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MANAGEMENT OF NATIONAL RESOURCE LANDS

GOVERNMENT

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DOCUMENTS

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KANSAS STATE UNIVERSITY 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

MARCH 1, 1973



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(II)

CONTENTS

	Page
S. 424-----	5
Department reports:	
Budget -----	23
Interior -----	21
S. 1041-----	46

STATEMENTS

Callison, Charles H., executive vice president, National Audubon Society, Washington, D.C.-----	133, 134
Cavanaugh, Thomas J., Falls Church, Va.-----	101, 105
Chandler, Collis P., Jr., president of Chandler and Associates, Inc., Denver, Colo., of the American Petroleum Institute; Thomas J. Cavanaugh, Falls Church, Va., from the American National Cattlemen's Association and the National Wool Growers Association; John Hall, Washington, D.C., vice president, National Forest Products-----	83, 87
Supplemental statement-----	99
Crandell, Harry B., the Wilderness Society, Washington, D.C.-----	141, 143
Driver, Bruce C., Environmental Policy Center, Washington, D.C.-----	153, 155
Fannin, Hon. Paul, a U.S. Senator from the State of Arizona-----	2
Hall, John F., National Forest Products Association-----	114, 120
Jackson, Hon. Henry M., a U.S. Senator from the State of Washington-----	1
Kimball, Thomas L., National Wildlife Federation, Washington, D.C.-----	131, 132
Pardo, Richard D., programs director, the American Forestry Association, Washington, D.C.-----	149
Rasmussen, Boyd L., National Wildlife Federation, Washington, D.C.-----	127, 128
Towell, William E., executive vice president, the American Forestry Association-----	150
Tupling, Lloyd, Sierra Club, Washington, D.C.-----	135, 137
Whitaker, Hon. John C., Acting Secretary of the Interior-----	24

COMMUNICATIONS

Cavanaugh, Thomas J., Public Lands Council: Letter to Senator Haskell, dated March 15, 1973-----	113
Chandler, Collis P., American Petroleum Institute: Letter to Senator Haskell, dated March 27, 1973-----	99
Morton, Rogers C. B., Secretary of the Interior: Letter to Senator Jackson-----	25

ADDITIONAL INFORMATION

National Wildlife Federation, 30th Annual Convention, Pittsburgh, Pa., March 11-13, 1966, Resolution No. 7-----	130
Southern California Edison Co.—Appeal from the Bureau of Land Management-----	32
<i>Utah Power and Light Co. v. Rogers C. B. Morton, et al.</i> , U.S. District Court, District of Idaho, filed November 3, 1972-----	43

APPENDIX

Ada County Fish and Game League, resolution of-----	212
Baenen, Richard A., Washington, D.C.-----	208
Bagge, Carl E., president, National Coal Association, statement-----	161
Eckman, James W., Yreka, Calif.-----	205
ERM Pipeline Monitoring System-----	188

IV

	Page
Erskine, A. G., Missoula, Mont.....	204
Gray, Howard W., American Mining Congress.....	159
Hall, John F., vice president, National Forest Products Association.....	171
Hubley, Raymond C., Jr.....	207
Jayne, Gerald A., Idaho Falls, Idaho.....	205
Jones, Holway R., Eugene, Oreg.....	206
Jones, L. Dan, statement.....	215
McCargo, David, Jr., Denver, Colo.....	204
McIntire, Clifford G., American Farm Bureau Federation, statement.....	180
McNeal, F. H., Bozeman, Mont.....	206
Meiners, William R., Boise, Idaho.....	210, 211
Milner, Doris, Hamilton, Mont.....	204
Poole, Daniel A., statement.....	200
Roditi, Harold, New York, N.Y.....	187
"The Nibbling Away of the West", by James Nathan Miller, from the Reader's Digest, December 1972.....	212
Weinberg, Edward.....	160
Wildlife Management Institute, letter.....	199
Wood, Harold Wm., Jr., Davis, Calif.....	209

MANAGEMENT OF NATIONAL RESOURCE LANDS

THURSDAY, MARCH 1, 1973

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

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

Present: Senators Haskell, Hatfield, Church, Bartlett and McClure. Also present: Jerry Verkler, Steven Quarles, Porter Ward, and Harrison Loesch.

Senator HASKELL. The hearing will commence on S. 424.

I have a statement by Senator Jackson, which I would like to have inserted in the record prior to the bill itself.

Senator MCCLURE. I wonder if we might also have a statement by Senator Fannin following the statement by Senator Jackson.

Senator HASKELL. A statement by Senator Fannin will follow the statement of Senator Jackson in the hearing record.

[The statements of Senators Jackson and Fannin follow:]

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Mr. Chairman, as the original sponsor of S. 424, I would like to comment on the important thrust of this proposed legislation—legislation which I consider long overdue.

This measure, the National Resource Lands Management Act of 1973, I introduced for myself and several of my colleagues last January 18.

It will provide the first comprehensive statement of congressional goals, objectives, and management guidelines for the use and management of 450 million acres of federally owned lands administered by the Bureau of Land Management in the Department of the Interior. This measure designates these lands as "national resource lands" in order to signify their importance to the Nation's natural resource base.

It would establish as national policy the need to preserve and protect the quality of the national resource lands and their numerous values to assure their continued enjoyment by present and future generations. It emphasizes throughout the importance of nonquantifiable as well as quantifiable values to the national interest by providing numerous assurances that scientific, scenic, recreational, historical, and archeological values; natural areas, and fish and wildlife habitats will be afforded ample protection and significant consideration in the national resource land management process.

Various entities within the Federal Government have attempted to develop the planning and management capabilities necessary to protect the public domain and insure its continued enjoyment by present and future generations. However, their efforts have frequently been impeded by the vast number of outmoded public land laws which developed over a period in American history when disposal and development of the public domain was the dominant theme. In 1964, Congress rec-

ognized a need to review and reassess the body of law governing the public lands. Thus, on September 19, 1964, the Public Land Law Review Commission was created by enactment of Public Law 88-606.

After 5 years of extensive investigations, the Commission completed its review and submitted its final report to Congress on June 20, 1970. The report contains 137 specific recommendations designed to improve the Federal Government's custodianship of the public domain lands. Principal among these recommendations is the Commission's view that—

The policy of large-scale disposal of public lands reflected by the majority of statutes in force today (should) be revised and that future disposal should be of only those lands that will achieve maximum benefit for the general public in non-Federal ownership, while retaining in Federal ownership those whose values must be preserved so that they may be used and enjoyed by all Americans.

In addition, the Commission emphasized a need to develop "a clear set of goals for the management and use of public lands, particularly for lands administered by the Bureau of Land Management." The Commission's report stated specifically that—

A congressional statement of policy goals and objectives for the management and use of public lands is needed to give focus and direction to the planning process.

Support for this view is widespread. During the 92d Congress, the Committee on Interior and Insular Affairs considered four different measures concerning management policy for the public domain lands, including one proposal submitted by the administration. Testimony received throughout 3 days of hearings on these measures consistently emphasized the need for a basic organic act to provide the Bureau of Land Management with the kind of management authority it needs to successfully administer and protect the public domain lands.

With the urging of the President and the support of a majority of its members, the committee favorably reported S. 2401, the National Resource Lands Management Act of 1972, to the Senate last September. However, the heavy schedule of business on the floor prevented the Senate from acting on this measure during the 92d Congress.

Mr. Chairman, I urge that the 93d Congress give early and favorable consideration to the National Resource Lands Management Act of 1973.

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

Mr. Chairman, one of the great challenges facing this Congress is enactment of organic legislation for the public lands.

These lands, more than 450 million acres, a fifth of the entire land base of the United States, represent the last of the Nation's territorial estate. From that estate we have created 32 of our 50 sovereign States, a transcontinental railroad system, a land-grant college system, national parks and forests and wildlife refuges of such immensity and diversity that they are the envy of the world. These 450 million acres are the left-overs, the forgotten lands that nobody wanted.

The forgotten lands are being remembered today, and revalued in a Nation where open space, clean air and room to stretch and roam are becoming priceless commodities.

There are other commodities on which prices can be placed ;

—Forest products valued at more than \$68 million last year alone.

—Oil, gas and other upland minerals, bringing hundreds of millions in revenues to Federal and State treasuries.

—Forage for domestic livestock as well as wildlife, providing grazing lands for more than 27,000 livestock operators and an estimated 5 million hunting days for sportsmen.

But we are still asking the trustees of the national resource lands—the Secretary of the Interior and the employees of the Bureau of Land Management—to administer these lands without modern authority or direction.

* The Taylor Grazing Act of 1934 had limited purposes, limited goals, and brought limited benefits to a few users of the lands.]

Our Nation is demanding other things from these lands today, and under wise direction they can provide almost limitless opportunity for outdoor recreation, an enhanced environment and still provide a major source of minerals and other commodities.

What do the trustees of our national resource lands need? Let me cite just one example, the need for enforcement authority.

These custodians of the Nation's largest category of Federal lands have no enforcement authority to carry out the intent of Congress or the policy directions of the Secretary of the Interior.

Employees of the Bureau of Land Management have many responsibilities, including: *

- Protection of fragile lands and resources from careless or destructive encroachment by off-road vehicles.

- Safe-guarding of Federal investments in recreation and other facilities, now vulnerable to theft and vandalism.

- Protection of priceless antiquities such as Indian relics and paleontological remains, subject now to theft and vandalism.

- Protection of marketable Federally-owned resources such as timber, stone and other building materials which we expect to be sold at fair market value.

- Safe-guarding the health and safety of millions of visitors to the public lands, visitors who assume that they may enjoy Federal recreation areas undisturbed by carelessly handled firearms and human wastes contaminating their water supplies.]

Almost forty years ago, Congress gave these responsibilities to the Secretary of the Interior and to those to whom he delegates his authority.

More than twenty-five years ago, Congress established the Bureau of Land Management as the Federal service manned and staffed to discharge these responsibilities.

I can well understand the reluctance of the 73rd Congress to include enforcement powers in the Taylor Grazing Act. Those affected by that Act in 1934 were ranchers, for the most part. The Federal employees were their neighbors. Together, through local advisory boards, they settled their differences as neighbors on the land. There were no Federal facilities, no Federal investments.

I can understand the reluctance of the 79th Congress to grant enforcement authorities to the newly formed Bureau of Land Management in 1946. The few members of the general public who ventured onto the public lands were seeking peace and quiet, or new land to settle.

And I can understand how things have changed.

During any holiday weekend, there may well be half a million visitors to the public lands in southern California. Those visitors will come in campers, in pickup trucks, in cars towing trailers and motorcycles and dune buggies and four-wheel-drive vehicles.

Along the Lower Colorado River separating California from Arizona, thousands of other visitors came to enjoy sunny weekends. These are their public lands to which they come.

There are more than three million off-road vehicles using the public lands today. Without control, users of these vehicles can wreak untold havoc on irreplaceable resources. Most of these people are thoughtful and informed outdoorsmen, who would not knowingly be destructive. Many belong to organized off-road groups, which have commendable codes of ethics and do much to regulate their own activities.

But there are others who can and do cause terrible damage because of either ignorance or total disregard for the welfare of the public lands.

Now, if a Bureau of Land Management employee sees a vandal in the act of destruction, he has two alternatives. He may seek assistance from local law enforcement authorities, or he may call upon the FBI. In either case, this Federal officer has no authority to detain a vandal even for a criminal act. *

Those who do have the power to arrest or the authority to write a citation are miles and miles away. Who would really expect a highly trained FBI agent to travel hundreds of miles to investigate a wrecked picnic table? Or who would expect a deputy sheriff to enforce the Secretary of the Interior's closure of a wildlife nesting area to off-road vehicles, if no local ordinances are being violated?

Since 1934 the Federal Government has spent millions of dollars improving the Federal Range. Many of those dollars represent cost-sharing investments by livestock operators, who believe in good range management. Stock-watering systems spread livestock use over a wider area, making better use of forage and producing fatter cattle. But what good is a water tank shot full of holes by a weekend vandal?

The taxpayers of the United States have spent millions of dollars on investments in recreation facilities. But what good is a toilet when pushed over a cliff? What good is a picnic table, when hacked into firewood? What is the value of a scenic vista, when the cliffs that frame the view are covered with spray-painted initials of thoughtless visitors?

Or what is the scientific value of a prehistoric Indian dwelling, when commercial pot-hunters have rifled it for the artifacts that were buried with its early inhabitants?

I am not suggesting that we need another police force, armed with guns and badges. I firmly believe that local peace officers, sheriffs' departments and State fish and game officers, should be primarily responsible for enforcement of society's rules of behavior. But I am equally firm in my belief that field employees of the Bureau of Land Management should be empowered to enforce the special rules and regulations for the public domain lands, to carry out the intent of the Congress and the Secretary to whom we have given so many responsibilities

* There are fewer than 4,000 employees of BLM. For the most part, they are natural resource managers skilled in such specialties as range and forest management, watershed protection and fire control.

I think that the occasions on which they would actually use authority to apprehend and take into custody violators of Federal laws would be rare. But by empowering them with that authority, we will give them what they must have if our laws and the Secretary's regulations are to be respected.

Mr. Chairman, I also would like to comment on and support proposed new authority for BLM to classify public lands.

Although the great portion of the lands under BLM management have been classified through the years, the Bureau is continually acquiring new data on the character of the lands. For example, there is the data which has been provided by the special program in eastern Arizona from the Earth Resource Orbiting Satellite (EROS) program.

Such data, and the fact that there are changing demands and projects, demonstrate the increasing need to review the classifications of the past toward better meeting future needs while maintaining the principle of multiple use and sustained yield.

It is my hope that as the management framework plans of the BLM for individual districts are completed, reviewed and updated, these considerations will be made.

The BLM is to be commended for the implementation of the management framework system which is now used for the classification of public lands.

It is my hope that through the new legislative authority of the Organic Act together with the improving technology in acquiring basic data, the public lands can more effectively meet future needs in a way that the resources are conserved and the environment protected.

Senator HASKELL. Without objection, the text of S. 424 and Department reports will be placed at this point in the record.

[The documents referred to 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 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, 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 tive 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.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 28 1973

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

Dear Mr. Chairman:

This responds to your request for this Department's views on S. 424, a bill "To provide for the management, protection and development of the national resource lands, and for other purposes."

S. 424 partially provides sorely needed management authority to protect and regulate the use of the national resource lands, which are lands administered by the Bureau of Land Management. However, because the Administration's proposal provides more comprehensive authority and provides a legislative base for future laws governing the management of the national resource lands, we strongly favor its enactment in lieu of S. 424.

S. 424 requires the Secretary of the Interior to prepare and maintain an inventory of the national resource lands and their resources, develop land use plans and manage the lands in accordance with those plans and principles of multiple use and sustained yield. The bill authorizes him to sell national resource lands, generally by competitive bidding, when certain criteria are met. These criteria are designed to ensure that sale of the lands will be in the public interest. The Secretary would be authorized to acquire lands by purchase, exchange or donation. S. 424 would also provide the Secretary with authority to issue regulations governing the use and protection of the national resource lands and would authorize him to appoint certain employees to enforce those regulations.

The national resource lands were for many years used as a means of stimulating the growth and development of the West. Consequently, little attention was given to preserving the irreplaceable values of those lands. Many of the laws pertaining to the lands were designed primarily to facilitate disposal. Although there has been a growing awareness that these lands are an invaluable national asset and although our policy is now to preserve their values, to obtain authority to develop sound planning of their uses and generally to maintain them in Federal ownership, these lands have inherited an archaic and often conflicting conglomeration of laws which govern their use. The national resource lands comprise over 60 percent of all Federal lands and yet Congress has never given the Bureau of Land Management, the administering agency, a clear and comprehensive grant of authority to manage the lands as it has done for the National Forest Service and the National Park Service.]

We therefore urge that this Congress enact well-defined management authority for the national resource lands. Although we approve of the principles in S. 424, it is only a beginning and we feel that Congress should take this opportunity to enact the comprehensive legislation which we have proposed.

Our proposal contains most of the provisions in S. 424, but these comprise only some of the fundamental provisions in our bill. Our proposal is designed to complement our proposed Land Use Policy and Planning Assistance Act of 1973 which provides for the protection and regulation of the uses of non-Federal lands. The bill is divided into five titles.

Title I provides the general management authority with guidelines very similar to S. 424. It also contains similar provisions for maintaining an inventory of the lands and developing land use plans. Unlike S. 424, however, the bill authorizes the Secretary to establish advisory boards which are often essential in assisting him to develop sound management policies and which provide a form of citizen participation in formulating policy decisions.

Title II contains similar sale authority as S. 424, except that the title also allows for the sale of reserved mineral interests in lands to the surface owners if those lands are not valuable for mineral development or the reservation interferes with appropriate land development. Congress has repeatedly approved of sales of reserved mineral interests where the Secretary determines that one of these conditions has been met. This sale authority would therefore save Congress the expense and time of needlessly having to approve of each sale of reserved mineral interests.

Title III provides for specific management authorities. In part Title III reenacts the Public Land Administration Act omitting provisions which are obsolete. Among its other provisions are: the establishment of a working capital fund, authority to issue documents of disclaimer when the United States has no interest in certain lands, authority to correct documents of conveyance, and, as in S. 424, authority to acquire lands and enforce regulations pertaining to the protection of the lands. Title III, however, extends this enforcement authority to allow the Secretary to contract with State and local law enforcement officials to protect national resource lands.

Title IV provides a uniform and comprehensive statute authorizing the Secretary to grant rights-of-way for purposes ranging from roads, trails and canals to powerlines and pipelines. Presently this authority must be gleaned from numerous disjointed and often ancient laws.

Title V contains a list of laws to be repealed or amended. These laws are generally either obsolete, duplicative or are replaced by the preceding titles. Title V also explicitly preserves rights existing under these laws at the time of enactment of the bill.

In conclusion, we have comments on specific provisions in S. 424. First, section 4 would require the Secretary to provide means of public identification of all national resource lands, including signs and maps. This requirement would be costly and is not necessary for all national resource lands. The Administration's proposal would authorize such identification where it is needed.

Second, section 7(f) requires an annual report to Congress on all sales or exchanges of national resource lands and their related resources. A statutory requirement for annual reports seems unnecessary since Committees can always request information at any time. Furthermore, the Bureau of Land Management publishes annually the "Public Land Statistics" which contains information on land sales.

Section 8 of S. 424 provides for authority to convey mineral interests along with the surface where retention of the mineral interests would interfere with land development or "where necessary". Our proposal contains more precise guidelines and also permits conveyance of reserved mineral interests where the surface has previously been conveyed.

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

Sincerely yours,

John P. White
Acting Secretary of the Interior

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., February 28, 1973.

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

DEAR MR. CHAIRMAN: This is in response to your request of January 29, 1973, for the views of the Office of Management and Budget on S. 424, a bill entitled the "National Resource Lands Management Act of 1973."

The Department of the Interior has just submitted to the Congress similar legislation which is also entitled the "National Resource Lands Management Act of 1973" and in the Department's report on S. 424, it recommends enactment of its proposal in lieu of S. 424. Enactment of the Department of the Interior's "National Resource Lands Management Act of 1973" would be in accord with the program of the President.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for
Legislative Reference.

Senator HASKELL. The BLM Organic Act, as it is commonly known, is an important administrative arm to be given to the Interior Department. There are 450 million acres of Federal land administered by the * Bureau of Land Management, which is roughly 60 percent of all Federal lands. We are dealing with something of considerable magnitude.

The Bureau of Land Management is without the tools to manage these lands. On the other hand, the Forest Service and the Park Service already have organic acts.

The Bureau of Land Management's authority to manage now stems from roughly 3,000 land laws which have accumulated over 170 years. It would seem about time to put together a management act for this extensive acreage.

We are today considering S. 424, the National Resource Lands Management Act of 1973. We received yesterday an administration bill which I am sure Secretary Whitaker will address himself to. I am going to ask all witnesses, however, not to discuss the matters of rights-of-way. These are properly an amendment to the Mineral Leasing Act of 1920. There will be a hearing on a bill to be introduced by Senator Jackson on the 9th of March. I understand that Senators Hansen and Fannin have also introduced a bill dealing with rights-of-way, so, today please refrain from any discussion of rights-of-way over Federal lands.

The need to change our rights-of-way legislation obviously is compelled by the court of appeal's decision in reference to the trans-Alaska pipeline system, but this hearing on the National Resource Lands Management Act is not the place to discuss that matter.

Secretary Whitaker, it is a great pleasure to have you before us again. If you will proceed in your own manner I would appreciate it very much.

STATEMENT OF HON. JOHN C. WHITAKER, ACTING SECRETARY OF THE INTERIOR; ACCOMPANIED BY BURTON SILCOCK, DIRECTOR, BUREAU OF LAND MANAGEMENT, JOHN KYL, ASSISTANT SECRETARY FOR PUBLIC AFFAIRS, AND KEN M. BROWN, LEGISLATIVE COUNSEL

Secretary WHITAKER. Thank you, Senator Haskell.

I specifically appreciate the sense of urgency that you convey in your remarks, that we get on with the business of getting a BLM organic act.

If I may depart from the formal testimony for a minute, I would like to report on the Secretary's health condition, if I may.

Senator HASKELL. Certainly, I wish you would.

Secretary WHITAKER. He is running seminars at Stanford. He has had a previous conference in San Francisco. He swore in John Kyl as Assistant Secretary for Congressional Relations, and he seems to have only one fundamental problem, and that is his surgical gown is too short for him and we are having a little problem getting one long enough.

Senator HASKELL. Please convey my best regards to the Secretary. In view of the fact that we knew each other a hundred years ago when

we were both in our teens, I am particularly glad to know that he is progressing well.

Secretary WHITAKER. I would like to introduce the witnesses appearing with me, if I may, Mr. Chairman.

They are, of course, John Kyle, Assistant Secretary for Congressional Relations and Public Affairs, Ken Brown, the Legislative Counsel, and Burton Silcock, Director of BLM.

Senator HASKELL. I am very pleased to have you with us this morning.

Secretary WHITAKER. I would like to begin my testimony this morning on the administration's proposal and S. 424 with a brief letter from Secretary Morton to the committee.

Mr. Chairman: America's land continues to be the keystone of our natural heritage and our most basic natural resource. For almost two centuries our lands have captured the spirit and vision of our people. Today, however, we recognize that the indiscriminate use of our lands must come to a close. The lands and their resources are not indestructible. We are entering an era when stewardship and management of their irreplaceable resources are an absolute priority if we are to protect them not only for future generations but for present use and enjoyment.

This growing awareness has resulted in recognition by the Congress, the Executive, and the American people of the desperate need to revise the laws which govern the administration of our national resource lands.

The Congress, over the years, has established management goals and objectives * for the administration of our National forests, National parks, and National wildlife refuge systems. Unfortunately, however, this Department's Bureau of Land Management which administers over 60 percent of the Federal lands derives its management authority from a vast collection of outmoded, and often conflicting laws.

In his message to the Congress on Natural Resources and the Environment, President Nixon underscored the fact that these, our national resource lands, lack "protection of an overall management policy with environmental safeguards."

There is little question, Mr. Chairman, of our need to act now to preserve the character of our national resource lands. There is little question that our time is fast running out.

I would hope, Mr. Chairman, that the Congress and your Committee responds fully to the needs of our people to preserve the natural values of our national resource lands.

ROGERS C. B. MORTON,
Secretary of the Interior.

Mr. Chairman, I will now follow with my remarks on the subject.

I would like to expand briefly on Secretary Morton's statement.

The national resource lands were for many years used as a means of stimulating the growth and development of the West. Consequently, little attention was given to preserving the irreplaceable values of the lands. Many of the laws pertaining to the lands were designed primarily to facilitate disposal. Although there has been a growing awareness that these lands are an invaluable national asset and although our policy is now to preserve their values, to obtain authority to develop sound planning of their uses and generally to maintain them in Federal ownership, these lands have inherited an archaic and often conflicting conglomeration of laws which govern their use. The national resource lands comprise over 60 percent of all Federal lands and yet Congress has never given the Bureau of Land Management, the administering agency, a clear and comprehensive grant of authority to manage the lands as it has done for the National Forest Service and the National Park Service.] *

We believe that effective national resource land management legislation must set out guidelines in terms of management goals and objectives and provide the Secretary of the Interior with the necessary authority to achieve those goals and objectives. Although we approve of the principles in S. 424, and it is a very good beginning, we feel that Congress should take this opportunity to enact the comprehensive legislation which we have proposed.

Our proposal contains most of the provisions in S. 424, but these comprise only some of the fundamental provisions in our bill. Our proposal is designed to complement the administration's proposed Land Use Policy and Planning Assistance Act of 1973 which provides for the protection and regulation of the uses of non-Federal lands. This bill is divided into five titles and is designed to provide a legislative base for future laws governing the management of the national resource lands. I will briefly highlight provisions in our bill and point out significant differences between the administration's bill and S. 424.

Title I provides the general management authority similar to the authority granted by S. 424. It directs the Secretary to prepare and maintain an inventory of the national resource lands, develop land use plans and manage the lands in accordance with those plans and principles of multiple use and sustained yield. Unlike S. 424, however, the bill authorizes the Secretary to establish advisory boards which are often essential in assisting him to develop sound management policies and which provide a form of citizen participation in formulating policy decisions.

Title II provides authority to sell national resource lands under special circumstances and is similar to the sale authority granted in S. 424. However, title II also allows for the sale of reserved mineral interests in lands to the surface owners if those lands are not valuable for mineral development or the reservation is interfering with appropriate land development which is a more beneficial use of the land than mineral development. Congress has repeatedly approved of sales of reserved mineral interests where the Secretary determines that one of these conditions has been met. This sale authority would therefore save Congress the expense and time of needlessly having to approve of each sale of reserved mineral interests on an individual basis.

Title III provides for specific management authorities. In part, title III reenacts the Public Land Administration Act, omitting provisions which are obsolete. Among its other provisions are: the establishment of a working capital fund, authority to issue documents of disclaimer when the United States has no interest in certain lands, authority to correct documents of conveyance, and, as in S. 424, authority to acquire lands and enforce regulations pertaining to the protection of the lands. Title III, however, extends this enforcement authority to allow the Secretary to contract with State and local law enforcement officials to protect national resource lands. The Secretary of Agriculture already has this same contracting authority in regard to the National Forest System.

I would like to enter for the record, but skip at this time any discussion of the right-of-way provisions which are title IV, as you requested.

Title IV provides a uniform and comprehensive statute authorizing the Secretary to grant rights-of-way for purposes ranging from roads,

trails, and canals to powerlines and pipelines. S. 424 does not include any of the provisions in this title. Presently the authority to grant rights-of-way must be gleaned from numerous disjointed and often ancient laws.

Title V contains a list of laws to be repealed or amended. These laws are generally either obsolete, duplicative or are replaced by the preceding titles. Title V also explicitly preserves rights existing under these laws at the time of enactment of the bill. S. 424 does not contain a repealer section.

We have submitted a letter at the committee's request expressing our views on S. 424. The letter contains more detailed comments on S. 424 of a technical nature.

In conclusion, Mr. Chairman, I would like to express our appreciation for the support you and the members of your committee have shown for enactment of a national resource lands management bill.

I urge, and I know the President does and the Secretary, prompt action on the two proposals now before you.

Thank you very much.

Senator HASKELL. Thank you, Dr. Whitaker. I would assume that any formal testimony a repealer section is in order. At least that is my top of the head reaction. I suppose, however, that we want to be very careful in so doing, so that we don't limit any authority or make any substantive change in the law while we are repealing the prior laws.

Secretary WHITAKER. I certainly agree with that.

Senator HASKELL. I suppose that counsel in your department has gone over the specific repealers with that in mind?

Secretary WHITAKER. Yes, I would ask Mr. Brown to answer your question in more detail.

Mr. BROWN. That is correct, and the committee will be supplied with the detailed analysis of the repealer very shortly.

Senator HASKELL. I appreciate that. Thank you, Mr. Brown.

I do not have further questions of the Secretary.

Senator McClure.

Senator McCLURE. Well, yes, I do have. I am sure there will be a lot more questions later. I think the hearing record of last year in the House committee, when we went through this, probably expresses my opinion adequately, at least, but I am concerned about the question that you just raised, and that is with respect to repealers making substantive law.

For instance, if I view the administration's actions correctly and proposals correctly, there is no provision in this statute at this time for the rules and regulations and conditions for the disposal of Federal lands. This is a management package, is that not correct?

Secretary WHITAKER. No, there are provisions related to the disposal of public lands, sale or exchange, in this proposed act.

Senator McCLURE. Where is that contained?

Secretary WHITAKER. Title II.

Senator McCLURE. It is your feeling that that completely and adequately takes care of all of the provisions of law which are now contained in the repealer section?

Secretary WHITAKER. Yes.

Senator McCLURE. The reason, of course, I raise that question is that Idaho, among all the States, is the only one in which the Desert Land

Act has a very substantial impact. And I have said it too often to avoid saying it again, that the Federal Government has been sitting on desert land entries for a good long period of time. Congress may be reacting about Federal impoundments and budgetary restrictions being an effective repealer of a statute by administrative action, I would say that the Desert Land Act has been virtually repealed by administrative action or inaction.

Secretary WHITAKER. I would agree with you, Senator, that there is a legal jungle that has built up around this act, including the Indian Hill case, and I would ask Mr. Brown to make further comment on that.

Mr. BROWN. I think, Senator, the position of the Department is that we and the applicants under the Desert Land Act have a great deal of difficulty insuring that the law is being adhered to in every respect. It is the position of the Department that if we are going to dispose of the public lands in the future, it ought to be done under a specific sale authority so if an individual is eligible to purchase land, it can be done without all of the problems and all the difficulties we have under these old existing laws.

Senator McCLEURE. I don't question at all that there are problems under the Desert Land Act, but I do question the authority, either moral or legal, of the Federal Government to unilaterally decide they don't like the existing statute and, therefore, repeal it by simply refusing to follow its provisions, which is in effect what has been done. There are too many of my people out there who have invested thousands of dollars in good faith under an existing statute and had that investment rendered absolutely worthless because the Department refused to follow the provisions of the law that are now the law of the land.

I have no question that the Desert Land Act needs to be amended. I have no question at all that it ought to be either substantially changed * or replaced by other disposal statutes, but I do have very serious question as to whether it is either legal or proper for the Federal Government to simply unilaterally decide they don't like the law that is on the books and therefore won't follow it. That is exactly what has happened for the last several years.]

I had a man in Twin Falls, Idaho, who walked away from a \$5,000 investment because he had been bandied about by the Federal Government for 7 years on pending application. That is neither legal or just.

* This is something that we have been talking about for the last several years and I know the Bureau doesn't want to dispose of these lands, and I know they are sitting on it until such a time as they can get a replacement of the law. I question very much that that action is proper. I am delighted that you have included an amendment of the statute, a replacement which is somewhat different than what was done last year in which a repeal was sought without any replacement, which would leave our people in limbo.

I recognize, too, that 90 percent of the desert land and applications and 95 percent of the patents that have been granted in the last several years are in Idaho, the other 49 States don't have much interest in this, because Idaho happens to be the only place where we have available lands and available water. As a result that is where the interest has been. But it is a severe handicap and I can't help but express

the feeling of the people of Idaho that they represent what has happened under this.

I assume that the provisions in this statute that provide for the preservation of valid existing rights would also recognize those persons who have pending applications under the Desert Land Act.

Secretary WHITAKER. Yes, they do.

Senator McCLURE. Could we look perhaps for an expedited administration of those applications?

Secretary WHITAKER. Well, I would personally be glad to look into that. I may request a more detailed answer to your question. I understand what you are saying here. As I started out, there was what I referred to as a legal jungle building up over there. The charge that this means the Federal Government is not following the act, I would have to look into. I am not personally in a position to respond to that. I am sympathetic to what you are saying and obviously we are dealing with two tracks, dealing with the law as it is and hopefully changing it as soon as possible.

Senator McCLURE. I can't help but comment that one man just contacted me who filed an application a year ago, better than a year ago, was told by the BLM office in Idaho that it would be a year and a half before they even started to look at his application. I don't think that is the kind of administration of the laws that our people are entitled to. I do hope that we can do a better job and I am sympathetic with the Department's desire to get a change and the pressures that are on the Department to avoid the disposition of public lands until we have some rational plans for disposition, and I am sure that is behind it.

But, despite that sympathy, I still think that the people of this country are entitled to a processing of their applications under existing law regardless of our attitude about the existing law and I will pledge you my support in trying to get something done in terms of the enactment of an organic act. There are a great many people in my State who are still of the attitude that the public lands are there for acquisition by private interests, and I think that decision is behind us. I think we are at that point now, where the decision has been made as a matter of fact, that we are going to retain the great bulk of public lands for management by the public and for public values. So I am not here to debate that issue at all. I think that one has been decided and we will then try to enact a rational body of law for the administration of these acres, but in a State like mine, where 66 percent of the State is owned by the Federal Government, we have to be concerned about the decisions you make. *

Although we have already indicated that we are going to kind of by-pass the right-of-way question, and I don't want to get into the Alaska right-of-way per se, I am not sure that we can simply ignore the right-of-way question generally.

Senator HASKELL. If the Senator would yield, we are going to have a hearing on the rights-of-way on March 9.

Senator McCLURE. But that deals primarily with the question that's been imposed because of the court decision on the Alaskan pipeline and the amendments that surround that particular decision, and I have a general question which deals with that position particularly, and that is, the tendency of the Department in some years in the past to attach conditions to the granting of rights-of-way that require the ap-

plicants, for the right-of-way, to do other things which the law does not require. Is there anything in the proposed right-of-way section that would give legitimacy to this practice?

Secretary WHITAKER. I will ask Mr. Brown to answer that because I am frankly not familiar with the details.

Mr. BROWN. We are not putting anything in here that would prevent us, for example, from requiring that an applicant comply with certain regulations. You may be referring to perhaps a powerplant that is seeking a right-of-way for a transmission line where we may attach certain conditions to the operation of the powerplant.

Senator McCURE. That is one of several such instances, yes.

Mr. BROWN. For example, that practice would be continued under this act, yes.

Senator McCURE. That is a practice which I find offensive personally, because while the granting of the right-of-way certainly has something to do with the construction and the operation of the line, I don't think it extends the Government's authority beyond other existing laws to establish conditions for the operations of the plant.

* The Department, a few years ago in an application for a right-of-way, decided they had the right, or at least they had the raw naked power, to require that the power company who was seeking the right-of-way for a powerline, had to, as a condition for the granting of that right, also agree to wheel public power, which is totally and completely unprovided for in any other statute.

Mr. BROWN. That, Senator, has been a regulation of the Department for some years, where a right-of-way is granted for a powerline, there is reserved to the Federal Government a right to wheel the power across that line.

Senator McCURE. That is not a regulation. I think that was a Solicitor's opinion at one time.

Mr. BROWN. I believe, sir, that is now a regulation of the Department.

Senator McCURE. We ought to attach to this a specific statement then that the Department doesn't have that authority. What is the genesis of that authority other than the desire of the Federal Government to use the power which it has?

Mr. BROWN. Well, sir, I think, for example, in oil and gas pipelines there has generally been a requirement that the pipeline be used as a common carrier and I think that general theory has been to some extent applied to powerlines. The regulations provide that to the extent the grantee is not using the line, or to the extent there is excess capacity, that the line be made available to the Federal Government.

Senator McCURE. Where is the statutory authority for saying that a line—before a pipeline can be given a right-of-way it must agree to be a common carrier?

Mr. BROWN. The Mineral Leasing Act of 1920.

Senator McCURE. Specific authority for a Mineral Leasing Act, and then how does that apply then to the wheeling of electrical energy in a transmission line?

Mr. BROWN. I would have to ask to supply that additional information for the record.

Senator HASKELL. If the Senator would yield, I would also appreciate receiving that information because I am familiar with the common carrier provisions in the Leasing Act of 1920, but I would suggest that if the Senator's facts are correct, the Department is very wrong in attaching conditions which are not spelled out in the statute.

Secretary WHITAKER. Mr. Chairman, we will supply for the record responses to the line of questioning.

Senator HASKELL. Thank you very much.

[The material requested follows:]

SOUTHERN CALIFORNIA EDISON COMPANY Annotated

A-30325

Decided November 3, 1964

R. K. Pelz

Rights-of-Way: Generally—Rights-of-Way: Act of March 4, 1911—Power: Generally

An applicant for an amended transmission line right-of-way under the act of March 4, 1911, is properly required to file the stipulation required by the Department's regulations agreeing to permit the Department to utilize surplus capacity in the line, or to increase the capacity of the line for the transmission of power by the Department.

See Decision dated May 28, 1964, p. 406.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Southern California Edison Company has appealed to the Secretary of the Interior from a decision dated May 28, 1964, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of the Riverside, California, land office holding in abeyance its application for an amended transmission line right-of-way easement, Los Angeles 096498, filed pursuant to the act of March 4, 1911, 36 Stat. 1253, as amended, 43 U.S.C. § 961 (1958), until the applicant should file a stipulation in the land office as required by regulation 43 CFR, 1964 Supp., 2234.4-1(c)(5), formerly 43 CFR, 1964 rev. 244.44(e).¹

The appellant filed an application dated January 8, 1963, for an amended right-of-way easement across public lands in Kern County, California, for the reconstruction, enlargement and conversion of an existing 33 kilovolt electric transmission line to a 115 kilovolt-volt line. The total length of the line is 28.69 miles, of which 1.87 miles cross Federal lands.

The appellant was advised on May 2, 1963, that it would be required to file a stipulation as called for in 43 CFR 244.44(e), now 43 CFR, 1964 Supp., 2234.4-1(c)(5). The stipulation provides for the agreement of the grantee of a right-of-way that this Department may utilize surplus capacity in the transmission line, or may increase the capacity of the line, for the transmission of power by the Department.

The regulations also provide for the equitable sharing of operation and maintenance costs of the transmission facilities by the Department, for the designation of a board to resolve any disagreements over the existence or amount of surplus capacity and for the modification of the terms and conditions at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

¹ California Electric Company, the original right-of-way applicant, merged with the Southern California Edison Company on December 31, 1963, thereby terminating its corporate existence.

On October 18, 1963, the appellant filed a stipulation consenting—
to accept, comply with, and be bound by all lawful terms and conditions of the Bureau of Land Management Department of the Interior Regulations, Title 43, CFR, Part 244, as amended, in effect on the date of this Stipulation for so long as such terms and conditions remain in effect, but Applicant does not agree or consent to accept, comply with or be bound by any of the terms or conditions of any Regulations which may hereafter be finally determined by a court of competent jurisdiction to be unlawful, legally unenforceable or contrary to any statutory provision enacted by the Congress of the United States; nor does Applicant agree or consent to accept, comply with or be bound by the terms or conditions of any Regulations applicable to said right-of-way easements after the time that such terms or conditions are withdrawn or waived.

By a decision of the land office dated January 2, 1964, the appellant was advised that its proposed stipulation did not meet the requirements of the regulations, and it was requested to execute and file a stipulation in conformance with the regulatory requirements.

Following that decision, appellant appealed to the Director, Bureau of Land Management, and then to the Secretary.

Appellant's contentions on this appeal have been carefully considered. However, they are essentially the same as the arguments advanced by appellant on its appeal to the Director and they are fully discussed and answered in the Bureau's decision. No purpose would be served by a repetition of the discussion.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 DM 2.2A(4) (a) ; 24 F.R. 1348), for the reasons set forth in the decision of May 28, 1964, the decision is affirmed.

EDWARD WEINBERG,
Deputy Solicitor.

May 28, 1964

The Southern California Edison Company has appealed from a letter-decision of the Riverside Land Office, dated January 2, 1964. That decision held that further action on the Company's request to convert its existing 33 kilovolt right-of-way to a 115 kilovolt right-of-way will be held in abeyance until the applicant files a stipulation in the Land Office, pursuant to the requirements of departmental regulation 43 CFR 2234.4-1(c) (5), 1964 Special Supplement (formerly 43 CFR 244.44(e)).

The appellant's original application herein, filed on January 8, 1963, requests that its existing right-of-way easement under the act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), upon and across public

¹ The decision was addressed to the original applicant, the California Electric Power Company, which merged with the Southern California Edison Company on December 11, 1963, and, thereupon, terminated its corporate existence.

November 3, 1964

lands in Kern County, California for its 33 kilovolt Inyokern-Ridgecrest transmission line, be amended to permit the reconstruction, enlargement, conversion and operation of said line at 115 kilovolts. The remaining period of that existing easement is 40 years; the total length of the expanded right-of-way requested across public lands is 1.87 miles; the total length of the Inyokern-Ridgecrest line is 28.69 miles.

The regulation in question, as amended, by Circular 2100, published March 23, 1963 (28 F.R. 2905), provides, among other things, that applicants for transmission line right-of-way permits shall execute a stipulation allowing the Government to utilize any surplus capacity in such transmission facilities crossing Government lands. The appellant declined to execute such stipulation. It here appeals the Land Office Manager's decision declining to consider the appellant's application further absent such stipulation, and prays that the easement requested be granted forthwith.

The appellant claims the regulations cannot be applied to it for the following reasons (in the order presented by the appellant):

- I. They are prospective and do not apply to appellant's application.
- II. They are contrary to law and the Constitution in that:
 - A. They exceed the authority of the Secretary;
 - B. They are unconstitutional administrative legislation, and violate the Due Process Clause;
 - C. Applicant's freedom to reject permits made subject to the regulations does not cure the invalidity thereof;
 - D. They are contrary to the intent and rate provisions of the Federal Power Act.
- III. They are ambiguous, uncertain, and impractical.

* * * * *

As to argument I, the appellant says its January 8, 1963, application complied with the regulations then in effect, and that the regulations promulgated March 23, 1963, do not apply to applications filed prior thereto. As amended, March 23, 1963, Sec. 244.44(e) of the regulations (now 43 CFR 2234.4-1(c)(5)), provides, among other things, that an applicant for a permit must "* * * execute and file with its application a stipulation * * *" allowing the Government to use the surplus capacity of the transmission line. We agree that the amendment is prospective. But the subject of the amendment relates to permits, not applications. The subject of the amendment is: terms and conditions in permits issued on or after March 23, 1963. The Department has found that permits should not be issued for transmission lines on Government lands after that date unless applicants allowed the Government to use the lines' surplus capacity. The reference (in the regulation) to applications merely states how applicants may

meet these terms and conditions.² Nor is there a problem of retroactivity here. "No vested right in a [transmission line right-of-way] grant is acquired by the filing of an application." (See *California Electric Power Company*, 58 I.D. 607 at 611 (1944), and cases cited therein.) The record does not show that the capacity in question lawfully was in-place or under construction on March 23, 1963. In short, the filing of the application did not operate to prevent the Secretary from granting appellant a permit subject to conditions prescribed by regulations issued, pursuant to statutory authority, shortly after the appellant applied for a permit.

The appellant next argues (II-A above) that the acts of 1901 and 1911, under which the regulations were promulgated, do not support them; that (II-B) therefore, they are unconstitutional administrative legislation; and that these two conclusions are corroborated by the fact that similar departmental wheeling regulations were withdrawn in 1954 because they were considered illegal by the then departmental Solicitor, and by the fact that bills to enact those regulations into law after they were withdrawn were introduced but not considered by the Congress. Under II-A, the appellant asserts that the act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959) (cited with the 1911 act by the amended regulations as supporting authority therefor) "has no bearing in this case" because the appellant applied for a permit under the 1911 act. The 1911 law, authorizing the issuance of 50-year permits, was enacted because the 1901 Act, which authorized the issuance of revocable permits only, did not provide sufficient investment security. We believe the act of 1901 has bearing insofar as the appellant argues that the act of 1911 does not authorize the subject regulation.³

The appellant misconstrues the 1911 act. A law of May 14, 1896 (29 Stat. 120) dealt with rights-of-way on the public domain for electric power purposes. The act of 1901 "superseded and took the place of the law of May 14, 1896. The act [of 1901] * * * carefully defines the extent of such rights-of-way and embodies provisions not found in any of the earlier enactments."⁴ "It would seem difficult to conceive of a statute couched in terms which would retain a larger measure of public control" than the 1901 statute.⁵ The 1911 act made no change in the 1901 act other than authorizing the granting of easements for up

² Subsequent to the Land Manager's decision of October 11, 1963, the appellant, on October 17, 1963, supplemented its January 8, 1963, application by filing the power line diagrams required by Sec. 244.43(d), as amended, March 23, 1963 (presently 43 CFR 2234.4-1(b) (4) (IV)).

³ Evidently the appellant really believes so, too, for, elsewhere in its brief, it cites court comment on the scope of regulations that may be issued under the 1901 act, as determinative of the scope of regulations that may be issued under the 1911 act *U.S. v. Colorado Power Co.*, 240 F. 217, 221 (1916).

⁴ *Utah Power and Light Co. v. U.S.*, 243 U.S. 389, 407 (1917).

⁵ 32 Ops. Att'y Gen. 525, 526 (1921).

November 3, 1964

to 50 years. As explained by Representative Scott, the House floor manager of the bill that became the 1911 act,

* * * it changes existing law only to this extent, that it provides that a permit may be issued for rights-of-way for the purposes specified for a fixed term of 50 years, whereas the present law requires all such permits to be revocable at the will of the authority granting them. * * * [U]nder this a right-of-way may be granted for a period of 50 years, under such regulations as the head of the department may make.⁶

The act of 1911, thus deals "specifically and solely * * * with rights-of-way for transmission lines."⁷ That act and two others⁸ "occupies a special field carved out of the comprehensive uses and occupancies embraced by the act of 1897. In the fields to which they relate, their provisions are comprehensive and complete * * *. These acts, therefore, bear to the act of 1897 the relation of special and particular to general legislation."⁹

The act of 1911, therefore, by background, emphasis and intent is uniquely an electric power transmission line act as well as a right of way statute. It was carefully constructed and enacted for the purpose of controlling the conditions under which transmission lines in particular should be placed on the public domain. Its intent is that such lines not be placed thereon by right and at random. Its intent on its face is that transmission lines be placed on Government lands under the terms and conditions the Government department responsible for the overall welfare of those lands believes transmission lines should be placed thereon.

Where the permit is to endure for fifty years and is not to be revocable at the will of the Government, the act requires such regulations as will protect Government interests associated with Government lands for the next 50 years. Had the Sixty-first Congress intended permits to be issued summarily—had it intended them to be issued if the applicants met the one, two, or three standards, the Sixty-first Congress in March 1911 thought should govern the placement of transmission lines on Government lands—the Sixty-first Congress would have said so. It legislated differently. Having stated its specific purpose and intent, Congress directed the departments responsible for Government lands to treat by such regulations as they in their expertise deemed appropriate, such developments and exigen-

⁶ Conference Report on H.R. 31596 in the 61st Congress, 3d Sess. and explanation to the House thereof, 46 Cong. Rec. 4014-15 (Mar. 2, 1911).

⁷ 30 Ops. Att'y Gen. 531, 533 (1916).

⁸ February 15, 1901, 31 Stat. 790, authorizing the Secretary to regulate the construction of electrical plants, poles and lines on public lands, forests, and certain reservations; and (February 1, 1905, 33 Stat. 628), authorizing the Secretary to regulate the construction of dams and reservoirs on forest reserves.

⁹ 30 Ops. Att'y Gen. 533 (1916). (The act of 1897 referred to, 30 Stat. 11, 35, authorized the Secretary to regulate the occupancy and use of public forests.)

410 DECISIONS OF THE DEPARTMENT OF THE INTERIOR [71 I.D.]

cies that should materialize during the life of the law that affected the placement of transmission lines on Government lands.

We think a regulation requiring a permittee to let the Government use surplus capacity in a transmission line permittee would build on Government's lands, is uniquely within the purview and intent of the 1911 transmission line act. The use of the transmission lines of one electric system to wheel, convey, or market the power and energy of and for another system is a widespread, long-established operating practice in the power industry. So is the interconnection and the joint use of transmission facilities by two or more different systems; and so is the purposeful overbuilding of transmission line capacity in anticipation of future load growth.¹⁰

The Federal Government is the largest wholesale producer of electric power and energy in the Nation. Its installed generating capacity of about 26 million kilovolts comprises 17 percent of all electric utility generating capacity in the country. Its installed hydroelectric capacity accounts for about 45 percent of the Nation's developed hydroelectric capacity. We are advised by the Assistant Secretary, Water and Power Development, that another 8.8 million kilovolts of Federal generating capacity is under construction; and still another 10.2 million kilovolts has been approved or authorized for future construction. The statutes under which this Federal power and energy is produced require that preference in the sale thereof be given to governmental agencies and to nonprofit organizations. This requirement originated contemporaneously with the transmission line right-of-way laws in question. It began with section 5 of the act of April 16, 1906 (34 Stat. 116, 117), requiring the Secretary of the Interior to give preference to municipal purposes when disposing of power produced at Federal reclamation projects in the western United States under the act of June 17, 1902 (32 Stat. 388).¹¹ It was restated by the act of February 24, 1911 (36 Stat. 930); and it has been affirmed by a long series of statutes enacted and re-enacted down to the present. To avoid constructing the transmission lines needed to market this power and energy,¹² the Government utilizes the transmission facilities of other systems to the maximum extent practicable.¹³ This wheeling service

¹⁰ See, for example, *Report on the Status of Interconnections and Pooling of Electric Utility Systems in the United States*, prepared by Edison Electric Institute, July 1962; revised May 1963.

See also 8 F.P.C. 1177, 1181-1183 (1949); as modified at 9 F.P.C. 399; and as affirmed in *Federal Power Commission v. Idaho Power Co.*, 344 U.S. 17 (1952).

¹¹ See 30 Ops. Att'y Gen. 197 (1913).

¹² * * * "The alternative method is to sell the * * * energy at the dam, and the market there appears to be limited to one purchaser, the * * * Power Company." *Ashwander v. TVA*, 297 U.S. 288, 339 (1936).

¹³ See, for example, sec. 5 of the Flood Control Act of 1944, 58 Stat. 887, 890; 16 U.S.C. 825s: "The Secretary of the Interior is authorized * * * to construct or acquire * * * only such transmission lines and related facilities as may be necessary in order to make the power and energy generated at said projects available in wholesale quantities for sale

November 3, 1964

that utility systems perform for the Federal Government is based on "the principle of coordination and cooperation * * * the very purpose of which is to make use of company transmission line facilities to avoid duplication and waste of Government funds" for transmission lines.¹⁴

In substance, the contested regulation¹⁵ (43 CFR 244.44(e)(2); now 43 CFR 2234.4-1(c)(5)) provides that the Government may have the use of any surplus capacity in that segment (from substation or interconnection point to substation or interconnection point) of a permittee's transmission line crossing public lands; and that the Government may increase the capacity of that segment. Any disagreement on surplus capacity is to be adjudicated by a three-man board (subparagraph (x)); and when for his own operations the owner needs to recover his surplus capacity, he must give the Government three years notice (subparagraph (ix)). In using the segment, the Government may not unreasonably interfere with the owner's operations (subparagraph (vi)); it may not, without the owner's consent, use his surplus capacity to supply customers the owner was serving when he applied for the permit, unless they are preference customers (subparagraph (vii)); and the Government must pay an equitable share of the segment's costs for any use it may make thereof (subparagraph (viii)). All these provisions may be modified by supplemental agreements (subparagraph (xii)).

We believe the regulation is neither unreasonable nor beyond the intent of the 1911 act. The regulation treats matters uniquely and peculiarly characteristic of transmission lines; the 1911 act expressly "authorizes and empowers" the Secretary to treat such matters by regulation. We also believe the 1911 act does not violate the rules regarding the nondelegability of legislative power. The Supreme Court has stated: "That Congress intends there shall be some administrative regulations on the subject is plainly shown in the [1901] act, and that its discretion in the matter is not narrowly confined is shown by our decisions in *United States v. Grimaud*, 220 U.S. 506, and *Light*

on fair and reasonable terms and conditions * * * the Federal Government, public bodies, cooperative, and privately owned companies."

See also the act of August 31, 1951, 65 Stat. 248, 255: "No part of [the] appropriation [for the Bureau of Reclamation] shall be used to initiate the construction of transmission facilities within those areas covered by power wheeling service contracts which include provision for service to Federal establishments and preferred customers * * *."

¹⁴ Pacific Gas & Electric Company President's testimony on "Transmission Lines" during Senate Appropriations Committee Hearings on H.R. 3790, 82d Congress, p. 1878 (1951).

¹⁵ We find it unnecessary to consider the appellant's objections to the references in the regulation, 244.44(c), to the "power-marketing program of the United States." * * * By letter of January 2, 1964, the Assistant Land Office Manager informed applicant that this Department's Assistant Secretary, Water and Power Development, formally found "no conflict between [applicant's] proposed * * * facility and the power marketing program of the United States."

v. United States, supra."¹⁶ "It was not necessary for Congress to ascertain the facts of or to deal with each case. The act went as far as was reasonably practicable under the circumstances existing."¹⁷

Contrary to appellant's assertions, the 1955 testimony of the then Under Secretary of the Department before a Subcommittee of the House Government Operations Committee, does not show that similar departmental wheeling regulations were withdrawn in 1954 because it was believed they were "unlawful." His testimony was that the issuance and rescission of those regulations "is a subject of administrative discretion on which the Secretary is free to act according to his judgment;"¹⁸ and that the 1954 withdrawal "involved [matters of] administrative discretion rather than of law."¹⁹ The "lawfulness" of the regulations previously had been fully explored, adjudicated and upheld in a Memorandum Opinion of June 2, 1952, by the United States District Court for the District of Columbia, in the unreported case of *Idaho Power Co. v. Chapman* (Civil Action No. 4540-50); and in a Supplemental Memorandum of that Court on October 31, 1952.²⁰ We also disagree with the inference the appellant draws from the failure of Congress to consider bills to enact those regulations in statutory form after the withdrawal thereof in 1954. The only legal inference that may be drawn therefrom is that the 84th Congress was content to have the matter treated under the 1911 Act as the Sixty-first Congress intended it be treated; namely, as a subject of administrative discretion. We do note, though, that when Congress amended the 1911 Act in 1952 to increase (from 40 feet) to 400 feet the width of transmission line rights-of-way that could be granted across public lands, no disapproval was expressed of the well-known transmission line wheeling regulations applicable to all such rights-of-way since 1948.²¹

¹⁶ *Utah Power & Light*, at 410, *supra*, responding to defendants' arguments that the regulations under the act of February 15, 1901, were "unconstitutional, unauthorized and unreasonable."

¹⁷ *United States v. Chemical Foundation*, 272 U.S. 1 (1926). Comparison of the statute and stipulation involved in *Chapman v. El Paso Natural Gas Co.*, 204 F. 2d 46 (1953) with the subject statute and stipulation, shows that *Chapman* is inapposite here. The *Chapman* stipulation is printed in full at 204 F. 2d 49-50. Unlike *Chapman*, "we are * * * dealing here with an order which seeks to compel the granting of a license *in futuro* or the modification and alteration of conditions embodied in the license prior to its issuance." (ibid at 53). The stipulation here does not undertake "to exercise so vast and so detailed a power;" nor "such intimate regulation of corporate affairs as the financing, construction and employment of facilities" (at 51).

¹⁸ Hearings on "Certain Activities Regarding Power, Department of the Interior (Changes in Power Line Regulations)," 84th Congress, page 232.

¹⁹ *Ibid.* at 237.

²⁰ The "Memorandum of Court" together with separate "Findings of Fact and Conclusions of Law," "Amended Findings of Fact and Conclusions of Law," plus the Supplemental Memorandum of Court" are printed in Hearings, *supra*, at pages 88 through 93.

²¹ S.1630 as introduced in the 82d Congress in May 1951; amended and reported by the Senate Committee on Agriculture and Forestry in March 1952 in Senate Rept. 1224; further amended and reported by the House Committee on Agriculture in May 1952, in House Report 1848; and approved as Public Law 367 of the 82d Congress on May 27, 1952, 68 Stat. 95.

November 3, 1964

The appellant next argues that insofar as the regulation requires the permittees to allow the Government the use of the entire segment, from substation or interconnection point to substation or interconnection point of a transmission line that crosses public lands, the regulation operates constitutionally to deprive a permittee of its property without due process of law in the portions of that segment not on public lands, but which extend from the borders thereof to the nearest line substation or interconnection point.

We do not agree with the appellant. This aspect of the regulation is reasonable because the portions of the segment in question are inseparably related to the portions of the segment on Government land; the use of the surplus capacity in the segment portions in question in no way interferes with the owner's use of those portions or damages their efficiency; and the alternatives to this aspect of the regulations—constructing a parallel Government line, or tapping into a permittee's line at the points where it would enter and leave Government lands—would not be economic either to the Government or to the permittees. This aspect of the regulation is fair because allowing the Government to use the permittee's surplus capacity in such segments is balanced by allowing the permittee to place segments on the Government's lands. This aspect of the regulation is the result of the due processes of the law because, as previously shown, the condition is one of those inherent characteristics of transmission lines that the law expressly authorizes and empowers the Secretary to control by regulation. We find that this aspect of the regulation would not operate "to take property of Appellant without * * * the payment of just compensation in violation of the Fifth Amendment," because subparagraph (viii) of the stipulation in question expressly says the Government will pay the owner "an equitable share" of the cost of the line segment for any use the Government may make thereof.²² And we do not anticipate that the application of that subparagraph, or any of the other subparagraphs of the stipulation, will violate the intent and rate provisions of the Federal Power Act, as amended (16 U.S.C. 792 *et seq.*). Contrary to the appellant's claims (II-D above), the Secretary's statu-

²² *United States v. Colorado Power Co.*, *supra*, footnote 3, is not apposite. The Power Company there claimed its rights to occupy government lands did not flow from the act of February 14, 1901; and that such act did not authorize the imposition of annual occupancy charges. The Court held that the 1901 act applied, and that it authorized the imposition of annual charges. Then, at page 221, it added that for the Secretary to promulgate a regulation subjecting Power Company's business "to examination as to the amount of electrical energy produced and disposed of, for the purpose of laying tribute thereon as a basis of a charge to be fixed by the Secretary, is to carry the power granted to him [to fix regulations] to a doubtful length and further than, I think, is given by the [1901] Act." No question of the reasonableness of the annual occupancy charges to be paid on appellant's enlarged line is present here.

tory authority and responsibility to set the terms and conditions at issue hereunder which transmission lines²³ shall be placed on public lands, plainly is not displaced by or in any way repugnant to Federal and State public utility laws regulating the sale or transmission of electricity.

Finally (III above), the appellant argues that the regulations are ambiguous, uncertain, and impractical because (a) it is difficult to determine what is "surplus" transmission line capacity, and to forecast when it should be recovered; and (b) the regulations do not make clear (i) the nature and extent of a permittee's obligation to maintain its facilities on public lands in good condition after the Government makes interconnection therewith; (ii) the Government's obligation to maintain on its own facilities equipment that will protect the permittee's normal and efficient operations; and (iii) whether a permittee, if it has not given 36 months' notice, could use the surplus capacity on its line whenever it "has need to do so."

As to the appellant's general observations regarding the "understanding" evidenced by the regulations, we are constrained to observe that this Department is faced with the responsibility for the marketing of very large quantities of Federally generated power in the manner directed by Congress; the protection and wise utilization of a very substantial Federal investment in hydroelectric power generating facilities; and the preservation and conservation of the Nation's interests in its public lands.²⁴

More responsively, we find the appellant's arguments on this ground premature. The regulations serve to articulate certain fundamental legal relations subsisting between the Government and the permittees who place transmission lines on Government lands. The regulations do not purport to be a substitute for the complex, contractual relations that must exist before Government attempts to make use of a permittee's transmission facilities. This is made expressly clear by the reference to "supplemental agreements" at subparagraph (xii) of the stipulation. The permittees may assume that if or when Government contracts to use any surplus capacity of a permittee's transmission lines, the Government will not interfere with and will respect all legal rights and interests of the permittees. "There can be no purpose in the Act [or the regulations issued thereunder] of dealing unfairly with the permittee and his investment."²⁵

²³ Other than primary transmission lines as defined at section 3(11) of the Federal Power Act, 16 U.S.C. 796.

²⁴ "If any of the regulations go beyond what Congress can authorize or beyond what it has authorized, those regulations are void and may be disregarded; but not so much as are thought merely to be illiberal, inequitable or not conducive to the best results." *Utah Power & Light Co. v. U.S.* 243 U.S. 410 (1917).

²⁵ *U.S. v. Colorado Power*, *supra*, 221 (1916).

November 5, 1964

In view of the foregoing, the decision of the Land Office was proper and it is affirmed.

The Southern California Edison Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840, 1964 Special Supp. (formerly 43 CFR Part 221). If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D.C., 20240. The filing fee is \$5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting substantial evidence, wherein the decision appealed from is in error.

RICHARD J. McCORMICK,
Chief, Branch of Land Appeals.

FEATHER RIVER RAILWAY COMPANY

Sacramento 013803

November 5, 1964

Public Lands: Jurisdiction Over

By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the land department as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved.

Public Lands: Leases and Permits

A tramroad right-of-way permit granted under the Act of January 21, 1895, as amended, 43 U.S.C. 956 (1958 ed.), is revocable at the discretion of the Secretary.

Rights-of-Way: Nature of Interest Granted—Rights-of-Way: Act of January 21, 1895

A tramroad right-of-way granted under the Act of January 21, 1895, as amended, 43 U.S.C. 956 (1958 ed.) creates no interest in the land. It is a mere permit to use the land, revocable at the discretion of the Secretary.

Trespass: Generally

Occupancy of public lands, without authority after expiration or termination of a right-of-way permit constitutes a trespass.

CEASE AND DESIST AND ORDER TO SHOW CAUSE

By order dated March 18, 1964, the Feather River Railway Company was advised that it was considered in trespass on certain described public lands and was told to cease and desist within 6 months from the date of receipt of the order and to remove its improvements.

[U.S. District Court, District of Idaho, Filed Nov. 3, 1972.—By Frank N. Bell, Clerk]

Civil No. 4-72-10

United States District Court for the District of Idaho

UTAH POWER AND LIGHT COMPANY, PLAINTIFF

v.

ROGERS C. B. MORTON ET AL., DEFENDANTS

ORDER

Defendant's Motion for Judgment on the Pleadings came regularly on for hearing before the Court sitting at Pocatello, Idaho, on the 19th day of September, 1972, Honorable Ray McNichols, Chief Judge, presiding.

Plaintiff was represented by Marvin J. Bartoch of Ray, Quinney & Nebaker, Attorneys at Law, Salt Lake City, Utah, and Wesley F. Merrill, Merrill & Merrill, Attorneys at Law, Pocatello, Idaho. Defendants were represented by Thomas C. Frost, Assistant United States Attorney, District of Idaho, and William Woodland, Department of Interior, Solicitor's Office, Salt Lake City, Utah.

The Court, after considering the arguments and briefs of counsel, and being fully advised in the matter, ruled that the "unhauling" requirements and attendant provisions contained in 43 C.F.R. 2651.1-(a) (5) constitute a reasonable and lawful exercise of the Secretary of Interior's administrative discretion and that said regulation is within the scope of authority delegated to the Secretary under Title 43, United States Code, Section 961.

Accordingly, IT IS HEREBY ORDERED and this so orders that the causes of action contained in Plaintiff's Complaint be, and the same are, hereby DISMISSED WITH PREJUDICE.

Dated: November 3rd, 1972.

RAY McNICHOLS,

Chief Justice, United States District Court.

Senator McCLURE. Again, while these specific things that I have mentioned sound like I have got a bone to pick, indeed they should, because I have, but that doesn't at all mean that I am not anxious to see a statute passed that gets a cohesive management plan to the public lands, because I think it is desperately needed and I think we will indeed find some way in which we can give some direction to that as we debate these two measures pending before us, the one which has been introduced and the one which the Department has sent up. Thank you very much.

Senator HASKELL. May I just interject one question here, Mr. Secretary. In your statement on page 4 you state that title II also allows for the sale of reserve mineral interests in lands to the surface owners if those lands are not valuable for mineral development. I am sure you, as a geologist, would concur with the statement that what is not valuable today may be valuable tomorrow, and I have some hesitancy in going along with this.

My first impression is that I am hesitant because what the Federal Government owns now in public lands, whether it be mineral rights or whether it be surface rights, is really a public trust. To depend on a geologists's opinion that the lands are not valuable—and let me hasten to say that I am not coming down on geologists, because lawyers are just as wrong as geologists just as many times and many more times—but I do hesitate to grant the Department the right to dispose of what may be in the future valuable to surface owners.

Do you have a comment on that?

Secretary WHITAKER. Well, being a geologist, I can, as you are a lawyer, we can appreciate that in our professions we can make terrible mistakes. I have drilled a few dry holes in my day.

I do believe that at some point a bullet-biting decision has to be made. Perhaps some additional descriptions of language should be attached to this provision. However, I believe the intangible will still be there. You can never prove that there is never a possibility of a mineral. That is virtually impossible with the state of the art.

On the other hand, we need to block up land, we need to exchange it. You have clouded titles, terribly clouded titles, which interfere with development or other use and to just freeze ourselves into a position where we can never say—

Senator HASKELL. If I may interrupt, Mr. Secretary, you go on and say, the reservation interferes with appropriate land development which is a more beneficial use of the land.

That I can understand and sympathize with. You have put in this alternative so the Department might dispose of the land if it determined it was not valuable for mineral development, and you indicate there might be additional reservations on that.

Secretary WHITAKER. I take it from what you are saying you would prefer to exclude the former provision but allow the latter provision, but that implicitly implies the former.

Senator HASKELL. It does.

Secretary WHITAKER. So I am not sure we are any further ahead.

Senator HASKELL. It does not allow disposition just because you think it is not valuable. This is a top-of-the-head reaction, Mr. Secretary, but I just raised the point.

Secretary WHITAKER. Would anybody here have any more comment on that? As a geologist, I will have to be the last authority for the Department on this.

Senator HASKELL. Thank you, Mr. Whitaker.

Senator Hatfield.

Senator HATFIELD. Thank you, Mr. Chairman.

Mr. Secretary, you are familiar with Senate bill 2401 of the last Congress, which consisted of two prints, two committee prints dealing with this organic act for the BLM?

Secretary WHITAKER. I am generally familiar with the history of last year on the BLM Act. I can't say I am specifically familiar with the bill you are referring to.

Senator HATFIELD. This was the proposal to set up the BLM with the organic act only a little differently worded.

I would like to make legislative record at this point to make certain that we are clear.

The first print of last year's bill included a section which indirectly would have affected the O and C lands. In Committee Print 2 of last year's bill that was deleted and at that time I received a written letter from the Assistant Secretary of the Interior, Mr. Loesch, assuring me that it was not intended. That in neither case would the organic act proposal affect either the present management or the present distribution of the receipts from the O and C lands.

I just want to reestablish, that is the continuing opinion of the Department?

Secretary WHITAKER. Senator, I would like to reaffirm for the record that it is a fact, that it does not affect the funding, formula, or management of the O and C lands.

Senator HATFIELD. Thank you. At this time or forever after.

Secretary WHITAKER. I presume that was a statement and not a question.

Senator HATFIELD. Thank you, very much, Mr. Secretary. I think it is a great proposal you make and you have my full support and backing on it.

Secretary WHITAKER. Thank you, sir.

Senator HASKELL. Senator Bartlett, do you have any questions?

Senator BARTLETT. No.

Senator HASKELL. Thank you, Mr. Secretary and gentlemen, for your presentation. We appreciate it very much indeed.

Before we call the next panel, I would like to announce that we will hold the hearing record open for submission of views on the administration bill by any interested person. If we find there is a great deal of controversy on any particular question, we may have another hearing on the administration's bill. In any case, I will ask that the administration bill be printed in the record at this point.

S. 1041

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

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 appro-
4 priate (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 involved 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
1. Homesteads:			
Revised Statutes 2289, 2290, 2295, 2291		21:140	161-164.
May 14, 1880	3	38:312	166.
Apr. 6, 1914		41:1193	167.
Mar. 1, 1921		38:740	168.
Oct. 17, 1914		38:766, ch. 335	169.
Revised Statutes 2297		21:166	170.
Oct. 22, 1914			171.
Revised Statutes 2289, 2292			172.
June 8, 1880			173.
Revised Statutes 2301			174.
Revised Statutes 2288			175.
Revised Statutes 2296		31:179	179.
May 17, 1900		31:740	180.
Jan. 26, 1901		38:712	182.
Sept. 5, 1914			183.
Revised Statutes 2300			184.
Revised Statutes 2302			185.
May 14, 1880	2	21:141	186.
Feb. 14, 1920		43:381, ch. 326	187.
Feb. 25, 1925		48:1185, ch. 640	187a.
June 21, 1894		32:203, ch. 821	187b.
May 22, 1902	2	31:270	188.
June 5, 1900	3	18:420, ch. 131	189.
Mar. 3, 1875	15	23:96	190.
July 4, 1884	(1)	47:1418, ch. 160	190a.
Mar. 1, 1933			
The following words of section 1 only "Provided, that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homestead be made in said county under the Act of July 4, 1884 (23 Stat. 96: U.S.C., title 43, Sec. 190)."			
Revised Statutes 2810, 2311			191.
Revised Statutes 2302			202.
May 14, 1880	1	21:140	203.
June 13, 1902		32:384, ch. 1080	204.
Mar. 3, 1879		20:472, ch. 191	205.
July 1, 1879		21:40	206.
May 6, 1888		24:22	207.
Aug. 21, 1916		39:518, ch. 361	208.
June 5, 1924		48:837, ch. 240	209, 210.
June 24, 1948		62:576	211.
Revised Statutes 2298			28301.
Aug. 30, 1890			
The following words of section 1 only: "No person who shall after the passage of this Act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be 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		33:827, ch. 1776	213.
Mar. 2, 1889	8	25:854	214.
Feb. 20, 1917		39:928	215.
Mar. 4, 1921		41:1488, ch. 122	216.
June 5, 1900	2	81:209	217.
Feb. 10, 1909		35:639	218.
June 17, 1910		36:831, ch. 298	219.
Mar. 4, 1915	1	38:1162	220.
Mar. 4, 1923	1	42:1448, ch. 248	222.
May 14, 1880	8	21:141	223.
Apr. 26, 1904		33:847	224.
Aug. 22, 1914		38:704, ch. 270	231.
July 8, 1916		39:841, ch. 214	232.
Sept. 29, 1919	2	41:288, ch. 64	233.
Apr. 6, 1922	3	42:491, ch. 122	234.
Mar. 2, 1889	1	25:854	235.
July 1, 1879	1	21:48	236.
Dec. 20, 1917		40:430, ch. 6	237.
July 24, 1919 (next to last paragraph only)		41:271	237a.
Mar. 2, 1932		47:59	237b.
May 21, 1934		48:787, ch. 820	237c.
May 22, 1935		40:286	237d.
Aug. 19, 1933		40:559, ch. 560	237e.
Apr. 20, 1938		49:1235, ch. 289	237f.
July 30, 1956	1, 2, 4	70:715, 716, ch. 778	237 f, g, h.
Revised Statutes 2308		41:1202, ch. 102	238.
June 16, 1898		30:473, ch. 458	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	25:855	252.
June 3, 1878		20:91	253.
Revised Statutes 2294			254.
Revised Statutes 2298			255.
Mar. 4, 1913		37:925	256.
Last paragraph of section 1 headed "Public Land Service" only.			
May 13, 1932		47:153, ch. 178	256a.
Aug. 27, 1935		49:301, ch. 770	256b.
Sept. 30, 1890		26:684	261.
June 16, 1890		21:287	263.
Revised Statutes 2304			272.
Revised Statutes 2305			272a.
Feb. 25, 1919		40:1161, ch. 37	273.
Apr. 6, 1922		42:491, ch. 122	274.
Revised Statutes 2306			275.
Mar. 3, 1893		27:593	276.

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.....	58:747, ch. 421.....	279-284.	
Dec. 29, 1916.....	39:862.....	291-298.	
Mar. 4, 1922.....	42:1445, ch. 245.....	302.	
Aug. 21, 1916.....	39:518, ch. 361.....	1075.	
Aug. 28, 1937.....	50:575.....	1181c.	
2. Desert Land Entries:			
Mar. 28, 1908.....	35:52, ch. 112.....	324.	
Mar. 28, 1908.....	35:52, ch. 112.....	326.	
Feb. 27, 1917.....	39:946, ch. 194.....	339.	
Dec. 15, 1921.....	42:348, ch. 3.....	381.	
Aug. 7, 1917.....	40:250.....	332.	
Mar. 28, 1908.....	35:52, ch. 112.....	333.	
Apr. 30, 1912.....	37:106, ch. 101.....	334.	
Mar. 4, 1915.....	38:1161, ch. 147.....	335.	
Feb. 25, 1925.....	43:982, ch. 329.....	336.	
July 30, 1950.....	70:716, ch. 778.....	336a-d.	
Mar. 4, 1915.....	38:116, ch. 147.....	337, 338.	
Mar. 4, 1929.....	45:1545, ch. 687.....	339.	
3. Sale and Disposal Laws:			
Mar. 3, 1891.....	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 2367.....		678.	
June 15, 1880.....	21:288.....	678.	
Mar. 2, 1889.....	25:854.....	679, 680.	
Mar. 1, 1907.....	34:1082, ch. 2286.....	681.	
June 1, 1908.....	32:609, ch. 317.....	682.	
Revised Statutes 2361-2363.....		682a-e.	
Revised Statutes 2368.....		688-690.	
Revised Statutes 2369.....		691.	
Revised Statutes 2370.....		692.	
Revised Statutes 2371.....		693.	
Revised Statutes 2374.....		695.	
Revised Statutes 2372.....		696.	
Revised Statutes 2375, 2376.....		697.	
Mar. 2, 1889.....	25:854.....	698, 699.	
4. Townsite Reservation and Sale:			
Revised Statutes 2380-2384.....		700.	
Revised Statutes 2386-2390.....		711-715.	
Revised Statute 2391-2394.....		717-720.	
Mar. 3, 1877.....	19:302.....	721-724.	
Mar. 3, 1891.....	26:1101.....	725-727.	
July 9, 1914.....	38:454.....	728.	
Feb. 9, 1908.....	38:820, ch. 531.....	730.	
5. Drainage Under State Law:			
May 20, 1908.....	35:169, ch. 181.....	731.	
Mar. 3, 1919.....	40:1321, ch. 113.....	1027.	
May 1, 1958.....	72:99.....	1028.	
Jan. 17, 1920.....	41:1392, ch. 47.....	1029-1034.	
6. Abandoned Military Reservations:			
July 5, 1884.....	23:104, ch. 214.....	1041-1048.	
Mar. 3, 1893.....	27:593, ch. 208.....	1074.	
Aug. 28, 1894.....	28:491, ch. 314.....	1076.	
Feb. 11, 1903.....	32:522, ch. 545.....	1077-1078.	
Feb. 15, 1905.....	28:864.....	1079.	
Aug. 23, 1814.....	33:208.....	1080.	
7. Public Lands in Oklahoma:			
May 2, 1890.....	26:89-93.....	1081.	
Last paragraph of section 18 and sections 20-22.			
May 2, 1890.....	26:92.....	1091-1094.	
Mar. 3, 1891.....	26:1026.....	1095, 1097.	
Aug. 7, 1940.....	60:872, ch. 772.....	1098.	
Aug. 3, 1955.....	69:445, ch. 498.....	1100-1101.	
Aug. 3, 1955.....	69:445, ch. 498.....	1102-1102e.	
May 14, 1890.....	26:109.....	1102e.	
Sept. 1, 1903.....	28:11.....	1111-1117.	
May 11, 1896.....	29:116.....	1118.	
Jan. 18, 1897.....	29:490.....	1119.	
8. Sales of Isolated Tracts:			
Revised Statute 2455, as amended.....		1151-1154.	
Apr. 24, 1928.....	45:457, ch. 428.....	1171.	
May 23, 1930.....	46:977, ch. 513.....	1171a.	
Feb. 4, 1919.....	40:1055.....	1171b.	
May 10, 1920.....	41:595, ch. 178.....	1172.	
Aug. 11, 1921.....	42:159, ch. 62.....	1173.	
May 19, 1926.....	44:568, ch. 337.....	1175.	
Feb. 14, 1931.....	46:1105, ch. 170.....	1176.	
9. Lands in Alaska:			
Mar. 3, 1891.....	26:1099.....	1177.	
May 25, 1928.....	44:829.....	732.	
Feb. 26, 1948.....	62:35, ch. 72.....	733, 736.	
July 24, 1947.....	61:414, ch. 305.....	737.	
May 14, 1898.....	30:400.....	738.	
May 14, 1908.....	30:413.....	270.	
Apr. 29, 1950.....	64:95.....	270-4.	
July 8, 1916.....	39:352, ch. 228.....	270-5-270-7.	
		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.....		40:633.....	
Apr. 13, 1926.....	1	44:243.....	270-15.
Oct. 28, 1921.....	1	42:208.....	270-16.
Apr. 13, 1926.....		44:244.....	270-17.
May 14, 1898.....	10	30:413.....	687a, 687a-2, 687a-3, 687a-5.
Apr. 29, 1950.....	5	64:95.....	687a-1.
Mar. 8, 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.....	356.
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.

¹ 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. 26, 1897.....		29:599.....	664.
Mar. 3, 1899.....	1	30:1233, ch. 427.....	665, 938 (16 U.S.C. 625).
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, 939.
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, 1896.....		28:635, ch. 37 as amended.....	956-957.
Feb. 15, 1901.....		31:790, ch. 372.....	959 (16 U.S.C. 79, 522).
Mar. 4, 1911.....		36:1253, ch. 238.....	961 (16 U.S.C. 5, 420, 523).
May 21, 1896.....		28:127, 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.

Senator HASKELL. The bill just came up to us yesterday and most people, myself included, haven't had a chance to read it.

Next we will have a panel. It will be Mr. Chandler from Denver, Colo., representing the American Petroleum Institute; Mr. Cavanaugh, from Falls Church, Va., representing the American National Cattlemen's Association and the National Wool Growers Association, and Mr. John Hall of the National Forest Products Association.

Gentlemen, if you will, step forward.

Please proceed as a panel and confine your presentation to a total of 15 minutes. If it is necessary to summarize your statements, please do so. They will be included in the hearing record if you will. I presume, since Mr. Chandler's name appears on the witness list first, you will be the first one to proceed. But if you have agreed otherwise, any one of you may go ahead.

STATEMENTS OF COLLIS P. CHANDLER, JR., PRESIDENT OF CHANDLER AND ASSOCIATES, INC., DENVER, COLO., OF THE AMERICAN PETROLEUM INSTITUTE; THOMAS J. CAVANAUGH, FALLS CHURCH, VA., FROM THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION AND THE NATIONAL WOOL GROWERS ASSOCIATION; JOHN HALL, WASHINGTON, D.C., VICE PRESIDENT, NATIONAL FOREST PRODUCTS

Mr. CHANDLER. Thank you, Mr. Chairman, members of the committee; my name is Collis P. Chandler, Jr. I am president of Chandler and Associates, Inc., a Denver-based independent oil and gas producing company. I am also chairman of the Onshore Subcommittee of the American Petroleum Institute's Committee on Exploration. I appear on behalf of the institute, the Mid-Continent Oil and Gas Association, the Rocky Mountain Oil and Gas Association, and the Western Oil and Gas Association.

If I may summarize, our suggestions and objections fall into three categories. First, we feel that the bill as it is presently written is slanted too heavily toward environmental concerns and not, as we would like it, in terms of multiple use concept which has existed in the Federal domain.

Our second suggestion deals with the penalty provision in section 6, and our third suggestion deals with the subject that is not touched on in the bill on the matter of Executive withdrawal.

Our special concern in these lands and management lies in the inter-relationship between lands and energy. Policies affecting the management of these resource lands do affect energy. The extensive hearings and studies that this committee has conducted pursuant to Senate Resolution 45, have made clear the importance of these problems, and I will therefore limit our statement to S. 424, and not the energy problem in general.

As it is now written the bill appears to give overriding priority to the environmental concerns to the detriment of other equally vital needs, such as the need for energy resource development. We believe that the protection of the environment is a necessary and laudable goal of public lands management. However, we do not believe it should be the only goal of such management, or that it should receive greater

stress or higher priority than all other factors, including economical needs and national security considerations. It is one essential element to be balanced against all other essential elements in developing sound public land management policies.

We urge that this legislation be amended to emphasize the environment, economic, and national security needs, all are to be given consideration in public land management.

We would like to offer a few suggestions designed to achieve greater balance. Our first recommendation relates to the definition of multiple use in section 2(c), and we would suggest the substitution of the multiple use definition used in last year's or in Senate bill 2401, which is included in my statement.

Although the purpose of the bill is to provide for management, protection, and development of the national resources land, the declaration of policy, section 3 does not recognize the sound and orderly development of the mineral resource of the public lands as essential to our national well being. We would propose two changes.

First, in section 3(a)2, the insertion of the phrase, "and economic," following "ecological"; and second, in section 3(b) following the words "present and future generations" include this phrase, "foster and encourage private enterprise in the orderly and economic development of mineral resources and reserve."

This language is directly taken from Public Law 91-631, which declares this policy to be in the national interest.

In section 5 we recommend the inclusion of a new item which would say, "consider the Nation's requirements for a continuous and reliable supply of energy resources for national security and economic well being."

As to the penalty provision, section 6, we are particularly concerned because section 6(a)2 authorizes a revocation or suspension of leases on violation of the Secretary's order or on violation of Federal or State air and water quality standards.

It has long been a requirement of Federal oil and gas leases that the lessee abide by all laws and regulations. We believe this is an appropriate requirement. Typically, State and Federal air and water quality laws and regulations provide for penalties ranging from \$1,000 to \$50,000 for a single incident or day of violation, often coupled with injunctive relief against the alleged violator. These penalties and those for violation of other regulations are adequate, in our opinion, to insure that a Federal lessee will exert every effort to comply with environmental standards and regulations of the Secretary.

We believe this is a pretty severe penalty and further to be subject to the outright cancellation of a lease by the inadvertent violation of an air and water standard seems to be indeed a harsh penalty.

Moreover, we note in paragraph 6(a), which states the management shall be in accordance with the provisions of S. 424, except to the extent that other applicable law provides otherwise."

Senator HASKELL. Where is this, Mr. Chandler, what section?

Mr. CHANDLER. 6(a).

Senator HASKELL. Are you reading from the bill?

Mr. CHANDLER. I am reading from my statement, but you could find it in the bill. 6(a) which appears on line—

Senator HASKELL. I got that. I just didn't follow the same language, you were reading it as if it were a quote from the bill.

Mr. CHANDLER. I am sorry. The bill says: "except for the fact that other applicable law provides otherwise."

We believe it will be useful to repeat this point in section 6(a)(2). We would further recommend that section 6(a)(2) be modified in the manner that is included in my statement. Would you like for me to read that?

Senator HASKELL. No; that is all right.

Mr. CHANDLER. We are additionally concerned with section 8. Section 8(a) provides for the reservation of all minerals upon conveyance of title to national resource lands, but directs the Secretary to prohibit mineral development if would interfere with the "appropriate use of development," of such lands.

We are at somewhat of a loss to understand that term. I notice in the Secretary's testimony that he adds a clause to that statement which is to the effect that it "interferes with appropriate land development which is a more beneficial use of the land than mineral development."

We would recommend section 8(a) be deleted in its entirety and that it be replaced by section 9(a) of S. 2401, which is included in my statement.

Section 8(b) prohibits the Secretary from making sales of land under the act which are not "in conformity with State and local land-use plans, programs, zoning and regulations." It further requires the Secretary to notify the Governor and heads of the political subdivisions within which the land is located 90 days prior to offering land for sale under the act to afford them an opportunity for the adoption of zoning or other regulations concerning the use of such land prior to its sale.

Although we believe the Secretary should be required to give careful consideration to the consistency of the use contemplated by a proposed disposition of Federal lands with State and local land use plans, we do not feel it is desirable to provide for what is tantamount to a veto power by local government units over the future use of such lands.

We would urge that section 8(b) be amended in the manner set forth in my formal statement.

As to the matter of executive withdrawals, we believe there is a deficiency in the existing system of land management that existing laws permit large areas to be set aside or withdrawn by Executive order for single-purpose or limited purpose use, and we urge that S. 424 be amended to provide that the executive branch be required to obtain congressional approval for the withdrawal of tracts of public lands in excess of 5,000 acres. We also recommend that executive withdrawals be limited to a period of 10 years, that there be a provision for thorough review of all existing withdrawals, and that all executive withdrawal power be vested in the Secretary of the Interior.

Thank you, Mr. Chairman.

Senator HASKELL. Thank you, Mr. Chandler. I want to compliment you on being specific, and I assume your suggested amendatory language is contained in your written statement which will be part of the record.

Mr. CHANDLER. Yes, sir.

Thank you very much. I have no particular questions of you.
Senator Hatfield.

Senator HATFIELD. Mr. Chandler, just briefly, I would like to join the chairman in commending you for your very excellent testimony. Where you have objections you offer alternatives. That sometimes is not heard from witnesses.

I think on page 3 you identify a very definite problem. We have tended to give a certain generic character to the term "multiple use." As you know, it has been officially defined in the Classification Act of 1965, which expired in 1970, and also in certain forestry organic acts, but it seems to me you point up the issue very clearly, that there should be some statutory definition of "multiple use," especially where it is used in a generic sense that would apply to all legislation and all bills covering public lands.

Therefore, I think you made a very distinct contribution not only to this piece of legislation this morning in your testimony, but you point up this problem that I think this committee should address itself to, getting some definite statutory definition that would apply to any new bill or piece of legislation. I don't think each bill should have a different definition of the term "multiple use," as it has a tendency here today to represent.

Thank you very much for your contribution.

Mr. CHANDLER. Thank you for your comments.

Senator HASKELL. Senator Church.

Senator CHURCH. No questions at this time.

Senator HASKELL. If Senator Church has questions in the reasonably immediate future, we will address them to you in writing, Mr. Chandler, and you can respond in writing for the record.

Mr. CHANDLER. I would be delighted to do so.

Senator HASKELL. Thank you very much, Mr. Chandler.

[Mr. Chandler's prepared statement follows:]

STATEMENT OF

COLLIS P. CHANDLER, JR.

on behalf of

AMERICAN PETROLEUM INSTITUTE
MID-CONTINENT OIL AND GAS ASSOCIATION
ROCKY MOUNTAIN OIL AND GAS ASSOCIATION
WESTERN OIL AND GAS ASSOCIATION

on

S. 424, "National Resource Lands Management Act"

before the

SUBCOMMITTEE ON PUBLIC LANDS
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
March 1, 1973

Mr. Chairman, Members of the Committee:

We appreciate this opportunity to comment on S. 424, the "National Resource Lands Management Act." It is most appropriate that the title of S. 424 recognizes the relationship of public lands to the nation's natural resource base. Our special concern in these lands, and in their management, lies in the interrelation between land and energy. More than 95 percent of the energy used in the United States comes from mineral resources which must be extracted from land, and many of these resources lie beneath the public lands. Therefore, policies affecting the management of these resource lands affect energy.

It is not necessary for us to repeat to this Committee the details of the nation's current energy supply problems. The extensive hearings and study this Committee has conducted pursuant to Senate Resolution 45 have made clear the importance of these problems. We will, therefore, limit our statement here today to the provisions of S. 424 which we believe should be improved to help resolve those problems.

Priorities of Land Management Legislation

As it is now written, the bill appears to give overriding priority to environmental concerns to the detriment of other equally vital needs, such as the need for energy resource development. We believe that protection of the environment is a necessary and laudable goal of public lands management. However, we do not believe it should be the only goal of such management, or that it should receive greater stress or higher priority than all other factors, including economic needs and national security considerations. It is one essential element to be balanced against other essential elements in developing sound public land management policies. We urge that this legislation be amended to emphasize that environmental, economic, and national security

needs are all to be given consideration in public lands management. We would like to offer a few suggestions designed to achieve greater balance among these elements.

Our first recommendation relates to the definition of "multiple use" in Section 2(c). Nowhere in the definition is any real recognition given to subsurface resources as has been done in prior law, e.g., the Public Lands Act of 1964, P.L. 88-607. We would amend Section 2(c) as follows:

"(c) "Multiple use" means the management of the natural resource lands and their various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; 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 takes into account the long-term needs of future generations for 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 impairment of the productivity of the land or undue damage to irreplaceable values, with consideration being given to the relative values of the resources, and not necessarily the combination of uses that will give the greatest economic return or the greatest unit output."

This definition is taken directly from S. 2401 as it was originally introduced in the last Congress. It is more comprehensive and better describes the concept of multiple use than the definition in S. 424.

Although the purpose of the bill is "To provide for the management, protection and development of the national resource lands...", the "Declaration of Policy" (Section 3) fails to recognize that the sound and orderly development of the mineral resources of the public lands is essential to our national well-being. We would propose two changes:

First, reword Section 3(a) (2) to read:

"Sound ecological and economic management of these lands is vital to maintenance of a liveable environment and essential to the well-being of the American people;"

Second, in Section 3(b), following the words "present and future generations" (line 6), we would add this phrase:

"foster and encourage private enterprise in the orderly and economic development of domestic mineral resources and reserves;"

This language is taken directly from Public Law 91-631 which declares this policy to be in the national interest. S. 424 is an ideal vehicle to promote this national policy, and should not overlook the opportunity to do so.

We further recommend that Section 5, dealing with land use planning, recognize that energy resource development is essential to the nation's economic and defense posture. The growing reliance on less-secure foreign energy sources, aggravated

by the present energy crisis, is not in the public interest. Our survival as a leading nation may well depend upon the early implementation of a wise plan for domestic energy development.

We recommend that a new item be included in Section 5(b), which would call upon the Secretary to:

"consider the nation's requirements for a continuous and reliable supply of energy resources for national security and economic well-being"

These modifications would make it clear that the Congress, in addition to being concerned about the protection of public lands, recognizes that our national security, which includes economic and consumer security, requires timely development of our domestic mineral resources.

Revocation/Suspension of Leases

We are particularly concerned with the provision in Section 6(a)(2) authorizing revocation or suspension of leases.

It has long been a requirement of federal oil and gas leases that the lessee abide by all laws and regulations. We believe this is an appropriate requirement. Typically, state and federal air and water quality laws and regulations provide for penalties ranging from \$1,000 to \$50,000 for a single incident or day of violation, often coupled with injunctive relief against

the alleged violator. These penalties and those for violation of other regulations are adequate, in our opinion, to insure that a federal lessee will exert every effort to comply with environmental standards and the regulations of the Secretary.

We can understand that more severe penalties, perhaps including suspension or revocation of the lease, might be required in cases where there is evidence of frequent and deliberate violation of laws and regulations. However, such a penalty should not be applied, as it could under this provision in the bill, to a single unintentional incident. The possibility of loss of a lease through forfeiture as a result of one such incident would make any prudent person hesitant to make the substantial investment required to explore and develop the property. Considering our current energy supply problems, now is not an appropriate time to inhibit energy industry investment with the specter of such an unnecessarily harsh penalty.

It also appears that, if a leaseholder were found to be in violation of a particular law or regulation, this section would permit the Secretary to revoke or suspend not only the particular lease involved in the violation, but other leases held by the same individual or organization. It might even be interpreted to permit suspension or revocation if the leaseholder,

in the course of conducting other business activities on private lands, violated a particular state or federal air or water quality standard.

We are also concerned about the procedures for revocation or suspension under this provision. As Section 6(a)(2) now reads, revocation or suspension would be by administrative action. As we have already pointed out, the loss of a valuable oil or gas lease is a very serious matter and the consequences of revocation or suspension could be financially catastrophic to a lessee.

It is because of these consequences that existing law, most notably the Mineral Leasing Act of 1920, provides for revocation or suspension of producing oil and gas leases, or leases where valuable oil and gas deposits are known to exist, only after proceedings in a district court. We note that Section 6(a) states that management shall be in accordance with the provisions of S. 424 "except to the extent that other applicable laws provides otherwise." We believe it would be useful to repeat this point in Section 6(a)(2).

For the reasons outlined above, we recommend that the section be modified as follows:

"(2) inserting in permits, licenses, or other authorization to use, occupy or develop the national resource lands provision authorizing revocation or suspension of such authorization covering land upon which there has been repeated and willful violations of any regulations issued by the Secretary under this Act or upon repeated and willful violations on such land of any applicable State or Federal air or water quality standard and implementation plan, Provided, that where other applicable law contains specific provisions covering suspension, revocation or cancellation of a permit, license or other authorization to use, occupy or develop the national resource lands, the specific provisions of such law shall prevail."
 (additions to existing language are underlined)

Conveyances of Title to Public Lands

We are additionally concerned with Section 8 of the bill, and feel there are improvements which could be made in both subsections.

Section 8(a) provides for the reservation of all minerals upon conveyance of title to national resource lands, but directs the Secretary to prohibit mineral development if it would "interfere" with the "appropriate use or development" of such lands. No definition of the kind of use which would totally preclude mineral use is contained in Section 8(a) or elsewhere in the bill.

One of the basic precepts of public lands management, we believe, should be the balanced multiple use of such lands.

Section 8(a) as proposed is confusing because it appears to negate this and other management principles stated in previous portions of the bill.

We therefore recommend that Section 8(a) be deleted from S. 424 in its entirety, and that it be replaced by the following, taken from Section 9(a) of S. 2401 as introduced during the last Congress:

"(a) Except where the Secretary finds that
(1) there are no mineral values in the land or
(2) reservation of the mineral rights in the United States would interfere with or preclude appropriate development of the land and that such development is a more beneficial use of the land than mineral development, all conveyances of title issued by the Secretary under this Act shall reserve to the United States all mineral deposits in the lands, together with the right to prospect for, mine, and remove the deposits under applicable law and such regulations as the Secretary may prescribe."

Such substitution, we believe, would more adequately reflect the goals of multiple use and sound land management set forth in the legislation.

Section 8(b) prohibits the Secretary from making sales of land under the Act which are not "in conformity with State and local land use plans, programs, zoning and regulations." It further requires the Secretary to notify the Governor and heads

of the political subdivisions within which the land is located 90 days prior to offering land for sale under the Act to afford them an opportunity for the adoption of zoning or other regulations concerning the use of such land prior to its sale.

Although we believe the Secretary should be required to give careful consideration to the consistency of the use contemplated by a proposed disposition of federal lands with state and local land use plans, we do not feel it is desirable to provide for what is tantamount to a veto power by local government units over the future use of such lands.

The emerging energy shortage may, in the overall national interest, require the development of such lands for the production of oil, gas and other minerals even though groups with local orientations may oppose such development. The same considerations may exist with respect to the development of refinery and electric generating sites.

Accordingly, we would urge that Section 8(b) be amended so that the sentence beginning on line 25 of page 9 would read as follows:

"The Secretary shall not make sales of land under this Act which would not be in conformity with State and local land use plans, programs, zoning and regulations unless such sales are required by the overall national interest"
(additions to existing language are underlined)

We would further urge that the remainder of Section 8(b), beginning with the sentence starting on line 3 of page 10, be deleted. This amendment would provide a mechanism to insure that the national interest is protected in all sales of federal lands.

Executive Withdrawals

Finally, we are concerned that the legislation now before you fails to touch on what we regard as one of the most important aspects of public lands management, the issue of executive withdrawals.

We believe it is a deficiency in the existing system of land management that existing laws permit large areas to be set aside or withdrawn by Executive Order for single-purpose or limited-purpose use.

Specifically, we urge that S. 424 be amended to provide that the executive branch be required to obtain Congressional approval for the withdrawal of tracts of public lands in excess of 5,000 acres. We also recommend that executive withdrawals be limited to a period of 10 years, that there be a provision for thorough review of all existing withdrawals, and that all executive withdrawal power be vested in the Secretary of the Interior.

We believe that an improved system for executive branch withdrawals and a careful review of the viability of existing withdrawals are essential prerequisites to the kind of meaningful public land use planning which S. 424 seeks to achieve.

Thank you for this opportunity to present our views on this important legislation.

[Subsequent to the hearing, Mr. Chandler submitted a supplemental statement which follows:]

AMERICAN PETROLEUM INSTITUTE,
Washington, D.C., March 27, 1973.

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

DEAR SENATOR HASKELL: Thank you again for the kind reception I received in my March 1 testimony before your Subcommittee on S. 424, the National Resource Lands Management Act of 1973.

My interest, and that of the associations on whose behalf I testified, continues in this subject, and we are hopeful that my testimony, and the supplemental statement which accompanies this letter, will be of assistance to you in your task of developing meaningful legislation in this area.

The supplemental statement, which is submitted for the record by the American Petroleum Institute, Mid-Continent Oil and Gas Association, Rocky Mountain Oil and Gas Association and Western Oil and Gas Association, centers on S. 1041 and one critical amendment which has been proposed to S. 424. Because S. 1041 had not been introduced nor the amendment proposed prior to March 1, we were not able to comment on them at that time.

If there is any way in which I can be a further assistance to you, please do not hesitate to contact me.

Very truly yours,

COLLIS P. CHANDLER, Jr.,
*Chairman, Onshore Subcommittee,
Committee on Exploration.*

SUPPLEMENTAL STATEMENT OF AMERICAN PETROLEUM INSTITUTE, MID-CONTINENT OIL AND GAS ASSOCIATION, ROCKY MOUNTAIN OIL AND GAS ASSOCIATION, AND WESTERN OIL AND GAS ASSOCIATION

The American Petroleum Institute, Mid-Continent Oil and Gas Association, Rocky Mountain Oil and Gas Association and Western Oil and Gas Association appreciate this opportunity to submit for the record our comments on S. 1041, the proposed National Resource Lands Management Act of 1973, and to offer our views on one critical amendment which has been proposed to S. 424.

We believe that S. 1041, as submitted by the Department of the Interior, retains many of the good features of its predecessor in the 92nd Congress, S. 2401, and of S. 424. In some ways, we feel it is an improvement over these other bills.

We are concerned, however, that although S. 1041 sets out to accomplish the goal of multiple use of the national resource lands, it would, in fact, hinder the achievement of that goal. We refer specifically to the management principles outlined in Section 101. S. 424 also mandates this management concept. We believe that neither S. 1041 nor S. 424 permits the Secretary to fully implement the principle of multiple use, for both give overriding priority to environmental concerns to the detriment of equally vital economic needs, such as the need for energy resource development.

To us, management with the principle of multiple use requires that equal consideration be given to, and balance be achieved among, all the nation's critical needs, including environmental concerns, economic needs and national security requirements.

In order for the concept of multiple use to be fully implemented under S. 1041, we suggest that the "Declaration of Policy" (Section 3) of S. 424 be retained instead of S. 1041's Section 2, and that two amendments be made to that declaration:

First, reword Section 3(a)(2) to read:

"Sound ecological and economic management of these lands is vital to the maintenance of a liveable environment and essential to the well-being of the American people;"

Second, in Section 3(b), following the words "present and future generations" (line 6), add this phrase:

"foster and encourage private enterprise in the orderly and economic development of domestic mineral resources and reserves;"

The language of this second amendment comes directly from Public Law 91-631, which declares this policy to be in the national interest. Legislation such as S. 1041 is an excellent vehicle to restate this national policy and should not overlook the opportunity to do so.

The amendments we have just suggested will assist the Secretary in his task of managing the national resource lands, but we feel additional attention must be given in this legislation to the need for energy—a need which is vital to every facet of American life.

We are now facing demands for energy of such proportions that our needs of even a quarter century ago are dwarfed. Because much of the nation's remaining energy resources reserves lie beneath the national resource lands, it is crucial that the critical need for energy be given proper consideration in the management of these lands. We therefore urge that Section 103(b) be amended to include a new item which would call upon the Secretary to:

"consider the nation's requirements for a continuous and reliable supply of energy resources for national security and economic well-being."

In our statement of March 1 on S. 224, we called the Committee's attention to these three areas, and five others, where we felt modifications of the legislation could provide a more realistic, more balanced system for management of the national resource lands.

We are pleased to note that three of the amendments suggested at that time were either included or the need for them obviated in S. 1041. Most particularly, we approve of the definition of multiple use contained in S. 1041, which retains the original language of S. 2401.

We feel we must reiterate, however, our suggestions regarding the two remaining areas of concern which we have not yet addressed in this statement.

First, we have the same objections to Section 101(c) of this bill as we had to Section 6(a) (2) of S. 424. In the statement of March 1, we detailed our concern with this provision which authorizes the harsh penalty of revocation or suspension of a lease for a single, accidental violation of regulations which are already penalized by other statutes. We offered the following language as an amendment which we believe is as necessary and appropriate to S. 1041 as to S. 424:

"(c) insert in permits, licenses or other authorizations to use, occupy or develop the national resource lands provision authorizing revocation or suspension of *such authorization covering land upon which there have been repeated and willful violations* of any regulations issued by the Secretary under this Act or upon *repeated and willful violations on such land* of any applicable State or Federal air or water quality standards and implementation plans, *Provided that where other applicable law contains specific provisions concerning suspension, revocation or cancellation of a permit, license or other authorization to use, occupy or develop the national resource lands, the specific provisions of such law shall prevail.*" (Additions to existing language are in *italics*.)

Second and finally, we recommend that provisions covering withdrawals be added to the legislation. In our earlier statement, we urged that the Committee consider writing in a new set of ground rules for withdrawals that could give Congress greater control over the extent of withdrawals and which would provide for a review of existing withdrawals. We still believe these new ground rules are necessary and appropriate for consideration in this legislation.

Our most important objection to current withdrawal procedures is that they permit large areas to be withdrawn from multiple use for single-purpose or limited-purpose use without the consent of the Congress. We note that an amendment proposed to S. 424 by a witness at the Committee's hearings on March 1 calls for withdrawing an additional 2.6 million acres from multiple use immediately and perhaps millions more later with no requirement that the present and potential mineral values of this acreage be determined before the withdrawal is made.

We believe that the magnitude of the nation's energy needs requires that access be permitted to important deposits of energy resources, both known and undiscovered. This means retaining as much land as possible within a management system based on the principle of multiple use. For this reason we urge that amendments such as that noted above be rejected, and that that Committee review and amend the entire withdrawal system.

Thank you for this opportunity to present our additional comments on this important legislation.

Senator HASKELL. I don't know whether Mr. Cavanaugh or Mr. Hall would like to follow. Whichever one of you prefers to speak next go ahead. Please summarize your testimony.

STATEMENT OF THOMAS J. CAVANAUGH, FALLS CHURCH, VA.

Mr. CAVANAUGH. My name is Thomas Cavanaugh. I am here representing the American National Cattlemen's Association, National Wool Growers Association and the Public Lands Council.

We are addressing our remarks to S. 424 because, just as the chairman, we haven't had an opportunity to review the administration bill as of this time. To the extent that S. 424 would grant certain limited additional authority to the Secretary, we do endorse it. We can agree, for example, that the Secretary must be granted some additional enforcement authority such as that provided in section 11. We can agree, also, that he needs some additional authority or some authority to acquire access across public lands, but we do not agree that he ought to have the general acquisition authority that appears in the bill.

We believe that this is much too broad and while it may make the management job somewhat easier—

Senator HASKELL. Excuse me, what section is that? Is it section 9, as Senator Hatfield tells me?

Mr. CAVANAUGH. Senator, 9, I believe it is. I interpret the section at least to give the Secretary acquisition to acquire by donation and purchase and exchange, but also I would interpret it to perhaps give him authority to acquire it by condemnation.

It provides for the acquisition of access for the public across private lands in order to enable them to get to the public lands, but also acquisition for lands needed for the management of national resource lands. That is a quote.

We believe this is much too broad, that it is not an authority that is needed. That in this respect in management of lands the Government is acting in a proprietary capacity. It may make it easier to manage the lands but we think it is too broad, and if necessary this could be dealt with more specific legislation in the future if such authority really appears to be necessary.

We also agree that the authority to manage the national resource lands should extend to the prevention of use of those lands in violation of other laws and regulations relating to the general public welfare. However, the transgressions which may lead to cancellation or suspension of a permit, license or lease should be attributable directly to the use of the public lands for which the permit, license or lease has been issued. We do not find any such limitation in the bill and we make a suggestion in our written statement for some language which would do this.

This bill deals with both management and disposal and it does so in such terminology that it presents to us, at least, a very serious question as to whether or not all or at least the major portion of the existing management and disposal laws would not be repealed by its enactment.

This morning Senator McClure alluded to the Desert Land Act. I think this bill could be interpreted to repeal the Desert Land Act in its entirety. Undoubtedly, many of the laws that are now in existence

should be repealed. On the other hand, there are some that have worked well and would be compatible with S. 424 and should be retained.

Of course, of particular interest to the livestock industry is the Taylor Grazing Act which recognizes public use of the grazing land through the use of permits and leases. We are fearful that this act could be interpreted in its present form of this bill to repeal parts or all of that Taylor Grazing Act. We feel very strongly that the Taylor Grazing Act should be retained.

Therefore, we feel strongly that S. 424 should be amended by adding thereto a section which would not only specify those existing laws which it would repeal, but would also make it clear that only those laws specifically repealed would be affected by its enactment, and I am pleased to note from the Secretary's testimony that there has been an attempt to do this in the administration's bill which was sent up yesterday. I think this is quite essential.

Although S. 424 directs national resource lands be managed under principles of multiple use it would leave intact the authority of the Secretary to withdraw the land under his jurisdiction for single purposes. We believe it presents an opportunity to limit the withdrawal authority which can be and has been abused in the past. We suggest that withdrawals in excess of 5,000 acres be subject to congressional approval and further suggest that withdrawals be limited in time not to exceed 10 years after which the Secretary would be required to review the withdrawal and rejustify it and terminate it unless he found justification for its continuance. Also, that the segregated effort of an agency request for a withdrawal should be limited to 6 months. If not acted upon favorably by the Secretary and/or Congress in that time, the segregated effect should terminate. The cancellations or suspensions of permit license or lease of public lands can have very serious economic consequences.

The authority to cancel for the violation of a Federal or State air and water quality standard and implementation plans, we believe should be exercised by the Secretary only after a finding of a violation under applicable law by the State or Federal tribunal having jurisdiction to make such a finding. Perhaps it is not intended in this bill as written, but it seems to me that the door is open for the Secretary to make an independent finding on his own of such violation, irrespective of any finding or whether or not there has been a finding by another tribunal.

We are also committed to the principle that the United States should receive reasonable payment for the use of any or all of its public lands, or their resources. With increased demands on the public lands for both consumptive and nonconsumptive uses, management costs have increased. At least a part of this cost should be recovered from the so-called nonconsumptive users, since costs are incurred for the benefit of such users.

* Those who use the public lands for commercial purposes already pay fair market value for that use. Studies have demonstrated that fair market value is and should not necessarily provide the greatest dollar return. The framework with which specific legislation for the disposition of a public land commodity is to be developed should recognize all of the factors which may properly effect the pricing policy for that commodity. Further, we believe that there is no justification for com-

mitting pricing policies solely to administrative discretion, as S. 424 would do. Experience demonstrates that such broad directives as to pricing lead only to interminable disagreements. We believe that such disagreements should be avoided in the future through legislation which would establish equitable pricing formulas for each public land use.

We also suggest that this bill might be amended to provide a more meaningful review of Federal agency decisions. At the present time the review of the secretarial decisions, the decision of the Secretary on a matter permitted to his discretion is confined largely to a review of the law. We suggest this would be an opportunity to confer upon district courts the jurisdiction to try cases challenging agencies' actions upon the merits as well as the law. *

Multiple use should give consideration to all possible uses and that the maximum number of compatible uses should be permitted, recognizing that in some areas the maximum benefit may be realized through one particular use with which other uses may be incompatible.

Outdoor recreation is a use of the public lands. However, it is only one of many legitimate uses and one which, in some instances, can and does have a devastating effect upon the land and should, like other uses, be controlled.

It seems to us that the emphasis placed upon this single use in sections 2, 3, and 5 of the bill, is inconsistent with the concept of multiple use. Those sections should be redrafted to make it a general policy that no single use can be considered a dominant, or priority use.

As this bill is now written it delegates to the Secretary virtually unlimited discretionary power to manage the public lands under the most general of congressional guidelines.

Too often, the abdication of congressional authority over the public lands has resulted in creating more problems than are solved.

We believe that S. 424 offers a vehicle for the development of a modern body of public land law. But, in order to accomplish this, the bill must be revised to provide more specific guidelines to limit the authority delegated along the lines we have suggested and to leave the door open to additional congressional action fixing specific policy for specific public land uses, both consumptive and nonconsumptive.

Thank you very much, Mr. Chairman. I appreciate the fact that you announced the record would be open so that we might, and others might, comment additionally, if we desire to do so upon the administration's proposal.

Senator HASKELL. That is correct, and it is possible if there is enough controversy, as I said, we may have another hearing.

You have made certain requests for changes. Would you mind submitting for the record your suggested statutory language with the reason why you suggest these changes.

Mr. CAVANAUGH. I would be very happy to do so.

Senator HASKELL. Thank you very much.

I should make an observation. You heard Mr. Brown, representing the Department, answer to my question concerning repealers, suggested in the administration's bill. Should we adopt those repealers we want to be sure we would not repeal any substantive law. I am sure you heard he is going to submit a memorandum concerning those repealers and why he does not think they affect substantive law. That

analysis will be available to you as soon as it gets in here to the committee.

Mr. CAVANAUGH. We appreciate that. I do think this is an essential thing, Senator Haskell, because I think a good public land lawyer could take a bill like this and find it would repeal a lot, and I think it is essential that it be specific.

Senator HASKELL. You will be specific yourself in your memorandum.

Mr. CAVANAUGH. Yes, sir.

Senator HASKELL. Thank you. I do not have any further questions.

Senator Hatfield.

Senator HATFIELD. No. Mr. Chairman, I have no questions of Mr. Cavanaugh. I appreciate very much your testimony this morning.

[The prepared statement of Mr. Cavanaugh and material requested by Senator Haskell follows:]

JOINT STATEMENT
OF THE
AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION
NATIONAL WOOL GROWERS ASSOCIATION
AND
THE PUBLIC LANDS COUNCIL
ON
S. 424
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS
OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U. S. SENATE
MARCH 1, 1973

We are pleased to have this opportunity to appear before the Subcommittee on Public Lands for the purpose of commenting on S.424, the proposed National Resource Lands Management Act of 1973.

There has long been a need for a major revision of those laws governing the management and disposal of our public lands. This need was recognized by the Congress in 1964 when it authorized the establishment of a Commission for the purpose of studying the public land laws and to make recommendations for the future management of these lands.

A pronouncement by Congress of the general policies and guidelines for the future management of the public lands is a necessary and first step in the process of restructuring the public land laws.

S. 424, of course, deals only with those lands under the jurisdiction of the Bureau of Land Management in the Department of the Interior.

To the extent that the bill would grant certain additional limited authority to the Secretary of the Interior, we are pleased to endorse it. The general concept of the bill would provide Congressional direction and policy guidelines for the management of the lands under the jurisdiction of the Bureau of Land Management. We have some serious reservations about the legislation.

We can agree, for example, that the Secretary must be granted additional enforcement authority such as that provided in Section II * of the bill. [During the past few years some areas of public land have become subject to intensive use, primarily recreational, which cannot be controlled by local enforcement authorities. These areas are likely to increase in number and if they are to be managed and preserved so that the majority of the users may obtain the maximum benefit from their use, then the Secretary probably needs the authority to regulate the use and the means to enforce his regulations.]

We do not agree that the Secretary should have general acquisition authority. In Section 9, we interpret the language to give the authority to condemn.

We can appreciate the need to provide access to the public lands for the general public and we have no objection to giving the Secretary some authority he needs to provide such access, so long as the authority is exercised in a reasonable manner and so long as title to the access lands would run to the government in a manner which would permit control of the access routes when necessary. There are times when, for example, the hazard of fire is so great that public access across both private and public lands should be restricted. In order to avoid any implication that the acquisition of access routes

across private lands would result in an uncontrolled dedication of such route to the general public, we suggest that the words "by the general public" be deleted from the first sentence of subsection 9(a).

Generally speaking, the condemnation authority of the government * is exercised in its sovereign capacity - to provide for the public convenience and necessity. We can agree, as we have done, that the acquisition of access to public lands for the benefit of the public through condemnation is a legitimate exercise of sovereign authority. However, in most other respects, the government acts in a proprietorial capacity in the management of the public lands, just as a private landowner does. And, while it may be more convenient to the managing agency, and, perhaps make its job easier, we fail to see where the public convenience and necessity is served by granting the managing agency the broad authority to acquire lands or interests therein "needed for the management of national resource lands" as is done in Section 9 (a). We do not believe that the authority to condemn is either a necessary or proper tool to be conferred upon the government or its agents when operating in a merely proprietorial capacity as opposed to a sovereign capacity. We, therefore, most strongly object to the extension of the power to condemn contained in this section of the bill beyond that necessary to provide access to the public lands.

It goes almost without saying that the Secretary should have the authority to control the use of lands under permit, license or lease even to the extent of canceling such permit, license or lease in the event of a violation of the terms and conditions thereof. The authority to control the use of national resource land should extend to the prevention of the use of those lands in violation of other laws and regulations which relate to the general public welfare. However, the transgression which may lead to the

cancellation or suspension of a permit, license or lease should be attributable directly to the use of the public lands for which the permit, license or lease has been issued. We do not find any such limitation in subsection (a)(2) of Section 6 in the bill. We would suggest that this subsection be revised to read in the last portion thereof as follows:

"Or upon violation of any State or Federal air or water quality standard and implementation plans applicable to the lands subject to such permit, license, or other authorization for the use, occupancy or development thereof."

We appreciate the desire of those who drafted S. 424 to afford the Secretary as much flexibility as possible in his management of the lands under his jurisdiction. However, we also foresee danger in the broad brush approach taken in the bill.

There are, for example, a number of public land laws now in existence. Some of these are disposal laws while some deal, as well, with management.

S. 424 deals with both management and disposal and does so in such terminology that it presents a very serious question as to whether or not all existing management and disposal laws would not be repealed by its enactment.

Undoubtedly, many of the public land laws now in existence should be repealed. On the other hand there are some which have for the most part worked well, which would be compatible with S. 424 and should be retained. Of particular interest to the livestock industry is the Taylor Grazing Act. This Act, recognizes uses of the public lands and it establishes a system for the control of that use through the issuance of permits and leases. We believe

strongly that the Taylor Grazing Act should be retained and that it can be retained without doing violence to the general principles and objectives for public land management enunciated in S. 424.

However, we can foresee a very real possibility that S. 424 could, at some future time, be interpreted to repeal the Taylor Grazing Act. We, therefore, strongly urge that S. 424 be amended by adding thereto a section which would not only specify those existing laws which it would repeal, but which would also make it clear that only those laws specifically repealed would be affected by its enactment.

Although S. 424 directs that the national resource lands be managed under principles of multiple use, it would leave intact the authority of the Secretary to withdraw the lands under his jurisdiction for single purposes.

The withdrawal authority can be a useful tool for the protection of public lands which might otherwise be subject to appropriation under existing disposal laws, or which might be subject to depredation which cannot be controlled under available authority necessitating Congressional action. The requirements of other Federal agencies can sometimes be met only by the withdrawal of specific lands for the use of such agency.

However, the withdrawal authority can be abused and, for this reason, reasonable limits should be placed upon the authority. S. 424 affords an opportunity for the imposition of such reasonable limitations.

We suggest that withdrawals in excess of 5,000 acres be subject to Congressional approval. We further suggest that withdrawals be limited in time, not to exceed ten years, after which the Secretary would be required to review the withdrawal and to terminate it, unless he found justification for its continuance.

The segregative effect of an agency request for a withdrawal should be limited to six months and, if not acted upon favorably by the Secretary and/or Congress within that time, the segregative effect should terminate.

The cancellation or suspension of a permit, license or lease to public lands can have serious economic consequences. Accordingly the competency of the Secretary exists to determine whether or not his own regulations or the conditions of a permit, license or lease issued by him have been violated. We believe, however, that the authority to cancel or suspend a permit, license or lease for violation of State or Federal air or water quality standards and implementation plans, should be exercised by the Secretary only after a finding of a violation under applicable law by the State or Federal tribunal having jurisdiction to make such a finding.

We are committed to the principle that the United States should receive reasonable payment for the use of any or all of its public lands, or their resources. With increased demands on the public lands for both consumptive and non-consumptive uses, management costs have increased. At least a part of this cost should be recovered from the so-called non-consumptive users, since costs are incurred for the benefit of such users.

Those who use the public lands for commercial purposes already pay fair market value for that use. Studies have demonstrated that fair market value is and should not necessarily provide the greatest dollar return. The framework with which specific legislation for the disposition of a public land commodity is to be developed should recognize all of the factors which may properly effect the pricing policy for that commodity. Further, we believe that there is no justification for committing pricing policies solely to administrative discretion, as S. 424 would do. Experience demonstrates that such

broad directives as to pricing lead only to interminable disagreements. We believe that such disagreements should be avoided in the future through legislation which would establish equitable pricing formulas for each public land use.

S. 424 provides for public participation in the agency decision making process. Such a provision is most commendable and we endorse it. In addition, we would hope that the bill would be amended to fill a void which has long existed by providing for a more meaningful review of Federal land management agency decisions. To accomplish this, we suggest that specific jurisdiction be conferred upon the district courts to try cases which challenge agency action upon the merits as well as upon the law.

As we have stated, we support the principle of multiple use. Multiple use, we believe, should mean that the land use planning process gives consideration to all possible uses and that the maximum number of compatible uses should be permitted, recognizing that in some areas the maximum benefit may be realized through one particular use with which other uses may be incompatible.

Outdoor recreation is a use of the public lands. However, it is only one of many legitimate uses and one which, in some instances, can and does have a devastating effect upon the land and should, like other uses, be controlled.

It seems to us that the emphasis placed upon this single use in Sections 2, 3 and 5 of the bill, is inconsistent with the concept of multiple use. Those sections should be redrafted to make it a general policy that no single use can be considered a dominant, or priority use.

As this bill is now written it delegates to the Secretary of the Interior virtually unlimited discretionary power to manage the public lands under the most general of Congressional guidelines.

Too often, the abdication of Congressional authority over the public lands has resulted in creating more problems than were solved.

We believe that S. 424 offers a vehicle for the development of a modern body of public land law. But, in order to accomplish this, the bill must be revised to provide more specific guidelines, to limit the authority delegated along the lines we have suggested and to leave the door open to additional Congressional action fixing specific policy for specific public land uses, both consumptive and non-consumptive.

PUBLIC LANDS COUNCIL,
Falls Church, Va., March 15, 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: At the conclusion of my testimony on S. 424 at the hearing held by your subcommittee on March 1, you requested that we supply the subcommittee with language which, if incorporated in the bill, would implement some of the suggestions made in our testimony. We hope that the suggestions which follow may be of some assistance to the subcommittee.

We objected to the emphasis placed upon a single use, recreation, in the definition of "multiple use". To meet this objection, we suggest that the language beginning on line 11 and ending on line 15 on page 2 of the printed bill which reads as follows, be deleted:

"... a combination of resource uses that takes into account long term needs of future generations for recreation, scenic values and nonrenewable resources and the achievement of diversity and balance for renewable resources; and ..."

We also stated that we did not believe pricing policy for public land resources should be a matter of administrative discretion and that any language in the bill regarding pricing should be of sufficient flexibility to permit further consideration by Congress of pricing policy for specific public land commodities.

Section 3 of the bill is supposed to be a declaration of general policy. However, sub-section 3(b) departs from the declaration of policy and becomes a directive to the Secretary to, among other things, "assure payment of fair market value by users of such lands."

As presently written, we believe that subsection 3(b) commits pricing solely to the discretion of the Secretary. To conform with the intent of the entire section and to leave the door open to further action by Congress, if appropriate, as to the several matters covered in subsection 3(b), we suggest that the subsection be amended by revising the first three lines appearing on page four of the printed bill as follows:

"(b) that the national resource lands shall be managed under principles of multiple use and sustained yield in a manner which will. . . ."

The change in subsection 3(b) which we suggest would reserve to Congress a measure of future control over public land administration rather than committing virtually all control under only the most general guidelines to administrative discretion.

We also believe that the language on lines 10 and 11 of page 4 in section 3(b) which now reads "assure payment of fair market value by users of such lands" should be changed to read: "assure payment of fair market value to users of such lands, recognizing that fair market value need not represent the greatest dollar return for such use."

As now written, there is insufficient flexibility in the section to permit recognition of some of the public benefits which flow from some uses, particularly non-consumptive uses, and which would dictate that only nominal charges be made for these uses.

In keeping with the suggestion made in our testimony, we suggest further that Subsection 6(a)(2) on pages 6 and 7 of the bill be revised to read:

"(2) inserting in permits, licenses, or other authorizations to use, occupy, or develop national resource lands provision authorizing suspension or revocation upon the violation of any regulation issued by the Secretary relative to the use, occupancy or development of such lands or upon a finding by a court of competent jurisdiction that the use, occupancy or development of such lands under such permit, license or other authorization to use has resulted in the violation of a state or Federal air or water quality standard and implementation plan."

We also believe that Section 9(a) on page 10 should be revised to read as follows:

"SEC. 9. ACQUISITION OF LAND.—(a) The Secretary is authorized to acquire by purchase, exchange or donation, lands or interests in lands needed for the management of the natural resource lands; he is further authorized to acquire by purchase, exchange, donation, or through the exercise of the power of eminent domain, lands needed to provide access to national resource lands, provided, that the title to such lands or interests in lands so acquired shall run to the United States of America."

We also suggest the addition of a new subsection (b) to Section 15 which would read:

"(b) Any person who has a direct interest in and is adversely affected by a final administrative decision of the Secretary affecting the administration of the national resource lands under this Act or any other law respecting the management or disposition of the national resource lands or any interest therein shall be entitled to a judicial review of such decision. An action seeking review of any such decision may be brought in the district court of the United States in and for the district wherein the Secretary resides or in and for the district wherein the lands involved are situate and the court having jurisdiction in such action may review the decision of the Secretary upon its merits as well as upon the law."

Also, we would like to suggest the addition of a new section, where appropriate, which would contain the following language:

"SEC. —. WITHDRAWALS.—(a) The Secretary of the Interior is authorized to withdraw for public purposes under Federal management lands under his jurisdiction not exceeding in the aggregate five thousand acres and to set aside such lands for a specified government use or uses. The Secretary is further authorized, upon the application of the head of any other agency, to similarly withdraw or set aside land for administration under the jurisdiction of the requesting agency. A withdrawal shall have the effect of excluding the public from all entry upon or use of the land specified in the withdrawal order.

"(b) Withdrawals accomplished by the Secretary under the provisions of this Section shall be limited to a period not exceeding ten years, Provided, however, that, if the Secretary finds a continuing need and justification for such withdrawal, he may renew such withdrawals for successive periods not exceeding ten years.

"(c) The Congress reserves to itself authority to withdraw lands (1) which exceed in the aggregate five thousand acres and (2) for periods in excess of ten years.

"(d) Upon notation on the land office records that an application has been made for a proposed withdrawal, the land affected thereby shall be segregated and restricted from public use as requested in the application for a period of six months, Provided, that, if the Secretary has not issued an order withdrawing such lands in accordance with the application within six months from the date of the notation of the application on the land office records, the segregative effect of the application and notice of proposed withdrawal shall terminate.

"(e) Notwithstanding any other law, from and after the effective date of this Act, withdrawals of national resource lands shall be made only in accordance with the terms and conditions of this Act."

We sincerely hope that these suggestions may be of some benefit to the subcommittee.

Sincerely,

THOMAS J. CAVANAUGH,
General Counsel.

Senator HASKELL. Mr. Hall, will you do the same, summarize your testimony?

Mr. HALL. Right.

STATEMENT OF JOHN F. HALL, NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. HALL. I am John F. Hall, vice president for forestry affairs of the National Forest Products Association, headquartered in Washington, D.C. Our association is a federation of 25 regional and wood products associations representing the forest products industry throughout the Nation.

The forest products industry supports legislation that provides the means for effective and productive management of the federally owned lands. In our opinion, S. 424 is not such a bill. It would establish appropriate congressional direction to insure that all resources found on national resource lands are properly recognized and fully utilized

to meet an ever-increasing public demand of goods and services that these public lands can and should supply.

Throughout S. 424, special recognition is accorded environmental, recreational, and scenic values, but the extremely valuable and critically important grass, mineral, timber, and water values appeal only as resource values.

S. 424 is an open invitation to litigation which would thwart BLM programs and policies. Highly subjective terms such as "sound ecological management," "maintenance of a livable environment," "uncontrolled use or development," "needless degradation of the environment," "proper land use," and "environmental integrity" must be replaced by language which is specific in the objectives that the agency is charged with reaching.

The definition of "multiple use" in section 2(c) differs in language but not in intent or scope from the definition in the 1960 Multiple-Use Sustained-Yield Act applicable to national forest lands. We suggest that the definition in the 1960 Multiple Use Act be used in place of the proposed definition in this bill to reduce uncertainty in the interpretation of policy for federally owned lands.

The concept of "areas of critical environmental concern," defined in section 2(e) is not needed. It is unlikely that any portion of the national resource lands would be subject to uncontrolled development by the agency entrusted with their care.

Section 3(a)(2) declares that "sound ecological management" is necessary for the "maintenance of a livable environment." These phrases invite litigation. There is a wide variety of opinion regarding what is sound management. The agency, not the courts, should set the standards.

The enumeration of various resources to protect, preserve, and provide for in section 3(b) fails to mention the timber, range, water, and mineral resources. The paragraph is an invitation to litigation which would stymie BLM programs. The entire paragraph is unnecessary if BLM is to administer the lands under a multiple-use and sustained-yield concept.

The inventory required in section 4 is long overdue. In addition to an inventory of outdoor recreation and scenic values, other natural resources such as timber, minerals, range, water, and soil should be specifically mentioned for inventory.

In the land-use plans required under section 5(a), timber management, range management, and other resource goals should be included as part of the planning program in addition to the outdoor recreation plan.

In section 5(b), we suggest the following amendments to the seven items to be considered by the Secretary for developing and maintaining land-use plans:

Item (2) concerning designation of areas of critical environmental concern should be deleted. Fragile or historic lands and areas of natural hazard could be listed as deserving specific designation in the land-use planning process.

Item (5) should also be deleted. It requires an evaluation of factors far outside the scope of public land managers, such as the productive capacity of adjacent or distant private or other Federal lands and the commodities available in the international trade.

If item (6) is to require BLM to "weigh long-term public benefits, including those of outdoor recreation and scenic values," then it should also require that the long-term benefits of an adequate supply of commodities to meet needs of housing, industry, and transportation be weighed against short-term local or individual benefits.

Section 6(a) (1) states that BLM management shall include "requiring land reclamation as a condition of use, and requiring performance bonds guaranteeing such reclamation of any person permitted to engage in extractive of other activity likely to entail significant disturbance to or alteration of the land."

Timber harvest is not an extractive or other activity resulting in significant disturbance to or alteration of the land. Replanting the harvested area is commonly the responsibility of the landowner and is quite different from reclaiming disturbed or altered land.

The provision in section 6(a) (2) requiring revocation or suspension of contract, permits, and licenses upon violation of State or Federal air or water quality standards should be deleted. There already are State penalties for the violation of State laws. Is it necessary that the Federal Government be required to determine when a State law has been violated? Further, the proposed language might make BLM liable to the State for damages incurred by the permittee if BLM fails to revoke or suspend a contract and there has been violation of State law.

The standard of "needless degradation of the environment," in section 7(a) is another undefined term inviting judicial participation in BLM's programs.

The limitation on sale of land imposed in section 7(a) (1) and 7(a) (2) are too restrictive. These lands should move more freely into the private sector.

The conditions on conveyance required by sections 8(a) and 8(b) should not apply in exchanges of similar properties such as forest land. The major private forest landowners have an active land exchange program underway with each other and with Federal and State forest land administering agencies. Such exchanges are necessary to block up ownerships in efficient management units. This effort should not be hindered by restriction on title conveyance.

The concept of "environmental integrity" in section 8(b) is subjective and should not be adopted as a standard.

It apparently is not the intent of S. 424 to change the current law governing funding for management and development for the revested Oregon and California railroad grant lands and Coos Bay wagon road lands. The existing procedure whereby 50 percent of the receipts are available for management and development has enabled BLM administrators to develop long-range management programs.

In this regard, section 9(d) should make clear that any O and C lands, or private lands acquired in exchange for O and C lands, which later become administered by the Secretary of Agriculture shall continue to be subject to the same requirements concerning distribution of revenue receipts.

* A basic act for administration of BLM lands must include authority and responsibility recognizing the interdependent need of the Government and private landowners to obtain access across their intermingled lands. Language similar to that developed in 1964 covering access

across intermingled national forest and private lands should be incorporated in the bill reported by this committee. Specifically, we suggest the following as section 10(b) :

(b) (1) The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way over national resource lands and other lands administered by the Bureau of Land Management.

(a) An easement granted under this act may be terminated by consent of the owner of the easement, by condemnation, or after a 5-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within 60 days after receipt of the notice, a hearing in accordance with such rules and regulation as may be issued by the Secretary.

The criteria and standards described in section 16(b) (1) should include recognition of the timber, water, grass, and mineral resources if the environmental, recreational, and scenic values are to be specified.

In summary, without substantial amendment, including the adoption of objective criteria, S. 424 would be a hindrance rather than a help to the agency administering the national resource lands.

We recommend that S. 424 as presently worded not be reported by this committee.

We will provide a marked up version of the bill for your consideration, as well as our comments on the administration's proposal.

Senator HASKELL. Thank you, Mr. Hall.

There is one comment I might make to see if I understood you correctly. I am referring to section 6(a) (1). Are you suggesting that that should not apply to a timber operation or in the alternative are you suggesting it should be deleted?

Mr. HALL. I am suggesting it should not apply to a timber operation because under current practices the owner and operator provide for reforestation and harvesting of forest areas.

Senator HASKELL. You think the Federal Government should bear that?

Mr. HALL. It does.

Senator HASKELL. It does, but you think it should continue.

Mr. HALL. Right. The landowners' responsibility is that of replanting and maintaining the productivity of the site. The timber harvester is on there briefly in the time spent on the crop in order to remove the crop. The landowner then is responsible for replanting and in a way that assures—

Senator HASKELL. Is the expense of that replanting reflected in the price your clients pay for the timber?

Mr. HALL. No, the price paid for the timber is reflected by the value of that timber at that particular time. The landowner has the obligation of reinvesting some of his income into the reforestation project.

Senator HASKELL. Is the price you pay to the Federal Government roughly the same as the price you pay as a private landowner?

Mr. HALL. Yes. On comparable lands it should be the same.

Senator HASKELL. Is it?

Mr. HALL. I think so, yes.

Senator HASKELL. Thank you. I have no further questions.

Senator Hatfield.

Senator HATFIELD. I would like to follow up on that one point. This is the crux of one of the great pending scandals, and I call it scandal * because we have 5 million acres of Federal and public land that have not been reforested. The Federal Government has squeezed, exploited and sold timber to make money for the general fund, but then it refused to uphold its responsibility as a landowner in reforesting those lands with reforestation practices that are required of private owners.]

In this fiscal year OMB has frozen money that we appropriated last Congress to try to uphold that responsibility of the public landowner.

Mr. Hall, in one point you make here, on page 3, I don't quite follow your reasoning on item 2 concerning the designation of areas of critical environmental concern which should be deleted. Section 5(b) (2). You suggest, as I understand it, in lieu of the language in the bill that there should be included, fragile or historical lands or areas of national hazard could be listed as deserving specific designation in the land use process. Would you clarify that a little bit, the distinction you make between the wording of the bill and what you are recommending?

Mr. HALL. This would also refer back to the language in lines 3 through 80 on page 3, where the term "areas of critical environmental concern" is defined. This is somewhat comparable to the definition found in the proposed Land Planning Assistance Act of 1973 and seems out of place in an area where the Government itself is the administrator because, as I mentioned in the testimony, it seems unreasonable to expect that the Bureau of Land Management charged with the maintenance of these lands under a system of multiple use and sustained yield would enter into uncontrolled use or development because they themselves are the control factor. And that the concept doesn't appear applicable in this context. Accordingly, if there are certain areas which ought to be specifically planned for, problem areas, I have suggested that they include historic sites, fragile sites or areas of natural hazard, as one which deserve flagging in the planning process rather than wondering about an area of environmental concern where the key works to me are "uncontrolled development," where the agency itself is the control mechanism.

Senator HATFIELD. Here we are getting again into that situation we talked about a moment ago about the term "multiple use," whether we are using it as a modifier, modifying an adjective or whether we are using it as a generic phrase, and it seems to me that if I read you correctly, that what you are suggesting here is that section actually be broadened, that you recognize environmental considerations but you want to broaden that to include historic and national hazard. If we are using it purely as a modifying adjective, is that correct?

Mr. HALL. You have me cornered in my semantics.

Senator HATFIELD. You are hung up on the term areas of critical environmental concern?

Mr. HALL. It doesn't seem to fit the problem applicable to BLM's administration of the national resource lands.

Senator HATFIELD. Except there are critical environmental areas within the BLM lands.

Mr. HALL. Well, the problem, the active words here, that raised my concern are the words "uncontrolled development," because in the National Land Use Planning Assistance Act, the uncontrolled development is development by persons over whom you have no control. Here the agency itself is the controlling device and there would be no such uncontrolled development.

Senator HATFIELD. It points up the necessity of interrelating definitions of words having to do with one act to any new act. Thank you very much.

Senator HASKELL. Thank you, gentlemen, very much. We appreciate your appearance.

[The prepared statement of Mr. Hall follows:]



NATIONAL FOREST PRODUCTS ASSOCIATION

1619 Massachusetts Avenue, N. W., Washington, D. C. 20036

Statement of John F. Hall
before the
Subcommittee on Public Lands
Committee on Interior and Insular Affairs
United States Senate
on S. 424,
"Organic Act for Public Domain Lands"
March 1, 1973

Mr. Chairman and Members of the Committee:

I am John F. Hall, Vice President for Forestry Affairs of the National Forest Products Association headquartered in Washington, D. C. Our association is a federation of twenty-five regional and wood products associations representing the forest products industry throughout the nation.

The forest products industry supports legislation that provides the means for effective and productive management of the Federally owned lands. In our opinion, S. 424 is not such a bill. It would not establish appropriate Congressional direction to insure that all resources found on "national resource lands" are properly recognized and fully utilized to meet an ever-increasing public demand of goods and services that these public lands can and should supply.

Throughout S. 424, special recognition is accorded environmental, recreational and scenic values, but the extremely valuable and critically important grass, mineral, timber and water values appear only as "resource values."

S. 424 is an open invitation to litigation which would thwart BLM programs and policies. Highly subjective terms such as "sound ecological management," "maintenance of a livable environment," "uncontrolled use or development," "needless degradation of the environment," "proper land use," and "environmental integrity" must be replaced by language which is specific in the objectives that the agency is charged with reaching.

The definition of "multiple use" in Sec. 2(c) differs in language but not in intent or scope from the definition in the 1960 Multiple Use-Sustained Yield Act applicable to National Forest lands. We suggest that the definition in the 1960 Multiple Use Act be used in place of the proposed definition in this bill to reduce uncertainty in the interpretation of policy for Federally owned lands.

The concept of "Areas of critical environmental concern" defined in Sec. 2(e) is not needed. It is unlikely that any portion of the national resource lands would be subject to "uncontrolled development" by the agency entrusted with their care.

Sec. 3(a)(2) declares that "sound ecological management" is necessary for the "maintenance of a livable environment." These phrases invite litigation. There is a wide variety of opinion regarding what is sound management. The agency, not the courts, should set the standards.

The enumeration of various resources to protect, preserve and provide for in Sec. 3(b) fails to mention the timber, range, water and mineral resources. The paragraph is an invitation to litigation which would stymie

BLM programs. The entire paragraph is unnecessary if BLM is to administer the lands under a multiple use and sustained yield concept.

The inventory required in Sec. 4 is long overdue. In addition to an inventory of outdoor recreation and scenic values, other natural resources such as timber, minerals, range, water and soil should be specifically mentioned for inventory.

In the Land Use Plans required under Sec. 5(a), timber management, range management and other resource goals should be included as part of the planning program in addition to the outdoor recreation plan.

In Sec. 5(b), we suggest the following amendments to the seven items to be considered by the Secretary for developing and maintaining land use plans:

Item (2) concerning designation of areas of critical environmental concern should be deleted. Fragile or historic lands and areas of natural hazard could be listed as deserving specific designation in the land use planning process.

Item (5) should also be deleted. It requires an evaluation of factors far outside the scope of public land managers, such as the productive capacity of adjacent or distant private or other Federal lands and the commodities available in international trade.

If Item (6) is to require BLM to "weigh long-term public benefits, including those of outdoor recreation and scenic values," then it should also require that the long-term benefits of an

adequate supply of commodities to meet needs of housing, industry and transportation be weighed against short-term local or individual benefits.

Sec. 6(a)(1) states that BLM management shall include "requiring land reclamation as a condition of use, and requiring performance bonds guaranteeing such reclamation of any person permitted to engage in extractive or other activity likely to entail significant disturbance to or alteration of the land. "

Timber harvest is not an extractive or other activity resulting in significant disturbance to or alteration of the land. Replanting the harvested area is commonly the responsibility of the landowner and is quite different from reclaiming disturbed or altered land. 

The provision in Sec. 6(a)(2) requiring revocation or suspension of contracts, permits and licenses upon violation of state or Federal air or water quality standards should be deleted. There already are state penalties for the violation of state laws. Is it necessary that the Federal government be required to determine when a state law has been violated? Further, the proposed language might make BLM liable to the state for damages incurred by the permittee if BLM fails to revoke or suspend a contract and there has been a violation of state law.

The standard of "needless degradation of the environment" in Sec. 7(a) is another undefined term inviting judicial participation in BLM's programs.

The limitation on sale of land imposed in Sec. 7(a)(1) and 7(a)(2) are too restrictive. These lands should move more freely into the private sector.

The conditions on conveyance required by Sections 8(a) and 8(b) should not apply in exchanges of similar properties such as forest land.

* [The major private forest landowners have an active land exchange program underway with each other and with Federal and state forest land administering agencies. Such exchanges are necessary to block up ownerships in efficient management units. This effort should not be hindered by restriction on title conveyance.]

The concept of "environmental integrity" in Sec. 8(b) is subjective and should not be adopted as a standard.

It apparently is not the intent of S. 424 to change the current law governing funding for management and development for the revested Oregon and California Railroad Grant lands and the Coos Bay Wagon Road lands. The existing procedure whereby 50 percent of the receipts are available for management and development has enabled BLM administrators to develop long-range management programs.

In this regard, Sec. 9(d) should make clear that any O&C lands, or private lands acquired in exchange for O&C lands, which later become administered by the Secretary of Agriculture shall continue to be subject to the same requirements concerning distribution of revenue receipts.

A basic act for administration of BLM lands must include authority and responsibility recognizing the interdependent need of the government and private landowners to obtain access across their intermingled lands. Language similar to that developed in 1964 covering access across intermingled National Forest and private lands should be incorporated in the bill reported by this Committee. Specifically, we suggest the following as Sec. 10(b):

(b)(1) The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way over national resource lands and other lands administered by the Bureau of Land Management.

(2) An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five-year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations as may be issued by the Secretary.

The criteria and standards described in Sec. 16(b)(1) should include recognition of the timber, water, grass and mineral resources if the "environmental, recreational and scenic" values are to be specified.

In summary, without substantial amendment, including the adoption of objective criteria, S. 424 would be a hinderance rather than a help to the agency administering the national resource lands.

We recommend that S. 424 as presently worded not be reported by this Committee.

Senator HASKELL. We have Mr. William E. Towell, Executive Vice President, American Forestry Association, Washington, D.C.; Mr. Boyd L. Rasmussen and Mr. Thomas L. Kimball, National Wildlife Federation, Washington, D.C.; Mr. Harry B. Crandall, The Wilderness Society, Washington, D.C.; Mr. Lloyd Tupling, Sierra Club, Washington, D.C.; Mr. Bruce Driver, Environmental Policy Center, Washington, D.C.; and Mr. Charles H. Callison, Executive Vice President, National Audubon Society, Washington, D.C.

Senator HATFIELD. Mr. Chairman, I am going to have to go to another committee.

I want to comment that Mr. Lloyd Tupling is moving from his present job where he has represented the Sierra Club.

I would like to take this public opportunity to commend Mr. Tupling for a very distinguished career here in Washington. He was administrative assistant to the late Senator Neuberger and Mrs. Neuberger and has been a very outstanding person here in many roles in Washington.

We are very proud of his distinguished and marvelous career.

Senator HASKELL. I hope that does not mean he is not going to appear before us again.

Gentlemen, please proceed in whichever order you wish.

STATEMENT OF BOYD L. RASMUSSEN, NATIONAL WILDLIFE FEDERATION, WASHINGTON, D.C.

Mr. RASMUSSEN. I am Boyd Rasmussen with the National Wildlife Federation.

I would like to point out one mistake in my testimony that is on page 3, third paragraph, the last word of the first line.

It says "disposal," and that should be for retention and management. There is quite a difference.

First, I would like to say that we are in favor of this bill because it does some things that have needed to be done for years.

First, it provides a broad policy base, which has been needed for a long time. It provides there be an inventory, that there be authority for enforcement and authority for acquisition, authority for disposal and other things.

We welcome this statement of policy at this time, because I think it is a historic event. I think this bill sets up what has needed to have been done for sometime.

These lands in the public domain and in the national resource lands are a great public asset. The classification of public domain revealed that the public was interested in retention and management and this bill says they will be retained mostly and managed under sustained yield principles and multiple use.

These are directives that have long been needed and they are needed now so that these lands may be available in the future and produce moneys of the resources for the good of the public.

They are scattered lands and lands that are divided in many cases by alternate sections.

The exchange part of this bill is needed, because there could be major changes. I don't see that there will be too many because it will take time.

They should be allowed to dispose of these lands where they are needed for disposal, but the public hearings that were held show that only about 3 million acres could be identified for disposal purposes versus the 178 million acres for retention and management.

Certainly we need this direction at this time, because these lands are a great national asset.

I think the greatest thing that has happened has been the increase in recreation, because of all the things and uses that have been needed, the most need is the recreational.

Certainly the land is good for grazing, some timber production, watershed protection, mineral protection. There are a lot of things these lands have been producing for years but now with our population explosion, more leisure time, people are looking to and using these lands to a great extent.

Many of them are arid. Who thought there would be recreation in the desert in July and August, but there is but also there is recreation year long in the desert. At the present time the Bureau has had little way in which to enforce the act against the Bureau except by trespass action.

For instance, if you find a man with a motorbike out in a place where he shouldn't be, you have to go through trespass action rather than being able to do something about him at the time the trespass occurs.

In other words, you are after the fact. If there was enforcement authority—and I don't mean to pick on the motorcyclists generally, because there are lots of places where they are handled very well.

So from our standpoint, we think this is long needed and now is the time and this is a historic bill.

We approve most of the sections. One section in there does not mention the right of the States to manage the taking of game and wildlife on public lands.

For years this has been the policy. I believe it should be firmly stated, so that there is no longer any dispute over this failure.

Thank you, Mr. Chairman, and I would like to have Mr. Kimball say one or two thoughts.

Senator HASKELL. Thank you very much, Mr. Rasmussen.

[The prepared statement of Mr. Rasmussen follows:]

STATEMENT OF BOYD L. RASMUSSEN, NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Boyd L. Rasmussen a member and consultant for the National Wildlife Federation.

I am pleased to appear before this committee to give testimony on such a historic proposal as S. 424. We are, and have been, vitally interested in the management and use of the vast public lands administered by the Secretary of the Interior through the Bureau of Land Management. We endorse the concepts of S. 424 which would:

1. Provide an official name for the public lands;
2. Provide a comprehensive statement of congressional goals, objectives and guidelines for the use and management of these public lands;
3. Provide management, direction, and authority to enforce regulations;
4. Direct the Secretary to maintain an up-to-date inventory of the public lands and their resources;
5. Direct the Secretary with public participation to develop, maintain, and revise Land Use Plans;
6. Provide for authority to acquire and dispose of public lands;

7. Provide for public participation in the formulation of standards and criteria used in the preparation of land use plans and land management actions.

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. 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 revision is needed. Many of these laws provide for retention and management of the public domain but except for a few did not cover the question of management and use in relation to the environment and changing times.

The basic National Forest System, much of the National Park System, Game Ranges and Refuges, military reservations, and reclamation withdrawals came from the public domain. The homestead, and other similar land grants took the arable land. Land was used to pay for public debts, promote the growth of schools, aid the construction of railroads, meet statehood needs and other developments. More than a billion acres were transferred out of Federal ownership under various land laws.

What was left was land no one wanted 40-50 years ago. But much of it now is recognized as prime recreation land suitable for wildlife, open space, outdoor recreation and some wilderness; it is also suitable for livestock grazing, timber production, mineral production and water. Public hearings under the Classification and Multiple Use Act PL-88-607 disclosed that the public supported retention and management of these public lands. Only limited disposal was sanctioned and this under specific rules. The Public Land Law Review Commission recognized this situation.

As a result, about 178 million acres of the public domain were classified for retention and management under sustained yield and multiple use. The population explosion, more leisure time, ease of transportation and prosperity have brought increasing pressures of these public lands for their many public resources. The skyrocketing demand for the recreation resources on the public lands has been the most outstanding phenomenon. At the same time the demands for the other resources have constantly increased.

There is a question as to whether in the future BLM can carry out an efficient program or give the environmental protection needed to meet the terms of the Environmental Policy Act under present conditions. A few examples are:

State exchanges which some consider mandatory may only consider the effect on administration of the grazing districts.

No authority exists to manage the location of roads or railroads. States and counties take rights of way under Section 2477 R.S. without consulting BLM and without having to take environmental precautions.

No real authority exists for enforcement of regulations or rules. The only way they may be handled is through trespass action. So the Bureau is dealing only after the fact when there may be a need for immediate action to prevent damage to the land.

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.

There is no real directive for multiple use management and sustained yield.

The public lands have come of age. They are a great national asset. And they need policy direction for tomorrows needs.

All of this great public resource of public lands needs a common objective, 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. The west is settled and it is time to look ahead for the wise use and management of these great public lands such as S. 424 provides.

We do suggest that you consider adding to S. 424 the repeal of prior laws as suggested in the Administration's proposal of July 20, 1971 listed as section 19.

We also suggest that the states role in the fish and game field be further clarified by adding to section 12 as item "(c) nothing in this act shall be construed to limit or restrict the power and authority of the state to regulate public taking of fish and wildlife and to enforce the state fish and game laws on the National Resource Lands."

To conclude, Mr. Chairman, I would like to say that the National Wildlife Federation last year, in a resolution listing the major conservation issues of 1972, enumerated public lands management as among the most important. The resolution, in part, read: "The National Wildlife Federation continues in its conviction that the Bureau of Land Management must be given basic statutory authority to manage lands retained in Federal ownership in accordance with the multiple use and sustained yield concepts which recognize all public values in a balanced program without dominance by any particular interest."

I also should like permission to attach for the record, copies of resolutions adopted by our organization in 1966 and 1972.

Mr. Chairman, sponsors and members of the Committee you are to be complimented in the clarity of S. 424 and its timely statement of Congressional policy.

NATIONAL WILDLIFE FEDERATION, 30TH ANNUAL CONVENTION, PITTSBURGH, PA.,
MARCH 11-13, 1966, RESOLUTION NO. 7

PUBLIC LAND LAWS

Whereas, the Public Land Law Review Commission has begun its work of reviewing laws and regulations relating to public lands; and

Whereas, the Commission is expected to recommend modernization of many laws and administrative regulations and policies; and

Whereas, the entire nation has a tremendous stake in final recommendations contained in work of this body; Now, therefore be it

Resolved, That the National Wildlife Federation, in annual convention assembled March 12, 1966, at Pittsburgh, Pa., hereby expresses its conviction that the Public Land Law Review Commission should make decisions which stress overall public interests, including those recreational values of an aesthetic and social nature, as well as direct economic benefits for private commercial interests; and be it further

Resolved, That adoption of the following principles relating to public domain and Oregon and California revested lands would be in the best public interest:

1. All lands should be classified for future use, with only those actually needed for residential, commercial, or industrial purposes being sold or transferred to State or local governmental agencies. It is viewed as essential that detailed and specific criteria be established to prevent land speculators and state and local government entities from acquiring large or key tracts of Federal land. Land transfer agreements should contain strong reverter provisions if lands transferred for public purposes are used for private gain.

2. The bulk of public domain and Oregon and California revested lands should be retained in Federal ownership under direction of a single agency. Boundaries of these properties should be established and identified in a manner readily recognized by the public. The Federal ownership should be consolidated, with in-holdings eliminated by exchange or purchase.

3. Lands to be retained in permanent Federal ownership should be managed under sound principles of multiple use duly authorized by law.

4. The Taylor Grazing Act either must be repealed or amended to provide for the permanent possession and multiple use management of public lands, including activities for recreational purposes. Grazing advisory boards should be eliminated and the executive agency administering the land authorized to appoint multiple use advisory boards.

5. Grazing fees on public lands should be based on the prevailing rate for rental of private lands in the same areas concerned and the funds derived therefrom used for proper resource management and payment for capital improvements placed upon the land.

6. The Homestead Act is obsolete and meaningless, and should be repealed.

7. The Desert Entry Act is obsolete and meaningless, and should be repealed.

8. Suitable authority and funds must be provided for the development of wildlife habitat in cooperation with State wildlife agencies.

9. Specific authority and funds must allow for the development of all phases of outdoor recreational potential on public lands and proper access to them.

10. A national policy on oil shale should direct that the Federal Government continue in oil shale technology and research, with all exploitation of minerals located on public lands being accomplished under leasing arrangements allowing control of the surface resources to remain with the Federal Government.

11. The allowable cut of timber must be based on a conservative estimate of sustained yield.

12. Any mining law which allows land in Federal ownership to go to patent should be repealed, with the extraction of minerals being accomplished under provisions of the Mineral Leasing Act. Leasing arrangements, however, should provide for security of tenure and exclusive use of the amounts of surface land necessary to justify investments. When mining ceases surface must be restored, where practicable, to original condition with surface rights retained in public ownership.

13. Public land exchange and purchase laws should be updated and modernized to permit consolidation of land into manageable blocks and to use cash to equalize differences of value in land exchanges.

14. Re-allocate 50 per cent of the revenues now going into the Reclamation Fund, for watershed management, soil conservation, recreation and wildlife habitat development on public lands.

15. Substantial increases in management and development funds for the Bureau of Land Management is recommended. Manpower needs to the level of one manager for every 25,000 acres of land should be met as a minimum for effective land management in the public interest.

BUREAU OF LAND MANAGEMENT ORGANIC ACT

Whereas, recent controversy over motorcycle races in the California Desert points up the need for early action on remedial legislation by the Congress of the United States to halt unrestricted and unauthorized use of the public domain lands; and

Whereas, such unauthorized use is destroying archaeological grounds, wildlife habitat, creating noise pollution and other nuisances; and

Whereas, the Bureau of Land Management does not presently have either the money or the manpower to delineate land areas to be protected; and

Whereas, the Bureau lacks the necessary authority to enforce even its present regulations; Now, therefore be it

Resolved, That the California Wildlife Federation, at its Quarterly Meeting duly assembled December 9-10, 1972, in San Diego, California, urges the National Wildlife Federation to support Federal legislation for comprehensive modern land management authorities for the public domain lands, including law enforcement authority and land sale similar to that proposed by the present administration in the National Resource Lands Management Act of 1972; and be it further

Resolved, That Bureau of Land Management Officers be authorized to make arrests and cite offenders to the United States Magistrates, and to contract with local law enforcement agencies for law enforcement on the public lands as well as acquisition and exchange authority including case equalization in land exchanges; and be it further

Resolved, That copies of this resolution be sent to all members of the Congress and the Senate of the United States, to the Secretary of the Interior and to the Director of the Bureau of Land Management.

Adopted December 9-10, 1972, CWF Quarterly Meeting, San Diego, California.

Senator HASKELL. If I have any questions, I will wait until everybody is through.

Mr. Kimball, would you proceed.

STATEMENT OF THOMAS L. KIMBALL, NATIONAL WILDLIFE FEDERATION, WASHINGTON, D.C.

Mr. KIMBALL. Thank you, Mr. Chairman.

May I add my voice to those who commend the opponents of this bill to give the overall management authority to the Bureau of Land Management.

I think this has been one of the shortcomings of the management of our public domain over the years. I particularly like some such terms

as you asked about in the previous testimony about uncontrolled development.

We think the time has come when these uses should be orderly planned and developed, and there should be more control exercised over them.

* The fact that 85 percent of our grazing lands are in poor or fair condition, I think, underlies the need for control and for management authority directed by the Congress.

* There are pressures for increasing the allowable cuts of timber to provide for our Nation's needs and I think this needs to be balanced over the sustained yield concepts that we never cut more than we grow.

* The pressures for increasing recreation are phenomenal and the public lands are really the only outlet for the average citizen that is searching for a place to recreate at a cost he can afford, and the fact that the great public support for the retention of these lands, specifically for this purpose and other purposes, I think, underlies the needs for this type of action now by the Congress.

There is a need for a control of mineral prospecting and extraction of minerals, not that this use should be denied, but certainly the exercise of more control to protect the other values of public lands that are also there, I think is absolutely essential.

We like the authority contained in the bill to require and exchange lands for the access, public access, that is needed for these lands.

Many of them are interspersed and we can't manage them. When they are interspersed with private lands, the authority to bring these together in manageable blocks so that proper Federal authority can manage them in a way that is meaningful, I think is one of the significant objectives of this particular act.

We also feel the need to repeal certain segments of the law that may be in conflict. One of the purposes of the Outdoor Recreation Review Commission which reviewed the entire public land problem years ago at a cost of some \$7 million to the taxpayer, this is one of their main conclusions, that we needed to bring some order in the chaotic condition of our public land law and to enact another one without taking a closer look at those who need repeal, so we just don't add to the confusion. I think, is significant.

Thank you, Mr. Chairman.

Senator HASKELL. Thank you, Mr. Kimball.

[The prepared statement of Mr. Kimball follows:]

STATEMENT OF THOMAS L. KIMBALL, NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Thomas L. Kimball, Executive Vice President of 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.

We welcome the invitation and opportunity of commenting upon S. 424.

I am pleased to introduce Mr. Boyd L. Rasmussen who will present the National Wildlife Federation's testimony on S. 424. Mr. Rasmussen is a former director of the Bureau of Land Management and a former Assistant to the Secretary of Interior. Mr. Rasmussen's experience in the Forest Service and in the Department of Interior qualify him to testify on this most important bill. I would like to expand on Mr. Rasmussen's testimony when he finishes and both of us will be available to answer questions.

Senator HASKELL. Mr. Callison.

Mr. CALLISON. Thank you Senator Haskell.

STATEMENT OF CHARLES H. CALLISON, EXECUTIVE VICE PRESIDENT, NATIONAL AUDUBON SOCIETY, WASHINGTON, D.C.

Mr. CALLISON. The Audubon Society is in enthusiastic support of S. 424, Mr. Chairman, and if my prepared statement can appear as read?

Senator HASKELL. It certainly will.

Mr. CALLISON. I should like to read only two paragraphs from it, because they express the reasons why we are in such strong support of this legislation.

Senator HASKELL. Please do.

Mr. CALLISON. In this environmental era, when America is re-ordering its priorities and reassessing what is meant by the "quality of life," few issues before Congress are more important than determining how best to use and conserve the public lands of the United States. Principally at stake, Mr. Chairman, are the resources of some 450 million acres of public domain: mineral deposits as yet unexploited, timber and forage, wildlife and wilderness, scenic and ecological values, and the public's recreational privileges in these, our last great open spaces.

It is necessary, in our view, not only to prescribe policy which reflects the public interest but also to establish an efficient and responsive administrative organization and vest it with enough authority to implement policy.

For this reason we enthusiastically endorse S. 424 because it does spell out policy that reflects the fact that all Americans have a stake in these lands that they own. Further, it embodies the principle that in management, disposal, and/or use of these lands, long-term resource* values and environmental quality are more important than exploitation for short-term gain.]

Mr. Chairman, because S. 424 as introduced did not contain any repealer provision, because when enacted it will replace and make unnecessary a number of obsolete and conflicting statutes, we have attached to our statement a copy of section 19 from a committee print of S. 2401, the similar bill that was processed by this committee last year.

We submit that as a guide to the committee staff and I was pleased Secretary Whitaker in his presentation, his explanation of the draft bill of the administration, also proposed the repeal of a number of obsolete and conflicting statutes.

We haven't had a chance to see the administration draft before today and I would request permission, if we may have it, sir, to submit written comments for the record on the administration draft bill after we have studied it.

Senator HASKELL. You certainly may. I do not think that any of us have any difference of opinion on the desirability of repealers where the law would be, the prior law would be in conflict with the present law.

We just want to be sure, when we are repealing something, that is off a part from this particular act, but there is no argument on the desirability to repeal.

[The prepared statement of Mr. Callison follows:]

STATEMENT OF CHARLES H. CALLISON, EXECUTIVE VICE PRESIDENT, NATIONAL AUDUBON SOCIETY

To Subcommittee on Public Lands, United States Senate:

I thank you for the invitation to present a statement on this important legislation. I appear as a representative of the National Audubon Society, its 287 chapters in 42 states, and 265 affiliated organizations. Our total membership as of the end of January this year was 254,171 individuals, not counting the memberships of "affiliated organizations."

The first Audubon Societies were organized in the 1880's and 1890's, Mr. Chairman. The National Association was formed in the first years of this century and incorporated under the laws of New York in 1905. Throughout its history the Audubon Society has been concerned about and actively involved in the conservation and management of the wildlife and other natural resources on the public lands of the United States. The first Federal Bird Reservations, the beginnings of our present great National Wildlife Refuge system, were established through public land orders by President Theodore Roosevelt upon the recommendations and urgings of the early Audubon leaders. The first substantial measure for conservation of the then endangered pronghorn antelope was established through acquisition of a private ranch with water on it, and withdrawal of adjacent public domain, as a result of the leadership of the then president of the National Audubon Society, the late Dr. T. Gilbert Pearson, working in cooperation with officers of the Boone and Crockett Club. This was the Charles Sheldon National Wildlife Refuge for antelope in northwestern Nevada. The first portions of it were bought with Audubon funds together with other monies raised by the Boone and Crockett Club in 1927 and 1928. The executive orders adding the additional lands and making it a federal wildlife refuge occurred in 1929 and 1931. The Audubon Society provided the initial warden service on this area as it had done on the first federal bird reservations, stepping in with its own funds and manpower.

I recite this history merely to establish the fact that our organization is not a Johnny-come-lately in its concern for public land resources. While it is true that the early preoccupation of Audubon members was with bird protection chiefly, our concerns have broadened and extended to the whole of nature, and to the proper functioning of the ecosystem upon which man's own life and welfare depend.

In this environmental era, when America is re-ordering its priorities and re-assessing what is meant by the "quality of life", few issues before Congress are more important than determining how best to use and conserve the public lands of the United States. Principally at stake, Mr. Chairman, are the resources of some 450 million acres of public domain: mineral deposits as yet unexploited, timber and forage, wildlife and wilderness, scenic and ecological values, and the public's recreational privileges in these, our last great open spaces.

It is necessary, in our view, not only to prescribe policy which reflects the public interest but also to establish an efficient and responsive administrative organization and vest it with enough authority to implement policy. For this reason we enthusiastically endorse S. 424 because it does spell out policy that reflects the fact that all Americans have a stake in these lands that they own. Further, it embodies the principle that in management, disposal, and/or use of these lands, long-term resource values and environmental quality are more important than exploitation for short-term gain. Furthermore, and equally important, it provides the long-needed Organic Act, or vestment of authority, for the Bureau of Land Management.

Mr. Chairman, this legislation will replace and make unnecessary a number of obsolete and conflicting statutes that should in this Act be specifically repealed.

Prominent among these are the Taylor Grazing Act of June 28, 1934, with its philosophy of disposal, and the give-away General Mining Law of 1872, the continuance of which as a vehicle for exploiting the public lands with no environmental controls is a national disgrace. As a further guide to the Committee, I attach for the record the list of statutes proposed to be repealed in Section 19 of S. 2401, a closely similar bill that was reported in the 92nd Congress by the Senate Committee on Interior and Insular Affairs.

Senator HASKELL. Mr. Tupling.

**STATEMENT OF LLOYD TUPLING, SIERRA CLUB,
WASHINGTON, D.C.**

Mr. TUPLING. Representatives of our organization have been before the committee numerous times in the past to support legislation similar to S. 424 which has the thrust of updating and improving the management of our residual public domain lands.

I would like to endorse the comments made by my colleague, Mr. Callison, about the necessity for action to repeal outmoded and somewhat archaic statutes that remain on the books.)

We feel that unless this repeal action is taken and S. 424 becomes law, that we will unnecessarily complicate land management in the public domain. *

We are also concerned about some of the disposal features in section 7 of the act, which appear to give the Secretary and undue discretionary authority for disposal. I refer specifically to the language in section 7(a) (3). It calls for possible sale of a tract which will serve important public objectives which cannot be achieved prudently and feasibly on land other than national resource lands, and which outweigh all public objectives and values, including recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

It just seems there is something wrong in the process of logic which infers nonpublic ownership will better attain public purposes than Federal ownership. If improperly administered, this section could become an open invitation to disposal because every land claim will assert that his desire coincides with important public objectives and there is no other land which is feasible for him to acquire. *

Another addition that we believe should be made to the bill, that is an addition of a new section establishing as part of the national wilderness preservation system those areas which have already been designated by the Bureau of Land Management as primitive areas. This has been accomplished in the past through inventory and classification of both the use act and I believe there are six areas that have been so named.

Also, we feel that the wilderness section which we believe should be added, should include study of all roadless areas of 5,000 acres or more for recommendation by the Secretary for possible inclusion in the wilderness system.

Senator HASKELL. Thank you, Mr. Tupling.

I was just told by the staff director the reason for including the section to which you objected. Certain communities in the west are landlocked and, therefore, in order for them to grow and prosper, you might need to give them certain Federal lands.

I would suggest that I would concur with you that this is a terribly broad language; there is no question about that. Perhaps you would like to confer with the staff director at some later time on specific language.

We do have to take care of the situation that he just pointed out to me.

On the other hand, possibly this language is unduly broad so would you be kind enough to confer with the staff director?

Mr. TUPLING. I will be glad to do that, sir.

[The prepared statement of Mr. Tupling follows:]

SIERRA CLUB STATEMENT

ON S. 424

NATIONAL RESOURCE LANDS MANAGEMENT ACT OF 1973

BEFORE THE

SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE

March 1, 1973

Mr. Chairman and members of the Committee, I am W. Lloyd Tupling, legislative advisor of the Sierra Club, a national environmental organization with about 140,000 members throughout the United States. Since its founding in 1892, the fate of our public lands has been a major concern of the Sierra Club. We welcome the opportunity to present views aimed at reshaping the fundamental laws governing those lands.

The need for drastic reform of land laws, particularly those administered by the Bureau of Land Management, has been recognized by this Committee through consideration of a number of bills in recent years, their intent has been to provide an organic statute for the agency supervising the residual public domain of some 428 million acres. The main thrust of previous legislation considered by the Committee, as with the pending S. 424, was that the residual public domain acreage represents a valuable national asset that should be retained in Federal ownership rather than be subject to disposal under out-moded laws.

The BLM administers the largest single block of landholdings in the United States. These lands are economically valuable, scenic, fragile, and vulnerable to degradation. In 1970, the Classification and Multiple Use Act expired, leaving the Bureau of Land Management without a basic charter for operations. The time has long since passed for administering *

our public lands under a patchwork of ancient disposal laws and piecemeal reform acts.) Since the BLM is the residual trustee of irreplaceable property, it should be given an organic act which will achieve needed objectives:

- (1) Repeal of obsolete disposal laws;
- (2) New policy for managing the great body of public lands which should stay in public ownership;
- (3) Management directives reflecting the concepts of the National Environmental Policy Act;
- (4) Limitation of land disposals, and implementation of methods for new land acquisitions and exchange serving the public interest.

S. 424 has been heralded as a measure to up-date outmoded federal regulations. In all candor, it must be pointed out that the bill, despite its declarations favoring preservation of the public domain for all Americans, does fall short of the protective concepts expressed in earlier legislation. For instance, S. 921, the bill introduced by the Chairman of this Committee in the 92nd Congress, had explicit provisions for revitalizing disposition of valuable minerals extracted from the public domain by an over-hauling of the Mineral Leasing Act of 1920 and repeal of the archaic Mining Location Act of 1872. Likewise, last session's Administration bill called for the repeal of outmoded laws such as the Desert Land, Homestead, Small Tract, and Recreation and Public Purposes Acts, and a long list of other archaic land statutes.

A major short-coming of S. 424 is that it does not deal with the problem * of wiping clean the slate of land laws no longer applicable. Unless these outmoded statutes are eliminated, the task of managing the remaining public domain acres will be complicated rather than simplified. Passage of S. 424, without repeal of acts which serve no purpose in modern times, will make public land administration more difficult. We urge that the land law repeal provisions, as set forth in Section 19 of S. 2401, introduced

on August 3, 1971, be incorporated into the National Resource Land Management Act of 1973.

Mr. Chairman, we are also concerned with the provisions in Section 7 of S. 424 which appear to give undue emphasis and discretionary authority to the Secretary of the Interior for sale of public lands. Section 7(a)(1) places so-called "isolated land" in a special category for disposal. Yet, there is no definition of isolation as it relates to other lands. Likewise, the intent of language in Sec. 7 (a)(3) also is unclear. It calls for possible sale of a tract which "will serve important public objectives which cannot be achieved prudently and feasibly on land other than national resource lands, and which outweigh all public objectives and values, including recreation and scenic values, which would be served by maintaining such tract in Federal ownership."

I submit, Mr. Chairman, that there is something wrong in a process of logic which infers that non-Federal ownership will better attain public purposes than Federal ownership. Moreover, the subjective judgments left up to the discretion of the Secretary are open-ended. What are the public objectives which cannot be achieved prudently and feasibly on land, other than national resource lands? I would suggest that extraction of oil from shale in our western public lands might be one such objective. Do we want to open the way for the Secretary to permanently dispose of such assets?

This particular section is a wide open invitation to disposal because every land claimant will assert that his desire coincides with "important public objectives" and that there is no other land which is feasible for him to acquire. Since the Congress has ultimate jurisdiction over disposal of the public lands, some restraint is necessary over the discretionary disposal authority of the Secretary. In other legislation, it has been suggested that Congress be required to grant its approval to decisions on management of

areas in excess of 20,000 acres and that the House or Senate Interior and Insular Affairs Committees be given veto power over actions on areas of 5,000 acres or less. Perhaps it would be wise for restrictions on Secretarial initiative along these lines to be incorporated into S. 424.

Acquisition of lands is provided for in Section 9 of S. 424, and we believe this process could be enhanced through an amendment calling for transfer of funds from the sales authorized under Section 7 to the Land and Water Conservation Fund in the Treasury of the United States. This provision would assure that losses in the land estate of the people of the United States would be used to aid in the acquisition of lands which better serve current interests, such as the new National Park Service units authorized by Congress.

Although S. 424 has guidelines for disposal of public lands, it lacks provisions which would give permanent protection to wilderness values. Land under the jurisdiction of the Bureau of Land Management was left out of the provisions of the Wilderness Preservation Act of 1964, despite the fact that numerous areas might qualify for inclusion in the System under its definitions. As a result of inventories, the Bureau has already identified and designated six areas as "primitive." These areas are the Aravaipa Canyon, Arizona, 4,044 acres; Paria Canyon, Arizona and Utah, 27,515 acres; Dark Canyon, Utah, 74,317 acres; Grand Gulch, Utah, 36,000 acres; Humbug Spires, Montana, 7,041 acres; and Beartrap Canyon, Montana, 2,761 acres. We recommend that a new section be added to S. 424 immediately designating these areas for inclusion in the Wilderness Preservation System; also, the Secretary of Interior be authorized to undertake a study of all roadless areas of more than 5,000 acres and recommend to Congress within 10 years those that are suitable for inclusion in the Wilderness Preservation System.

SENATOR HASKELL. Mr. Crandell.
Mr. CRANDELL. Thank you Senator Haskell.

**STATEMENT OF HARRY B. CRANDELL, THE WILDERNESS
SOCIETY, WASHINGTON, D.C.**

Mr. CRANDELL. I am Harry Crandell, director of the Wilderness Society.

The Wilderness Society generally states that there is a need of long standing to provide the Secretary of Interior through the Bureau of Land Management with the needed authorities that have been stated this morning.

However, in our review of the bill, which was not a line-by-line, section-by-section analysis, we note what we consider to be one very serious deficiency and that is that the Bureau of Land Management is not required in this bill to review the wilderness potential of the national resource land.

Three other conservation agencies, the National Forest Service, the Bureau of Fisheries and Wildlife, and the National Park Service are principally covered by the Wilderness Act. *

We feel it is only proper that the Bureau of Land Management be included in these requirements.

In my formal statement we have suggested some language which paraphrases the wilderness law. In addition, as Mr. Tupling pointed out, the Bureau of Land Management, through the existing planning process, has identified and established or withdrawn a certain number of primitive areas.

We feel that it would save the public money and time and the Federal Government the time and effort if these sections were added to this bill. Also the Bureau of Land Management has identified a certain number of areas which are wilderness on the public domain which, according to information we have received from the BLM, they intend to crank into this process and establish as primitive areas. *

I have been handed a list of these areas furnished by the BLM. I would like to have that included with my statement.

SENATOR HASKELL. That will be included in the record.

Mr. CRANDELL. We feel that these areas since the BLM has identified them and indicated the intent, at least, to us of establishing primitive areas that these, too, ought to be included in the wilderness system for passage of this bill with the proviso that the BLM be required to review the contiguous lands to these primitive areas to ascertain whether additional lands should be so recommended.

As the chairman knows, what I am proposing here is a review process that quite possibly could be cranked in to regulate the inventory process this bill, S. 424, provides and further, as the chairman knows, it is only the Congress that can establish a wilderness area. *

What we are proposing here is that this review process be required in the bill so that the Congress can make the final decision on that.

I have two other points in my statement which I would like to briefly summarize.

One is I was surprised this morning to hear Chandler from the American Petroleum Institute voicing, perhaps with different objec-

*tives, a concern that we share. And that is that it seems that in this day and age that the Federal Government and the various agencies of the Federal Government are becoming more and more unresponsive to the citizens of the country, that citizens across the country are becoming more and more frustrated in that they can't seem to grab ahold of this monster.)

Senator HASKELL. Sometimes that is true of Congress, too.

Mr. CRANDELL. But it is particularly true, we feel, in a decision-making process. I am not talking about the planning process. I am talking about the decision making processes that affect citizens, not only citizens in the local area, but citizens that are interested in the proper management, saving national resource areas.

We would like to see some sort of requirement that the agency be required to clue in the citizens when they are making a decision that is affecting the public lands.

We would like to see it with all of them, but this is our only opportunity at this time, because actually what we are doing here is creating a new agency and we would like to see these kinds of controls initiated immediately.

One of the things we have suggested is that it may be possible to do this by clearly stating objectives for management of the public lands in the bill so the agency has to adhere to that.

Mr. Chandler mentioned that through the court process there is a proliferation of people taking Federal agencies to court for the various reasons, and that shall remain, I presume. But what I am suggesting here is there may be a way to have management of public lands so a citizen could have his voice heard when a decision is made concerning him.

We have one other suggestion. That is the Secretary of Interior has a number of existing authorities relative to, for lack of a better term, we call land set-asides.

We feel that there may be opportunities, they may be slim and they may be remote, but there may be opportunities in the future for the Secretary of Interior to decide that there is a need to establish a national park in a particular area of land.

We feel that the BLM in its inventory process and in its planning processes and development of plans should take this factor into consideration and the Secretary of Interior should, therefore, when he makes a determination a national park should be established because of the higher public value inherent in these so-called land-asides, that he should then be required to report to Congress his findings and let the Congress decide.

Thank you very much, Mr. Chairman.

Senator HASKELL. Thank you, Mr. Crandell, very much indeed.

[The complete statement of Mr. Crandell follows:]

Statement of Harry B. Crandell
 Director of Wilderness Reviews, The Wilderness Society
 Before the Public Lands Subcommittee
 of the Senate Interior and Insular Affairs Committee
 on S. 424, To Provide for the Management, Protection
 and Development of the National
 Resource Lands, and for Other Purposes
 March 1, 1973

Mr. Chairman, I am Harry B. Crandell, Director of Wilderness Reviews, The Wilderness Society, 729 15th Street, N.W., Washington, D.C. It is with a great deal of pleasure that I respond to your invitation to appear before you today representing the 80,000 members of The Wilderness Society in support of legislation providing authority for proper management of the residual public domain by the Bureau of Land Management, Department of the Interior.

Greatly improved management and administration of these lands is a need of long standing. The Wilderness Society generally supports the objectives of S. 424 to meet this need. However, we find that the bill, while excellent for intents and purposes, is not sufficiently detailed to achieve the intended objectives. Our primary concern focuses on the absence of any reference to study and entry of National Resource lands into the National Wilderness Preservation System, which was created by the Wilderness Act of 1964. These lands, presently totalling more than 400 million acres, contain some of the most remote, scenic and potential wilderness type lands on the continent. To provide a wide range of authorities to the Secretary of the Interior in the bill without assuring the means and the authority to review and recommend qualified areas for possible designation within the National Wilderness Preservation System is a most serious deficiency and oversight. We suggest that the following language be incorporated in section 5:

Within five years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more, lands contiguous to wilderness areas established by this Act and every roadless island within the National Resource lands under his

jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or non-suitability of each such area or island for preservation as wilderness. The President shall advise the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. When conducting this review, the Secretary shall adhere to the procedural requirements of Sec. 3(d) of the Wilderness Act.

Mr. Chairman, the Bureau of Land Management has identified certain areas within the Natural Resource lands that should be classified as primitive. A list of these areas is attached to this statement and I ask that it be incorporated in the record of these proceedings. Some of these areas have been classified as primitive areas already by the Secretary of the Interior. Primitive areas which have already been identified and classified or withdrawn plus those which the Bureau of Land Management has identified as potential primitive areas should be incorporated in the National Wilderness Preservation System by an appropriate provision in this Act. We suggest the following language be provided in section 5:

30 Lands classified or withdrawn as Primitive Areas, or identified as roadless areas, are hereby placed in the National Wilderness Preservation System and shall be administered under the provisions of the Wilderness Act. Within 60 days after the effective date of this Act, the Secretary of the Interior shall file maps of these wilderness areas and descriptions of their boundaries with the Committee of Interior and Insular Affairs of the United States Senate and of the House of Representatives and such maps and descriptions shall have the same force and effect as if included in this Act: Provided, however, that correction of clerical and topographical errors in such maps and descriptions may be made.

Mr. Chairman, for the first time in the history of our country we have an opportunity when creating a new Federal agency (which actually is what is being proposed) to require that agency to be adequately responsive to the whole American public rather than private economic sectors. The American citizen finds it extremely difficult in this day and age to secure serious consideration of his

views by Federal agencies in matters directly concerning him or her. It seems to me that this is a most opportune time to require, through this legislation, that the Bureau of Land Management be required to seek out public input into its decision-making processes. I have no specific suggestions how this might be accomplished but suggest that Sec. 15 be amended to incorporate a requirement that the public be permitted to participate in formation of land management decisions of the agency. The Society feels quite strongly that citizen input is a matter of high priority in this legislation.

Perhaps this need can be met by expanding Sec. 3 in the Declaration of Policy to spell out management objectives of the agency. For an example, one objective might be ... "to administer the public lands in order to retain their natural values as a contribution to the social welfare of the American people." Another might be ... "to administer the public lands and to plan their utilization in such a manner as will preserve for future generations their natural values, continually in a productive condition." Another might be ... "to administer the public lands in a fashion that quantifiable outputs and non-quantifiable outputs are to be considered on an equal basis in the decision-making process." Certainly, preserving qualified lands as wilderness should be a declared objective.

We are not certain that ^{NOT} it is proper at this point in time to create a new * agency which would duplicate the efforts of other existing agencies. For an example, an area having high archeological or historic value might best, and more economically, be administered if placed under the administration of the National Park Service. The same would be true of an area having high wildlife values whereby it would be placed under the administration of the National Wildlife Refuge System. In other words, we would like to see cranked in as a requirement in the planning process of the Bureau of Land Management an identification and recommendation process whereby these kinds of public values would be identified and that the Secretary would be required to consider whether such values might more properly be administered by an existing conservation agency with expertise to do so.

Thank you, Mr. Chairman.

Roadless Areas on the Public Domain 5,000 Acres in
Size or Larger

<u>State</u>	<u>Name</u>	<u>Acreage</u>
Arizona	Black Mountains	75,000 acres
"	Bill Williams Mountain	24,000 "
"	Rawhide	15,000 "
"	Arrastra Mountain	70,000 "
"	Burro Creek	7,000 "
"	Eagle Tail Mountains	33,000 "
"	Table Top Mountains	32,000 "
"	Gila Mountains	65,000 "
"	Gila Box	15,000 "
"	Peloncillo Mountains	50,000 "
"	Des Cabezas Mountains	20,000 "
"	Gila River & Mescal Mountains	10,000 "
"	Sullivan Canyon Area	38,000 "
"	Kanab Creek	33,000 "
	SUB TOTAL	<u>487,000</u>
California	Algodones	20,000 "
"	New York Mountains	25,000 "
"	Providence Mountains	17,000 "
"	Granite Mountains	36,000 "
"	Kingston Range	40,000 "
"	Cima Dome	32,000 "
"	Whipple Mountains	60,000 "
"	Turtle Mountains	60,000 "
"	Chuckwalla Mountains	70,000 "
"	Yuha Desert	13,000 "
"	Picacho Area	38,000 "
"	Whitewater River Area	42,000 "
"	Eagle Lake Points	3,280 "
"	Skedaddle Mountain	22,080 "
"	Gooch-Rock Springs	64,180 "
"	Twin Peaks	40,600 "
"	Five Springs	11,000 "
"	Indian Mountain	1,360 "
"	Tunnison Mountain	6,760 "
"	Elder Creek	3,695 "
"	Cache Creek	36,180 "
"	Timber Craters	15,000 "
"	Beegum Gorge	2,400 "
"	Keynot Peak	85,000 "
"	Amargosa Desert	339,000 "
"	Owens Peak Area	30,000 "
"	Saline Wild Area	50,000 "
"	Owlshead Mountains	50,000 "
"	Big Baldy	2,000 "
"	Inyo Mountains	20,000 "
"	Last Chance Range	25,000 "
	SUB TOTAL	<u>1,260,535</u>

<u>State</u>	<u>Name</u>	<u>Acreage</u>	
Colorado	Powderhorn	40,000	acres
"	North Sand Hills	670	"
"	Red Cloud Peak	30,000	"
"	Beaver Creek	15,500	"
"	Browns Canyons	12,500	"
"	Black Ridge	65,000	"
"	North Thompson	4,366	"
"	Lookout Mountain Breaks	6,000	"
"	Weber-Menefee	23,000	"
"	Dolores River	30,000	"
"	Sewemup Mesa	16,000	"
"	Cold Springs Mtn. Breaks	22,500	"
"	Red Bluffs	1,500	"
"	Grape Creek	22,500	"
"	Palisade	25,600	"
"	Diamond Mtn. Breaks	12,600	"
	SUB TOTAL	327,736	
Idaho	Craters of the Moon	Unknown	
"	Lava Field	230,000	"
"	Wapi Lava Field	90,000	"
	SUB TOTAL	320,000	
Montana	Humbug Spires	7,000	"
"	Bear Trap Canyon	3,200	"
	SUB TOTAL	10,200	
Nevada	Blue Lake	8,800	"
	SUB TOTAL	8,800	
New Mexico	Grants Malpais	88,000	"
	SUB TOTAL	88,000	
Utah	Grant Gulch	29,480	"
"	Paria Canyon	8,726	"
"	Joshua Tree	1,040	"
"	Devils Garden	640	"
"	The Gulch	3,430	"
"	Canaan Mountain	35,000	"
	SUB TOTAL	78,316	
Wyoming	Ferris Mountain	20,000	"
	SUB TOTAL	20,000	
	GRAND TOTAL	2,600,587	

WINTER, 1972-73

Landmarks

Talking with conservation leaders here and elsewhere, we sense that land use legislation is very high in their list of expectations from the new Congress. They're interested in land planning, using both the carrot and the stick to get states started in the planning process. They're hopeful that the 1872 Mining Law will be modernized. They want to see controls imposed on strip mining.

Central to the concern of these conservationists is the proper administration of national resource lands by the Bureau of Land Management. Long sensitive to pressure from grazing and mining interests, BLM is an agency today without legislative mandate. Unlike the National Park Service or the U.S. Forest Service, BLM has no "organic act" to give it substance. It wants an organic act. Should it have one?

We can't help but reflect on the record of the agency and wonder how wise it would be to give it new powers without some sort of legislative direction requiring the agency to be responsive to the broad, public interest — not just local interests. Conservationists have long protested, without success, such range "improvement" practices as spraying sagebrush and reseeding to grass, "chaining" of piñon and juniper to tear out trees by their roots — all to provide additional feed for livestock. Wildlife, watershed, wilderness and scenic values have been largely ignored.

And then there is the matter of fencing to improve livestock distribution. That may be fine for the stock growers, but it doesn't do much for the movement of wildlife, especially antelope, which, restricted in movement, often suffer severe winter losses.

To its credit, BLM has made a few fresh starts toward multiple use in recent years, but these attempts have been sporadic. For example, out of the millions of acres of lands administered by the agency a few primitive areas have been established or identified, but all are small in size and none has been established where vested interests raise strong objections.

Recently, according to people we know in the Department of the Interior, BLM has proposed that national wildlife ranges in the West (established by Executive Order of the President and withdrawn from the public domain in the 1930s) be turned over to it for management. This worries us, since all of these units are currently undergoing wilderness reviews by the Bureau of Sport Fisheries and Wildlife. Nearly three and a half million acres of wilderness could be lost in the event that Secretary Morton were to issue such an order transferring jurisdiction to BLM.

While some will argue that these examples indicate a need to broaden BLM's powers, we need to be convinced.

Senator HASKELL. Mr. Pardo.

Mr. PARDO. Thank you Senator Haskell.

**STATEMENT OF RICHARD D. PARDO, PROGRAMS DIRECTOR, THE
AMERICAN FORESTRY ASSOCIATION, WASHINGTON, D.C.**

Mr. PARDO. I am Richard Pardo, a member of the staff. With your permission I would like to submit Mr. Towell's statement for the record and make a few brief comments.

Senator HASKELL. It will be included.

Go ahead and make the comments.

Mr. PARDO. We believe this is a good bill, that it is a long overdue bill and we enthusiastically support its passage.

We particularly endorse these concepts. One, that BLM lands will be retained except for limited plan disposal in the public interest.

Two, that BLM lands will be managed under the multiple-use, sustained-yield doctrines.

Three, that users will pay a fair market value for products received.

Four, that all national resource lands will be inventoried and their boundaries marked.

Five, that comprehensive land use plans will be required and coordinated with State and regional plans.

Six, that BLM will be given acquisition authority, particularly for public access.

Seven, that BLM personnel will have enforcement authority for the protection of national resource lands.

In our statement we raise several questions regarding the bill but these are not meant to be in opposition to the bill, but merely to raise some points that we feel the committee should look at plans to make this a better bill.

One final point among the questions raised is our concern that the Presidential appointment and Senate confirmation of BLM Director would not place the Director's position in a political arena any more than it is now.

The person responsible for national resource lands should be a professional, we firmly believe, with broad experience and he should be selected for his background and ability rather than for political affiliation.

That concludes my statement, Mr. Chairman.

Senator HASKELL. Thank you very much.

[Mr. Towell's statement follows:]

Statement
of
The American Forestry Association
on
S. 424 - National Resource Lands Management Act of 1973
before
Senate Committee on Interior and Insular Affairs

February 15, 1973

Mr. Chairman and members of the Committee, I am William E. Towell, Executive Vice President of The American Forestry Association.

* I appear today very much in support of S. 424, because my Association has had a long time interest in the welfare and protection of the Public Domain. Permanent legislative authority making the Bureau of Land Management truly a management agency rather than a mere custodial and disposal agency is long overdue.

Most of the provisions in S. 424 meet with our approval so I will not waste your time discussing them in detail. But, we particularly endorse these concepts:

- (1) That BLM lands will be retained except for limited planned disposal in the public interest.
- (2) That BLM lands will be managed under the multiple use-sustained yield doctrines.
- (3) That users will pay a fair market value for products received.
- (4) That all National Resource Lands will be inventoried and their boundaries marked.
- (5) That comprehensive land use plans will be required and coordinated with State and Regional plans.
- (6) That BLM will be given acquisition authority, particularly for public access.
- (7) That BLM personnel will have enforcement authority for the protection of National Resource Lands.

There are other good points, too, but these are paramount. I am going to raise some questions about a few provisions in this bill, not that we oppose them, but rather that it might aid the Committee in making this even better legislation.

You are aware, I am sure, that surveying and marking the boundaries of all National Resource Lands is an enormous job. It is highly desirable, but will take time and cost a great deal of money.] *

Section 5 (c) provides for a review of National Resource Lands already classified. This is good in terms of the total land use planning process, but it is hoped that present use classifications will not be jeopardized in the process. It would seem that highest priority for inventory and classification would be given to those lands not yet selected for special uses.

In Section 8 are provisions that the Secretary shall reserve to the United States all minerals in the lands conveyed under this Act. I am fundamentally opposed to separation of mineral rights and surface rights except when absolutely necessary. I have seen too many problems arise from dual ownerships and they should be avoided. If there are known mineral deposits land should not be sold except at fair value, but if no minerals are in evidence, then the title should be sold intact.

In the authorization for the Secretary to acquire other lands needed for management of National Resource Lands Section 9 provides for acquisition by purchase, exchange, donation or otherwise. I would hope that this implies power of condemnation and would recommend that it say so specifically.

Although Section 12 protects state criminal statutes and police powers it might be well to specify that nothing in the Act shall impinge upon the traditional states' jurisdiction and regulatory authority over fish and resident wildlife, and that all hunting and fishing on National Resource Lands will be done in accordance with state regulations. Such specific clarification might avoid State-Federal disputes that have arisen on other public lands.

One final comment, Mr. Chairman, concerns the Presidential appointment and Senate confirmation of BLM Directors. I would hope that this would not place the Director's position in the political arena to any greater extent than it now is. The person responsible for National Resource Lands should be a professional with broad experience and selected for his background and ability rather than his political affiliation.

In spite of these few questions I have raised, S. 424 is good legislation and should be approved by the Congress. Thank you for this opportunity to testify in its behalf.

Senator HASKELL. Mr. Driver.

**STATEMENT OF BRUCE C. DRIVER, ENVIRONMENTAL
POLICY CENTER, WASHINGTON, D.C.**

Mr. DRIVER. Thank you. I would first like to say, before I get into the substance of what I am going to talk about that the Environmental Policy Center supports the concepts of this type of act.

However, in view of a large amount of discretion granted BLM in S. 424, we believe that S. 424 must be examined in the context of increasing demand for energy resources which exist in abundance on particular national resource lands.

This is so largely because of BLM's role as the administrator of certain mineral leasing programs established under the 1920 Mineral Leasing Act.

We think the language of S. 424 pertaining to multiple use does offer the promise that these lands can be administered with a keen eye to protection of the kinds of values which our organization supports.

But this same particular language may allow BLM to exercise its discretion in its role with regard to the 1920 act to create large areas which will be subject to dominant use of minerals development instead of multiple use.

This discretion will be exercised because of the pressure of increasing energy demand within our Nation and also in a climate of total ignorance with regard to its feasibility of land reclamation techniques to produce ecologically desirable results in mining areas.

Senator HASKELL. Go over that one again.

Mr. DRIVER. We are afraid that the sound environment words and language in S. 424 will not be able to prevent certain areas of the national resource lands from falling under dominant use. I am thinking particularly of the coal producing areas as well as and that in fact the environmental concerns which our particular organization supports will not be able to be protected in those areas. Not necessarily because of this act, but because of land reclamation technology not being able to do the job which ought to be able to be done.

What we think could occur is that the sound environmental language of S. 424 might be for naught unless the problems of coal surface mining and oil shale development are approached and resolved in a climate of stringent environmental controls.

We don't quarrel with this particular act. We think it is a long time in coming. We are just afraid that its sound environmental words could be for naught in particular areas and that we will have dominant use instead of multiple use.

That basically is the message.

Senator HASKELL. I see what you mean.

On the other hand, if you have got an oil well, you have got an oil well, and I think the statute at least attempts to be sure that when that oil well is exhausted, that the land be restored. This is, after all, multiple use we are looking at, Mr. Driver.

Mr. DRIVER. Right. It is not so much oil that we are basically concerned with. It is really coal. For example, the Powder River Basin contains a great deal of coal and it will be administered.

Senator HASKELL. I hate to interrupt you, but I might mention there is another bill before the Interior Committee dealing with surface mining.

Mr. DRIVER. That I do know, and I think that that bill, unless it is quite strong, will effectively cut into BLM's capabilities to administer this act. That is the message I am trying to make.

This bill has to be seen in the context of the general legislation, the particular coal surface mining legislation, but also oil shale problems as well which are not being addressed by this particular committee now.

That is basically the message.

Senator HASKELL. Yes, sir, I understand. Go right ahead.

Mr. DRIVER. That is really all I want to say. There is a lot more in my testimony which will be printed in full in the record.

Senator HASKELL. Gentlemen, I appreciate your comments and the thought that you have given to this bill.

[Mr. Driver's statement follows:]

ENVIRONMENTAL POLICY CENTER

324 C Street, S.E., Washington, D.C. 20003

(202) 547-6500

Testimony of the Environmental Policy Center
on
S.424, the "National Resource Lands Management
Act of 1973", before the Committee on Interior
and Insular Affairs of the United States Senate
March 1, 1973

I am Bruce Driver, a Washington representative of the Environmental Policy Center, a research and information organization with offices in Washington, D.C.

At the outset let me stress that the Environmental Policy Center supports the concept of a BLM Organic Act. It is time that the agency with the administrative responsibility for so much of our public domain have a statutory base for its actions. S.424 contains much language which will help to create such a base.

In view of the large amount of discretion granted the Bureau of Land Management in S.424, however, we believe that S.424 must be examined in the context of increasing demand for the energy resources which exist in abundance on "national resource lands". This is so largely because of BLM's role as administrator of the minerals leasing program established under the Mineral Leasing Act of 1920. The language of S.424 pertaining to Multiple Use and Sustained Yield principles offers the promise that "national resource lands" can be administered with a keen eye to protection of the natural environment of these lands. But this same language may allow the BLM to exercise its discretion in its role as lessor of fuels minerals to create large areas subject to the dominant use of minerals development. And this discretion will be exercised because of the pressure of increasing energy demand in the nation in a climate

of ignorance regarding the feasibility of land reclamation techniques to produce ecologically desirable results in mining areas.

Enhanced demand for low sulfur coal and attendant electric power plants, the development of oil shale resources and stimulation of natural gas recovery by nuclear explosion are three very current ways in which the nation's energy problems are making and will make themselves felt on "national resource lands".

Regarding coal, on February 17, 1973, Secretary Morton announced a new coal leasing policy with unknown but potentially serious environmental ramifications for the "national resource lands". We have read the North Central Power Study with its projected potential growth in Northern Plains megawatt capacity of 53,000 by the year 2000. Eight billion tons of coal, much of it from "national resource lands" the surface estate of which is in private ownership may be needed to fuel power plants over their life. Now we hear of a new plan being developed by the Missouri Basin Systems Group and the Bureau of Reclamation to provide additional base load generating units within the Missouri River Valley, these units presumably dependent on coal from the "national resource lands".

* The problem with projected development of this coal is that land reclamation is not economically and/or technologically feasible on much of the "national resource lands" currently eyed for development of its strippable deposits. For example, according to the U.S. Geological Survey, there are 8.4 billion tons of recoverable coal under federal lease now in Wyoming. Over 90% of these recoverable, leased reserves are in strippable deposits. We simply do not have the base line data to know whether or not the lands which will be disturbed to obtain this coal can be reclaimed. And there will be pressures exerted to bring more federal coal under lease in this area.

What this means for S.424 is that there is substantial chance that the principles of Multiple Use and Sustained Yield will be incapable of

implementation and we will be left with dominant use areas throughout the coal producing regions. Section 6(a)(1) of S.424 requires land reclamation as a condition of use, but if satisfactory land reclamation is unproven on much of the "national resource lands", how will Section 6(a)(1) be able to be enforced short of declaring off-limits to surface mining unreclaimable areas? Will the system of selecting areas of "critical environmental concern" adequately protect areas which should not be surface-mined? We hope that that is the intention of S.424, but we have our doubts. Much of the answer to these questions is left to the discretion of the BLM under S.424. Some of the answer, however, may be found in the surface mining legislation which this Committee reports and therein lies one of the connections between this bill and energy legislation.

Oil shale development in the Green River Formation under the Interior Department's Prototype Leasing Program will certainly cause substantial and unavoidable environmental damage on "national resource lands". The Draft NEPA Statement on the Program does not indicate that anything other than dominant use will be the case-after the industry reaches a certain level of development.

In sum, S.424 leaves much to the discretion of the BLM. Pressures generated by our nation's increasing need for energy sources could have the effect of stealing from the BLM the power to exercise its discretion under the sound environmental criteria set forth in S.424. One solution is to assure that other energy legislation, particularly the surface mining bill, be stringently protective of the environment. S.424 is energy legislation. For it places the statutory responsibility for considering the whole range of economic, social and environmental considerations tied to the development of our fuels resources which are found on "national resource lands" squarely on the shoulders of the BLM.

Senator HASKELL. Mr. Tupling, I will look to you as the spokesman. Is there anything you would like to add before we wind this up? We would certainly appreciate specific suggested statutory language for any general suggestions you have made because this makes it much easier for us.

Thank you, gentlemen.

I appreciate your being here very much indeed.

We will then keep the record open for any written comments on the administration's bill and we may possibly have another hearing.

[Whereupon, the hearing was concluded.]

APPENDIX

[Under authority previously granted, the following statements and communications were ordered printed:]

AMERICAN MINING CONGRESS,
Washington, D.C., March 19, 1973.

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

DEAR MR. CHAIRMAN: The American Mining Congress, a national trade association whose membership is composed of U.S. companies that produce most of the nation's metals, coal, and industrial and agricultural minerals, wishes to comment on S. 424, the National Resource Lands Management Act of 1973.

Subsection 3(a) (3) contains language which may be interpreted as an abdication of congressional powers under Article IV, Section 3 of the Constitution, namely, "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The policy stated in subsection 3(a) (3) is that "the national interest will best be served by retaining the national resource lands in Federal ownership . . ." However, the Secretary is authorized to dispose of particular tracts of land when he determines disposal ". . . will achieve a greater benefit for the general public. . . ." This grants to the Secretary the discretion of determining what is the public interest with respect to the public domain lands covered by this measure. Congress is given that power and responsibility by the above cited provision of the Constitution, and such determinations should not be granted as discretionary powers to a cabinet officer or his delegate. The subsection should be amended, at a minimum, to make it clear that the Secretary shall dispose of such lands as comply with the public policy of the United States as enunciated by Congress in this and other provisions of law. Congress is the appropriate branch of government to determine what ". . . will achieve a greater benefit for the general public . . ." not an appointed administrator. *

S. 424 provides in Section 6(a) (1) that the Secretary of Interior insert in permits, licenses, or other authorizations to use, occupy or develop the national resource lands provision to suspend or revoke any such authorization upon violation of any applicable state or federal air or water quality standards in implementation plans. We feel that stipulations now inserted in mineral leases provide adequate protection of the environment. At a minimum, there should be language stating that the holder of a permit would be entitled to a hearing and an opportunity to correct any violation prior to suspension. Also, it should be made clear that subsections 6(a) (1) and (2) are not blanket authorizations to the Secretary to require permits, licenses or other authorizations to enter the public lands. At a minimum, it should be made clear that no license or permit is required to explore for locatable minerals. *

In Section 8, Conditions in Conveyances, there is a provision that where prospecting, mining or removing minerals reserved to the United States would interfere with or preclude the appropriate use or development of such land the Secretary may enter into covenants which provide that such activities shall not be pursued for a specified period of time. This proviso is contrary to the principle that the mineral owner shall have the right to use the surface in connection with the development of his minerals and completely subordinates the mineral use to the surface use. This goes too far and reflects too drastic a change in the present existing policies.

Section 15, dealing with public participation, while commendable in principle, is so wide open as to create a situation where any member of the public can come in and establish himself as an interested party and then, through the procedures offered in the Administrative Procedure Act, take matters to court which

should really be matters of administrative prerogative. Accordingly, this section should be enlarged to delineate just what is meant by public participation and in what circumstances individual members of the public can get involved in administrative matters and how far they can go.

We appreciate the opportunity to bring our views to your attention.

Sincerely,

W. HOWARD GRAY, *Chairman,*
AMC Public Lands Committee.

WYMAN, BAUTZER, ROTHMAN & KUCHEL,
Washington, D.C., March 1, 1973.

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

DEAR MR. CHAIRMAN: This letter is written on behalf of our client, Koniag, Inc., a Regional Corporation created pursuant to the Alaska Native Claims Settlement Act, representing the area in and around Kodiak Island, and relates to a possible ambiguity created by S. 424, the National Resource Lands Management Act of 1973, with respect to the withdrawal, selection and disposal of lands under the Alaska Native Claims Settlement Act.

* There can be no quarrel with the need for an organic act for the Bureau of Land Management. It is long overdue. The public interest is not served by the continuation of the uncoordinated, polyglot collection of statutes which have long frustrated administration of the public lands in a manner consistent with the nation's present and future needs.

However, the broad language in which this framework legislation is necessarily couched may inadvertently introduce unnecessary complications in effectuating the purposes of the Alaska Native Claims Settlement Act. In that Act Congress laid down policies and conditions on the withdrawal, selection and disposal of federal lands in Alaska.

For example, on its face, Section 3(a) (3) of S. 424 might, although doubtless not so intended, be considered to require the imposition of a new review process superseding the provisions of Sections 11, 12, 14 and 16 of the Alaska Native Claims Settlement Act which provide for the withdrawal, selection and conveyance of lands to Alaska Natives in effectuation of the settlement of their aboriginal land claims which was effectuated by that Act.

To avoid such possible inconsistencies, it is respectfully suggested that Section 13(a) of S. 424 be amended by inserting after the phrase "as affecting in any way", the phrase "withdrawal, selection and disposal of lands effected by or pursuant to the Alaska Native Claims Settlement Act and land-use planning and classification thereunder or".

Sincerely yours,

EDWARD WEINBERG.

STATEMENT BY

CARL E. BAGGE

President
National Coal Association

BEFORE THE

Subcommittee on Public Lands
Committee on Interior and Insular Affairs
of the
United States Senate

ON PROPOSED

National Resource Lands Management Legislation

S. 424 and S. 1041

March 1, 1973

My name is Carl E. Bagge. I am president of the National Coal Association (NCA) which is a Washington based trade association representing most of the nation's major commercial bituminous coal producers.

The coal industry has a vital interest in the national resource lands (public lands) legislation now before your Committee. Below the surface of public lands in western states lies billions of tons of coal, so vital to the nation's energy needs. Enactment of S. 424 or S. 1041 in their present form would drastically alter existing procedures and practices relative to the administration and management of public lands and would have a significant effect on the coal industry.

The National Coal Association recognizes the complexities involved in the administration and management of the public lands. In fact, NCA actively supported the efforts of the Public Land Review Commission (PLRC), and one of our senior staff members served on the Advisory Council to the Commission. In our judgment any legislation in this area should be based, at least generally, upon the findings and conclusions of that Commission. Two basic and fundamental recommendations were incorporated in the findings of the PLRC.

*

(1) "Congress should establish a national policy on all public lands by prescribing the controlling standards,

guidelines, and criteria, for the exercise of authority delegated to executive agencies."

(2) "Congress assert its constitutional authority by enacting legislation reserving unto itself exclusive authority to withdraw or otherwise set aside public lands for specified limited purpose uses and delineating specific delegation of authority to the Executive as to the types of withdrawals and set asides that may be effected without legislative action."

These recommendations were based on the Commission conclusion that [Congress had delegated its plenary constitutional authority to the executive branch and essentially, where authority was not delegated, it passed to the executive branch by default.] The National Coal Association concurs in these recommendations and urges that they be implemented in the legislation under consideration.

The stated purpose of S. 424 is "to provide for the management, protection and development of the national resource lands...". However, neither the Declaration of Policy (Sec. 3) nor the definition of multiple use and sustained yield (Sec. 2) mention the word "development." Indeed, as presently drafted, the Declaration of Policy (with its over-emphasis on environmental, cultural, scenic and recreational values) creates the presumption that use and development are incompatible with environmental protection.

A rebuttable presumption no doubt, but nevertheless it constitutes a built-in anti-development bias. In most instances development can be accomplished in harmony with our environment. The objective of this legislation should be to encourage the use and development of public lands without lasting or irreparable harm to the environment.

In our judgment the Declaration of Policy in section 3 should make it clear that it is in the public interest to foster and encourage private enterprise in the orderly and economic development of our domestic mineral resources on the public lands. It should also be pointed out in section 3 that the sound economic, as well as ecological, management of the public lands is essential to the maintenance of a livable environment and the well-being of the American people. These modifications would make this legislation consistent with the basic objective of our existing mining and mineral leasing laws, while at the same time providing for the protection of the environment.

An additional basic concern of considerable significance is that the proposed definition of "multiple use" simply does not give sufficient consideration to subsurface resources and the fact that coal, as well as other minerals, are uniquely different from other natural resources such as forest and agricultural products. ³¹ New trees and crops are renewable

assets which can be grown in many different areas. Land use planning for agricultural, recreational, residential, commercial and industrial purposes can take advantage of innumerable sites depending upon the specific criteria established. However, nature in its infinite wisdom has already done all the comprehensive planning that can be accomplished since man cannot grow minerals in the earth.

[Coal must be mined where it can be found. In view of the * importance of coal to our energy-oriented economy--especially with the limited reserves of our other hydrocarbon fuels and with coal's newly emerging role as a feedstock for not only the nation's gas but for the oil industry--any rational land management policy must recognize as a priority land use the necessity to permit the full development of our coal reserves, as well as our other nonrenewable natural resources.]

The definition of multiple use in S. 2401, introduced in the last Congress, is more comprehensive and more accurately sets forth the concept of multiple use than the definition in S. 424. In our judgment the S. 2401 definition should be adopted.

Additionally, it seems clear that there must also be a clearly articulated recognition that mineral extractive operations are only a temporary use of the land and, thus,

mineral lands must be categorized and considered in terms
 * of their multiple benefits to mankind. [The multiple use
 concept should stress that we can no longer disqualify the
 use of land for different purposes at different times.
 Therefore, land well suited to supply premium coal close
 to a major urban market for a period of years could, after
 that time, be classified as the best suited for low density
 residential use, open space or industrial use. This is
 particularly true in view of what can be done today through
 sound, effective reclamation of surface mined areas.]

It is equally vital for public land management legisla-
 * tion to take into account the fact that [most of our mineral
 resources lie hidden beneath the earth's surface and only a
 very small percentage of these reserves have been adequately
 explored so as to be clearly identifiable. With the excep-
 tion of known deposits, it is extremely difficult, if not
 v totally impossilbe, to determine which lands are best suited
 for mineral use.] as presently required by the proposed legisla-
 tion. The legislation should provide that as much land as
 possible remain open for exploration even though these lands
 are classified for another use which would in no way prohibit
 the subsequent development of newly discovered reserves, if
 and when they are required.

* [No land area should be zoned, withdrawn or otherwise
 removed from prospecting or exploration unless an exhaustive

geological analysis of its mineral potential has been made to determine that no possibility exists for development of energy resources.] Such a finding should be continually reevaluated in view of advances in technology and changes in economic conditions. [Management of the public lands on * the basis of multiple use requires that equal consideration be given to, and balance achieved among, all of the nation's critical needs, including economic and national security requirements and not just environmental concerns.] As a result, section 5(b) should spell out the need to consider our requirements for the development of a reliable supply of coal and other domestic energy sources for national security and the economic well-being of the American people.

Section 6(a)(2) provides for revocation or suspension of leases for violation of any regulation issued under this Act or violation of any applicable state or federal air or water quality standard and implementation plans. No recognition is given to the nature of the violation, the seriousness or whether it was willful or caused by an act of God despite all the safeguards taken by a prudent operator. [State and * federal air and water quality statutes and regulations provide for penalties and injunctive relief which have been deemed adequate for the proper enforcement of those acts.] Any additional penalties that might be necessary are more appropriately

the subject of oversight hearings on those statutes. Furthermore, any mechanism to cope with violations of this proposed legislation should be structured to take into consideration the particular violation involved. Revocation and suspension are extremely severe and should be limited to willful violations of a serious nature.

* [In view of the severity of revocation or suspension of a lease, which could terminate an entire coal mining operation supplying a 400 megawatt electric power plant, it should be invoked only after an ad hoc determination in a district court.]

Section 8(a) directs the Secretary to prohibit mineral development if it would "interfere" with the "appropriate use or development" of such lands. No definition of the kind of use which would totally preclude mineral use is contained * in section 8(a) or elsewhere in the bill. [One of the basic precepts of public lands management should be the balanced multiple use of these lands.] Section 8(a) as proposed is unclear and would apparently negate this and other management principles stated in previous portions of the bill. Consequently, * section 8(a) should be deleted in its entirety, and [only by application of the multiple use concept when a more beneficial use of land is determined, should development of the coal and mineral deposits be restricted.]

Section 16 of S. 424 provides for the promulgation of such rules and regulations as the Secretary deems necessary. Further, that such rules and regulations shall be governed by the Administrative Procedures Act. [Section 4 of the Administrative Procedures Act provides for general notice of rule making in the Federal Register and the right of interested persons to have the opportunity to comment on the proposed rules and participate in the rule making process. But, one of the exceptions relates to public property and the Department of the Interior has, in the past, interpreted this exception as excluding from the Administrative Procedures Act rules and regulations relating to public lands and minerals on public lands.] While Interior has followed the general rule making process in recent years, this is, nevertheless, a "grey area" in administrative procedure with respect to public lands. [Language should be included in any legislation which would eliminate any doubt with respect to the applicability of APA to national resource lands (public lands).] *

S. 1041, while objectionable in some respects, appears to give greater recognition to the needs of the nation, while at the same time providing for reasonable protection of the environment.

This bill, however, would also grant excessive discretionary powers to the Secretary of Interior and is vague in many respects. It does nevertheless provide somewhat more

definitive guidance to the Secretary. Because the two bills are deficient in a number of similar respects, the obvious shortcomings of S. 1041 will not be argued here since these points were covered in the discussion of S. 424.

Finally, in our judgment the legislation under consideration does not address itself to one of the most important aspects of public lands management, namely--executive withdrawals.

Provisions covering withdrawals should be added to the * legislation. [A new set of ground rules ^{etc.} for withdrawals should be developed in order to give Congress greater control over the extent of withdrawals and provide for a review of existing withdrawals.]

* [The most important objection to current withdrawal procedures is that they permit large areas, in excess of 5,000 acres, to be withdrawn from multiple use for single-purpose or limited-purpose use without the consent of the Congress. This power of the Secretary is inconsistent with multiple use and would undermine this effective management tool.] A limitation on the size of the tracts that could be withdrawn should be imposed and any withdrawal should be limited to a definite term.

Thank you for this opportunity to present our comments on this important legislation.



National Forest Products Association
1619 Massachusetts Avenue, N.W.
Washington, D.C. 20036
202-332-1053

John F. Hall
Vice President—Forestry Affairs

March 7, 1973

Hon. Floyd K. Haskell, Chairman
Subcommittee on Public Lands
Senate Committee on Interior
and Insular Affairs
3106 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed is a marked up copy of S. 424 which incorporates the amendments referred to in my testimony presented before your Committee on March 1, 1973.

Adoption of these amendments would substantially improve the bill as a policy direction for national resource lands. However, in our opinion, the bill still falls far short of the basic policy needed to provide for optimum production of goods and services from these lands.

We suggest that the entire bill be rewritten, incorporating clear planning and management objectives based on economic and social as well as environmental criteria. A new bill should provide for appropriate advisory committees, limitation on executive withdrawal authority, and a statement identifying those statutes to be repealed.

We will review the Administration bill, S. 1041, the "National Resource Lands Management Act of 1973," and will provide you with comments for the hearing record.

Sincerely,

John F. Hall
John F. Hall

Enclosure

(1)

BILL S. 424
SEC. 2(c)
Definition of "Multiple Use"

AS PRINTED

Page 2

PROPOSED CHANGE

REASON

(c) "Multiple use" means the management of the national resource lands and their various quantifiable and non-quantifiable 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 into account the long-term needs of future generations for recreation, scenic values and non-renewable resources and the achievement of diversity and balance for renewable resources; and harmonious and coordinated management of the various resources without permanent impairment of the quality of the land or 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.

(a) "Multiple use" means the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the 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; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity 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 definition of "multiple use" in Sec. 2(c) differs in language but not in intent or scope from the definition in the 1960 Multiple Use-Sustained Yield Act applicable to National Forest lands. We suggest that the definition in the 1960 Multiple Use Act be used in place of the proposed definition in this bill to reduce uncertainty in the interpretation of policy for Federally owned lands.

(2)

BILL S. 424
SEC. 2(d)
Definition of "Sustained Yield"

AS PRINTED

Page 2 & 3

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

PROPOSED CHANGE

(b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

REASON

Same reason as Sec. 2(c)

(3)

BILL S. 424
SEC. 2(e)
Delete "areas of critical environmental concern"

AS PRINTED

Page 3

(e) "Areas of critical environmental concern" means areas within the national resource lands where uncontrolled use or development could result in irreversible damage to important historic, cultural, or scenic values, or natural systems or processes, or life and safety as a result of natural hazards.

Delete this Section

PROPOSED CHANGE

REASON

The concept of "Areas of critical environmental concern" defined in Sec. 2(e) is not needed. It is unlikely that any portion of the national resource lands would be subject to "uncontrolled development" by the agency entrusted with their care.

Page 5

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

Sec. 5(b) (2)

(2) give recognition to fragile or historic lands and areas of natural hazards.

Item (2) concerning designation of areas of critical environmental concern should be deleted. Fragile or historic lands and areas of natural hazard could be listed as deserving specific designation in the land use planning process.

(4)

BILL S. 424
Sec. 3(a)(2)
long-term management

REASON

PROPOSED CHANGE

AS PRINTED

Page 3

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

1/ Insert "long term" for "ecological"

Sec. 3(a)(2) declares that "sound ecological management" is necessary for the "maintenance of a livable environment." These phrases invite litigation. There is a wide variety of opinion regarding what is sound management. The agency, not the courts, should set the standards.

Sec. 5(b)(5)
Scope of Land Use Planning

Page 5 & 6

(5) consider the relative scarcity of the values involved and the availability of alternative means, materials, techniques, and sites for realization of those values;

Delete

Item (5) should also be deleted. It requires an evaluation of factors far outside the scope of public land managers, such as the productive capacity of adjacent or distant private or other Federal lands and the commodities available in international trade.

(5)

BILL S. 424
SEC. 5(b)(6)
Long-term benefit of all resources

AS PRINTED

Page 6

PROPOSED CHANGE

REASON

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

(6) weigh long-term public benefits, including water, soil productivity, timber, minerals, range, recreation and scenic resources.

If Item (6) is to require BLM to "weigh long-term public benefits, including those of outdoor recreation and scenic values," then it should also require that the long-term benefits of an adequate supply of commodities to meet needs of housing, industry and transportation be weighed against short-term local or individual benefits.

Page 6

Sec. 6(a)(1)
Land reclamation

(1) requiring land reclamation as a condition of use, and requiring performance bonds guaranteeing such reclamation of any person permitted to engage in 1/ (extractive)2/ or (other)3/ activity likely to entail significant disturbance to or alteration of the land;

1/ insert "mineral"

2/ Substitute extraction for extractive

3/ Substitute development for other

Sec. 6(a)(1) states that BLM management shall include "requiring land reclamation as a condition of use, and requiring performance bonds guaranteeing such reclamation of any person permitted to engage in extractive or other activity likely to entail significant disturbance to or alteration of the land."

Timber harvest is not an extractive or other activity resulting in significant disturbance to or alteration of the land. Replanting the harvested area is commonly the responsibility of the landowner and is quite different from reclaiming disturbed or altered land.

(6)

BILL S. 424
SEC. 6(a)(2)
Permittee Compliance

AS PRINTED

Page 6 & 7

(2) inserting in permits, licenses, or other authorizations to use, occupy, or develop the national resource lands provision (authorizing revocation or suspension upon violation of any) 1/ regulations issued by the Secretary under this Act (or upon violation of 2/ any applicable State or Federal air or water quality standard and implementation plans; and

REASON

The provision in Sec. 6(a)(2) requiring revocation or suspension of contracts, permits and licenses upon violation of state or Federal air or water quality standards should be deleted. There already are state penalties for the violation of state laws. Is it necessary that the Federal government be required to determine when a state law has been violated? Further, the proposed language might make BLM liable to the state for damages incurred by the permittee if BLM fails to revoke or suspend a contract and there has been a violation of state law.

1/ Substitute "requiring the permittee to comply with all" for "authorizing revocation or suspension upon violation of any"

2/ Substitute "and" for "or upon violation of"

SEC. 8(a)

Clear Exchange Conveyance

Page 9

Sec. 8. CONDITIONS IN CONVEYANCES. -- (a) All conveyances of title issued by the Secretary under this Act shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe: Provided, That, where prospecting, mining, or removing minerals reserved to the United States would interfere with or preclude the appropriate use or development of such land, the Secretary may enter into covenants which provide that such activities shall not be pursued for a specified period or, where necessary 1/, convey minerals in the conveyance of title.

1/ Insert "as in exchange of similar properties"

The conditions on conveyance required by Sections 8(a) and 8(b) should not apply in exchanges of similar properties such as forest land. The major private forest landowners have an active land exchange program underway with each other and with Federal and state forest land administering agencies. Such exchanges are necessary to block up ownerships in efficient management units. This effort should not be hindered by restriction on title conveyance.

(7)

BILL S. 424
SEC. 8(b)
Excessive Encumbrances

PROPOSED CHANGE

REASON

Delete

Same reason as in Sec. 8(a), plus:

The concept of "environmental integrity" in Sec. 8(b) is subjective and should not be adopted as a standard.

AS PRINTED

Page 9 & 10

(b) The Secretary shall insert in any patent or other documents of conveyance he issues under this Act such terms, covenants, and conditions as he deems necessary to insure proper land use, environmental integrity, and protection of the public interest. In the event any area which the Secretary has identified as an area of critical environmental concern is conveyed out of Federal ownership, the Secretary shall provide for the continued protection of such area in the patent or other document of conveyance. The Secretary shall not make sales of land under this Act which would not be in conformity with State and local land use plans, programs, zoning, and regulations. At least ninety days prior to offering land for sale under this Act, the Secretary shall notify the Governor of the State within which such land is located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such land is located, in order to afford the appropriate body the opportunity of zoning or otherwise regulating, or changing or amending existing zoning or other regulations concerning the use of such land prior to such sale.

(8)

BILL S. 424
Sec. 9(d)
Maintain In-lieu Payments to Counties

AS PRINTED

Page 11

(d) Lands acquired by exchange under this section within the boundaries of the national forest system may be transferred to the Secretary of Agriculture for administration as a part of, and in accordance with laws, rules, and regulations applicable to, the national forest system 1/.

PROPOSED CHANGE

1/ Add "and without reduction of in-lieu payments to the State and local governments which would otherwise be received."

REASON

It apparently is not the intent of S.424 to change the current law governing funding for management and development for the re-vested Oregon and California Railroad Grant lands and the Coos Bay Wagon Road lands. The existing procedure whereby 30 percent of the receipts are available for management and development has enabled BLM administrators to develop long-range management programs.

In this regard, Sec. 9(d) should make clear that any O&C lands, or private lands acquired in exchange for O&C lands, which later become administered by the Secretary of Agriculture shall continue to be subject to the same requirements concerning distribution of revenue receipts.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
 BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS
 OF THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
 RE S. 424, NATIONAL RESOURCE LANDS MANAGEMENT ACT OF 1973

by
 Clifford G. McIntire, Legislative Director

March 21, 1973

The American Farm Bureau Federation, with its 2,175,780 member families in the 49 states and Puerto Rico, appreciates this opportunity to present its views on S. 424, the "National Resource Lands Management Act of 1973."

One of the most critical land use planning needs of Western Public land states is Congressional action to update the existing laws for the management, use and development of the land resources in federal ownership.

* [For many years residents of the public land states have sought to change the issue-by-issue pattern of Congressional action on federal land issues. This historical process of piecemeal legislation has produced a patchwork of public laws and left voids in many vital policy areas which have required agency interpretation of Congressional intent.] The resulting duplication and overlapping of programs and personnel, plus the growing number of serious inconsistencies in management and administrative procedures was a major cause of Congressional action that created the Public Land Law Review Commission in September, 1964.

* [We believe the work of the PLLR Commission did help the public land agencies to identify the problems and issues, but because of legislative inaction the problems and issues still exist.]

Farm Bureau wishes to commend the Senate Interior and Insular Affairs Committee for its decision to give priority attention to land use and land management policies on lands administered by the Bureau of Land Management.

The Senate Committee on Interior and Insular Affairs has under consideration S. 268, a bill relating to land use planning of private and nonfederal lands within each state. We do not believe it is desirable, particularly in the Western

public land states or other states having substantial areas of public lands, to attempt to deal with state land use planning and the planning of federal lands through separate legislation. We urge that provision for federal land use planning and management and national land use planning be combined in a single bill. In support of this view may we offer the following observations:

(1) [The total acreage remaining in federal ownership in the Western public land states is 359 million acres. This is 89 percent of the land owned by the federal government outside of Alaska, and it is 54 percent of the total land area of the eleven contiguous Western public land states.] *

(2) Efficient land use and management are complicated by the intermingled and checkerboard pattern of private, state, and federal land ownership in the Western public land states.

(3) There is a close environmental, recreational and vital economic interdependence between private and public lands in the public land states.

(a) Sixty-one percent of the water resources of the West arise on federal lands. [Water is a most indispensable resource of the arid public land states and the federal land watersheds are a major source of future Western water development. A clear knowledge of the watersheds is basic information that must be established before any land use planning for the future of private lands can be undertaken.] *

(b) [There exists an economic and social dependence between federal and nonfederal lands that is not only of vital importance to the general public, but is critically important to those communities and citizens who are established in the West. Some private land uses are substantially reduced in value without the use of commensurate federal land resources. At the same time, there are federal lands that are almost worthless without supporting private lands.] *

- (c) Economic, social, recreational and tourism industries in the public land states cannot perform their important functions in a satisfactory manner under the existing public land management, development and use policies.

* Planning of private land use cannot be done without a coordinated federal land planning program. Of equal importance is a clear knowledge of the long-term management and use policies for all federal lands that are involved. The problems which this Committee's land use planning legislation is designed to correct do not stop at private land boundaries. For example, it is impossible to plan the future land use of the private farm or ranch lands in a public land state, until it is clearly understood whether the operation will include the use of federal land resources. The decision of whether commensurate federal lands will be included in the operation requires a clear knowledge of the long-term procedures and conditions of use that will apply on the federal land resources. In a similar manner communities, counties, and states cannot begin to discuss--let alone establish--land use plans for nonfederal lands until they have a high degree of understanding of the management and use policies that will apply to all federal lands within the geographic area of their jurisdiction. Members of a utility complex, a group of service industries or the component parts of a local or state recreation area cannot plan without understanding the role of public lands plans for the future.

* Those who suggest that all that is essentially needed is a new BLM land policy statement moving the BLM lands from a custodial management to a more permanent status, do not understand that this is only one part of a much bigger problem.

* The land use problems of the Bureau of Land Management lands do not stop at the Bureau of Land Management boundaries. Many times Forest Service lands, BLM lands and Park Service lands are intermingled and are identical types of land. There is no easily identifiable reason why one is Forest land and the other is

Bureau of Land Management land or Park Service land; nevertheless, it is vitally important to recognize that land use planning programs must resolve such problems that extend far beyond the boundaries of any ownership pattern.)

[A serious error is the belief that use of the federal lands by private industry is undesirable. The facts are that proper use of federal lands by private industry is not only desirable but also is essential for proper management and conservation of renewable federal land resources. For example: When domestic livestock are banned from foraging on rangelands, the renewable vegetation becomes rank and unpalatable. Undesirable vegetation encroaches, producing thorns and thickets that become impenetrable to man or wild animals. Big game habitat is benefited by proper grazing by livestock. There is abundant range research showing that domestic livestock and big game complement each other in forage consumption.) *

[The infrequent instances of federal land deterioration due to overgrazing by domestic livestock, generally have been due to a lack of proper management.) Farm Bureau recognizes that at times in the past there was some damage to some range lands during the days of the "nomads" and "transient" herds. We concede that there still may be a few instances of improper use of federal rangelands, but as a general rule the grazing of public lands today is managed with great skill and on a sustained-yield basis.) Where there continues to be deterioration of the federal grazing lands, Farm Bureau and all other livestock groups with whom we are acquainted, would pledge full support in the correction of such mismanagement. *

We believe [the basic need today is to provide more intensive management to federal lands. Proper management will protect the environment and the fragile areas, conserve the renewable resources, and insure sustained yields for current, as well as for future, generations.) *

Farm Bureau's research on the conditions of lands in federal ownership has revealed that desirable vegetation for recreation, natural beauty, watershed improvement, wildlife habitat, and economic growth can be substantially increased by improved land management.

Farm Bureau testified to the Public Land Law Review Commission on January 12, 1969, * that, by the application of timber, watershed, and management technology that is available, the desirable vegetation on most public lands could be increased by 50 percent. Under the direction of the Public Land Law Review Commission, the University of Idaho studied this specific problem and their research confirmed the correctness of the Farm Bureau finding. The University of Idaho study revealed that the Animal Unit Months on federal lands could be increased up to 73 percent by intensive management.]

Many assume that the answer to this problem is to develop all economic uses of federal lands and have the public sector provide the intensive management and * development which research indicates these lands require. However, experience indicates no evidence of success in public land management when significant capital investments or intensive management was required. There is, however, ample evidence of failure. There needs to be maintained in public land management an opportunity for the initiative created by private capital investment and management to contribute their capabilities. This is the basis on which sound management and full use of the resources can be achieved for the total benefit of the public interest.

We wish to make recommendations more specifically with respect to the proposed National Resource Lands Management Act of 1973, S. 424.

It is timely and very important that the Congress establish general policies and guidelines for the future management of the public lands as a vital first step in restructuring the public land laws.

This legislation would remove the public lands now managed by the Bureau of Land Management from the status of being managed until disposed of to a permanent status in federal ownership with provisions for the sale or exchange of lands as authorized by the Secretary. We have no basic objection to the change of status of the lands that should remain in federal ownership. We believe, however, the national policy should recognize the need to periodically review these lands

as the needs of the nation change and to move limited areas into private ownership to attain the highest and best use of the resources.

We do not agree with the intent of Section 9 that the Secretary should have general authority to acquire private land to be added to the federal ownership. We also object to granting authority to the Secretary to take private property by condemnation unless the specific acquisition has been given Congressional approval.

We are disturbed by the terminology used to describe the factors that are to be involved in meeting the requirements of Section 5, Land Use Plans, and Section 6, Management. These lands have vital resources which must be used constructively but which, in the national interest, need to be used as renewable and extractable resources. In our opinion this legislation requires management objectives that give emphasis of national priority to the environmental, recreational and scenic values and reduce to a secondary position the values of water, timber, grazing, and minerals. This is not, in our opinion, in the national interest and certainly is not in the interest of the people and the economies of the Western public land states.

Section 6(a)(2) would require the Secretary to insert into "permits, licenses, or other authorizations to use, occupy, or develop, the national resource provision authorizing revocation or suspension upon violation of any regulations issued by the Secretary under this Act or upon violation of any applicable State or Federal air or water quality standard and implementation plans." This is far too sweeping a provision, placing any licensee or permittee in an untenable position of subjecting the tenure of his enterprise to the widely varied opinions of every federal or state environmental agency. No one with capital and business judgment would find much hope for the future in this setting.

While S. 424 does not enumerate which existing public land laws should be repealed, we recognize that new legislation in the area of federal public land use and management should provide for the repeal of many outmoded laws. We believe

this legislation should clearly indicate, by appropriate listing, all existing laws that are to be repealed or substantially superseded by the provisions of this Act.

We suggest that the definition of "multiple use" in Section 2(c) be changed to be identical to the definition in the 1960 Multiple Use Act.

We recommend that the Desert Entry Act be retained.

We recommend that the basic land management and administrative features of the Taylor Grazing Act be retained. We suggest that withdrawals in excess of 5,000 acres be subject to Congressional approval.

In summary, S. 424 has a somewhat limited objective of dealing only with lands administered by the Bureau of Land Management. It fails to cover the broader need for a modern body of public land law appropriately related legislatively to state land use planning of private and nonfederal lands. In addition, it carries provisions which, in our opinion, need substantial revision and amendment.

We are anxious to be as helpful as possible to the Committee but we must oppose S. 424 unless it is amended substantially to clarify many points of concern.

PROPRIETARY RIGHTS SERVICE CORPORATION,
New York, N.Y., March 10, 1973.

Dear Mr. Committee Member: In connection with the *National Resources Land Management Act of 1973*, which we understand has just gone to Congress with an addendum affecting the proposed Alaska pipeline projected by Alyeska Pipeline Service Co., we enclose a description of the ERM Pipeline Monitoring System for which we have been appointed sole licensing agents.

When the nation is confronted with energy requirements on the one hand, and with protection of our environment on the other, it is important to know what other nations are doing in similar circumstances and what can be done to reconcile conflicting priorities. The ERM Pipeline Monitoring System was developed in West Germany as a means for giving very rapid and fail-safe warning of sudden pipeline breach whatever the cause. It can sound the alarm and trigger shut-down of pumps within fractions of a second from occurrence of any breach exceeding a threshold value. *

The ERM System can be seen in operation on two crude pipelines and three product lines in Southern Germany where it is approved by regulatory authorities as satisfying the requirements for one of the two systems to be installed on every such common carrier. It is currently being studied for a complete crude network and for a liquid ammonia pipeline. In our opinion it is the best answer to the objections of environmentalists as to the hazards of the Alaska project. It is our responsibility as the sole world-wide agents for the ERM System to arrange conducted tours and to give access to approved personalities who are desirous of studying the features of the ERM System in operation. Please contact us for any information you may wish to receive.

Very truly yours,

By *H. Roditi*
HAROLD RODITI,
President.

THE "ERM" PIPELINE MONITORING SYSTEM
NEW GERMAN SYSTEM FOR RAPID WARNING OF PIPELINE FAILURE

suitable for

oils, petrochemicals, chemicals, waters, effluents

* * *

Background of ERM System

The transportation of liquids by pipeline is the cheapest way to handle large volumes. It is possible by this method to store at concentration points the inventory of entire raw materials industries and to convey it there from great distances and in a wide variety of products.

The transportation of liquids by pipeline, however, is inherently dangerous to the environment in the event of rupture or other cause of leakage. Even though the likelihood of liquid escape is much less than in other methods of transportation, it is nevertheless necessary to adopt technical measures in order to minimize eventual damage. In many countries the authorities have enacted laws and regulations for protection of the environment by prescribing strict safety measures.

* Initial construction must include broad provisions guaranteeing a high operational safety factor. In operation a pipeline must be so supervised that small and large leaks can be recognized as to size and location at their very inception, in order that further transportation can be interrupted immediately and remedies implemented. These duties must be performed by various measuring appliances, yet there is no known method capable of offering a solution to all the requirements. These requirements are: rapid indication of the location and size of the leakage, high degree of operative readiness, absence of failure by interruption or disturbance, wide range of measurement from smallest to largest potential leakage flow, full reproducibility even with very small drift, and completely independent fully automatic actuation, free of operating personnel, to effect total cut-off of transportation and initiation of alarm systems.

* The presently known methods of pipeline surveillance can perform in combination with each other only a part of the required duties in that they partly complement each other. In order to provide partial surveillance upon failure of individual appliances, pipelines in West Germany must be equipped with two independently operative leak-detection systems.

A new surveillance system which gives very rapid warning of leaks in liquid-product pipelines, followed by automatic shutdown of the

line, has been developed by Erdöl Raffinerie Mannheim (ERM), an affiliate of Wintershall Aktiengesellschaft, Kassel, West Germany and of Marathon International Oil Company, Findlay, Ohio, U.S.A. Major ruptures are detected within a time interval varying from a few tenths of a second up to three seconds depending on the site of the failure - as against a time-lag of some 30 to 60 seconds with conventional "line-balancing" techniques which are based on accurately comparing outflow with inflow. In addition, cost savings up to 60% are claimed. The exclusive worldwide licensing agency for the new ERM system outside West Germany has been awarded to Proprietary Rights Service Corporation.

Principle of ERM System

The novel method now announced by ERDÖL RAFFINERIE MANNHEIM (ERM) offers over the known methods a range of advantages which predestine it for use in many fields. In the known methods of line-balancing or volumetric comparison, the flow at each instant is compared at the pipeline inlet and outlet, i.e., the quantities flowing per unit of time are compared and variations between these two magnitudes are indicated as leaks. The investment in equipment is high for large diameters and short distances, with ND 64 as the upper pressure limit necessitating the use of by-passes beyond that parameter. The operating costs for maintenance of flow-meters, repairs and replacements are very high. The unavoidable meter tolerances as a function of flow require a comparison time of about 30 to 60 seconds before a clear determination can be made. The accuracy of measurement is influenced by the density and viscosity variations of the product as also by any temperature variations along the pipeline. Remedies can be introduced at a price.

The ERM System - successfully employed since 1969 on two underground crude-oil pipelines in West Germany - uses the fact that pipeline failures tend to occur suddenly. Two orifice-plates (see Diagram A) are installed near the inlet and outlet of the line. These produce, by means of transducers, continuous electrical signals proportional to rate of flow. The two signals are brought together and combined, and the resultant is differentiated with respect to time to give an output proportional to rate-of-change of flow. This output is recorded (Diagram B) and is also compared with a pre-set norm. If it exceeds the norm, the comparator unit automatically actuates a relay which triggers an alarm, shuts off the product pump, and closes all valves throughout the length of the pipeline.

There are leak detecting systems, e.g., line balance, which react already to small leak flows, but which take a longer time to provide quantitative data and comparisons before initiating release of the safety installations.

The ERM System is not capable of reacting to such small leak flows. It reacts initially to a larger leak flow, but then with a multiple of the speed (a fraction of the time) of all other leak detecting systems.

* In practice, those instances are dangerous where a substantial leak in a short time causes a large volume to escape (upwards of 20% leak flow). It is then important that the most rapid reaction and shutdown be effective to restrict the escaped quantity, and precisely in this range the ERM System's reaction speed is several times faster than, for example, the competitive line balance system.

The fast reaction of the ERM System in the most dangerous range makes it more valuable than the other systems.

* There is no universal leak detecting system in the present state of the art. Total protection can be approximated by installing three systems:

Very small leaks

Pressure drop systems or
instrumented (acoustic) "pigs"

Mid-range up to
20% leak flow

Line balance system

20% leak flow and beyond

ERM System

* The pressure by public bodies for ever more complete protection of pipelines against accidental fluid spills is bound to increase in intensity. The limitations of the individual systems are likely to be known to the supervisory or regulatory agencies. Under the increasing pressure from public bodies, the agencies will raise the required performance levels of these systems.]

Because the ERM System, unlike line-balancing methods, depends on rate-of-change of flow rather than absolute flow values, the measuring instruments need not be particularly accurate. So long as the flow remains constant - at whatever level - the output is zero. Routine alterations of pumping rate produce a small output well below the "alarm" level, and so may variations in the viscosity, density or temperature of the liquid being pumped. But any rupture of the line produces a sudden variation in flow at the point of failure; and because liquids are virtually incompressible, this pulse is transmitted rapidly and without significant attenuation to the two measuring stations, producing a sharp peak on the output. Diagram B shows the effect of a simulated leak on one of the West German pipelines. This occurred between 1600 and 1700 hours. The response was so rapid that the ink on the recorder was unable to follow the stylus.

50% Savings with ERM System

The ERM System operates with orifice plates or similar restrictions as proportional flow indicators. They have no moving parts immersed in the product and they are subjected to practically no wear. The capital investment and operating costs are low and practically independent of the pressure gradient, below 50% of those for line-balancing methods. An important advantage is the almost instantaneous detection of major ruptures or leaks within a time interval of from a few tenths to about 3 seconds.

Table 1 shows the capital investment required for the ERM System and for conventional line-balancing systems applied to different sizes of pipeline. The ERM System is 50% cheaper for a 10-inch-diameter (25-cm) pipeline and savings are even greater for larger lines. Operating costs are also much lower, since the orifice-plates have no moving parts immersed in the product and are subjected to practically no wear, whereas conventional flow meters must be serviced regularly to maintain the high accuracy required. Costs of the ERM System are practically independent of pressure gradient.

Its low cost makes the ERM System applicable economically to short pipelines which cannot be served by existing methods. It can be applied to the largest pipes without providing a by-pass flow, and remains effective even if there are several sources serving the pipeline or several outlet terminals.

This new method makes use of the fact that pipeline failures occur only suddenly. When dealing with liquids which are to all intents and purposes incompressible, any instantaneous flow variation propagates rapidly through the medium as a pulse transmitted even to a remote measuring station. The rapidity with which a leak occurs thus determines directly the measuring effect. This temporal variation is converted in the surveillance system into an electrical current which returns to zero when a constant flow is re-established. A recorder displays this procedure. The current peak is fed to a comparator which compares its value with that of a predetermined threshold. If the threshold is exceeded, the comparator actuates a relay which triggers an alarm, shuts off the product pump and closes all valves throughout the length of the pipeline.

The method of measurement is independent of variations in viscosity or density and of inaccuracies of the measuring appliance, since it uses no effective values, but only their time differentials. The other factors do not vary in the short reaction time.

The rapid unequivocal actuation of the installation upon occurrence of a leak, even if there are several sources at the beginning or several users at the end of a pipeline, makes the new method also applicable economically on a wide scale to short pipelines which cannot be served by the previously known methods.

Moreover, the ERM System is unlimited as to liquid product, such as hydrocarbons, particularly crude oil, heating oil, gasoline or chemicals, ammonia, anhydrous or aqueous acids or lyes, even water and aqueous solutions, in fact all liquids with widely varying properties and densities.

Existing ERM System Installations

The ERM System is already in operation on two crude oil pipelines. * It has been tested by the environmental protection agencies in West Germany and approved as a fail-safe system.]

The two German pipelines employing the ERM System are both 16 inches (40 cm) in diameter and run from Jockgrim, near Karlsruhe, in the Rheinland-Pfalz Region. One is 35 km long and ends near Speyer; the other, 57 km long, crosses the Rhine at Ludwigshaven and ends at Mannheim. In Germany, all pipelines have to be licensed by the local Landesgewerbeaufsicht (Regional Trade Supervision Authority), who lay down the standards required. They are retested annually. In this case, the main requirement was that "...interruption of transportation must be achieved for a product outflow of more than 30 litres/sec in a time span of at most 10 seconds". Because the ERM System "fails safe" with no possibility of leaks going undetected, it was accepted by the authorities as one of the two independent leak-detection systems with which every pipeline must be equipped.

Evaluation of ERM System

For determining the performance capability of a leak detecting system, the most customary question is: What is the smallest size leak it can detect? This parameter is the standard yardstick when comparing volumetric systems. The man skilled in the art is used to accepting a volume indication as the qualitative measure of a leak detecting system.

This does not, however, take into consideration the size of the hole nor the quantity of liquid escaping through it. The total damage is calculated from the total quantity Q_L spilled from rupture to closure. This total damage Q_L is the product of F_L (leak flow) in m^3/h by t_L (leak time) in hours. The leak flow F_L is determined by the leak area A_L as the cross-section of the rupture, the pressure drop Δp across the rupture between the pipe product pressure and the environment pressure, and the viscosity η of the product. The magnitude of the total damage Q_L therefore depends on 4 factors:

$$Q_L = f(A_L, \Delta p, \eta, t_L)$$

Despite the relatively low incidence of leaks, it is nevertheless known that small ruptures do not occur independently of the cause of rupture, disregarding chronic leaks from small corrosion pinholes or cracks. The magnitude of the rupture size A_L cannot be influenced by any action taken before or after it occurs, and up to the present time ruptures have occurred in the range of at least 10% to 100% or more of pipe cross-section.

The pressure drop Δp is a function of environment pressure and pipe internal pressure, which depends in turn on the leak location and thus the distance from the pump and the static elevation of the leak location. This parameter is likewise not available until the leak occurs, whereupon the magnitude of Δp can be considerably lowered in favorable circumstances by pump shutdown and by controlled pressure relief with safety tanks.

Since the product viscosity as an equation parameter similarly cannot be influenced, the only remaining factor is the leak time t_L which must be kept as short as possible in order to reduce the total damage Q_L . The leak time is divisible into intervals t_{OD} (occurrence to detection) t_{DS} (detection to shutdown), and t_{SC} (shutdown to closure). Particularly, interval t_{OD} must be kept as short as possible in order to contain as soon as possible the greatest spill occurring while Δp is high. The interval t_{DS} can then elapse with automatic speed as determined by the closure time for the valves. These valves, which divide the pipeline into smaller segments having smaller part volumes, can be closed only with time delay in order to avoid the dangerous pressure peaks caused by deceleration of the moving liquid column. The interval t_{SC} , finally, is determined by the minutes and hours it takes to discover the precise location of the leak and to reach it and effect closure of the rupture.

It is, therefore, of utmost importance that the interval t_{OD} be kept as short as humanly possible by developing and installing a telemetering system capable of responding immediately to a rupture. The customary line balance or volumetric comparison systems prolong this interval because they take time to determine quantities. The fluid flow measurements at the beginning and end of the line must be individually integrated as a function of time and the results compared. It is then possible to determine what quantity has spilled out of the pipe, but the determination of this quantity has no immediate value and it takes up valuable time during which the product is spilling out of the pipe, through the crack or rupture, at full pumping pressure.

The ERM System disregards the relatively valueless parameter of missing fluid flow quantity, but it seizes on the moment in time when the rupture occurs. This is done by time-differentiation of the sudden leak flow increase. The result is a substantial amplification, i.e., rapid detection of all leak flows F_L spilling through the quite large leak areas A_L . Since the leak flow F_L is not measurable, it must first be constituted mathematically by subtraction of the fluid flows at the end and beginning of the line. If these two parameters, or a greater number for a whole network, are made available at all times at a same location, the time differentiation can be made there and the instant of leak occurrence can be immediately determined. Time delays will then occur mainly if the telemetering and transmission systems require conversion because of different base principles. The ERM System, therefore, operates best if it is matched to the transmission technique of the other monitoring system used on the line.

In comparison with other systems, the ERM System operates very rapidly, is simple to operate, requires no precision of individual measuring points, is sturdy and free of operational hazards or failures, and is valuable in its performance capabilities. It has proved itself in several instances and is officially approved in Germany as one of the two systems required for every pipeline.

The ERM System is offered under license from the proprietors, and license terms will be submitted in response to documented inquiries. The authorized licensing agents are:

PROPRIETARY RIGHTS SERVICE CORP.
180 EAST END AVENUE
NEW YORK, N. Y. 10028
PHONE: (212) 988-7096
TELEX: 421655 (PRSC)

and

PROPRIETARY RIGHTS SERVICE CORP.
33 RAGGED HALL LANE
ST. ALBANS, HERTS.,
GREAT BRITAIN
PHONE: ST. ALBANS 59906
TELEX: 262407 (COTWO)

TABLE I

NS 937

INVESTMENT REQUIRED FOR PIPELINE SURVEILLANCE SYSTEMS

(All figures in DM1000)

Nominal diameter of pipeline	4" (10cm)	6" (15cm)	10" (25cm)	16" (40cm)	30" (75cm)
<u>A Line-balancing systems:</u>					
Flow-measuring equipment and filters.	14	28	46	114	-
Electronics, recorder, alarms	10	10	10	10	-
Installation	8	14	30	40	-
Total	32	52	86	164	270 (est.)
<u>B ERM-System</u>	20	22	25	32	40
Savings	12	30	61	132	230

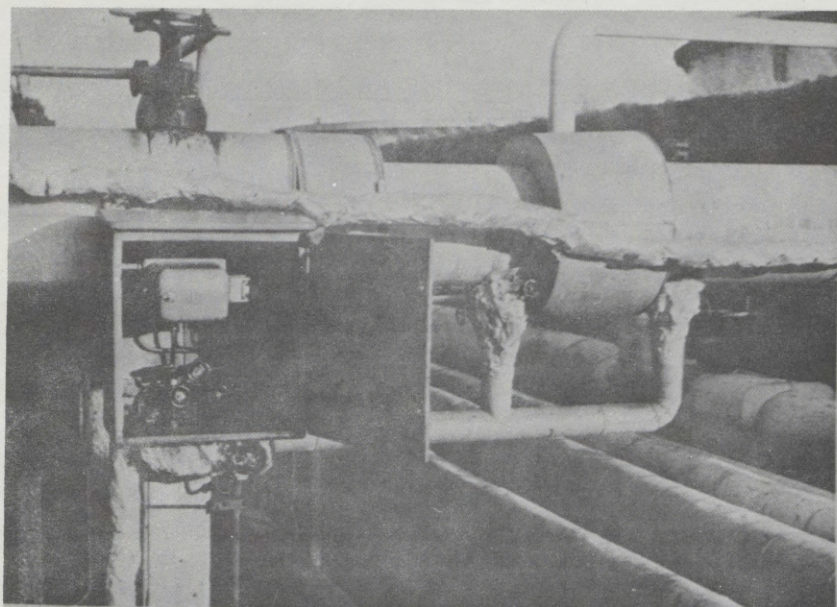


Fig 1

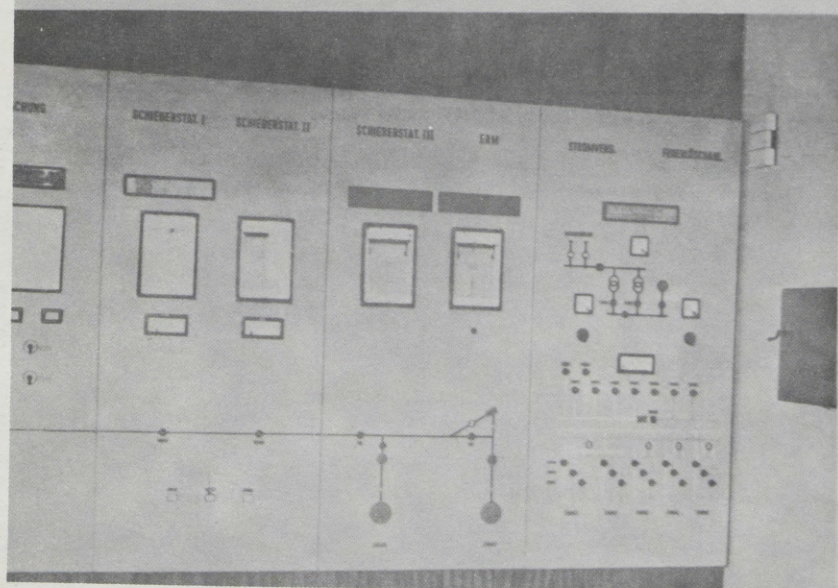


Fig 2

NS 937

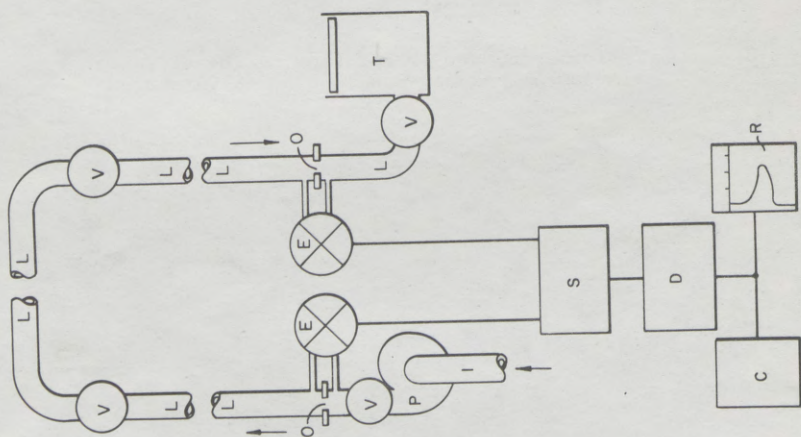


Diagram A

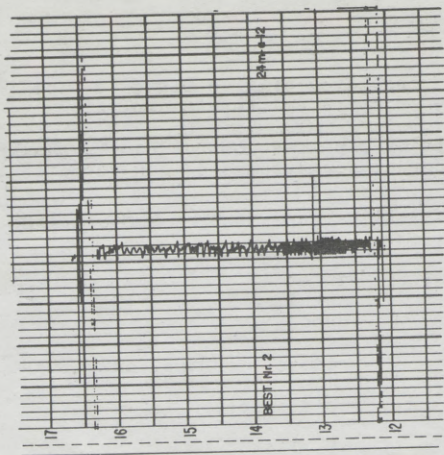


Diagram B

Captions to Illustrations

- Fig. 1 ERM insulated orifice-plate in pipeline, showing electric transmitter in explosion-proof case.
- Fig. 2 Part of pipeline control panel, showing ERM recorder for automatic leak-detection.
- Diagram A Schematic arrangement of ERM pipeline surveillance system.

Key: I - inlet
 P - pump
 V - remotely-controlled valve
 O - orifice-plate
 L - pipeline
 T - storage tank
 E - electrical transducer
 S - summator
 D - differentiator
 C - comparator
 R - recorder

- Diagram B Typical recorder-trace, showing the effect of a simulated leak between 1600 and 1700 hours.

DANIEL A. POOLE
President
L. R. JAHN
Vice-President

WILDLIFE MANAGEMENT INSTITUTE

Dedicated to Wildlife Restoration
WIRE BUILDING, WASHINGTON, D. C. 20005 (202) 347-1774

IRA N. GABRIELSON
Board Chairman
HARRY L. HAMPTON, Jr.
Treasurer

March 1, 1973

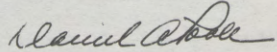
Hon. Henry M. Jackson, Chairman
Committee on Interior and Insular Affairs
Senate Office Building
Washington, D. C. 20510

Dear Senator Jackson:

It is regretted that the Institute was unable to have a representative present at the public hearing on S.424. We long have been interested in the objectives of the proposal, as you know.

I would appreciate having the enclosed statement in support of S.424 inserted in the hearing record. Please note our comments with respect to (1) Sec. 6(a)(2) and (2) amendment to include wilderness study and classification authority.

Sincerely,



Daniel A. Poole
President

DAP:mm

Encl.

WILDLIFE MANAGEMENT INSTITUTE

Dedicated to Wildlife Restoration
WIRE BUILDING, WASHINGTON, D. C. 20005

Statement of Daniel A. Poole
before the
Subcommittee on Public Lands
of the
Senate Committee on Interior and Insular Affairs
on S. 424
March 1, 1973

Mr. Chairman:

I am Daniel A. Poole, president of the Wildlife Management Institute. The Institute is one of the older national conservation organizations, and its program has been devoted to the restoration and improved management of renewable natural resources for more than 60 years.

* The Institute endorses the principles and objectives of S. 424. [For decades now, the Bureau of Land Management has struggled to meet its responsibility on the public domain lands. Its efforts have been largely futile due to a lack of authority and funding. Its entire program is predicated on random authorities scattered among many diverse Acts of Congress.] Consequently, the relatively few professional resource management personnel have been unable to fully plan and execute adequate programs to protect these lands and their resources, much less enhance productivity and increase public benefits.

This sorry state of affairs is first noticeable in the fact that most Americans have never heard of BLM. Many are not even aware that they own 472 million acres of land in 11 western states and Alaska. It is evident, therefore, that these lands are not serving the public as they should.

The earlier Classification and Multiple Use Act, developed and extended with the support of this committee, gave BLM a brief opportunity to gather data and upgrade its program in a general way. Resource inventories and public hearings were conducted to gather information and recommendations in terms of designating public lands for retention and management or for disposal.

Public interest in these lands, as evidenced by public participation in the public hearing process under the C&MU Act, was great. Before this Act expired, it became apparent that people were beginning to realize that public domain lands comprise one of the nation's greatest natural resources, and that their general disposal would drastically curtail the amount of land available for beneficial public uses. An overwhelming proportion of the people taking part in the classification process wanted the lands retained and placed under more intensive management and protection.

S. 424 addresses two specific inadequacies in BLM's overall ability to manage public domain lands. These are the agency's lack of authority to enforce applicable public land laws and regulations and its inability to accommodate dramatic increases in public recreational use.

Unlike employees of other federal land administering agencies, such as the National Park Service, Bureau of Sport Fisheries and Wildlife, and U.S. Forest Service, personnel of the Bureau of Land Management have no authority to enforce the laws of the United States or departmental or agency regulations. For example, if a BLM employee observes an individual ripping down signs marking public domain boundaries, he can ask the person to stop, but he cannot make an arrest if the person persists in destroying public property. The alternatives available to the BLM employee is to contact a U.S. Marshall or magistrate and request that an arrest be made or the employee may chance a citizen's arrest. Neither alternative is satisfactory. Obviously the time and distance involved in summoning a marshall makes that way ineffective. And, if a citizen's arrest is made, the employee is entirely on his own and subject to suit without help from the federal government. *

The lack of enforcement authority problem may best be illustrated with reference to endangered species on BLM lands. In 1967, BLM instituted its endangered species program with assistance from the Bureau of Sport Fisheries and Wildlife and state wildlife management agencies. These efforts, though

plagued by a lack of funds, have resulted in extensive field inventories of endangered species on public domain lands and in several habitat enhancement programs directed at protecting these animals. To date, 45 species considered by BLM as endangered or threatened with endangerment have been identified. Habitat manipulation to protect these species is progressing slowly, but, another arm of *management, law enforcement, is still outside the purview of the agency. BLM personnel, for instance, cannot arrest anyone deliberately destroying endangered animals. To control the littering, theft, vandalism, misuse of motor vehicles, and other abuses that accompany public use, it is clear that designated BLM personnel should have the authority to protect the overall public interest from an inevitable marauding few.]

* [In some localities, where state and local laws or ordinances have been extended to the public domain, BLM personnel observing violations can contact sheriffs or other enforcement officers. This cooperative arrangement has proved to be inadequate, however, because of the limited resources of local police.]

It is our understanding that some public land permittees are concerned about field implementation of Sec. 6(a)(2) as presently worded. There is some feeling that revocation or suspension authority should be tied more specifically to violations with respect to misuse of a permit and misuse of the public land covered by the permit. We find this concern a valid one and are hopeful that the committee, either in the bill or the report, can clarify this point. Our concern, of course, is for providing a realistic basis for improved management of national resource lands, not in needlessly raising apprehensions of permittees.

We sincerely urge, Mr. Chairman, that the much-needed enforcement authority be granted to BLM.

Turning now to the public domain recreation problem, I believe it best can be summarized by pointing out that recreational use of BLM lands has *increased dramatically during recent years. [From 1965 to 1969, recreation visits to BLM lands went from 9 million to 40 million, a more than 400 percent increase.]

Some areas, such as the California Desert near Los Angeles, are being impacted by too many people with too few facilities to accommodate them. BLM no longer can be expected to control the use of these important lands with skeleton crews of the past, but, additional funding and personnel have not been provided.

Additionally, the public is being denied use of millions of acres of land that it owns because access is restricted by private lands. In other areas, the co-mingling of private and public lands has encouraged ranchers to lease thousands of acres to fishing, hunting, and recreation clubs, with non-members being denied access to public lands both within and beyond the fenced areas or being charged a fee to cross the club area to other open public lands. Again, this problem is linked with BLM's inability to conduct a responsive recreation program and with its lack of enforcement authority and wherewithal to mount a regular patrol and surveillance program.

The historical unregulated use and degradation of public domain lands by some grazing and mining interests is now joined by another threat from recreationists. Land managers estimate that two-thirds of the public grazing lands are in unsatisfactory condition because of overgrazing. Recent inventories have indicated that nearly half of the 172 million acres of wildlife habitat on BLM lands within the contiguous 11 Western States is in an unsatisfactory condition. Without proper management authority and program funding for BLM, we can expect this loss of public resources to continue. *

We strongly urge that the committee amend the bill so as to include the BLM lands under the procedures of the National Wilderness Preservation Act of 1964. A number of outstanding natural areas already have been designated for special handling by BLM. We believe that these should be studied further and recommendations made as per the 1964 Act procedures for their designation as wilderness. Also, BLM should be charged with inventorying all of its holdings, conducting field hearings, and preparing a list of all areas suitable for designation as wilderness. *

A final point, Mr. Chairman. We hope and trust that the committee will recommend the repeal of the numerous archaic laws that pertain to national resource lands.

THE MONTANA WILDERNESS ASSOCIATION,
Hamilton, Mont., March 5, 1973.

Senator FLOYD HASKELL,
Chairman, Senate Subcommittee Public Lands,
Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: Senator Jackson's National Resource Lands Management Act, S. 424, is a piece of legislation long overdue. Past problems in management of BLM lands have been many, hampered as the Administration was, by lack of definitive management direction and the tools and authority to carry them out.

We urge your support of S. 424 and also ask that you entertain the idea of amending the Act to:

1. Include the provision that BLM lands be subject to review under the Wilderness Act of 1964, and

2. Blanket into the Act the existing designated primitive and natural areas.

These areas are in jeopardy and have been because they exist by Administrative regulation only and do not have statutory protection. They should be secured by legislation.

* Well managed public lands are a source of great internal strength in any country. A country without them can be locked into existing patterns benefiting a few with no hope of change. We need public lands for elbow room for national change and for an opportunity for leadership in good land management practices.

Once we had great frontiers. Now only our public lands remain as frontiers and we should cherish them and manage them with care.

Very truly yours,

DORIS MILNER, *President.*

WESTERN MONTANA FISH AND GAME ASSOCIATION,
Missoula, Mont., March 5, 1973.

Senator FLOYD K. HASKELL,
Chairman, Subcommittee on Public Lands,
Senate Office Building, Washington, D.C.

DEAR SENATOR: This letter is written to urge passage of S-424 Organic Act for Public Domain Lands.

We like this bill as it is now written, but believe that it would be a much better piece of legislation if amended to include immediate classification of BLM primitive areas and outstanding natural areas as wilderness within the act.

We ask your support of our thinking on S-424.

Conservationally yours,

A. G. ERSKINE, *Chairman,*
Legislative Committee.

C.O.S.C. WILDERNESS WORKSHOP,
Denver, Colo., March 11, 1973.

SENATOR FLOYD HASKELL,
Chairman, Senate Subcommittee on Public Lands, Senate Office Building,
Washington, D.C.

DEAR SENATOR HASKELL: Since the C.O.S.C Wilderness Workshop is very much concerned with the future of BLM lands, we would like to comment on S. 424, "The National Resource Lands Management Act of 1973".

S. 424 is very similar to S. 2401 which Senator Jackson introduced last year, and which we considered to be a watered down version of Title I of S. 921 which Senator Jackson also introduced last year. S. 424 is satisfactory in principle, but fails to come to grips with a number of serious problems. Consequently, we would like to make the following recommendations many of which were originally incorporated in S. 921. We believe that many of these recommendations should be included in a BLM Organic Act prior to consideration of any National Land Use legislation.

1) The Secretary of the Interior should be empowered to recommend to the President certain "national resource" lands for wilderness designation under the provisions of the 1964 Wilderness Act.

a) Designated BLM Primitive Areas, Outstanding Natural Areas, and Natural Areas should be studied immediately for possibly inclusion within the National Wilderness Preservation System.

2) De facto wilderness areas should be preserved until they are studied for wilderness designation and acted upon by Congress.

3) The appointment of the Director of the Bureau of Land Management would be subject to the advice and consent of the Senate. Additionally, "the Director shall (1) have a broad background and experience in public land and natural resource management, (2) be selected from the Federal civil service . . ." This would encourage the bipartisan appointment of qualified individuals to the office of the Director.

4) The public should be able to request hearings prior to the classification of public lands for disposal.

5) The notoriously obsolete General Mining Laws should be repealed and replaced with a more equitable mineral leasing system. In Senator Jackson's own words ". . . 99 years is enough."

6) In addition to protecting all de facto wilderness areas, mining would be prohibited within units of the National Park System, units of the National Wildlife Refuge System, the National Wilderness Preservation System, and the national system of Wild and Scenic Rivers.

7) Unless already "improved" for purposes other than mineral development, title to all patented claims should revert to the Federal government. Fair Market Value would be appraised effective when the Act is signed into Law. Thanks to the 1872 Mining Law, the title to thousands of acres of what was once prime Federally owned lands has passed to private ownership. Recently, land speculators have taken advantage of this fact and have seized large tracts of patented mining claims for their own purposes. This obviously was not the intent of the law. *

We support S. 424 as an enlightened approach to the future management of our public domain lands. However, as we have indicated, there are several areas in which it could be made more effective.

We request that this letter be entered into the Official Hearing Record.

Cordially yours,

DAVID McCARGO Jr.,
Acting Chairman.

YREKA, CALIF., March 9, 1973.

Senator FLOYD HASKELL,
Chairman, Senate Subcommittee on Public Lands,
Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: The purpose of this letter is to express my support for S. 424, the National Resource Lands Management Act of 1973. I strongly believe that Bureau of Land Management lands should be managed under multiple use and sustained yield guidelines and certainly management programs should consider environmental, recreational and scenic values as well as other uses.

I would urge your committee to amend S. 424 to make Bureau of Land Management lands subject to review under the 1964 Wilderness Act and also to designate the already identified BLM Primitive Areas as "instant" parts of the National Wilderness System.

Please make this letter part of the official hearing record. Thank you very much.

Sincerely yours,

JAMES W. ECKMAN.

IDAHO ENVIRONMENTAL COUNCIL,
Idaho Falls, Idaho, March 10, 1973.

Senator FLOYD HASKELL,
Chairman, Subcommittee on Public Lands,
Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: The Idaho Environmental Council supports S. 424, the National Resource Lands Management Act of 1973 (BLM Organic Act), and suggests an amendment for further improving this good piece of environmental legislation.

Past administration of the public domain lands has been somewhat haphazard due to the lack of adequate authority by the Bureau of Land Management, and to the general lack of environmental concern. The public is only now beginning

to realize that there are great values in these lands, intangible as well as tangible.

Some of the provisions of S. 424 which we think highly desirable are:

1. The Secretary of Interior would be directed to inventory the national resource lands (BLM lands) and to develop comprehensive land use plans for them, giving priority to the identification and protection of areas with special and critical environmental values.

2. National resource lands would be managed under a multiple use and sustained yield concept, and in a manner which would protect the environmental quality of those lands so that they would be as valuable to future generations as they are to us.

3. The BLM would be given specific authority to enforce regulations needed for the protection of those lands, including the authority to stop uses which would lead to violation of environmental protection laws.

4. Land reclamation would be required where the surface was disturbed.

We urge that S. 424 be amended to make national resource lands subject to the provisions of the Wilderness Act of 1964. There are many undeveloped areas among these lands which qualify as Wilderness. Those specific areas already designated administratively by the BLM as "Primitive", "Natural Area", etc., should be made instant Wilderness, and other undeveloped areas which appear to qualify should be studied for their possible inclusion in the National Wilderness Preservation System.

S. 424 would give the public domain lands the protection they so badly need. We find it grimly amusing that some of the timber, mining, and grazing interests are protesting the bill so loudly, claiming that too much consideration would be given to environmental concerns.

The IEC hopes that S. 424, with an amendment to make BLM land subject to the Wilderness Act, will soon be acted upon and passed by Congress.

Sincerely,

GERALD A. JAYNE, *President.*

MONTANA WILDLIFE FEDERATION,
Bozeman, Mont., March 5, 1973.

SENATOR FLOYD K. HASKELL,
Chairman, Senate Subcommittee On Public Lands, Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: I favor SB 424 by Senator Jackson. However, it seems to me that the bill should be amended so that it will, when passed, continue the existing area designations, such as primitive and other areas, which the BLM currently has in effect.

Please make this letter a part of your hearing record.

Sincerely yours,

F. H. McNEAL,
Vice President.

EUGENE, OREG., March 7, 1973.

SENATOR FLOYD HASKELL,
Chairman, Senate Subcommittee on Public Lands, Committee on Interior and Insular Affairs, Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: One of the most significant land measures since the Multiple Use and Sustained Yield Act of 1960 and the Wilderness Act of 1964 is now before your subcommittee. I refer to the National Resource Lands Management Act of 1973, sometimes known as the BLM Organic Act, S. 424.

This is urgently needed legislation. For years there has been confusion about the policies which BLM pursues on its 450 million acres, particularly regarding protection for primitive and highly scenic areas. This bill would, for the first time, provide that BLM lands be managed under the same principles as our National Forests, but more importantly, it would require an inventory of these lands, with priority given to identification and protection of areas of critical environmental concern.

Once again, as they did in the ten-year struggle to enact a Wilderness bill, the extractive industries who stand to lose easy access to the minerals and forest and grassland resources of the public's lands are leaping to the fore to defeat

this landmark bill. Ultimately, they cannot win this battle any more than they did in 1964.

As S. 424 now stands, it is an excellent piece of legislation. There are, however, two essential changes I would like to urge:

1. Amend S. 424 to require that BLM lands be subject to systematic review under the Wilderness Act of 1964. It has never made sense that these important lands, larger in total acreage than all the National Forests, Parks, and Wildlife Refuges, were not included in the Wilderness review process. Here is an opportunity to do so.

2. Amend S. 424 to place in the National Wilderness Preservation System several Primitive and Outstanding Natural Areas which the BLM has already identified and designated in several western states. These should be specifically listed in the bill with provision for their immediate inclusion in the Wilderness System upon passage of S. 424.

Enactment of S. 424 would give the BLM specific authority to regulate environmental abuses; at present it is the only federal agency without such authority. And if the amendments suggested here could be made a part of the legislation, the rounding out of the wilderness concept would be complete in that *all significant federal lands* containing areas of outstanding beauty, solitude, and wild character would be given equal review and legislative designation.

I appreciate this opportunity to comment and would ask that you make this letter a part of the hearing record.

Sincerely,

HOLWAY R. JONES.

THE IZAAK WALTON LEAGUE OF AMERICA, INC.,
March 1, 1973.

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

DEAR MR. CHAIRMAN: The Izaak Walton League of America is happy again to support the National Resource Lands Management Act of 1973. This is essential legislation which is long overdue; its sponsors and your Committee are to be commended for bringing it up for consideration and action so early in the session.

The lands administered by the Bureau of Land Management have been orphaned for a century or more. Subject to a variety of public land laws often in conflict, vulnerable to undue influence exerted by some privileged to use them for profit, denied essential funding for their protection and management and with the threat of disposal ever hanging over them, public domain lands have been a continuing source of frustration to those officials responsible for their management and to the public which owns them. S. 424 would reject that obsolete format and bring the lands within responsible and consistent management for long range as well as current public benefits.

Of prime importance, and basic to all other management determinations, is the decision that the public domain lands are to be retained in public ownership. They would continue to be subject to exchange, to block up holdings for administrative efficiency and to disposal when the public good would best be served thereby.

Crucial to long range management is application of the multiple-use-sustained yield policy for the whole range of tangible and intangible values in a balance which best serves public needs. Only in recent years has the public in substantial numbers begun to recognize the quantity and quality of recreation opportunities afforded by these lands. Their value for recreation purposes constantly increases. *

S. 424 emphasizes the importance of "areas of critical environmental concern . . . where uncontrolled use and development could result in irreversible damage to important historic, cultural, or scenic values, or natural systems . . ." This may imply eligibility for consideration under the Wilderness Act, but the bill does not specifically provide for such.

It will be noted that the Multiple Use-Sustained Yield Act of 1960 which applies to National Forests, provided that wilderness is an appropriate use of national forest lands. There are areas in the Public Domain which have unique

characteristics of wilderness and which should be studied for potential inclusion in the Wilderness Preservation System.

We suggest that the Secretary as part of his inventory of national resource lands be directed to carry out a study of existing roadless areas which meet Wilderness Act standards and criteria, and within a period of 5 years make recommendations through the President to Congress for action to include such qualified areas in the Wilderness Preservation System. Such areas when identified should receive full wilderness protection pending Congressional action.

While Section 12 of the Act should make it clear that the police powers of the respective states are not limited, misunderstandings might be avoided with the addition of traditional language about hunting and fishing being permitted under applicable State and Federal laws.

While the Act includes the requirement of public participation in overall management decisions and land use plans, we believe this should be specifically extended to the process of developing regulations for the protection of areas of critical environmental concern and to the sale of any national resource lands.

In conclusion, Mr. Chairman, we heartily endorse the purpose of the legislation, urge its enactment with perfecting amendment and ask that this communication be made a part of the record.

Respectfully yours,

RAYMOND C. HUBLEY, Jr.,
Executive Director.

WILKINSON, CRAGUN & BARKER,
LAW OFFICES,
Washington, D.C., February 27, 1973.

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

DEAR SENATOR JACKSON: On behalf of NANA Regional Corporation, Inc., one of the twelve regional corporations formed in Alaska pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (P.L. 92-203; 85 Stat. 688), we respectfully submit the following comments for consideration in connection with the March 1, 1973 Committee hearings on S. 424.

"National resource lands", as defined in S. 424, includes all lands now or hereafter administered by the Bureau of Land Management. Technically, at least, it could be asserted that this would make the bill apply to all lands in Alaska withdrawn under Section 11 of the Settlement Act for selection by the Alaskan Natives. None of these will be conveyed to the Natives before December 18, 1974, and until conveyed they are administered by the BLM. The bill also applies to other lands in Alaska now administered by BLM, in particular lands presently withdrawn under Section 17(d) of the Settlement Act. Some of these lands are under study to insure that the public interest in them is properly protected, and others are to be considered for possible addition as units of the National Park, Forest, Wildlife Refuge and Wild and Scenic Rivers Systems. Before Native land selections take place, some of these 17(d) lands will, however, have to be withdrawn for selection by the Alaskan Natives, under the deficiency withdrawal provisions of the Settlement Act (Section 11(a)(3)(A)).

We assume that there is no intent to have S. 424 apply to lands in Alaska presently withdrawn for selection by Natives, to add any additional obstacles to effecting the necessary deficiency withdrawals, or to diminish in any way any other rights granted under the Settlement Act. Section 14 of S. 424 provides that all actions of the Secretary shall be subject to all valid existing rights. This may be sufficient to protect rights granted under this Settlement Act. We respectfully suggest, however, that those rights would be more clearly protected if S. 424 included a specific statement that "National resource lands" do not include lands now or hereafter withdrawn for selection under Section 11 of the Settlement Act, and that no other rights granted to Natives under the Settlement Act are in any way intended to be affected or diminished by the bill.

Very truly yours,

By RICHARD A. BAENEN.

DAVIS, CALIF., FEBRUARY 14, 1973.

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

DEAR SIR: I would like to make the following statement for the Hearing Record on S. 424, the "National Resource Lands Management Act of 1973".

I heartily support the purposes and intent of the proposed Act, for it has become increasingly clear that there is a necessity for giving the Bureau of Land Management full authority for the conservation and protection of the public lands under its jurisdiction. I have had the opportunity to observe operations of BLM lands in California, Nevada, Utah, and Arizona. The BLM is to be commended for the fine job that it has done, albeit suffering under the strictures of underfunding by Congress and lack of authority to enforce its own regulations. No longer is the BLM the tool of the U.S. Government to rid itself of excess lands; no longer is it a way of subsidizing the private operations of cattle ranches. The wide variety of uses to which our public lands are being put have created many sources of conflict, which can only be mitigated through careful planning and full authority for the conservation and protection of these lands through the regulations of the managing agency. I am the owner of a parcel of desert land literally "given away" by the BLM in the foregone days of a land disposal agency. I can now clearly see that the public good would have been far better if these lands had been retained in federal ownership for the common good.

Even today, we have found serious circumstances where the BLM attempts to protect the land under its jurisdiction, but is unable to do so. Desert Rangers in southern California have stood helplessly by while vandals defaced priceless archeological artifacts. A motorcycle club set out deliberately to defy BLM regulations in order to bring the issue to court by running a race without a permit; it turned out that they ruined literally hundreds of acres of land valuable for archeology, wildlife, and scenic values. If this Organic Act had been enacted then, this would not have happened, and motorcycle races would occur in locations where the destruction would not be as great.

Multiple Use and Sustained Yield are excellent precepts, which the Bureau of Land Management is already attempting to operate under, but is unable to carry out fully from lack of funding and lack of sufficient authority. This proposed legislation is vitally necessary if the goals of wise use and protection is to be achieved.

There is one noticeable omission in the proposed Bill which I feel deserves attention and amendment to rectify. S. 424 makes several references to protection which as they stand are empty words without any procedure for insuring this protection: Section 3 (b) line 7 & 8: "preserve and protect certain areas in their natural condition"; and Section 5 (b) (2): "give priority to the designation of areas of critical environmental concern".

While the bulk of BLM lands today and in the future will be used for a wide variety of exploitive purposes such as resource harvesting and mass recreation, BLM has realized that certain areas are valuable for their primeval character and unique biological properties. It has recognized these properties by establishing by administrative designation six Primitive Areas, and is studying numerous other areas for addition as Primitive status. It has found that many circumstances often warrant this special kind of protection; not just to preserve endangered wildlife, or provide recreation, but to preserve as ecological benchmarks examples of a wide array of plant and animal communities which fall under this kind of protection nowhere else. The Multiple Use Act clearly states that Wilderness is an authorized use of public lands; and this National Resources Land Management Act is an attempt to elevate the BLM to the same authoritative status that the Forest Service or the Park Service enjoys. BLM has had to designate these Primitive Areas under its own administrative guidelines; with this Act, these Primitive Areas ought to be included for inclusion into the National Wilderness Preservation System under the provisions of the Wilderness Act of 1964. The inventory process for public lands in this proposed law should include study of potential for legal Wilderness protection, as well as the various other multiple

uses. This Bill provides an opportunity to insure the greatest possible protection of our eminently valuable public lands, for *wilderness* as well as grazing, wildlife, recreation, etc. This Act is being made, after all, basically to insure the protection of our public lands, through the vehicle of giving the BLM the authority to do so. I hope that appropriate amendments can be made so that all possible means of aiding the BLM in the protection of our public lands can be made.

Thank you.
Sincerely,

HAROLD WM. WOOD, Jr.

WILLIAM R. MEINERS,
CONSULTANT,
Boise, Idaho, March 11, 1973.

Senator FLOYD HASKELL,
Chairman, Senate Subcommittee, Public Lands,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HASKELL: Please, may I ask your review of the enclosed materials as they have direct bearing when considering an Organic Act for management of our publically owned lands. May I also request that this letter and its enclosures be made part of the hearing record: S. 424—the NATIONAL RESOURCE LANDS MANAGEMENT ACT of 1973.

Grazing is, of course, but one of the many uses having impact upon the publically owned lands. It is one, however, which has contributed greatly to the degradation of these lands and it continues to do so. It is for this reason that I believe the Reader's Digest article: *The Nibbling Away of the West* is both excellent and timely. It is for this reason also that livestock grazing must be separated from its romantic past and the special treatment that it has so long been accorded and placed into perspective with all other uses of the public lands in today's world. Advisory Boards as now constituted must be abolished. And, if a citizens board is thought necessary it must represent all the publics not just the vested few. With proper and full application of the National Environmental Policy Act I can see no real need for such boards.

I endorse S. 424 completely and urge its early enactment. I would suggest certain amendments if that can be done at this late date. An amendment to permit applicable lands under the jurisdiction of the Bureau of Land Management to be inventoried, studied and classified under the criteria of the 1964 Wilderness Act is urgently requested. We here in Idaho have some prime candidate areas. I would recommend two such areas for your approval and inclusion as wilderness within the National Wilderness Preservation System:

1. The Owyhee High Desert Area of southern Owyhee County, Idaho. It is an area of some 200,000 acres and just as well be extended to include some additional area in Oregon. However, the area I would describe starts at the Idaho/Oregon border and extends eastward along the South Fork, Owyhee River to Crutchers Crossing, thence along the East Fork of the South Fork, Owyhee River upstream to the Duck Valley Indian Reservation Boundary, a distance of some 60 miles. It would occupy the river canyon and portions of the adjacent plateau—a unique area of cliffs, canyons, bluffs, wildlife and beauty little trampled by man. It is a remnant of a rapidly diminishing High Desert Ecosystem.

2. The Bruneau River Canyon from its point of entrenchment, just above Bruneau, Idaho, upstream and inclusive of its major tributaries (such as: Sheep Creek and Jarbidge River) to the permanent works of man found in the upper reaches of the stream as it nears the Idaho/Nevada Stateline. Its area would encompass the river and its canyon as well as the canyons of the other and major tributaries to the Bruneau system. Also included is a buffer area of a minimum width of one half mile set back from the canyon rim. Presently portions of the Bruneau River are under study as Wild or Scenic—the total area deserves classification as wilderness.

Thank you for this opportunity to comment and may we have this much needed legislation. S. 424 is needed.

Sincerely,

WILLIAM R. MEINERS.

WILLIAM R. MEINERS,
CONSULTANT,
Boise, Idaho, March 11, 1973.

Senator FLOYD HASKELL,
Chairman, Senate Subcommittee, Public Lands,
Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: May I ask your attention to the enclosed resolution as passed by the Ada County Fish and Game League. Also I would draw your attention to the cited article which appeared in the December, 1972, Readers Digest (copy attached).

The consequence of livestock grazing on the public land has long been overlooked. It is sinister, insidious and very real. It is costing you and I our natural resources upon which we place a high regard. It is not alone in its application to the United States but is world-wide. It dates from earliest time when man first began to covet, control and "manage" domestic livestock. The creation of what is being called "The Great American Desert" is in large measure due the grazing of mans domestic livestock.

Over-grazing is not limited to domestic livestock. Wild populations as well are wont to deplete an area but in the case of wild populations the situation does not long continue before some natural force or phenomenon moves in such as: drought, starvation, severe winter kill or other factor to relieve the situation. Not so with man and his animals! It is our manifest destiny to use our resources. In our omnipotent wisdom and pride of technology we alter or substitute the factors at hand with resultant (as we are painfully becoming aware) progressive degradation of the natural environment. *

Degradation of the natural environment is evidenced in: depletion of the native vegetative cover; exposure therefore of raw soil which is at the mercy of wind and water action; introduction of chemicals to further aggravate a weakened plant community or combat and eliminate competing life forms; and, in the last analysis, we must pay the horrendous price of diminishing if not outright destruction of our basic resources of soil, water and air.

What particularly alarms me is that the general public does not realize the reality of this wanton waste of our resources. It has and continues to take place in its slow, deliberate but constant way. Nothing spectacular to gain attention. Such resource depletion makes clear-cutting, mining, dredging, urban sprawl or other resources misuse or abuse a little thing by comparison. Where else do we lose tons of topsoil to the acre year after year and from millions of acres yet, not to many are alarmed? Where else do we seek to actually place thousands of pounds of poisons into our environment to control sagebrush, coyotes and bugs yet, not too many are excited? Where else do we permit an industry having approximately three percent of their productive capacity dependent upon, or, perhaps just associated with, a given land area to continue to abuse, to delude and to bully the American Public into accepting and prolonging the rape of our lands and their resources? The benefit of the few at the cost to the many is the price we are paying. The many in this case is not just us today but all those whose options are being foreclosed in the future. It also may be pointed out that the three percent livestock numbers on the public lands is found on lands where the great majority of our wildlife resource must make a living. It is getting harder every day!

From this one might conclude that I would opt for total abolition of livestock grazing on public lands. Not so! They have a place and in fact can have a beneficial impact where such use is tailored to the land and its resources. I am saying that livestock grazing is but one of many uses and must be considered in context with other uses and the impact such uses has on the soil, water and, to a limited extent, the air resources to sustain use over time. I further state that there are areas where livestock grazing must be excluded. And I emphasize that the time to act is now while there is yet time and where costs of improvement can be realized through recognition that return to an approximate native vegetative cover is vital. The native vegetative cover is the original deep-rooted plant community that developed over time relative to the climatic regime, soils and other environmental constraint.

This calls for application of proven plant physiological doctrine, research and common sense. This does not call for grand expenditure of funds for the glamour

* practices of reseeded, spraying, fencing and water development. In certain instances, however, where the plant community has been so depleted that little or no remanent native vegetation is found and where the soil mantel has been seriously damaged, reliance on artificial rehabilitation may be necessary to initiate recovery. In any event, each area and case must be considered on its own merit and problem with restoration implemented that encompasses all dependent life forms.

I therefore request your earnest review and consideration of the enclosed resolution. It, in my opinion, charts a course to management of public lands respective of all life forms and generations—present and future.

Sincerely,

WILLIAM R. MEINERS,
Range Conservationist.

RESOLUTION—ADA COUNTY FISH AND GAME LEAGUE

Whereas management of the public estate, primarily located in the eleven (11) western states and Alaska, is a sacred trust; and,

Whereas grazing of this public estate by domestic livestock has and continues to result in extensive damage through erosion and pollution of the public estate and its resources; and,

Whereas this loss is seen through: Complete change and composition of natural plant communities resulting in severe damage or destruction of watersheds with, an active and ever greater erosion loss, creating both on-site and off-site damage; and,

Whereas this unabridged use pollutes springs, streams and lakes; destroys anadromous or other fish habitat; competes, and destroys essential habitat to a host of both game and non-game wildlife species; or, through the imposition of facilities, chemicals or other means impairs, harrasses or destroys the nature and being of environmental characteristics essential to the existence of dependent life forms; and,

Whereas there is a prevalent thrust, guised in the cloak of public interest and equity, that further encroaches upon and diminishes the capability of the public estate to provide that diversity of natural character as an essential necessity to the equally diverse life forms which inhabit the area or amenities which derive therefrom, *now therefore be it*

Resolved, That 1. The Ada County Fish and Game League ask immediate and full compliance by the Bureau of Land Management, U.S. Forest Service, or other agency with the intent, purpose, and criteria of the National Environmental Policy Act; specifically although not limited to Section 102. Equal application to existing and proposed management decision, including renewable licensing and contracting actions, is required.

2. Such exercise of the public trust be made in full view and participation of all interested publics.

3. Areas of consideration shall not be at greater than the lowest administrative level or specific problem area basis as may be required; and,

Be it further resolved, 1. That reference to the extent, nature and applicability of this overriding problem, which was aptly and succinctly portrayed in the December, 1972, issue of the Readers Digest titled: "Nibbling Away At The West" by James Nathan Miller, be given exposure in all areas of public interest.

2. That a letter of appreciation be accorded The Readers Digest for this forthright article, and

3. That all appropriate action be undertaken to halt this insidious destruction of our national heritage by placing domestic livestock use in perspective to all other uses of the public estate, its resources, its amenities, and its integral role to our very existence.

[From the Reader's Digest, December 1972]

THE NIBBLING AWAY OF THE WEST

(By James Nathan Miller)

Much of today's "desert country," full of sagebrush and cactus, was once a great sea of tall grass. We have allowed overgrazing to make it a wasteland. This land is irreplaceable. It must be saved.

Last summer I stood at the edge of a 40-foot cliff that formed one bank of the San Simon River in southeast Arizona. Looking at the opposite cliff, 200 feet away across the bone-dry gorge, I found it almost impossible to believe that this 60-mile-long gash in the earth had been produced mainly by the nibbling and pawing of cattle. The story of how it was done is probably the country's most flagrant—and least recognized—example of the squandering of a national resource: the overgrazing of the West by cattle and sheep.

The San Simon River runs through the middle of 1.2 million acres of public domain known as the Safford Grazing District, which is under the jurisdiction of the U.S. Bureau of Land Management (BLM). It is a Delaware-size patch of cactus and sagebrush that the agency rents out to 173 stockmen—one of 52 such districts in the 11 western states. Altogether, these districts total 177 million acres, an area slightly larger than Texas.

To understand how the Safford District got into its present shape, start with the sight that greeted immigrants in the 1870's as they rode into the valley of the San Simon. It was "a promised land," wrote an early settler: from end to end, a thick, waving sea of perennial grass and wild flowers so tall that they brushed the settlers' stirrups. Antelope abounded, and down the valley's middle tumbled a clear stream lined with cottonwoods, alive with birds and small game.

The grass that made all this possible was what's called "climax vegetation." Over the centuries, its roots and foliage had woven themselves into such a dense mat that no other plant could penetrate the mass. Sagebrush and cactus had been forced up into the hills, leaving the grass the land's final possessor and protector.

POCKET GRAND CANYON

By the 1880's the valley floor was filled with 50,000 head of grazing cattle, consuming 1000 tons of grass a day, and within a dozen years the entire valley had been nibbled as bald as a billiard table. Then the grass—its roots compressed and torn by the pounding herd, its blades unable to form seeds—began to sicken and die. Into the bare patches, down from the hills, crept the scraggly sagebrush and cactus.

The stream was killed just as rapidly. First, the hoofs of watering cattle cut away at the cottonwood roots; the trees sickened, the water turned to mud, the fish died, the birds and animals disappeared. Finally, the massive summer thunderstorms, no longer swallowed up by the great sponge of grass, came rushing downhill to slice pocket-size Grand Canyons through the unprotected earth. By 1900 the once-verdant valley had become a desolate wasteland, and by 1934 it—along with tens of millions of acres of similar western rangeland—was in such pitiful condition that the government stepped in to stop the damage.

But today, after four decades of government management, these lands are still being heavily overgrazed. In the San Simon valley the damage is worse this year than almost ever before, because the BLM has allowed grazing-as-usual despite a two-year drought that has virtually wiped the remaining grass off a large part of the Southwest. Many pastures are 90-percent bare earth, their soil pouring into western rivers at almost a ton per acre each year. "When it rains here," says Safford District manager William Earp, "the range melts away like sugar."

But there's still enough topsoil to grow plenty of grass. If the BLM would just reduce the grazing to the point where the remaining scattered clumps could produce seed, in five years or so the valley would start to green up again, and in perhaps 15 or 20 years most of it would be just as it was in the old days.

LET THEM GRAZE

Why doesn't the Bureau restrict grazing? In Washington, Harrison J. Loesch, Assistant Secretary of the Interior in charge of the BLM, gave me the answer. If he could, he admitted, "I'd be inclined to pull every head of cattle off the range in Arizona until the drought is over." But he can't. "Every time you lower a man's grazing a bit, you get a squawk. So you have to do it gradually or get into a big Congressional hassle." *

That's the crux of the matter: the political power of the livestock industry. Back in the Safford District, a BLM range manager explained, "Whenever we try to cut the number of cows, a rancher will write to his Congressman, and pretty soon word comes down from headquarters: Let them graze."

Nationally, the damage is on a scale all its own—the country's biggest source of resource deterioration and environmental degradation," in the words of an

* internal BLM memorandum. The BLM admits it is improving only 14 percent of its huge domain. The rest—150 million acres, or a thousand times the strip-mined area of the United States—is either deteriorating or in a static condition. Each year half a billion tons of topsoil are washed away from the public lands—more mud than is discharged by the Colorado and Mississippi rivers combined.

Wildlife, too, is taking a terrible beating as domestic livestock trample its habitat and gobble its forage. In hundreds of critical winter feeding grounds, deer, elk and other species, driven down from the mountains by the heavy snow, stalk the public cow pastures like scavengers. According to the BLM's own figures, 37 percent of its wildlife habitat is in "unsatisfactory" condition. But experts within the agency put the actual figure closer to 50 percent.

* The BLM is not alone. For all these conditions the U.S. Forest Service (USFS)—which manages 105 million grazing acres of its own—must share the blame.

BELLY-DEEP IN FLOWERS

Yet the fact is that the overwhelming majority of these man-made deserts can be made to bloom again. On a two-square-mile meadow called Mule Park, in Colorado's Gunnison National Forest, I saw a dramatic example of how it's done.

In the 1940's, Mule Park was a sea of dirt pounded bare by 500 head of cattle. Then, in 1950, the Forest Service forced the local rancher to cut his herd to 291 animals, built fences and water holes to distribute the cows over a wide area, allowing the fields to reseed themselves. The cows were scientifically rotated from pasture to pasture, giving the grass plenty of time for vigorous root-and-seed-producing growth between grazings. In certain fields the cattle were admitted just long enough to brush the seeds off the plants and trample them into the ground. It worked so well that in 1963 the rancher was allowed to increase the herd to 490 head—just ten under the original number. Today the cows in Mule Park graze belly-deep in a sea of wild flowers and perennial grasses.

* The catch: only ten percent of the BLM's land (and a claimed 50 percent of USFS land) is under such management plans, in which the ranchers share costs with the government in building fences and digging wells. For although many progressive ranchers are deeply concerned about the land's deterioration, the great majority fight anything smacking of even temporary reduction in grazing.

But it's important to keep two facts in mind. First, these people are not "robber barons." While plenty of millionaire cattlemen use the public lands, for every one of these there are dozens of small, marginal, hardworking ranchers trying to support their families on a hundred head of cattle or so. Second, though most of the range they have ruined is publicly owned, they did nothing illegal in ruining it. For, until 1934, there were no laws covering this land. The BLM's domain is "the land nobody wanted"—neither homesteaders, nor miners nor loggers—and there has always been the basic assumption in the West that the ranchers, who arrived first on this range and whose livelihoods depend on it, have special rights to it.

RABBITS IN THE CABBAGE PATCH

Indeed, this is the very assumption that underlies the law governing the public domain today. It's not a "conservation act" or a "land-reclamation act": it's the *Taylor Grazing Act* of 1934, whose purpose is "to stop injury to the public grazing land . . . and to stabilize the livestock industry." Written for and by ranchers, it gives them almost complete control over the BLM. For instance:

In each grazing district set up under the act, there is a 5- to 12-man "advisory" board to help government range managers set policy. Except for one so-called "wildlife representative," the act says, the board members must be "local stockmen recommended by the users of the range." Thus, in the words of range ecologist William Meiners (who last year quit the BLM in disgust), "The rabbits have been put in charge of the cabbage patch."

* As a result, every meaningful BLM attempt to cut grazing has been beaten back. In 1945, when the U.S. Grazing Service (predecessor of the BLM) tried to enforce significant reductions, Congress slashed its budget, fired its director, and a year later abolished it and created the BLM. Today this agency, administering an area 85 percent as large as the entire United States east of the Mississippi, has a budget of only \$120 million—about what the Corps of Engineers spends on a medium-sized dam. Since 1946 it has lowered grazing only half a percent a year. At this rate, says Congressman John Saylor (R., Pa.), it will take 180 years to reduce it to proper levels.

THE IRREPLACEABLE

Here are three basic changes that could help put an end to overgrazing:

Make the BLM and the USFS issue environmental statements on the effects of present grazing on public lands, as required by the 1969 National Environmental Policy Act. Today, most people looking at an overgrazed area think it is "beautiful desert country." An environmental statement—if honestly written—would wake them up to the devastation they are really seeing.

Change the Taylor Act to require the BLM to consider *all* uses of the land—watershed protection, wildlife, scenic values, recreation—instead of just the stability of the livestock industry. (The USFS already has such a mandate; all it needs is more public pressure to offset rancher pressure.)

Give the BLM money to build more fences and water holes for its rotation plans, and to hire the biologists and ecologists it needs to broaden the plans beyond livestock.

One final, and vitally important, question: How seriously would a grazing cut affect U.S. livestock production? Nationally, the industry would hardly notice it; only three percent of its forage comes from public lands. But locally—especially in the Southwest—reductions would hit many small family operations hard. In these cases (involving perhaps 20,000 families), Congress should certainly provide relief. One suggestion is to give the affected ranchers first priority on the range-improvements jobs.

In almost all the districts affected, grazing would be reduced, not abolished. Moreover, most reductions would be temporary. All experts agree that once the land is cured—in three or four years in some areas, 10 or 20 in others—it will support approximately double the present numbers of livestock and wildlife.

But far more important than increasing the animals is saving the land. For the land is the one irreplaceable ingredient; when it is gone—and it certainly is going—that's all there is. Indeed, on a strictly cost-benefit basis, there is perhaps no better investment the country could make than the relatively few million dollars it would cost to stop the massive nibbling away, trampling down and running off of the western landscape.

STATEMENT OF L. DAN JONES, GENERAL COUNSEL, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

The Independent Petroleum Association of America is deeply concerned that S. 424 would seriously impede the development of oil and gas on the public lands and would therefore be inconsistent with the best interest of the nation in relation to the serious energy problem that now exists.

There is a present urgent need to maximize exploration and development of domestic energy resources. If we fail this need our nation will become dangerously dependent on imports, within the decade, compounded by an intolerable balance of payments problem. Since petroleum (both oil and natural gas) provide some 75 percent of our energy and will continue to be the principal source for many years, it is essential that every effort be made to encourage expansion of oil and gas exploration and development in every way reasonably possible on both the public domain and privately owned lands in the U.S. In recent years, more than 18 percent of total U.S. crude oil production has come from federally owned lands, including the public lands covered by this bill. Therefore, government policies in the management, protection and development of these lands become of very substantial importance.

In our opinion, S. 424 would have a far-reaching adverse impact on the exploration and development of the oil and gas resources under the public lands.

For this reason, we urge the Committee to amend the bill so as to make it compatible with the national interest in maximizing exploration and development of domestic energy supplies, by providing added rather than less, incentives and encouragement to such expanded efforts.

Our recommendations are as follows:

1. It is recognized that protection of the environment is a necessary objective of public lands management. S. 424, however, in our opinion is unbalanced in favor of environmental considerations. There is a need, therefore, to amend the bill so as to give a proper balance between environmental considerations and other vital national requirements including (1) economic develop-

ment and expansion, (2) consumer comforts to which our society has become accustomed and now demands and (3) furtherance of national security requirements.

It is recommended, therefore, that the bill be amended so as to restate and emphasize the multiple-use concept that is so essential if all of our vital national needs are to be served in the development of the public lands.

2. On page 4 of S. 424, beginning on line 10, the legislative policy directive would require the Secretary to "assure payment of fair market value by users of such lands". This policy directive raises the question as to whether or not it would constitute a mandate to the Secretary of the Interior to require competitive bidding in the leasing of all public lands. The present system of leasing under the Mineral Leasing Act of 1920 has been eminently successful in fostering the development of oil and gas resources underlying the public lands. It has proven through experience to have been instrumental and effective in encouraging a multiplicity of effort on the part of thousands of individuals in the exploration and development of oil and gas resources. It is this element of multiplicity of effort that has been an indispensable ingredient in the widespread and successful development of the public lands. To require competitive bidding in the leasing of all public lands would risk the loss of this essential ingredient at a time the nation can ill-afford it. Furthermore, as a matter of orderly legislative procedure, if the present system of leasing is to be amended it is submitted that it would be more appropriate to do so through an amendment to the Mineral Leasing Act rather than in S. 424.

It is recommended and urged, therefore, that the phrase "assure payment of fair market value by users of such lands" be deleted.

3. Section 6(a) (1) of the bill would create a duplication of legislative authority for the regulation of holders of exploratory permits and oil and gas leases which is unnecessary for the full protection of the public lands. Such holders already are required under existing law and regulations to post performance bonds. Their activities are comprehensively supervised by the Department and they are immediately and readily available in the event the Secretary determines that redress is necessary.

The holders of exploration permits and leases stand in a position unlike many other users of the public lands who may not be on the public lands under such permits or leases or may be transient users whose identity and addresses are unknown to the Secretary and, therefore, may present a problem in enforcing reclamation measures.

It is recommended, therefore, that this provision of S. 424 be amended to apply only to those users and circumstances where present laws and regulations are inadequate to guarantee proper reclamation.

4. Section 6(a) (2) of the bill would have a devastating effect on the ability of independents to continue to participate in the development of the public lands. Its far-reaching effects cannot be over emphasized.

Independents, in general, could not take the risk of making substantial investments to explore and develop a lease and then have the lease subject to revocation or suspension by administrative action by the Secretary or, most likely, his delegate. In many instances an independent may have a very substantial portion of his total financial resources committed in a single lease. Independents could not tolerate the hazards of this provision. The result would be adverse to the full development of the public land oil and gas resources. The multiplicity of effort that has been provided by independents would be largely lost. Only a relatively few large companies could take the risk of revocation or suspension of leases.

There is no need for a such a harsh policy. The Mineral Leasing Act of 1920 already provides for revocation and suspension of leases through court action which is a more appropriate procedure where the consequences are so severe, rather than administrative decree. Also, Federal and state air and water quality laws and regulations provide for heavy penalties for violations. In view of the sanctions of existing law this provision of the bill would appear to be unnecessary to the proper management of the public lands.

With the energy crisis growing more severe each day the petroleum producing industry should be moving forward with an expanded program for exploration

and development. But it is not doing so and one of the principal ingredients is the vast new boy of environmental law and regulations, the impact of which will not be fully known for years to come. The threat of legal actions under these new laws with the resulting penalties and delays is one of the serious problems facing the industry. The enactment of Section 6(a)(2) would unnecessarily add to this situation.

It is recommended, and urged, therefore, that Section 6(a)(2) of S. 424 be deleted.

5. Section 8(a) provides that in the sale of public lands the Secretary shall reserve to the United States all mineral rights.

The Federal government should not be in the business of owning and speculating in mineral rights. There is no more justification for the Federal government to engage in this business activity than in other activities such as the manufacturing of shoes or automobiles or in the exploration, development and production of oil and gas. *

Furthermore, the concentration of mineral rights in the government would be contrary to the urgent present need to maximize domestic exploration and development as rapidly as possible. *

The U.S. petroleum industry has become foremost among the nations of the world, not because of fortuitous geology, but because the multiownership of mineral rights by millions of individuals on the one hand and thousands of individuals engaged in petroleum exploration and development on the other hand, were able to generate a multiplicity of ingenuity, technology, experience and effort that has been necessary to meet our gigantic needs for petroleum energy. If the ownership of minerals rights had been concentrated in the sole ownership of the Federal government, the U.S. petroleum industry would not have developed as we have known it. *

In considering this provision of the bill it is pertinent to observe that the Congress in considering this matter with respect to acquired lands has provided that minerals shall not be reserved.

It is recommended and urged that Section 8(a) be amended so as to limit the reservation of minerals to those lands where there has been a predetermination that a known geological structure exists, which has an established value at the time of sale; or where other special or overriding circumstances exist.

Section 8(b) is repugnant to our basic land law precepts in that it would require the Secretary to retain undefined discretionary controls over the land use through terms, covenants and conditions in the conveyance.

It is recommended and urged, therefore, that Section 8(b) be deleted.

6. Section 11(a) constitutes a very broad delegation of authority to the Secretary to promulgate regulations the violation of which would constitute a crime subject to fine and imprisonment. The delegation is vague and undefined, and in fact goes beyond the subject of this bill, namely, the national resource lands. The delegation embraces (1) other public property and (2) the public health, safety and welfare, which are not germane.

Any needed authority to issue regulations, the violation of which is a crime, should be carefully defined and limited in every practical way.

It is recommended, therefore, that Section 11(a) be deleted.

7. Section 11(d) compounds and seriously aggravates the uncertainties and dangers to users of the public lands that could result from the unwarranted delegation in Section 11(a). This provision authorizes any "competent person" to initiate the arrest of any users of the public lands. This is an unwarranted and unnecessary delegation or enforcement authority over users of the public lands who are holders of permits or leases issued by the Secretary. There may be a need for such delegation of enforcement authority against transient users of the public lands but there is no such need with respect to any oil and gas explorer and developer who is operating under a permit or lease and whose identity and address is known and who is always available to enforcement procedures or legal process of any nature.

It is recommended and urged, therefore, that holders of permits and leases validly issued by the Secretary under existing law shall be exempted from Section 11(d) of S. 424.

The Committee's consideration of our views would very much be appreciated

