are many provisions that have been approved over the years so that this pending legislation in many respects is superior to what had been proposed 12 years earlier.

However, I do find in my own mind a number of defects—that is, technical defects—in both the pending bills and I would like to suggest some amendments in my written statement to the committee.

Senator HASKELL. I think that would be very helpful in view of your background and experience if you could submit the technical suggestions in writing.

Mr. LANDSTROM. Mr. Chairman, I am a little concerned about some testimony this morning. If the purpose is to give BLM an organic act I am just a little bit allergic to that expression.

Really this is not an organic act for the administration of a very important resource, it is for the people of the United States and of course technically the authority is being given the Secretary of the Interior and not to the BLM as an organization.

I think sometimes land management agencies take on an over-possessive view, but the purpose of administration is rather bureaucratic so I would be hopeful that we would look upon this as a great aid to people rather than a bureau.

Just commenting very briefly on a few points that you raised this morning, Mr. Chairman. First, the Administrative Procedure Act provision—I certainly endorse the addition of a requirement that any rulemaking affecting public lands be included within the Administrative Procedures Act requirement, although I do recognize the historic reason for the exception which was that in the case of national emergency there may be reasons to put in emergency rules for which the time will not permit the processes of public participation. So, I think perhaps this should be an exception clause.

With respect to section 306(b) of S. 1041 you have raised a question about mention of national forests and not other agencies.

I think the explanation of that should be, Mr. Chairman, now there are statutory prohibitions in existing law against additions to national forests in certain States. I think it is universal in the Western States with a possible exception of Montana.

Therefore I believe that they have included this specific provision with respect to national forests overcome by a statutory prohibition which I do not believe is as effective as any other class of Federal land administration.

Therefore I think that section is proper.

On desertland entries, just very briefly, I would oppose any kind of grandfather right with respect to desert land entry applications that

may be filed between now and the time that such a bill exists or is enacted in the law.

Senator HASKELL. Excuse me, you would propose the suggestion that it be grandfathered for applications made prior to the date of introduction of the bill?

Now, bear in mind that I do not know anything about the Desert Land Act. But, you would oppose even such a limited grandfather?

Mr. LANDSTROM. Yes, sir; because those so-called applications are really not "applications" that have any current standing. They are really only petitions technically at the present time to have this land examined and reclassified and restored from withdrawn status so that the application may become effective.

They therefore should have no greater standing than any other request of the Secretary of the Interior that withdrawn lands be restored to entry so to speak, certainly no legal writ attachments to such a petition. And I believe if I understand the reasoning people who feel that they have filed their application that has not yet been acted upon finally have some sort of a right as opposed to other parties that could be involved later. But those people of course that do not understand should be given to understand that they merely are petitioning to have the withdrawal land reclassified and opened so that their application could then be considered.

I think therefore they are in a different position than in many other cases where grandfather rights have been granted, for example in the case of geothermal resources in 1970 the Congress enacted a law that would give the owners of mining claims or a variety of gas or other mineral leases on public lands a grandfather right to have their existing property interest recognized when the new geothermal leasing program becomes effective.

Now, it is true that we are having difficulty then and now getting that law enforced and interpreted but those people actually had mining rights in existence or they had leases in existence which had legal property rights attached to them as distinguished from the desertland petition that we are referring to here.

With respect to section 308 of S. 1041, I would certainly like to support the enactment of that section which would permit the Secretary to issue a document of disclaimer under certain circumstances.

This, I feel, would permit administrative decisions to be made in many equitable claims. I say many, it would not be very many but there would be more than a few that would come up over a period of years.

It would make it unnecessary for this committee and the House committee and the Congress to individually adjudicate these matters.

In a similar vein, however, I do think that the section 203 of the bill 1041 should be somewhat modified so that the Secretary is authorized to consider and the sale of public lands might allow him to recognize those equities fully.

I notice that under section 203(b) he may recognize equitable considerations for public policy including but not limited to a preference right to use them. But under the last sentence of section 203 as I read the bill, he would be required in every instance to demand the appraised fair market value.

I doubt, Mr. Chairman, that those provisions are consistent and I doubt that the Secretary could recognize equitable consideration but yet charge the full price.

Therefore, I think the last sentence would have to be amended.

Senator HASKELL. Do you not think it is a little dangerous to give the Secretary a right to dispose of public lands for less than the fair market value?

Mr. LANDSTROM. I think the history of this type of activity has shown that there are instances that arise that indicate that something less than fair market value would be acceptable.

These instances are fairly uncommon. In the past it has been necessary for each person involved in this kind of a situation to come to the Congress and seek individual bills and there has been some number over a period of years and I suspect that there are applications of this kind still arising. As a matter of fact, I know of some. And, to be perfectly frank to the committee, Mr. Chairman, I do represent one group of over 100 property owners in the State of California who are now in this particular situation in which they are competing but claim every right and title to the same real estate both by the people and by \*the United States. And at the present time the only recourse available to resolve these things is through the courts or through legislation. There is no effective administrative proceeding.]

Regarding the wilderness proposal of the Friends of the Earth, I want to associate myself completely with that. As a matter of fact, Mr. Chairman, when I was a staff assistant in the House Interior Committee in 1959 and 1960 I encouraged Chairman Aspinall of that committee to seek this very result. He agreed with my suggestion; he took it up with the House Agriculture Committee; he took it up with the Forest Service and the Forest Service objected to adding the BLM to the Forest Service Multiple Use Act at that time, which included the wilderness provision for the reason that expediency indicated that this might raise questions that would be difficult and might hamper the passage of that legislation.

Again in 1961 and 1962 I urged Secretary Udall to seek an amendment to the rule in his bill then pending to accomplish the same purpose that the Friends of the Earth now propose.

At that time we found objection mainly from the Wilderness Society. They agreed fully with the notion now expressed by them that there are lands under BLM administration that meet all the requirements of the wilderness criteria and that it was prejudicial to the proper management of those lands to have them omitted at that time from the pending wilderness bill.

But again for purposes of expediency they told us that they had gone that far, having started back in about 1957 with the wilderness bill, they had developed the program to the point that it had then reached, that the situation existed that it might delay unduly or even affect an option of the bill if the BLM lands were then included because it would raise controversy with respect to conflict of grazing, conflict of mining, and many other uses.

So, for that reason the BLM lands were not then included. I certainly think that was a mistake at that time and I have said so many times since.

I therefore highly endorse the change now to rectify that mistake. At the same time, with respect to the American Mining Congress statement, I also support adequate recognition of mining and the use of other mineral resources along with the wilderness in this bill and I therefore suggest that you accommodate that and that the committee look again at the policy section of the classification or Multiple Use Act of 1964 and perhaps add to the declaration of section 2 of this bill or the other bill a statement of the purposes which Congress would intend that these lands be used for, and if possible make the statements that say all of these potential uses would be considered equally and fully without prejudice one against the other.

Thank you, Mr. Chairman.

Senator HASKELL. Thank you, Mr. Landstrom; you have been very helpful and I am sorry you did not receive notice.

We apologize for not giving you the proper notice. Thank you.

[Subsequent to the hearing Mr. Landstrom submitted the following:]

KARL S. LANDSTRÖM,  
ATTORNEY AT LAW,  
Arlington, Va., July 31, 1973.

HON. FLOYD K. HASKELL,  
Chairman, Subcommittee on Public Lands,  
Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: In accordance with permission granted by the Subcommittee on July 23, I am submitting herewith my written statement concerning S. 424 and S. 1041 on which I made an oral statement on that date. My written statement presents my personal views concerning the merits of these two bills, and suggests various amendments by which the Subcommittee might conform the bills to my ideas of the public interest.

I am taking the liberty of submitting, also herewith, an additional statement concerning the same two bills on behalf of the Sportsman's Paradise Homeowners Association of Blythe, California, which I represent as attorney of record in litigation involving certain members of the Association in the case of *United States v. Iva May Harvey*, et al., now pending in the United States District Court for the Southern District of California, File: Civil No. 72-277-T, and as agent of said Association, registered under the Federal Regulation of Lobbying Act, to assist in seeking the enactment of H.R. 2218, H. Res. 183, or other similar legislation which would quiet and settle title to certain subdivision properties situated along the Colorado River in Imperial County, California, which are held in the record title of various defendants in the above-cited action, but which properties are claimed in the action to be property of the United States.

Thank you, Mr. Chairman, for this opportunity to submit views on my own behalf as a citizen, and also on behalf of the Association, in regard to these important measures which are pending before your Subcommittee.

Sincerely,

KARL S. LANDSTROM.

Enclosures.

PREPARED STATEMENT OF KARL S. LANDSTROM, AGENT FOR THE SPORTSMAN'S  
PARADISE HOMEOWNERS ASSOCIATION

I am Karl S. Landstrom, an attorney at law, of 510 North Edison Street, Arlington, Virginia 22203, and I submit this statement on S. 424 and S. 1041 as agent for the Sportsman's Paradise Homeowners Association, registered under the Federal Regulation of Lobbying Act, to assist the Association and its members in seeking the enactment of legislation similar to H.R. 2218 and H. Res. 183 of the present Congress which would quiet and settle title to certain subdivision lands situated along the Colorado River in Imperial County, California, which are held in the record title of various Association members but which are claimed to be the property of the United States.

As I have advised the Chairman of the Association, who is Mr. Charles R. Patriquin of 10612 Dalerose Avenue, Inglewood, California, enactment of S. 1041 likely would be of assistance to the Association's members in that the bill, in at least two instances, appears to grant administrative authority to the Secretary of the Interior through which resolution might be sought, without the necessity of litigation or legislation, of the present dispute between the United States and such members as to ownership of interests in the subdivision lands. This dispute, which arose beginning in 1967 when agents of the U.S. Department of the Interior requested the land owners to file applications for land use permits from the United States, is now the subject of a civil action for ejectment brought by the United States Attorney in the U.S. District Court for the Southern District of California, and a counterclaim against the United States which I have filed under date of May 2, 1973, on behalf of certain of the defendants in the action, which is known as *United States v. Iva May Harvey, et al.*, Civil Action File No. 72-277-T.

Very briefly stated, the dispute referred to arises from a belief, apparently held by certain officers of the Department of the Interior, that the subdivision land in question was washed away some 40 or more years ago by floods of the Colorado River, and then accreted, on the California side of the River, to upland which were public lands of the United States. Defendants in the case believe, on the other hand, that the subdivision land is "elevation land", which, based upon first-hand observations and other evidence, was by-passed in an avulsive action of the River which was artificially induced. Certain of the defendants, in their counterclaim filed pursuant to provisions of Title 28, sections 1346(f), 1402(d), and 2409a, as amended by the Act of October 25, 1972 (86 Stat. 1176), have also asserted that the United States is and should be estopped and barred from asserting any claim to the properties because (1) the United States while holding an alleged claim of interest in the lands, failed during a number of years to assert or disclose the claim, thereby disadvantaging the defendants; and (2) the United States has failed and neglected to take any action to assert its alleged claim in a timely manner. As the law now stands, title in and to the lands in question apparently may be quieted and settled only through litigation or by means of legislation which would draw upon powers of the Congress delegated to it by the Property Clause of the Constitution.

As I suggested in my oral statement, several of the provisions of S. 1041 appear to hold the potential for administrative resolution of a controversy such as the one described, and it is my belief that the membership of the Sportman's Paradise Homeowners Association would endorse enactment of these provisions, if amended along lines suggested in this statement.

Section 308 of S. 1041 appears to hold the potential of lending itself directly to administrative consideration and disposition of a controversy of the kind which has been described. That Section would authorize the Secretary of the Interior, after consulting with any other agency that is affected, to issue a "document of disclaimer of interest or interests", suitable for recordation, where the disclaimer will help remove a cloud on the title of the lands and where, among other things, "accreted, relicted, or avulsed lands are not lands of the United States." The Section goes on to require that the administrative costs of issuing the disclaimer as determined by the Secretary are to be paid by the intended beneficiary or beneficiaries; and to provide that the disclaimer shall be regarded as a quitclaim deed from the United States. In the particular case of the subdivision lands at Sportsman's Paradise, my understanding is that the record-titleholders would be willing to pay to the Secretary the estimated cost of issuing a quitclaim deed or similar document, in line with the usual custom in such matters; and I assume that the bill's language contemplates that only the cost of issuing the document is to be collected, not the cost of Government operations which may have been incurred prior to such time in receiving and adjudicating the application, presenting the Government's side of the case, and related matters.

Accordingly, Section 308, as proposed by the Administration, appears to offer an effective, flexible, and appropriate administrative forum and channel for the adjudication of controversies such as the one which currently involves the members of the Sportmen's Paradise Homeowners Association. The Section would tend to relieve both the United States courts and the Congress of the burden of hearing and determining the issues in cases of this kind, and thus would tend toward more expeditious justice at a savings of Government funds. However, in order to promote clarity, I suggest that either the bill or the report specifically define the term "administrative costs of issuing the disclaimer" as including only the direct costs of issuing such document after the direction to have it issued has been given, and

not to include the administrative costs of hearing and determining the facts and issues which may have been involved in considering whether or not to give such direction.

Section 203 of S. 1041 is also of interest in this regard, in that that Section would authorize the Secretary to sell "national resource lands" without competitive bidding where, among other things, he determines it necessary and proper "to recognize equitable considerations or public policies . . ." Under such authority the Secretary, if he should decide that any or all of the record-title holders of lots in the Sportsman's Paradise subdivision were deserving of equitable consideration within the history of their cases, apparently would be able to sell to them such interest or interests as are claimed by the United States without competitive bidding. Unfortunately, however, and I am convinced most inconsistently, the final sentence of the Section (at page 9, lines 13-15) states: "In no event shall national resource lands be sold under this title for less than the appraised fair market value as determined by the Secretary." One may ask, how far, if at all, can "equitable considerations" be recognized and compensated if, in any event, the Secretary must charge in full for the sales transaction?

It is noted that the provisions of Section 7 of S. 424 are similar to those of Section 203 of S. 1041 in this respect: again the Secretary would be authorized to recognize equitable considerations or public policies, but the only relief he could grant would be to waive competitive bidding or to modify the competitive bidding, requiring in all cases that the appraised fair market value be paid.

Returning to the situation affecting the members of the Sportsman's Paradise Homeowners Association, those members find themselves in the position of having purchased their subdivision lots in good faith, without knowledge of any Government claim to ownership therein, based upon homestead patent granted by the Department of the Interior in 1914 and subsequent conveyances duly recorded in the county real property transfer records. The lot owners have regularly paid real property taxes on their lots, and some of the lots have been improved with very substantial dwellings or other improvements. As indicated in defendants' counterclaim, the Government was very late in deriving its theory of accretion, and has been late in communicating its claim to the disadvantage of the bona fide purchasers. Such information and related matters would seem to amount to "equitable considerations" when the sale of title to "national resource lands" is being considered, and to amount to sufficient cause to consider, at such time, whether something less than what otherwise would be the full fair market value should satisfy the public concern in obtaining public revenues from the sale of public lands.

Accordingly, I believe that the Subcommittee should consider the following amendment to the two bills:

In Section 203 of S. 1041, amend the final sentence, at page 9, lines 13-15 so as to read as follows: "In no event, except as the Secretary may determine is appropriate to recognize equitable considerations or public policies, shall national resource lands be sold under this title for less than the appraised fair market value as determined by the Secretary."

In Section 7(b) of S. 424, strike out all and insert the language proposed immediately above for Section 203 of S. 1041.

Thank you, Mr. Chairman, for this opportunity to submit this statement on behalf of the Sportsman's Paradise Homeowners Association.

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#### PREPARED STATEMENT OF KARL S. LANDSTROM

Mr. Chairman, I am Karl S. Landstrom, an attorney-at-law, of 510 N. Edison Street, Arlington, Virginia 22203. I am a former Director of the Bureau of Land Management and at present I am a member of the Public Lands Committee and the Environmental Quality Committee of the Natural Resources Section of the American Bar Association, and of the Administrative Procedure Committee of the Federal Bar Association. I am registered under the Federal Regulation of Lobbying Act as an agent to assist a group of clients in seeking legislation to settle and quiet title to certain lands situated in Imperial County, California. However, the statements contained herein are my personal views and not necessarily those of any organization which I represent or with which I am affiliated.

Both S. 424 and S. 1041 contain provisions of a nature which I and some of my associates in the Department of the Interior had long and diligently sought prior to the establishment of the Public Land Review Commission. I am very glad indeed to note that many of the provisions of the two bills resemble more nearly

our earlier recommendations from the Department of the Interior than they do certain of the proposals of the majority of the PLLRC commissioners, which proposal in many instances I opposed as the Department's representative during the proceedings of the Commission and have since opposed following release of the Commission's final report.

I recommend early enactment of either S. 424 or S. 1041 if amended along lines I shall indicate in this statement.

S. 424

S. 424's title is misleading in that it fails to mention that the bill includes sale and acquisition authorizations. Amend to read "To provide for the management, protection, development, sale, and acquisition of the national resource lands, and for other purposes."

Sec. 2 defines only five out of the larger number of technical employed in the bill. Recent and well as older experience indicates public land terms, unless very clearly defined, cause untold problems. Here are some of the other terms in the bill that should be defined: "land reclamation"; "air or water quality standard"; "isolated land" "equitable considerations"; "modified competitive bidding"; "withdraw any land from sale"; "all minerals"; "to insure proper land use" (the term, as it appeared in the Sale of Public Land Act of September 19, 1964, has already promoted much controversy); "the formulation of standards and criteria in the preparation and execution of plans and programs and in the management of the national resource lands"; "significant actions of the Secretary of the Interior or any agency under his jurisdiction thereof"; "sound ecological management"; and "environmental quality".

Sec. 2(b), purporting to define "National resource lands", is not technically sound in that BLM administers interests in lands, such, importantly, as mineral resources, which fall within the sphere of "lands" that are administered by other bureaus and other departments of the government. The traditional way of overcoming this problem in measures being recommended from Departmental sources is to say "now or hereafter *exclusively* administered by the Secretary through the Bureau of Land Management . . ."

Sec 2(c) is a technically sound definition of what has professionally and legally come to be known as "multiple use". However there are many both in government and outside who fail or conveniently refuse to recognize that "multiple use" is not really a noun, in this context, but is really merely an adjective which is being introduced to modify the noun "management". This should be clear from the proposed definition, if it is closely read, but unfortunately many people do not read or respect the "fine print". For the benefit of such persons, and to make sure the meaning comes out as intended, the Section should not purport to be defining "multiple use" but rather "*multiple use management*". Other provisions of the bill, at page 4, line 3, should be amended to conform (insert "management" after "multiple use").

Sec. 3(a)(1) appears literally to classify each and every parcel of national resource lands as a "vital national asset". This, of course, departs from the truth, which is that a considerable number of the parcels are a detriment in their present tenure arrangement and ought to be transferred either to State or local government ownership or to private ownership where they more appropriately, may be used or managed. Perhaps this anomaly could be remedied by amending the sentence to include "generally" after "national resource lands". (This would harmonize Sec. 3(a)(1) with Sec. 3(a)(3).)

Sec. 3(a)(3) appears to set up a policy that directly conflicts with the existing policy of authorizing the automatic transfer (nonretention) of this class of lands in certain circumstances, such as in the case of mineral discovery, State exchange, or conversion of certain classes of mining claims and mineral leases or permits into geothermal leases. Undoubtedly some kind of savings clause should be added to the paragraph to accommodate such exceptions, at least until such time as the Mining Law of 1872 is to be repealed.

Sec. 3(b) appears to fall short of a fully comprehensive listing of the objectives of proper multiple use management, particularly in respect to mineral resource exploration and development. Language should be added recognizing the place of properly authorized commercial uses, such as mining and domestic livestock grazing, perhaps along lines of the Classification and Multiple Use Act of 1964.

Sec. 3(b), in calling for assurance of "payment of fair market value by users of such lands", might inadvertently work to the unfair disadvantage of the existing holders of Taylor Act grazing preferences or others who, I believe, have legitimate objections to the Department of the Interior's recent practice, at least

in the grazing-fee controversy, of defining "fair market value" in such a way as to ignore or render inoperative the meaning intended by the Congress to be given to the term "reasonable fee" or similar terms as they appear in existing law. Unless the authors of the bill expressly intend by this reference in the bill to repeal the "reasonable fee" and related provisions of the Taylor Act, I suggest that the page 4, lines 10-11 be amended to insert, after "assure payment of fair market value by users of such lands" a comma and the following: "except as otherwise specified by law;".

Sec. 4 provides that the inventory data to be accumulated "shall be made available to State and local governments for purposes of planning and regulating the uses of non-Federal lands in proximity to national resource lands." The implication from this is that the data shall not be provided if the purpose of the State or local government is to plan or regulate the uses of Federal lands within that government's jurisdiction. This not only reflects a misunderstanding on the part of the authors of the legitimate and proper scope of State police power in respect to Federal land use, but also conflicts with Sec. 12 of the bill which is a recognition of State police power. The fact is that the State governments, in our Federal system, hold plenary power to plan for and regulate private uses of all lands within their boundaries, except as to lands in which exclusive legislative jurisdiction is held by the United States (less than 5 percent of the total) and except as to any conflict that would arise with authorized activities of the United States. The States and the local governments can and often do regulate private lands using activities occurring upon public lands on the part of parties who are conducting such activities under permit, lease, or other tenure arrangement from the United States. (Citations to authorities documenting this assertion will be provided upon request). Accordingly, Sec. 4 at page 5, line 1, should and must be amended by striking out "non-Federal". To perfect the final sentence of the Section, at page 5, lines 1-2, strike out "in proximity to national resource lands" and insert in lieu thereof "in the proximity."

Section 5 on land use plans, might be literally construed to mean that each and every "plan", no matter how detailed in nature, would have to be written out and subjected to "public participation" before any action under the "plan" could be taken by the Secretary. Undoubtedly the authors had in mind merely that general or over-all plans would be subject to the Section's mandatory procedures; the detailed, day-to-day working plans, so long as consistent with the general or over-all plan would be routinely developed and carried out more or less as at present. Something by way of further explanation should be carried either into section's language or by way of explanation in the Committee's report. Otherwise this section could give rise to a myriad of lawsuits challenging the detailed or day-to-day level of administrative management.

Section 6(a)(3) of the bill includes a matter to which I have consistently objected, namely, attempting to use the public land laws as a device to provide a double penalty for violating environmental quality laws. At page 7, lines 4-6, strike out all after the word "Act", because violation of any applicable State or Federal air or water quality standard or implementation plan would carry with it its own penalty. If that penalty is imposed and accommodated by the public land user, and the violation is stopped thereby, I see no sound reason to penalize the user still further, and possibly render him financially unable to pay his fine or remedy his violation, by revoking or suspending his public land permit when, by inference from the Section's terms, none of the Secretary's regulations had been violated.

I especially commend the inclusion in the bill of Section 7 authorizing the sale of what I would describe as "excess public lands and of Section 8 authorizing deed restrictions of appropriate nature. These provisions reflect a refreshing and reassuring return to principal espoused by myself and others in the Bureau of Land Management and the Department of the Interior some 10 or more years ago, and a striking departure from I considered ill-advised recommendations on these items by the majority of the PLLRC commissioners. As you recall, the PLLRC report recommended that sales of public lands be barred unless or until some or any kind of zoning regulations affecting potential private use of the lands had been enacted by an appropriate local authority; and also recommended that deed restrictions accompanying the sale of public lands be authorized only for the purpose of preserving important environmental values. Sections 7 and 8 of the present bill I believe provide for adequate coordination of public land sales with State and local government planning and zoning authority without at the same time placing undue restrictions on the Secretary's flexibility as the PLLRC proposals would have done.

Section 16(a), among other things, would commendably require that regulations under the Act be promulgated under procedures required in the Administrative Procedure Act. I could cite a number of instances in which rules and regulations of the Department of the Interior, even when promulgated under procedures similar to those required in non-public property matters by the APA, have been changed or obliterated in summary fashion, without public notice, by such devices as a memorandum legal opinion or an administrative memorandum. I would caution, however, that emergencies, not limited to national defense emergencies, may arise in which new rules or regulations may be needed urgently or existing rules may need to be changed without delay. Historically this is the reason for the public-property exception in the APA. So I suggest the need for a national emergency exception clause at page 15, line 5.

Section 18 of S. 434 would subject appointees as BLM Director to Senate confirmation and would require that an appointee "have a broad background and experience in public land and natural resource management. I oppose the first of these provisions inasmuch as I believe that Senate confirmation, considering the intermixture of functions and the weaken of the separation of powers that it involves, should be limited to the top-rank positions in each department, which, in the case of the Department of the Interior, would be limited to the Secretariat. I strongly support the second of these provisions, but I would rather look for enforcement to the Secretary and the Civil Service Commission than I would to Senate confirmation. The latter, I fear, would tend to deemphasize the professional standing and ability of the prospective appointee and emphasize instead the expediency of the persons' appointment in terms of his relationship to regional, specialized, or partisan issues in which members of the Senate Committee were concerned. My experience also suggests that Senate confirmation at a bureau level might set up undesirable obligations back to Senate sources which would tend to conflict with the appointee's national-level obligations.

S. 424, in comparison with S. 1041, omits treatment of the following topics: advisory boards and committees; conveyance of reserve mineral interests, studies, cooperative agreements, and contributions working capital fund; deposits and forfeitures; contracts for certain functions; authority to issue and correct documents of conveyance; recordable disclaimers of interest in land; rights-of-way; and repeal of obsolete and superseded statutes. My recommendation is that all of these matters be included in S. 424, if it is to be favorably reported instead of S. 1041, but that the S. 1041 provisions first be amended along lines suggested in the remainder of this statement.

#### S. 1041

Sec. 2(a) of S. 1041 appears literally to classify each and every parcel of national resource lands as a "vital national asset". See my recommended amendment at page 3 above.

Sec. 3 defines only five out of numerous technical terms employed in the bill. Here are some of the other terms for which I believe specific definitions should be provided: "fair market value"; "land reclamation"; "significant disturbance or alteration"; "isolated land "equitable considerations"; "mineral values"; "mineral deposits"; "environmental integrity"; and "to insure proper land use". See also page 2, above.

Sec. 3(c) should be amended so as to add the word "management" after "Multiple use". See pages 2-3, above.

Sec. 3(b) should be amended so as to insert "exclusively" after the word "hereafter". See page 2 above.

Sec. 2(c) should be amended by adding some kind of a savings clause to recognize exceptions to the announced retention policy in such instances as the mining laws, State exchanges, and geothermal lease conversions. See page 3 above.

Sec. 101. At page 4, line 17, insert "management" after "multiple use". See pages 2-3, above.

Sec. 101 uses the phrase "maximum opportunities for the public to participate in decisionmaking concerning such lands." Taken literally this implies public activity in making the decisions, whereas, as we all know, the public activity can go so far only as to provide facts, ideas, and proposals or recommendations leading up to the function of decisionmaking, which, by its nature, can be performed only by the authorized officer of government. Probably should be amended to read "maximum opportunities for the public to participate in the processes leading up to decisionmaking . . ."

Sec. 102. At page 6, lines 8-9, strike out "non-Federal". Also strike out "in proximity of the national resource lands" and insert "in the proximity". See pages 4-5 above.

Sec. 205 of S. 1041, unlike Sec. 8 of S. 424, would require that the Department ascertain, before any title conveyance under the Act could be issued, whether the land contains any "mineral value" (a term that is not defined in the bill). The automatic reservation feature of S. 424 is by all means to be preferred, subject to the exception clause which is common to both bills. If "mineral value" is to be defined, as I believe it should, I would suggest using "existing or prospective mineral value" and by "prospective" I have in mind the usage that is given that term in public land matters by the Department of the Interior through the Geological Survey. But the better solution is S. 424 with "mineral value" very broadly defined.

I commend the inclusion in S. 1041 of the repeal of a great number of obsolete and superseded laws. I have not taken time to study in detail the peal provisions of the bill, but in this matter I am willing to rely upon the judgment and technical ability of the Department of the Interior which has submitted the text of the measure. I am particularly interested, based on my experience in public land law reform over a number of years, in urging the repeal of such outmoded and currently damaging statutes as the homestead laws, the Desert Land Act, the Isolated Tract Act, the General Allotment Act, the Townsite Acts, and the Land Exchange Acts, provided up-to-date authorizations incorporating modern concepts of land management and providing for environmental protection are enacted to take their place.

One note in passing is that among the repealers I do not find a repeal of the phrase "pending its final disposal" which appears in the first section of the Taylor Act. It would no doubt be wise to repeal those troublesome four words specifically, even though they are being repealed by implication, assuming either S. 424 or S. 1041 is enacted as proposed, by the new policy declarations contained there.

One further passing note is the word "lien" which appears at page 34, line 10 as proposed new language for Sec. 7 of the Taylor Act. This word, which has been much confused over the years, obviously should be "lieu."

The bill, S. 1041, omits disposition to be made of applications, petitions, or other unfinished matters which, as of the effective date of the repealers, may then be remaining. The bill undoubtedly should be amended so as to provide specifically for each class of actions that may then be pending. It has been suggested to the Subcommittee that some sort of "grandfather rights" should be according to persons who as of the effective date of the new public land sale provisions, have pending petitions or applications that have been submitted under provisions of laws that are being repealed. My belief, however, as I indicated in my oral statement, is that this suggestion may have arisen from a misunderstanding of the nature of public land transactions under the existing laws. Please note that the BLM lands, with very rare exceptions, withdrawn or reserved from the operation of the so-called agricultural land laws (homestead laws, Desert Land Act, General Allotment Act, etc.), and an application filed under provisions of those laws, although properly submitted and received for filing in the land office, actually does not lie so as to affect the status of the land or to establish any right or interest on the part of the applicant unless and until favorable action has been taken on the applicant's petition before the Department of the Interior to have the land examined and classified, pursuant to Section 7 of the Taylor Act, as appropriated in the Secretary's discretion, for conveyance out of Federal ownership under terms of the person's application. Accordingly, no "right" which in my judgment could reasonably be advanced as the basis of a "grandfather right" arises from the mere existence of an application-petition on which favorable action has not yet been taken.

In the case of desert-land application-petitions which would remain unallowed as of the effective date of the proposed repealer, the most that I would consider as proper, from a public-interest standpoint, would be a preference to the petitioner-applicant in the event, and only in the event, that the land applied for is, in fact, offered for sale by the Secretary, in his discretion, within the succeeding period of, say, up to five years. By "preference" I have in mind not more than granting the prior petitioner or applicant, in case (and only in case the same land is to be sold, the opportunity of first refusal of the sale at not less than the appraised fair market value.

If the Congress should elect to grant any kind of "grandfather" right or preference, the legislative language making such grant should by all means be very carefully and clearly stated so as to avoid later controversy. Certainly greater clarity is needed than is exhibited in the most recent grant of this kind, which appears in the Geothermal Steam Act of 1970.

As I stated orally, I endorse enthusiastically the suggestion offered by Friends of the Earth and others under which the Wilderness Act would be amended, in effect, so as to add the national resource lands to its provisions. As a matter of fact, I urgently recommended in 1961-63 while I was Bureau Director, that such amendment be made in the then pending Wilderness legislation. At the same time this proposition is considered, the Committee should also consider the desirability of further amending the Wilderness Act so as to close any Wilderness Preservation System lands immediately from the further operation of the Mining Law of 1872, rather than waiting for closure until January 1, 1984, as the present law provides. In my view, Federal lands which are being mined, or are subject to mineral exploration or mining, cannot be classified properly as "wilderness".

## SUMMARY

I recommend enactment of appropriate legislation, along lines of S. 424 or S. 1041, if amended, so as to modernize the land laws relating to BLM functions and to repeal a long list of outmoded and superseded laws which are hampering effective conservation and management.

Senator HASKELL. I wonder, Mr. Rasmussen, I did not realize that you had been Director of the Bureau of Land Management for so many years. I wonder if you would mind answering just two questions which I have because I think your viewpoint would be very, very helpful.

This Desert Land Act—a suggestion has been made that you might grandfather applications as Mr. Landstrom said, or the petition or application pending as of the date of the introduction of the earlier of the two bills.

Mr. Landstrom expressed his opinion on the subject. I wonder what your opinion is?

Mr. RASMUSSEN. I am not sure how many pending applications for desert entries are on the records. Certainly the ones that have been allowed should go forward and they should be allowed to complete the contract that they have.

As to the grandfather clauses on those that have not been allowed, I would think we would have to study that pretty carefully.

And an offhand remark only, the staff supplied me with about 600. In the fairness to those people who have spent time and money, I think we should perhaps look at them. I do not believe they should be given any rights but that they should be carefully looked at.

Senator HASKELL. In other words—I wish I knew anything about the Desert Land Act, but apparently people make a petition to see if they can apply to qualify. And I gathered from Mr. Landstrom that is the procedure.

Where would you draw the line, if there are 600 of them that is a great many. Would you grandfather all petitions for application or only those petitions where the Government has said yes, you may apply? Or, is it not possible to draw that kind of a line?

Mr. RASMUSSEN. I think that where the Government has said you may apply that would be a valid application and a proper line—certainly those folks.

The question of others that have been held up for various reasons, I think that perhaps they should be looked at carefully.

Senator HASKELL. All right, sir. We will consider that.

The other question I had, you remember Mr. Alderson indicated the desirability of including BLM lands as possible candidates for wilderness areas just the way they are candidates for mining lands and Mr. Landstrom endorsed that proposal.

I wonder, as a former Director, what are your reactions?

Mr. RASMUSSEN. My reaction is that there are areas on the public lands which should be considered for wilderness status and certainly there are some outstanding lands.

The list that was supplied, I had a great deal to do with their selection at the time and certainly the majority of those qualify for some type of wilderness. And on that basis I certainly endorse that portion of it.

Senator HASKELL. Thank you.

I appreciate your staying in the room so I could ask you these two other questions. Thank you a lot.

Our next and last witness, Mr. Brock Evans of the Sierra Club has, apparently submitted a statement for the record.

[The prepared statement of Mr. Evans follows:]

PREPARED STATEMENT OF BROCK EVANS, WASHINGTON REPRESENTATIVE,  
SIERRA CLUB

I am Brock Evans, Director of the Washington Office of the Sierra Club, and I appreciate the opportunity to once more appear before you to testify on this extremely important subject. As you know, representatives of the Sierra Club have testified at least twice before on this subject before this Committee, in September of 1971 and of March of this year. We remain deeply concerned about the fate and proper management of the lands which remain under the jurisdiction of the Bureau of Land Management.

We understand that today's hearing is a continuation of that one held in March of this year, and therefore we will not take this Committee's time by restating our position. Our basic views on this subject are contained in the statement delivered by Mr. Tupling in March. However, during the March hearings, a significant question was raised by us concerning the provisions in Section 7 of S. 424, which appear to give undue emphasis and discretionary authority to the Secretary of the Interior for the sale of public lands. There was a discussion between our representative and some members of this Committee, and it was suggested that if we had some suggestions about possible changes in language, we could submit them at a later date. We would like to do so at this time. Our suggestive changes follow:

(1) On line 19, page 7, Section 7(a)(1) strike the phrase "isolated land" and substitute the following: "A parcel of land which contains no significant scenic or wilderness values, nor any habitat for rare and endangered species of plants or animals, nor any habitat for other species of plants or animals which are likely to become endangered in the local area if Federal protection is removed, and which is located at least one mile from any other lands under the jurisdiction of the Secretary."

*Purpose.*—To remove the great discretion now permitted the Secretary under this Section as presently proposed, in order to insure that important national values will be protected, and to give the Secretary the means with which to defend the public interest against undue pressures from local commercial interest.

(2) Line 5, page 8, Section 7(a)(3). Add the following clause at the end of this Section, following the word "ownership;" Provided, that no parcel or tract of land in excess of 640 acres shall be disposed of under this sub section, until the House and Senate Interior and Insular Affairs Committees have first approved of such disposal, by majority vote of the membership of each Committee, after receiving due notice of such disposal.

*Purpose.*—Since every applicant for favorable consideration for disposal of public lands under this Section will claim that his action coincides with "important public objectives", it is important to prevent abuses of this Section, particularly in areas such as those which bear oil shale and similar resources. The provision requiring approval of the House and Senate Interior Committees should at least provide some sort of public interest check on the Secretary's discretion here.

(3) Line 17, page 8, Section 7(d)(2). Strike the phrase "including but not limited to a preference right to users . . ."

*Purpose:* We feel it is extremely inequitable in this last third of the twentieth century to assume that users of the public domain (and in this instance, it appears plain that such users are users with an economic interest, such as grazing rights)

should have a "preference" of any kind. Such a provision again permits too much discretion in the Secretary, and also gives him too little defense against the often overwhelming pressure of local commercial interest. This phrase should be stricken, to give no special consideration for "users."

Finally, to emphasize again some points made in our March testimony, we would like to make it clear that our policies regarding wilderness and land management have not changed. Many of the outstanding wilderness areas in the United States are on BLM administered land and we feel that present primitive areas should be designated as wilderness, and that there should be accelerated wilderness study for those areas which have already been identified as having wilderness potential in the BLM unit planning process, and finally that the Secretary of Interior be mandated to undertake a study of all roadless areas of more than 5,000 acres on BLM land and report and recommend back to Congress within 10 years. Roadless areas of greater than 5,000 acres should be afforded interim protection. We feel further that the Bureau of Land Management needs immediate authority to protect resources and enforce applicable laws and regulations on the lands which they are responsible for administering. Severe problems with unrestricted use of off-road vehicles in the southern California desert has resulted in unnecessary and unfortunate resource damage on public lands. The BLM rangers are presently powerless to deal with the situation and channel ORV use into areas where resource damage will be minimized.

We thank the Committee for holding this additional hearing, and we hope that it can see fit to adopt our suggested language which will guarantee more protection to the public interest in this very important matter. Thank you.

Senator HASKELL. This then concludes the hearing and the hearing record will stay open for 2 weeks for written submissions.

We are adjourned.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]



