AMENDMENT TO THE IDAHO ADMISSION ACT AND CONVEYANCE OF CERTAIN LANDS TO AUGUST SOBOTKA AND JOSEPH J. TOMALINO OF INTAKE, MONTANA

HEARINGS

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS

OF THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 939

A BILL TO AMEND THE ADMISSION ACT FOR THE STATE OF IDAHO TO PERMIT THAT STATE TO EXCHANGE PUBLIC LANDS AND TO USE THE PROCEEDS DERIVED FROM PUBLIC LANDS FOR MAINTENANCE OF THOSE LANDS

DECEMBER 11, 1973

AND

S. 237

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN LANDS TO AUGUST SOBOTKA AND JOSEPH J. TOMALINO OF INTAKE, MONTANA

DECEMBER 7, 1973

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CONTENTS

AMENDMENT TO THE IDAHO ADMISSION ACT AND CONVEYANCE OF CERTAIN LANDS TO AUGUST SOBOTKA AND JOSEPH J. TOMALINO OF INTAKE, MONTANA

TUESDAY, DECEMBER 11, 1973

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

The committee met at 9:30 a.m. pursuant to notice in room 3110, Dirksen Office Building, Hon. Floyd K. Haskell, chairman, presiding.

Present: Senators Haskell [presiding], Church, and McClure.

Also present: Jerry T. Verkler, staff director; Steven P. Quarles, 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 Subcommittee on Public Lands of the Senate Interior and Insular Affairs Committee will commence the hearing on S. 939.

[The text of S. 939 and Department reports follow:]

93D CONGRESS
1ST SESSION

S. 939

IN THE SENATE OF THE UNITED STATES

FEBRUARY 21, 1973

Mr. McCLURE (for himself and Mr. CHURCH) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 5 of the Act entitled "An Act to provide for
4 the admission of the State of Idaho into the Union", ap-
5 proved July 3, 1890 (26 Stat. 215), is amended to read
6 as follows:
7 "SEC. 5. (a) Except as provided in subsection (b), all
8 lands herein granted for educational purposes shall be dis-
9 posed of only at public sale, the proceeds to constitute a
10 permanent school fund, the interest of which only shall be

1 expended in the support of said schools. Such lands may,
2 under such regulations as the legislature shall prescribe, be
3 leased for periods of not more than ten years, and in the
4 case of an oil, gas, or other hydrocarbon lease, for as long
5 thereafter as such product is produced, and such lands shall
6 not be subject to preemption, homestead entry, or any other
7 entry under the land laws of the United States, whether
8 surveyed or unsurveyed, but shall be reserved for school
9 purposes only.

10 "(b) Such lands may be exchanged for other lands, pub-
11 lic or private, of approximately equal values and as near as
12 may be of equal area. If any such lands are exchanged with
13 the United States, such exchange shall be limited to unre-
14 served or reserved public lands within the State that are sub-
15 ject to exchange under the laws governing the administra-
16 tion of such lands. All such exchanges heretofore made with
17 the United States are hereby approved."

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 11 1973

Dear Mr. Chairman:

This responds to your request for this Department's views on S. 939, a bill "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands."

We have no objection to enactment of the bill with the amendments suggested below.

The Act of July 3, 1890, 26 Stat. 215, provides for the admission of the State of Idaho into the Union. Section 5 of the Act states that lands granted to Idaho for educational purposes shall be disposed of only at public sale and that the sale proceeds will constitute a permanent school fund. Section 5 also allows for the leasing of such lands for periods of not more than five years.

S. 939 would amend section 5 to allow for leasing of lands granted for educational purposes for periods of not more than 10 years, and in the case of an oil, gas or other hydrocarbon lease, for as long thereafter as such product is produced. It would also allow such lands to be exchanged for other lands, public or private, of approximately equal value and as near as may be of equal area. If such lands are exchanged with the United States, the exchange would be limited to unreserved or reserved public lands within the State that are subject to exchange under the laws governing the administration of such lands. The bill would also approve all such exchanges heretofore made with the United States.

Many restrictions placed on the use of lands granted to States at the time they entered the Union are no longer appropriate and they often interfere with sound land management. S. 939 would benefit the United States as well as the State since it would specifically authorize exchanges of State and Federal lands. These exchanges would allow for consolidation of Federal lands and thus facilitate Federal land management. We therefore have no objection to the

bill if subsection (b) is amended as suggested below.

Subsection (b) provides that when State land is exchanged for other land, the lands be of "approximately equal value and as near as may be of equal area". Similar provisions in other Federal exchange authority have often proven to be very inflexible. We therefore recommend that the bill permit exchanges when the lands exchanged are of equal value or the land values are equalized by the payment of money. This amendment would be consistent with the exchange authority in section 306(b) of the Administration's proposed "National Resource Lands Management Act of 1973" (S. 1041).

We also recommend that in subsection (b) the word "Federal" be substituted for the words "reserved or unreserved". This change would clarify the applicability of S. 939 to all Federal lands. Provisions of current exchange laws would continue to affect the availability of Federal lands for exchange in each instance.

When amended as we suggest, subsection (b) would read as follows:

> "(b) Lands herein granted for educational purposes may be exchanged for other lands, public or private. The values of the lands exchanged shall be equal, or if they are not equal, the values shall be equalized by the payment of money by the appropriate party. If lands herein granted for educational purposes are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States are hereby approved."

Time has not permitted securing advice from the Office of Management and Budget as to the relationship of this report to the program of the President.

Sincerely yours,

Assistant Secretary of the Interior

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

26-212—74——2

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D C 20250

December 19 1973

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate

Dear Mr. Chairman:

We would like to offer our views on S. 939, a bill "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands."

This Department recommends that S. 939 be enacted with the amendments suggested herein.

S. 939 would amend section 5 of the Act of July 3, 1890 (26 Stat. 215), relating to admission of the State of Idaho into the Union. Section 5 provides that Federal lands granted to the State for educational purposes can be disposed of by the State only by public sale. S. 939 would permit the State to exchange such lands.

Enactment of S. 939 would be beneficial to both the State of Idaho and the United States. There are many areas of intermingled State grant lands within the National Forests of Idaho. S. 939 would permit consolidation of State and National Forest ownerships for more efficient and economical management.

S. 939 would also ratify five exchanges that were completed in the past. It would permit completion of eight exchanges on which agreement has been reached, involving 14,278.65 acres of State lands and 13,575.70 acres of National Forest lands. It would also permit continued consideration of exchange proposals involving 31,000 acres of scattered parcels of State lands within the National Forests.

Subsection (b) of the proposed amendment would require that State lands be exchanged for lands "as near as may be of equal area." We recommend that this clause be deleted. Such a provision might prevent an important and desirable exchange merely because the land areas were not nearly equal. The authority of the State of Idaho to exchange its lands should not be so restricted because adequate protection against abuse of exchange authority exists in the requirements that the lands exchanged be of approximately equal value. When amended as we suggest, subsection 5(b) would read as follows:

"(b) Such lands may be exchanged for other lands, public or private, of approximately equal value, but if any of said lands are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States involving National Forest lands are hereby approved."

We also recommend that the words "reserved or unreserved" on page 2, lines 13 and 14, be deleted, and the word "Federal" be substituted therefor. This change would clarify the applicability of S. 939 to all Federal lands. Provisions of current exchange laws would continue to affect the availability of Federal lands for exchange in each instance.

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

Sincerely,

J. Phil Campbell

Under Secretary

Senator HASKELL. Senator McClure is first on the list, but as he is delayed, we will proceed with Mr. Berklund, the Director of the Bureau of Land Management, Department of the Interior.

Mr. Berklund.

STATEMENT OF CURT BERKLUND, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY SAM LANGERMAN, CHIEF, DIVISION OF REGULATION AND MANAGEMENT; AND JAMES MONROE, ASSISTANT DIRECTOR, BLM

Mr. BERKLUND. First I would like to introduce those with me today. Seated on my left is Mr. Sam Langerman, Chief of the Division of Legislation and Regulatory Management; seated on my right is Mr. James Monroe, Assistant Director of the BLM.

Mr. Chairman, S. 939 would amend section 5 of the act of July 3, 1890; 26 Stat. 215; which provided for the admission of the State of Idaho into the Union.

This section required that lands granted to Idaho for educational purposes be disposed of only at public sale with the proceeds therefrom becoming a permanent school fund.

The section permitted the leasing of these lands for up to 5 years. No provision was made, however, for any exchanges involving these lands.

S. 939 would amend section 5 to permit leasing of lands granted for educational purposes for periods up to 10 years. In the case of oil, gas, or other hydrocarbons, leasing would be authorized for as long as the period of production.

The bill would also allow these lands to be exchanged for other lands, public or private, of approximately equal value and equal area.

Any exchange with the United States would be limited to public lands within the State that are subject to exchange under the laws governing their administration.

In addition, the bill would approve all exchanges heretofore made with the United States involving lands granted for educational purposes.

Our records indicate that some 3 million acres have been granted to Idaho for educational purposes under this 1890 act. We have also previously exchanged some 10,000 acres with the State, involving lands granted for educational purposes, under authority of the Taylor Grazing Act.

Many restrictions placed on the use of lands granted to States at the time of their admission into the Union are no longer appropriate and often interfere with sound land management.

The bill would benefit both the United States and Idaho by specifically authorizing exchanges of State and Federal lands, thereby permitting consolidation of lands and facilitating land management. The bill would also remove any doubts regarding the legality of previous exchanges.

We have no objection to the enactment of S. 939 if amended as indicated in the Department's report on the bill.

Senator HASKELL. I understand, Mr. Berklund, this is more or less a standard bill that has been applied in other States. Am I correct in that assumption?

Mr. BERKLUND. There has been some modification. If it is the same I am not aware of it. It is similar, especially with the amendment or change we have asked for, it would make it consistent with our Organic Act that you are in the process of marking up now.

Senator HASKELL. Generally then, I didn't mean the bill was identical. But the principle has been applied, it is my understanding, in other Western States. Am I correct in that?

Mr. BERKLUND. Yes, sir, that is correct.

Senator HASKELL. Can you name me the States it has been—the States in which the principle has been applied?

Mr. BERKLUND. I would like to supply that for the record.

Senator HASKELL. I would appreciate it. Maybe you could supply it this afternoon. We would like to move these bills on. It should not be much of a job, should it?

Mr. BERKLUND. No, we will just have to go back and pull it from the record.

[Subsequent to the hearings Mr. Berklund submitted the following information:]

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
Washington, D.C., December 12, 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: This responds to your request for additional information at the hearing yesterday on S. 939.

Upon review of the acts granting educational lands to the public land States, as indicated below, we find that the Dakotas, Montana, and Washington have specific authority to make public or private exchanges of such lands similar to

that proposed in S. 939. This authority was the result of mandatory statutes in 1932 and 1970.

Arizona, June 20, 1910 (36 Stat. 557).
California, March 3, 1853 (10 Stat. 244).
Colorado, March 3, 1875 (18 Stat. 474).
Idaho, July 3, 1890 (26 Stat. 215).
Montana, February 22, 1889 (25 Stat. 676).[1]
Nevada, June 16, 1880 (21 Stat. 287).
New Mexico, June 20, 1910 (36 Stat. 557).
North Dakota, February 22, 1889 (25 Stat. 676).[1]
Oregon, February 14, 1859 (11 Stat. 383).
South Dakota, February 22, 1889 (25 Stat. 676).[1]
Utah, July 16, 1894 (28 Stat. 107).
Washington, February 22, 1889 (25 Stat. 676).[1]
Wyoming, July 10, 1890 (26 Stat. 222).

Sincerely yours,

CURT BERKLUND,
Director.

Senator HASKELL. My reason for asking: If this is a principle that has long been established in other areas, there is no point in rethinking the thing all over again.

I think your associate would like to respond.

Mr. BERKLUND. As far as the exchange provision is concerned, I am not sure of the number of public land States in which it has been applied, but we will supply that for the record.

Senator HASKELL. I think it is important.

[The information requested was not received in time to be included in the record.]

Senator HASKELL. I notice here you have suggested an amendment to subsection (b). Would you please state why you make this suggestion for amendment?

Mr. BERKLUND. Yes, sir. The first provision we have asked for a change in is lands that are equal in area. We have gone through one exchange with the State of Idaho in which we exchanged approximately 70 acres—I am sorry, around 73.3 acres of State land for 3,480 acres of Federal land.

This was for the Interagency Fire Center in Boise, and we could not have undertaken that exchange with that wording in the act.

Senator HASKELL. I see. The subsection (b) as it reads in the bill provides they must be of approximately equal values and as near as may be of equal area.

You are suggesting the provision of equal area may not fit in with the pattern of the past, and furthermore, may not be very practical in the future?

Mr. BERKLUND. Yes sir, we would like to see that deleted.

Senator HASKELL. What does the Senator from Idaho think of that?

Senator McCLURE. I understand the problem. Of course, the problem on the other side has been that some of the appraisal procedures have been criticized by the State as being unequal as far as the State is concerned.

I am not sure the equal area provision necessarily solves that problem when it comes to equal values. I have no objection. I have no particular pride in the language that is used in this bill with respect to the exchange. I think the principle is the more important objective.

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[1] The amendatory acts of May 7, 1932 (47 Stat. 150), and Oct. 16, 1970 (84 Stat. 987), provided these States with specific exchange authority.

Senator HASKELL. In Mr. Kyl's letter addressed to Senator Jackson Mr. Kyl says:

Time has not permitted securing advice from the Office of Management and Budget as to the relation of this report of the program to the President.

Do you have to go to OMB on all such matters as this?

Mr. BERKLUND. Yes, all such legislative reports must be cleared through OMB. This report has departmental clearance but we have not received clearance from OMB at this time.

Senator HASKELL. When would you anticipate getting OMB clearance?

Mr. BERKLUND. That is a hard question to answer, Mr. Chairman. Sometimes it comes pretty fast and other times it takes considerable time to get it through.

Senator HASKELL. I suppose this is a somewhat irrelevant question. The answer is probably going to be because it is. But, why in your opinion, should OMB be involved in a transaction such as this?

Mr. BERKLUND. They are the focal or coordinating point for the executive agencies. If there is a difference of opinion between ourselves and Agriculture, which there appears to be right now, a minor difference, that would generally be resolved before we get OMB's clearance.

Senator HASKELL. Before the administration officially puts its stamp of approval even on a transaction like this, OMB's imprimatur is necessary. Is that correct?

Mr. BERKLUND. That is correct.

Mr. Chairman, I might mention the other provision in there we have asked to have added. That is, if the lands are not equal in value at the time of appraisal we have asked if we could use cash as an equalizer. These are the same words we have used in the Organic Act and a prime example was the exchange with the State of Idaho for the Dworshak project; in that specific case the exchanges were not equal in value.

By the time we made the adjustment, land values had changed. We had to go back a third time for reappraisal and the appraisal cost to the Federal Government was greater than the difference in the appraised value in the first instance.

Senator HASKELL. I think now I would like to ask the junior Senator from Idaho if he has a statement or questions he would care to make.

STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator McCLURE. Mr. Chairman, thank you very much. I am sorry I was late getting here. I was at a meeting with Mr. Simon trying to work out some fuel problems.

That is also a matter of some importance to my State. Of course it is a great pleasure for me personally to have the opportunity not only to have this bill in hearings before the committee but also to see the Director of Land Management appear and testify on questions with which he is personally quite familiar.

I am certain the chairman of the committee knows, the Admissions Act called for the allocation of sections 16 and 36 for school lands.

These dispersed sections often lay in townships which have developed and have since been sold and gone into private ownership.

Since about 85 percent of the State of Idaho remains in public ownership of one nature or another, that means 85 percent of the school lands are roughly still in the dispersed ownership and it is very hard to manage dispersed townships of that kind.

It is bad enough where the Milwaukee Land Co. owns alternate sections, but at least where there is half ownership on one of the other where it is intermingled, we can get together on a management plan.

When the State of Idaho owns only isolated 640 acre tracts separated from all other tracts the result has been either very poor management or effectively no management for income.

That is not the fault of the State, although the State has been much criticized. It is just those isolated tracts of lands are almost incapable of being managed.

A great many efforts have been made over the years to in some way consolidate ownerships so that they could be effectively managed for the benefit of the schools and carry out a mandate for the Idaho Admissions Act.

This bill's intention is not to dispose of lands, but to consolidate ownerships into tracts so the schools in our State can benefit from what was a wise provision in the Admissions Act.

I think the testimony of Mr. Berklund has been helpful in pointing out some flexibility that could be given to the bill by allowing a different exchange formula or equalization by the payment of cash.

I am certain you will agree, Mr. Berklund, that given the exchange authority, it does not solve all of the problems. There would still be administering problems.

Mr. BERKLUND. That is correct. Probably the greatest problem you have pointed out here for the Bureau of Land Management is the checkerboard area. Part of the problem of no management is the isolated sections 16 and 36 within the southern part of Idaho.

Senator MCCLURE. We have isolated school sections out in the wilderness. We have isolated school sections in the Saw Tooth National Recreation Area. We have isolated school sections in our proposed Hell's Canyon Recreation Area. We will have more isolated school sections out in the Idaho primitive area, in the Salmon River Breaks Primitive Area. And, the State ought to be permitted to exchange out of the ownership of such sections so they can be managed for national purposes and not simply lost. As far as our schools are concerned it would be a complete negation of the purpose of the Idaho Admissions Act, and probably constitutionally inadmissible under the State's constitution.

We have a number of such difficulties which this act will not totally solve. But, we will certainly go a long way toward opening the door to some of this, and I am quite certain Mr. Berklund is aware of the problems in a personal sense and also would give the administrative direction toward finding a solution.

Again, the door can only open, a door cannot force anybody to walk through it to find answers. It would still require administrative discretion and a great deal of willingness and determination on the part of both the State and the Federal agencies to implement this bill.

Is that correct?

Mr. BERKLUND. That is correct. If we had this legislation we would establish a high priority in trying to consolidate manageable units for the State and for the Bureau of Land Management.

Agriculture has a similar problem where they have proposed exchanges, either they to the State, or the State to them, that they have not been able to proceed with.

We have not been able to establish a high priority while waiting on legislation of this type. This is what we would like to do in establishing some land use management through consolidation of our holdings.

Senator McClure. Again, there are administrative problems, and I don't want to belabor that. There are appraisal problems. One example, an isolated 40 acre tract in the Seven Devil's Mountains of Idaho, there was a mill site tract nearly 80 years ago—over 80 years ago—which the Forest Service purchased for $64,000. As a matter of fact, it was probably worth that on the market, and yet there are similar isolated State tracts to which they refuse to assign any kind of value. So, there are administrative problems even under the proposed amendment.

Mr. Berklund. That is correct. It does not affect the exchanges by any means, but it gives us the tools in order that we may proceed with the State and try to arrive at an equitable solution.

Senator McClure. Thank you.

Senator Haskell. I would like to call on the senior Senator from Idaho.

Senator Church. Mr. Berklund, I would like to welcome you to the committee this morning.

Mr. Berklund. Thank you, Senator.

Senator Church. Is this the first time you have testified on Idaho matters since you have become director?

Mr. Berklund. Yes.

Senator Church. I think this is a very sensible bill. I welcome your support for it. I take it your support for the bill is conditioned upon the adoption of the amendments you recommend. Is that correct?

Mr. Berklund. We have no objections to the bill in principle, Senator. We could endorse it with our amendment.

Senator Church. I have no objection to your amendment, so it looks like we are going to get along fine.

I believe Senator McClure has covered the ground here. This is a sensible bill. I think it will make more efficient land management, it will benefit both the State of Idaho and the Federal Government, and it ought to be passed.

Senator Haskell. Senator Church, before you came in I asked Mr. Berklund if this followed a pattern of legislation in the Western States.

He indicated that it did, and you, having been on the Interior Committee for some time, might want to comment on that and possibly you have knowledge of certain ways in which it was applied.

Senator Church. I notice the amendment that is recommended here is in line with what has become, if not a boiler plate provision, something close to it in recent statutes to give greater flexibility in matters of exchange.

That is needed. The original exchange provisions were very restrictive and often times defeated their own purpose. That is why I think the amendment you have suggested is very good.

Mr. Berklund. We suggested this in order to give us more flexibility. We took the isolated cases of Idaho and applied them to your legislation and we found ourselves going back over the same problems.

If we had the authority under the bill as proposed and with these minor changes, we felt we would relieve most of the problems we had in the past on proposed exchanges.

Senator HASKELL. Thank you very much, Mr. Berklund, and you will give us a list of those States for the record where a comparable principle has been adopted?

Mr. BERKLUND. Yes, we will supply that for the record.

Senator HASKELL. Thank you, sir, and thank you gentlemen for appearing.

Mr. BERKLUND. Thank you very much.

Senator HASKELL. The next witness is Mr. Rexford A. Resler, associate chief, Forest Service, The United States Department of Agriculture.

STATEMENT OF REXFORD A. RESLER, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JERRY VAN GILST, DIRECTOR, DIVISION OF LANDS

Senator HASKELL. Mr. Resler, very nice to have you here.

Mr. RESLER. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, I have with me Mr. Jerry Van Gilst, Director of our Division of Lands.

Senator HASKELL. Glad to have you.

Mr. RESLER. Mr. Chairman and members of the subcommittee, thank you for this opportunity to present the views of the Department of Agriculture on S. 939.

The bill would permit the State of Idaho to exchange lands that had been granted to it by the Federal Government for educational purposes.

Our interest in the bill stems from the fact that it would make it possible for the Forest Service of this Department to acquire State lands of this type in exchange for national forest lands.

There are many tracts of State grant lands interspersed among national forest lands. Such a situation does not facilitate efficient administration of either the State lands or the adjacent national forest lands.

For example, additional boundary lines must be maintained and rights-of-ways must be negotiated to provide access to or through these tracts.

In some cases the natural resources of isolated tracts cannot be effectively utilized or put under management because of the expense of building roads to get to them.

Consolidation of land ownership through exchange can be mutually beneficial to the Forest Service and the State. We therefore recommend enactment of the bill.

If enacted, the bill would permit the completion of eight land exchanges on which agreement has tentatively been reached, involving 14,300 acres of State lands and 13,600 acres of national forest lands.

It would also permit continued consideration of exchange proposals involving 31,000 acres of scattered tracts of State lands within the national forest.

26-212—74——2

If enacted, the bill would also ratify five exchanges that were completed before it was realized that the present language of the Admission Act did not provide the State with authority to exchange the State grant lands.

We would like to offer for the subcommittee's consideration two amendments which we believe would improve the bill.

We recommend that the words "as near as may be of equal area" on page 2, lines 11 and 12, be deleted. Such a provision might prevent an important and desirable exchange merely because the land areas were not nearly equal.

We believe that adequate protection against abuse of exchange authority exist in the requirements that the lands exchanged be of approximately equal value.

The value of individual tracts of forest and range land can vary considerably because of their location, accessibility, and best use.

This diversity in land values make it generally difficult to develop individual land exchanges on a basis of nearly equal area.

Exchange authorities of the Forest Service do not require that exchanges be of equal or nearly equal area, and we have not experienced any problems as a result.

Generally, we find that in a series of land exchanges with a large landowner, such as a State, the area exchanged tends to become nearly equal.

We also recommend that the words "reserved or unreserved public lands" on page 2, lines 13 and 14, be deleted, and the words "Federal lands" be substituted therefor. This change would extend the exchange authority to include all Federal lands within the State that are subject to exchange under the laws governing the administration of such lands.

As the bill now reads, reserved or unreserved public lands can be interpreted to mean only lands reserved from the public domain or unreserved public domain lands.

If revised as recommended, it would be clear that Federal lands acquired through such means as purchase and donation could also be exchanged for the State grant lands.

When amended as we suggest, subsection 5(b) would read as follows:

(b) Such lands may be exchanged for other lands, public or private, of approximately equal value, but if any of said lands are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States involving National Forest lands are hereby approved.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you may have.

We have prepared a report on S. 939. It is still awaiting signature. It has been cleared with the Office of Management and Budget with respect to the administration's program.

Senator HASKELL. Basically your position of the Forest Service is the position of the Bureau of Land Management. The only difference I can see is the Bureau of Land Management suggested in the amend-

ment that there be a right to equalize values if they differ in values by a money transaction.

Would you endorse that principle?

Mr. RESLER. That is correct, Mr. Chairman. We do not feel we need that authority. There are other ways of equalizing values. In the case of national forest lands reservation of cutting rights on timber values is one method under the present authority.

However, I recognize there would be circumstances in which, in particular BLM lands, it would be particularly expeditious to opt to do that.

Senator HASKELL. You would not object?

Mr. RESLER. We would not object to that; no.

[Subsequent to the hearing the Department of Agriculture submitted the following information:]

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., December 13, 1973.

Hon. FLOYD K. HASKELL,
Chairman, Subcommittee on Public Lands,
U.S. Senate.

DEAR MR. HASKELL: At the hearing before your subcommittee on S. 939, the bill to amend the Admission Act for the State of Idaho, you pointed out that the testimonies of the Department of Agriculture and the Department of the Interior were generally in agreement except for the amendment relating to the equalization of land values through the payment of money that was recommended by Interior.

We have studied the Department of the Interior's proposed amendment.

In our testimony we recommended that section 5(b) of the bill be changed to head "Such lands may be exchanged for other lands, public or private, of *approximately* equal value. . . ." In response to a question we also stated that we would have no objection to language that would provide for the equalization of values through the payment of money. We would like to clarify this latter statement with respect to Interior's proposed amendment. Their amendment provides that "the land values shall be equal, or if they are not equal the values shall be equalized." Because exchanges seldom involve values that are precisely equal, the payment of money would be mandatory in almost all cases if the Interior's proposal is adopted.

The general exchange authorities of the Forest Service do not provide for cash equalization. We have been successful in negotiating exchanges within the framework of these authorities and would prefer to continue to process exchanges under their provisions. Also, we would have to obtain a special appropriation for money to equalize values in cases involving National Forest lands reserved from the public domain.

We would have no objection to language in the bill that would provide that the exchanged lands be of "approximately equal value" and if they are not they may be equalized by the payment of money. Precedent for this approach is contained in section 3(d) of the Act of August 22, 1972 (86 Stat. 613) which established the Sawtooth National Recreation Area in the State of Idaho. The applicable language of that Act reads:

"The values of the properties so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require."

Similar language may be found in section 6(d) of the Wild and Scenic Rivers Act (82 Stat. 912).

Sincerely,

PHILIP L. THORNTON,
Deputy Chief, Programs and Legislation.

Senator HASKELL. Are you, as well as Mr. Berklund, aware that this general principle of S. 939 has been applied in other Western States?

Mr. RESLER. Yes, sir.

Senator HASKELL. You don't know off the top of your head what States?

Mr. VAN GILST. There were originally five States, I believe, that had restrictions relative to school lands being exchanged, and Public Law 91–463 approved October 16, 1970, took care of the States of North Dakota, South Dakota, Montana, and Washington and the same land we are proposing for the State of Idaho.

Senator HASKELL. So, we have precedent.

Thank you, gentlemen.

Senator McClure.

Senator McCLURE. Thank you very much. I appreciate the testimony in support of the legislation. I am sure you are aware, as we are, of the problem that is imposed in trying to manage isolated tracts scattered throughout the townships, that is an all too familiar problem.

As I mentioned with Mr. Berklund when he was on the witness stand, there are appraisal problems which have plagued the exchanges up until this time. Is that not correct? Different approaches to appraisal of the lands between the State land department and your agency?

Mr. RESLER. Yes. There have been differences of opinion. The difference primarily relates to the question of how do you best determine fair market value. There have been difficulties, yes.

Senator McCLURE. I am sure you are aware of the isolated 40-acre tract to which I made reference that the Forest Service bought for $64,000, and they did not buy it for timber values, I am certain, because there is not that kind of timber on it.

Mr. RESLER. I am not personally aware of that example, Senator.

Senator McCLURE. I am particularly aware of it because that is the area of the State where I grew up and I hiked over all of that country at one time or another in my lifetime. It is right on the banks of Black Lake, where I would love to have a summer cabin, as would everyone else who has ever been there.

There are such examples. But when it comes to State lands and we look at the equal values test, then you start running into trouble. That is, I suspect, one of the reasons why the bill has in it "lands of equal area as near as may be" so we get away from this question of appraisals.

It seems to State officials with whom I have discussed this problem that Federal land always seems to be more valuable than the State land which they seek to exchange.

Mr. RESLER. I would hope that is not the case, Senator McClure. Our purpose of course is to try to determine fair market value as accurately as we can. There are differences in value affected by various things, all of which you are familiar with.

I cannot address myself to this specific question, but I am sure we agree on the principle of fairness to both sides in the appraisal process.

Senator McCLURE. I know of another appraisal tract which is in the primitive area, an isolated tract of some 640 acres in which the Forest Service is seriously considering a purchase at over $1.5 million because of the location.

Right adjacent to that is a school—State school section. I would hope when you get down to looking at equal values if you need to buy that type of property, then you would also consider giving the State property which is right next to it the same kind of value, and I predict right now you will not.

Mr. RESLER. I can assure you we will use the same philosophy in the appraisal of both lands. There may be differences in the values that I cannot describe here but we would be happy to go into detail on that if you wish.

Senator MCCLURE. I just foresee some difficulties, even though we may open the door. It does not solve all of the problems, it just gives us an opportunity to address ourselves to the problems.

Mr. RESLER. That is right. I will point out the exchanges we have been working on now are quite close in area. I think there are some 600 acres difference between the exchange of State lands and national forest lands, 14,300 on State compared with 13,600 on State land. Areawise we also try to keep them reasonably comparable because the one thing, if both tracts are timber, we try to keep the value to the area as reasonably close to possible in the exchange process.

Senator MCCLURE. I appreciate that. I know there are some real difficulties involved. I don't mean to be arbitrary in my approach to this problem, but the State has been trying for several years to get some exchanges. They have moved awfully slow.

The Department moved the Idaho Admissions Act did not permit it and it ground to a halt. The State is anxious to get on with it because they realize they cannot manage effectively isolated tracts and the schools can use the money that can be generated.

Have you seen the letter of the Department of the Interior with their proposed amendment?

Mr. RESLER. No, I have not.

Senator MCCLURE. It is very similar in thrust to the one you suggest but there are some slight differences. I wonder if you could comment on those differences?

Mr. RESLER. I did not recognize anything of significance other than that equalization of value. As I indicated, we would not object to that.

Senator MCCLURE. Thank you very much.

Senator CHURCH. I have no further questions. I think the position of the Forest Service has been made clear.

I would like to thank the gentlemen for coming this morning.

Mr. RESLER. We are pleased to appear.

Senator HASKELL. Thank you, Mr. Resler, and your associate, very much indeed.

[Subsequent to the hearing the following communications were received for inclusion in the record:]

STATE OF IDAHO,
OFFICE OF THE LIEUTENANT GOVERNOR,
Boise, Idaho, December 13, 1973.

Hon. JAMES MCCLURE,
Old Senate Office Building,
Washington, D.C.

DEAR JIM: As you no doubt are aware, the legislature has charged me together with an advisory committee with selecting "in-lieu-lands" of some 37,000 acres that the federal government has owed the State of Idaho for some 50–60 years.

As a part and portion of the charge by the legislature, they further advised in HCR 21 and 24 to enter into an on-going exchange program with the federal government in order to block up and make more manageable state lands.

Recently a red flag has been thrown up, and the federal attorneys have indicated that the Admission Act for the State of Idaho on entering the Union is vague, and they feel they can't exchange endowment lands. This surprising conclusion occurs notwithstanding many years and a history of exchanges between the Forest Service, the BLM, etc., with the State of Idaho. Some 64,000 acres of exchanges are now pending because of the decision of the federal attorneys.

I am most grateful that Senator Church and yourself have seen fit to introduce S. 939. This will cure the problem if passed. In that this bill is absolutely essential to the State of Idaho, I would urge that you give this the highest priority that you can. I would appreciate your advice from time to time as the bill progresses through the various committees and, hopefully, comes to the floor.

With best regards.

Very truly yours,

JACK M. MURPHY,
Lieutenant Governor.

IDAHO STATE SENATE,
Boise, Idaho, December 24, 1973.

Hon. JAMES A. MCCLURE,
U.S. Senator from Idaho,
Old Senate Office Building, Washington, D.C.

DEAR JIM: I very sincerely appreciate your sponsorship of S. 939.

While serving as a member of Idaho's Board of Education Board of Regents of the University of Idaho, I had reason to research at some length the gifts of land made by the Federal Government to the various states. I think it's important to note that almost all of the states in the nation were granted far more land than Idaho. As an example, our sister state, Utah, received four sections in each township for school purposes, while Idaho received only two sections. Many of the states East of the Mississippi River received as much as, and sometimes more than fifty per cent of the total land area of the state as a gift from the Federal Government. In asking for the exchange of "in-lieu-lands" in Idaho's case seems to be only fair and just considering the treatment afforded other states.

S. 939 is important to Idaho as you are well aware. Please do everything possible with the least possible delay to secure passage.

Respectfully yours,

DICK SMITH.

HOUSE OF REPRESENTATIVES,
STATE OF IDAHO,
December 18, 1973.

To Senators FRANK CHURCH and JAMES A. MCCLURE.

DEAR FRANK AND JIM: I have just received a copy of the S. 939, an amendment to the Idaho Admissions Act which concerns the clarification of exchange authority for State lands in Idaho. There are many areas in Idaho where consolidation of land ownership is necessary to make the State lands manageable; in other places consolidation would help render State lands more salable. In either instance S. 939 is necessary if we are to make meaningful improvements in our Idaho State land management program. I hope you will make every effort to assure prompt passage of this bill.

While we are speaking of exchange authority, the Wild Rivers Act states "State lands may be acquired by donation only." This language should clearly be broadened to authorize exchange and it would be even more specific if the Act were broadened to state that ownership of the beds of navigable streams should be acquired from the states and that lieu land selection authority was granted as the means of compensation for the lands (beds of navigable streams) so acquired.

Sincerely,

VERNON F. RAVENSCROFT.

U.S. DEPARTMENT OF AGRICULTURE,
IDAHO PANHANDLE NATIONAL FORESTS,
Coeur d'Alene, Idaho, December 17, 1973.

Hon. JAMES A. MCCLURE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLURE: This letter concerns S. 939, a bill to amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands. This bill was introduced into the Senate by you and Senator Church on February 21, 1973.

You expressed interest in the bill during discussions we had when you were visiting Idaho. This letter will give you its current status. A favorable report was prepared by the Forest Service and this report is being held by OMB. They have asked for a report from Department of Interior, since agencies within that Department are also affected. We presume that as soon as OMB has Interior's report, they will forward their recommendation to the Committee on Interior and Insular Affairs for appropriate action.

If there is more I can do to help you regarding this matter, please call on me.

Sincerely,

RALPH D. KIZER, *Forest Supervisor.*

[Whereupon, at 10:15 a.m., the hearing was adjourned.]

AMENDMENT TO THE IDAHO ADMISSION ACT AND CONVEYANCE OF CERTAIN LANDS TO AUGUST SOBOTKA AND JOSEPH J. TOMALINO OF INTAKE, MONTANA

FRIDAY, DECEMBER 7, 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: Senator Haskell.

Also present: Jerry T. Verkler, staff director; Steven P. Quarles, 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 of the Interior Committee will commence on S. 237 and our first witness is Senator Mike Mansfield from Montana.

[The text of S. 237 and the Department report follow:]

93D CONGRESS
1ST SESSION

S. 237

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1973

Mr. MANSFIELD introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To authorize the Secretary of the Interior to convey certain lands to August Sobotka and Joseph J. Tomalino of Intake, Montana.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, for the purpose of settling title to certain lands along
4 the northwest bank of the Yellowstone River in eastern
5 Montana, the Secretary of the Interior is authorized and
6 directed to convey by quitclaim deed to August Sobotka
7 and Joseph J. Tomalino, both of Intake, Montana, all right,
8 title, and interest of the United States in and to approxi-
9 mately two hundred and fifty acres of land in section 20,
10 township 18 north, range 57 east, principal meridian, Mon-

1 tana, located in Dawson County, Montana, such land being
2 the same land covered by a Bureau of Land Management
3 grazing lease held by August Sobotka.
4 SEC. 2. The conveyance authorized by the first section
5 of this Act shall be made subject to the payment to the
6 Secretary of the Interior of an amount equal to the fair
7 market value of the land to be conveyed as determined by
8 the Secretary of the Interior after appraisal.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 6 - 1973

Dear Mr. Chairman:

This responds to your request for the views of this Department on S. 237, a bill "To authorize the Secretary of the Interior to convey certain lands to August Sobotka and Joseph J. Tomalino of Intake, Montana."

We recommend against enactment of the bill.

S. 237 would direct the Secretary of the Interior to convey to Mr. August Sobotka and Mr. Joseph J. Tomalino of Intake, Montana, by quitclaim deed, all United States interest in certain land in Dawson County, Montana. Conveyance would be made upon payment of the fair market value of the land.

The land was not surveyed until 1968. Messrs. Sabotka and Tomalino protested the survey, claiming ownerships of the tract. Their protest was dismissed and they appealed to the Board of Land Appeals, Bureau of Land Management. Pursuant to an agreement of the parties, the hearing on the protest has been held in abeyance pending Congressional action on S. 237 which would allow sale of the land.

The land consists of most of an island in the Yellowstone River. It is subject to periodic flooding and is under a grazing permit issued to Mr. Sobotka. The land has significant wildlife and recreational values. There is little public land in this area and public use of the area for recreation has been growing in recent years. Based on mineral values in the general area, the subject land is believed to have a nominal value for oil and gas; however, further testing would be necessary.

In 1970, after public meetings and other consultation, a total of 70,000 acres in Dawson County, including this island, were classified for retention in Federal ownership for multiple use management under the Classification and Multiple Use Act of 1964, 78 Stat. 986, 43 U.S.C. §§1411 - 1418 (1970).

In 1971, we entered into an agreement with the Montana Fish and Game Commission which commits the Bureau of Land Management to consult with

the Commission prior to making a decision to transfer ownership or change the classification of this island and other public land in the State.

The Administration's proposed "National Resource Lands Management Act of 1973" (S. 1041) would permit the sale of lands administered by the Bureau of Land Management if any of the following three criteria are met: the land is isolated and difficult to manage; the land was acquired for a specific purpose and is no longer required for that purpose or any other Federal purpose; or disposal of the land will serve important public objectives which outweigh other public objectives and values served by retention in Federal ownership. Any land disposals would be made in accordance with land use planning. The subject land does not qualify for sale under any of the above criteria.

In view of the nature of the land, the classification order, the agreement with the Montana Fish and Game Commission and the proposed "National Resource Lands Management Act of 1973", we oppose enactment of S. 237. The land has obvious public objectives and values which would be served by retention in public ownerhip. We know of no public objectives that would be served by selling the lands as specified in the bill.

It should be noted that there is a significant inconsistency in the bill. It directs that 250 acres be conveyed, but the description of the land to be conveyed is only about 180 acres.

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

Sincerely yours,

Stephen A. Wakefield

Assistant Secretary of the Interior

Hon. Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D. C. 20515

STATEMENT OF HON. MIKE MANSFIELD, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator MANSFIELD. Mr. Chairman and gentlemen of the committee, I am delighted and most appreciative that the Subcommittee on Public Lands, headed by the able junior Senator from Colorado, Mr. Haskell, has taken the time from his busy legislative schedule to consider what may appear to many to be an insignificant piece of legislation, S. 237, to authorize the Secretary of the Interior to convey certain lands to August Sobotka and Joseph J. Tomalino of Intake, Mont. This matter has been the subject of years of negotiations and I would hope that it would have been resolved sometime ago. Unfortunately, the Department of Interior has resisted a settlement satisfactory to my constituents.

Briefly, the situation involves land adjacent to the Yellowstone River in Dawson County in eastern Montana—approximately 250 acres of land built up over the years into the river bed. I believe these are referred to as accreted lands. The main land involved is owned by Messrs. Sobotka and Tomalino. The Federal Government determined, in 1967, that investigations supported their position that the land involved was actually an island in the river and, thus, classified as omitted lands. This area of the Yellowstone River has a number of sandbars and islands according to original surveys which date back to 1883. The land in question has been part of a lease to the beneficiaries of S. 237 since the early 1930's but under protest. I am also informed that Government documents in 1912 referred to the 250 acres as accreted lands. All of this has been submitted to the congressional delegation and the Bureau of Land Management.

Negotiations with the Federal agency began in 1968 and, after several years, it appeared that further negotiations were fruitless and, thus, an administrative remedy was abandoned when my able colleague, Senator Lee Metcalf, and I introduced legislation in the 92d Congress. Unfortunately, the report from the Department was never cleared by the Office of Management and Budget. The legislation was reintroduced early this year and, as of Tuesday, December 4, I understand the Department had not had clearance on the departmental report; but just this morning, prior to the convening of this committee, a report was sent up by the Department of Interior about which I will have a few words to say later.

Again, I wish to state that this has been an insignificant matter but I do deplore the amount of time it has taken the Department to clear up this matter one way or the other. I, personally, would support the claims of Messrs. Sobotka and Tomalino and I think anyone familiar with the land patterns along the Yellowstone River would agree. The land is a part of that already owned by the beneficiaries and I recognize that the Government clear the title to the 250 acres in their behalf. I realize that the Federal Government will withhold all mineral rights in the name of the U.S. Government.

According to 1971 estimates, these lands would be valued at approximately $50 an acre. I know the situation has changed but, quite frankly, this land is of little value to anyone other than the Messrs. Sobotka and Tomalino.

I am in receipt of a telegram from John R. Carr, attorney for the two individuals in question, which reads as follows:

In regard to the Senate Subcommittee hearing scheduled for Friday a.m. on Senate Bill 237, due to the shortness of notice, neither my clients nor myself will be able to appear at the hearings, and on behalf of August Sobotka and Joseph J. Tomalino it is requested that you submit in their behalf the following information.

The dispute of the ownership of the land came about when the Sobotkas and Tomalinos in 1962 purchased certificates of certain ranch property in Dawson County, Montana, which were adjacent to the Yellowstone River. Included in their contract from William Willet were lands which had accreted to the main land in Section 20 and 21, township 18 north, range 57 east, Montana, principal meridian. The United States Government Bureau of Land Management made claim to the accreted land by reason of a accretestial survey made in 1967 and an investigation related thereto.

The basic claim of Messrs Sobotka and Tomalino is that the land in question accreted to the main land and was built up over a period of years. Dawson County has taxed this land since 1937 on the tax rolls to Messrs Sobotka and Tomalino.

The Government claim is based upon the alleged fact that when the original survey was made in 1883, the surveyor omitted these lands and the Sovereign therefore has not lost title.

There is a maze of facts and dates pertaining to this dispute which cannot be included in this wire. A résumé by Mr. Sobotka, dated 1968, may be available in your Senate office file, and this could also be presented to the Subcommittee.

Mr. Chairman, if I do have the résumé, I would like your consent to put it in the record.

Senator HASKELL. It will be so included, Senator Mansfield, and the hearing record will stay open for 1 day to receive such.

[The résumé referred to above was not received in time to be included in the record.]

Senator MANSFIELD [continuing].

We ask you to urge upon the Subcommittee, in fairness and justice, that this bill be given favorable consideration. The Sobotkas and Tomalinos and their predecessors in interest have been in possession and using this grazing land for 61 years.

The proponents of the bill have asked that you inform the Subcommittee and full Interior Committee that they will, upon reasonable notice, appear and present a complete and full factual history and documents to support and substantiate their claim. Respectfully submitted, John R. Carr, Attorney for August Sobotka and Joseph J. Tomalino.

In the report which the Department sent up there are some interesting observations. For example, in the third paragraph the statement is made: "The land was not surveyed until 1968." Not surveyed until 1968, whereas the land had been occupied for over 60 years without any questions being raised. On the basis of the hearings held between the parties, the hearing on the protest by the Tomalinos and the Sobotkas has been held in abeyance pending congressional action on the measure now before the committee.

Furthermore, in 1970, it says in the report:

After public meetings and other consultation, a total of 70,000 acres in Dawson County, including this island, were classified for retention in Federal ownership for multiple use management under the Classification and Multiple Use Act of 1964.

1970, 2 years after the first survey, approximately 65 years after the land had been settled and worked, and then in 1971 it states:

We entered into an agreement with the Montana Fish and Game Commission which commits the Bureau of Land Management to consult with the Commission

prior to making a decision to transfer ownership or change the classification of this island and other public land in the State.

It looks to me like all these moves, 1968, 1970, and 1971 are ex post facto and certainly does not take into consideration the amount of time expended by the Tomalinos and the Sobotkas and their predecessors in developing this land.

Then they refer to: the administration's "National Resource Lands Management Act of 1973" would permit the sale of lands administered by the Bureau of Land Management under three criteria. They say that the subjects do not qualify for sale under any of the three criteria. In other words, with the Bureau of Land Management's assessment, the Department of Interior is trying to freeze out these little guys, these small people, who have no place else to turn except to the elected representative and to the Congress.

It also states in the next to last paragraph: It should be noted that there is a significant inconsistency in the bill. It directs the 250 acres be conveyed, but the description of the land to be conveyed is only about 180 acres. That is a matter which can be settled by the committee when it considers the testimony on this bill, but I would hope that this committee, in its usual fashion, would give every consideration to the proposal of the Tomalino and Sobotka families, whom I know very well.

The land is on their ranch, which I have visited several times, and the fact that for almost 65 years this land has been held in private ownership, that taxes have been paid to Dawson County and the State of Montana on the basis of that ownership, and, therefore, I would hope that this committee would see fit to report S. 237 favorably to the full committee.

Senator HASKELL. Thank you, Senator Mansfield.

The lands having been occupied for that length of time and taxes having been paid it would occur to me if the claimant, instead of being the Federal Government, was a private citizen, the doctrine of adverse possession would apply, and these Montana citizens would own the land. The rights certainly are on the side of the Sobotka and Tomalino families, at least if my understanding of land law is accurate in that regard. I would hope that the committee would sympathetically approach this bill, and I see we have somebody from the Department of Interior here.

I know you have to get to the floor, Senator Mansfield. Is there any member of your staff who is here and who might help me in questioning the Department of Interior?

Senator MANSFIELD. Unfortunately, the only member of my staff who is conversant with this situation is absent from the city today and tomorrow, but I am sure that the distinguished chairman can handle this matter himself, and, if any questions arise, we will be prepared to answer them in an appropriate fashion.

May I say, Mr. Chairman, as indicated, this is an insignificant matter, but it does concern two families who have done a great deal to build up the State of Montana in their area along the Yellowstone; who have tilled the soil, who make a living from ranching, and who are entitled to every consideration and should not be cold-shouldered, frozen out or pressured by the Federal Government on the basis of the

facts which they presented which I do not think should hold up in this instance.

Senator HASKELL. Thank you very much, Senator Mansfield, and, if after hearing the Department of Interior, there are any questions, we will just keep the hearing record open a sufficient time for your office to respond.

Senator MANSFIELD. Thank you, Mr. Chairman and gentlemen of the committee.

Senator HASKELL. Mr. Irving Senzel, Assistant Director, Legislation and Plans, Bureau of Land Management, Department of the Interior.

ATEMENT OF IRVING SENZEL, ASSISTANT DIRECTOR, LEGISLATION AND PLANS, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. SENZEL. Thank you, Senator Haskell. S. 237 would direct the Secretary of the Interior to convey all interest of the United States in certain public land in Dawson County, Mont., to August Sobotka and Joseph Tomalino. The conveyance would be made subject to the payment of the fair market value of the land as determined by the Secretary after appraisal.

The land involved is most of a former island in the Yellowstone River northeast of Glendive, Mont. About 180 acres are involved. The land is now subject to a grazing permit issued to August Sobotka. It is subject to periodic flooding. It has some value for oil and gas, but testing is needed to determine the extent thereof.

The land is excellent whitetail deer habitat and pheasant production is good. Other wildlife use the island, including Canada geese, pelicans and warblers. Public use of the land for recreation purposes has been growing in recent years. The amount of public lands in the general area is relatively small.

After public meetings and other consultations, a total of 70,000 acres in Dawson County, including this island, was classified for retention for multiple-use management under the Classification and Multiple Use Act of 1964.

In 1971, we entered into a memorandum of understanding with the Montana Fish and Game Commission which commits BLM to consult with the commission before undertaking any action which might affect ownership or classification of public lands.

The tract was not surveyed by the United States until 1968. Mr. Sobotka and Mr. Tomalino protested the acceptance of the survey, claiming ownership of the tract. Their protest was dismissed. The claimants appealed the dismissal of their protest. Pursuant to an agreement of the parties, hearing on the appeal has been held in abeyance pending possible legislative action which we now have before us in the form of S. 237.

From the policy standpoint of the Department, which it has expressed in S. 1041, the Department believes that the national interest is best served by retaining public lands managed by the Bureau of Land Management in Federal ownership except where disposal is consistent with certain disposal criteria. Briefly, these criteria cover situations in which the land involved is isolated and difficult to manage

by BLM and not suited for management by any other Federal agency, or the land was acquired for a specific purpose and is no longer required for that or any other Federal purpose, or disposal will serve important public objectives which cannot otherwise be met and that outweigh other public objectives and values served by retention in Federal ownership. The policy also requires that these determinations must result from land use planning.

Under these governing policies, we cannot recommend enactment of S. 237.

The land has obvious public objectives and values which would be served by their retention in public ownership. We know of no public objectives that would be served by selling the lands to the beneficiaries of the bill. The lands are susceptible of effective management. Under our programs we would not consider disposal of the tract without further consultation with the Fish and Game Commission and other interested public agencies, and the general public.

We, therefore, oppose enactment of S. 237.

Senator HASKELL. Mr. Senzel, you were here when Senator Mansfield was testifying. I just want your opinion on a few facts. Senator Mansfield stated as a fact that the Sobotka and Tomalino families occupied the land for 64 or 65 years, I forgot which he said; is that correct?

Mr. SENZEL. I don't quite know what he meant by occupy. This is unimproved land.

Senator HASKELL. The way he used it, I assume occupy means to use it for whatever purposes.

Mr. SENZEL. I have no reason to doubt that what Senator Mansfield said was correct, that the lands have been used.

Senator HASKELL. By these families?

Mr. SENZEL. And their predecessors, I believe he said, Senator Haskell. Senator Mansfield also stated that these families have paid, I presume he is referring to ad valorem taxes, on these lands for many years. Do you have any data on that?

Mr. SENZEL. I have no data on that.

Senator HASKELL. You have nothing in your file on that?

Mr. SENZEL. No, not now.

Senator HASKELL. I would like to ask the staff director, Jerry Verkler, to ask a question.

Mr. VERKLER. You don't have in your files at least what they claim they paid in taxes and for how long? I gather it was a long, long time.

Mr. SENZEL. I believe the Senator said since about 1936. I will be happy to try to get that information.

Mr. VERKLER. That would be helpful to the committee. In the past when we considered land bills like this, that has been one of the criteria that we have looked at to determine if the committee should back them.

[The information referred to was not received in time to be included in the record.]

Senator HASKELL. You do not know whether you have anything in your file on taxes?

Mr. SENZEL. That is correct. I don't know whether we have or not. I can check the local file.

Senator HASKELL. Would you check the local file? Would your office in Montana have anything on it that you would not?

Mr. SENZEL. They may have it.

Senator HASKELL. Check your file today, and, if you do not have it, call your office in Montana today. Would you send me a letter today stating the factual situation as reflected by your files?

Mr. SENZEL. Yes, sir.

[Subsequent to the hearing the following information was supplied by the Department of the Interior:]

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

HON. FLOYD K. HASKELL,
Chairman, Subcommittee on Public Lands, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: This responds to your request this morning at the hearing on S. 237.

(1) Bureau records contain information showing that according to the County records, Messrs. Sobotka and Tomalino began paying taxes November 15, 1963, on 229,183 acres of "accreted" lands in sections 20 and 21 of T. 18 N., R. 57 E.;

(2) Bureau records disclose the following series of events relating to the question of ownership of the lands covered by S. 237;

On July 15, 1952, a private attorney wrote to the Bureau District Range Manager inquiring about the ownership of an island in this area, indicating a William Willot was interested in leasing the lands for grazing purposes. On August 1, 1952, the Range Manager replied that it appeared that the land was quite likely to be found to be public lands of the United States and suggested that Mr. Willot file an application for a grazing lease. On May 25, 1953, a lease was issued to Mr. Willot describing an unsurveyed island in sections 20 and 21 of T. 18 N. of R. 57 E., containing about 240 acres. On September 1961, Messrs. Sobotka and Tomalino purchased Mr. Willot's ranch adjacent to the lands in question. The purchase included the right to renew and maintain the grazing lease issued by the Bureau of Land Management. Sometime thereafter, the County Assessor raised the question whether these lands were an island or were "accreted" lands. On December 2, 1963, the Bureau received from Mr. Sobotka an application for the survey of "omitted" lands. This application set in motion the survey procedures under which the lands were examined and then surveyed as public lands of the United States. On November 9, 1965, the Bureau received a communication from Sobotka and Tomalino whether the public lands in question could be purchased from the United States. The earliest record we have of acceptance of the grazing privileges "under protest" is dated March 1969.

(3) The lands directly opposite the lands in question are in private ownership.

(4) In the 40-mile stretch of the Yellowstone River between Glendive and Sidney, 95 percent or more of the shoreline is in private ownership. Within this stretch, there are three or four surveyed public land islands. In addition, there may be some unsurveyed public land islands.

We have also asked the Solicitor to provide you with the requested statement concerning the existing public land laws which may allow the conveyance of the lands to Messrs. Sobotka and Tomalino.

Sincerely yours,

JOHN M. ALLEN,
(For Ken M. Brown, Legislative Counsel).

Senator HASKELL. You say the tract was not surveyed until 1968; how did that happen? Would I infer that it was not until 1968 that the Government woke up to the fact that it might have a claim to this land?

Mr. SENZEL. I am not sure of the exact date when it was determined that it might be Federal land.

Senator HASKELL. In your statement, you refer, of course, to S. 1041, which is not law yet. What authority, if any, does the Bureau of Land

Management, the Department of the Interior, have to dispose of BLM land at the present time?

Mr. SENZEL. There are a number of statutes. The public sale statute, section 2455 of the revised statutes. That is 43 U.S.C. 1171. There is the Homestead Act.

Senator HASKELL. In the first one, first, what if any criteria are contained in that statute?

Mr. SENZEL. It is discretionary with the Secretary. There are no definite criteria except the lands have to be isolated, or too rough or mountainous to be suitable for cultivation.

Senator HASKELL. That is then the alternative. Either isolated or rough and mountainous?

Mr. SENZEL. One proviso deals with the isolated tracts. The other proviso deals with the rough or mountainous tracts.

Senator HASKELL. I do not have a map of this land. You probably do. Would this land come under the isolated category?

Mr. SENZEL. Yes, sir.

Senator HASKELL. Then you would have the discretion under present law or existing law to dispose of these lands to this family?

Mr. SENZEL. We can dispose of them at a public sale, but the adjoining owner, which would be these gentlemen, would have preference right to purchase them.

Senator HASKELL. This is by bid?

Mr. SENZEL. Meeting the high bid, yes.

Senator HASKELL. Do you have any authority under the present statutes to dispose of any BLM lands other than by public sale?

Mr. SENZEL. We have the Homestead laws which deal with agricultural lands. We have the Desert Land laws which also deal with agricultural lands.

Senator HASKELL. These lands probably would not qualify under Homestead, or would they?

Mr. SENZEL. I am not sure. We did not look at its agricultural value. The only use for agricultural purposes that has been made in the past, as I understand it from the file, is grazing and some improved pasture.

Senator HASKELL. I would appreciate it if you would have your counsel, or do you have a general counsel at BLM?

Mr. SENZEL. The Office of the Solicitor of the department is our general counsel.

Senator HASKELL. I would like to get an opinion from the Office of the Solicitor as to whether or not you have the authority to dispose of these lands other than by public sale to these two families under present, existing statutes.

Being a lawyer myself, I know that lawyers are not always as prompt as possible, but I would appreciate it if you could get that to me right away.

Now, if the lands are isolated, I gather from Senator Mansfield it was once an island, but by buildup of the river, it is now no longer an island. Am I correct in that?

Mr. SENZEL. That is my understanding. It is part of the mainland now.

Senator HASKELL. Part of the mainland, and, obviously it adjoins on one side these lands belonging to the Sobotka and Tomalino fami-

lies and on the other side is the river. Can these lands, under those circumstances, be managed by BLM for recreational purposes?

Mr. SENZEL. Yes, sir.

Senator HASKELL. How are you going to get to them?

Mr. SENZEL. You could reach it from the river side.

Senator HASKELL. Is the other side of the river occupied by private or public land?

Mr. SENZEL. I am not sure, sir.

Senator HASKELL. Will you find out and let me know? Maybe you could get that in also today, because I assume your Montana office could let you know. You must also indicate to me on that stretch on the opposite side of the river how many miles are occupied in each direction by private land.

[The information appears on p. 31.]

Senator HASKELL. Thank you, Mr. Senzel, and I would appreciate it if you could submit that information.

Mr. SENZEL. Thank you very much.

[Whereupon, at 10:25 a.m. the hearing was adjourned.]

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