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MANAGEMENT OF NATIONAL RESOURCE LANDS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND LAND RESOURCES

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 507 and S. 1292

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

MARCH 7 AND MAY 15, 1975

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

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U.S. GOVERNMENT PRINTING OFFICE
53-644 O WASHINGTON : 1975

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MANAGEMENT OF NATIONAL RESOURCE LANDS

FRIDAY, MARCH 7, 1975

U.S. SENATE,
SUBCOMMITTEE ON ENVIRONMENT AND LAND RESOURCES,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 10:30 a.m., pursuant to notice, in room 3110, Dirksen Office Building, Hon. Floyd K. Haskell presiding.

Present: Senators Haskell, Hansen, and McClure.

Also present: Steven P. Quarles, counsel; Thomas B. Williams, professional staff member; and W. O. Craft, Jr., deputy minority counsel.

Senator HASKELL. The subcommittee will come to order.

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

The purpose of this hearing before the Subcommittee on the Environment and Land Resources is to take testimony on S. 507, the National Resource Lands Management Act.

This bill, often referred to as the "BLM Organic Act", would provide the first comprehensive statement of congressional goals, policies, and authority for the use and management of 451 million acres of federally owned lands administered by the Secretary of the Interior through the Bureau of Land Management. As most of you know, S. 507, as introduced, is virtually identical to S. 424, which was ordered reported unanimously from the Interior Committee and passed the Senate by a 71–1 vote last Congress.

I firmly believe this bill is one of the most important measures pending before the committee. Its importance is readily discernible from the fact that the national resource lands comprise two-thirds of all Federal land and one-fifth of our entire land base, and that the Bureau of Land Management is the only major Federal land agency without a modern statutory mandate. The only management tools available to the BLM remain some 3,000 public land laws which have accumulated over the last 170 years. A goodly proportion of these laws were written in the last century at a time when the policy of rapid disposal, rather than retention, of the public lands prevailed. Not unexpectedly, therefore, these laws are often conflicting, sometimes truly contradictory, certainly incomplete and inadequate, and largely lacking in enforcement authority.

S. 507 will provide the vitally needed modern statutory mandate to the BLM.

I plan to make this measure a priority item of business for the subcommittee and look forward to the same level of bipartisan support enjoyed by S. 424 during the last Congress.

At this point I will insert in the record the text of S. 507, departmental reports, and a statement from Senator Church.

[The material referred to above follows:]

94TH CONGRESS
1ST SESSION

S. 507

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 1975

Mr. HASKELL (for himself, Mr. JACKSON, and Mr. METCALF) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "National Resource Lands Management Act".

(b) TABLE OF CONTENTS.—

Sec. 2. Definitions.
Sec. 3. Declaration of policy.
Sec. 4. Rules and regulations.
Sec. 5. Public participation.
Sec. 6. Advisory boards and committees.
Sec. 7. Annual report.
Sec. 8. Director.
Sec. 9. Appropriations.

TITLE I—GENERAL MANAGEMENT AUTHORITY

Sec. 101. Management.
Sec. 102. Inventory.
Sec. 103. Land use plans.
Sec. 104. Recordation of mining claims.

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TITLE II—CONVEYANCE AND ACQUISITION AUTHORITIES

Sec. 201. Authority to sell.
Sec. 202. Disposal criteria.
Sec. 203. Sales at fair market value.
Sec. 204. Size of tracts.
Sec. 205. Competitive bidding procedures.
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Sec. 207. Reservation of mineral interests.
Sec. 208. Conveyance of reserved mineral interests.
Sec. 209. Terms of patent.
Sec. 210. Conforming conveyances to State and local planning.
Sec. 211. Authority to issue and correct documents of conveyance.
Sec. 212. Recordable disclaimers of interest in land.
Sec. 213. Acquisition of land.

TITLE III—MANAGEMENT IMPLEMENTING AUTHORITY

Sec. 301. Studies, cooperative agreements, and contributions.
Sec. 302. Service charges, reimbursement payments, and excess payments.
Sec. 303. Working capital fund.
Sec. 304. Deposits and forfeitures.
Sec. 305. Contracts for cadastral survey operations and resource protection.
Sec. 306. Unauthorized use.
Sec. 307. Enforcement authority.
Sec. 308. Cooperation with State and local law enforcement agencies.
Sec. 309. California desert area.
Sec. 310. Oil shale revenues.

TITLE IV—AUTHORITY TO GRANT RIGHTS-OF-WAY

Sec. 401. Authorization to grant rights-of-way.
Sec. 402. Right-of-way corridors.
Sec. 403. General provisions.
Sec. 404. Terms and conditions.
Sec. 405. Suspension or termination of right-of-way.
Sec. 406. Rights-of-way for Federal agencies.
Sec. 407. Conveyance of lands.
Sec. 408. Existing rights-of-way.
Sec. 409. State standards.
Sec. 410. Effect on other laws.

TITLE V—CONSTRUCTION OF LAW, PRESERVATION OF VALID EXISTING RIGHTS, AND REPEAL OF LAWS

Sec. 501. Construction of law.
Sec. 502. Valid existing rights.
Sec. 503. Repeal of laws relating to disposal of national resource lands.
Sec. 504. Repeal of laws relating to administration of national resource lands.
Sec. 505. Repeal of laws relating to rights-of-way.

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

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

(b) "National resource lands" means all lands and interests in lands (including the renewable and nonrenewable resources thereof) now or hereafter administered by the Secretary through the Bureau of Land Management, except the Outer Continental Shelf.

(c) "Multiple use" means the management of the national resource lands and their various 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 balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including recreation and scenic values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment, with consideration being given to the relative values of the resources and

not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(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 and productivity of the land or its environmental values.

(e) "Areas of critical environmental concern" means areas within the national resource lands where special management attention is required when such areas are developed or used to protect, or where no development is required to prevent irreparable damage to, important historic, cultural, or scenic values, or natural systems or processes, or life and safety as a result of natural hazards.

(f) "Right-of-way" means an easement, lease, permit, or license to occupy, use, or traverse national resource lands granted for the purposes listed in title IV of this Act.

(g) "Holder" means any State or local governmental entity or agency, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title IV of this Act.

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

(1) the national resource lands are a vital national

asset containing a wide variety of natural resource values;

(2) sound, long-term management of the national resource lands is vital to the maintenance of a livable environment and essential to the well-being of the American people;

(3) the national interest will be best realized if the national resource lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts; and

(4) except where disposal of particular tracts is made in accordance with title II, the national interest will be best served by retaining the national resource lands in Federal ownership.

(b) Congress hereby directs that the Secretary shall manage the national resource lands under principles of multiple use and sustained yield in a manner which will, using all practicable means and measures: (i) assure the environmental quality of such lands for present and future generations; (ii) include, but not necessarily be limited to, such uses as provision of food and habitat for wildlife, fish and domestic animals, minerals and materials production, supply-

ing the products of trees and plants, human occupancy and use, and various forms of outdoor recreation; (iii) include scientific, scenic, historical, archeological, natural ecological, air and atmospheric, water resource, and other public values; (iv) include certain areas in their natural condition; (v) balance various demands on such lands consistent with national goals; (vi) assure payment of fair market value by users of such lands; and (vii) provide maximum opportunity for the public to participate in decisionmaking concerning such lands.

SEC. 4. RULES AND REGULATIONS.—The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedure Act (60 Stat. 237), as amended. Prior to the promulgation of such rules and regulations, the national resource lands shall be administered under existing rules and regulations concerning such lands.

SEC. 5. PUBLIC PARTICIPATION.—In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for the prepa-

ration and execution of plans and programs concerning, and in the management of, the national resource lands.

SEC. 6. ADVISORY BOARDS AND COMMITTEES.—In providing for public participation in planning and programming for the national resource lands, the Secretary, pursuant to the Federal Advisory Committee Act (86 Stat. 770) and other applicable law, may establish and consult such advisory boards and committees as he deems necessary to secure full information and advice on the execution of his responsibilities. The membership of such boards and committees shall be representative of a cross section of groups interested in the management of the national resource lands and the various types of use and enjoyment of such lands.

SEC. 7. ANNUAL REPORT.—The Secretary shall prepare an annual report which he shall make available to the public and submit to Congress no later than 120 days after the close of each fiscal year. The report shall describe, in appropriate detail, activities relating or pursuant to this Act for the fiscal year just ended, any problems which may have arisen concerning such activities, and other pertinent information which will assist the accomplishment of the provisions and purposes of this Act. The report shall contain a detailed list and description of all transfers of national resource lands out of Federal ownership for the fiscal year just ended. It

shall include such tables, graphs, and illustrations as will adequately reflect the fiscal year's activities, historical trends, and future projections relating to the national resource lands.

SEC. 8. DIRECTOR.—Appointments made on or after the date of the enactment of this Act to the position of the Director of the Bureau of Land Management, within the Department of the Interior, shall be made by the President, by and with the advice and consent of the Senate. The Director shall have a broad background and experience in public land and natural resource management.

SEC. 9. APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act.

TITLE I—GENERAL MANAGEMENT AUTHORITY

SEC. 101. MANAGEMENT.—The Secretary shall manage the national resource lands in accordance with the policies and procedures of this Act and with any land use plans which he has prepared, pursuant to section 103 of this Act, except to the extent that other applicable law provides otherwise. Such management shall include:

(1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appropriate, the use, occupancy, or development of the national resource lands not provided for by other laws: *Provided,*

however, That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands;

(2) requiring appropriate land reclamation as a condition of use, and requiring performance bonds or other security guaranteeing such reclamation in a timely manner from any person permitted to engage in an extractive or other activity likely to entail significant disturbance to or alteration of the national resource lands;

(3) inserting in permits, licenses, leases, or other authorizations to use, occupy, or develop the national resource lands, provisions authorizing revocation or suspension, after notice and hearing, of such permits, licenses, leases, or other authorizations, upon final administrative finding of a violation of any regulations issued by the Secretary under any Act applicable to the national resource lands or upon final administrative finding of a violation on such lands of any applicable State or Federal air or water quality standard or implementation plan: *Provided*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect public health or safety or the environment: *Provided further*, That, where

other applicable law contains specific provisions for 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; and

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

SEC. 102. INVENTORY.—(a) The Secretary shall prepare and maintain on a continuing basis an inventory of all national resource lands, and their resource and other values (including outdoor recreation and scenic values) giving priority to areas of critical environmental concern. Areas containing wilderness characteristics as described in section 2 (c) of the Act of September 3, 1964 (78 Stat. 890), shall be identified within five years of enactment of this Act. The inventory shall be kept current so as to reflect changes in conditions and in identifications of resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change in the management or use of national resource lands.

(b) The Secretary, where he determines it to be appropriate, may provide (i) means of public identification of national resource lands, including signs and maps, and (ii) State and local governments with data from the inventory

for the purpose of planning and regulating the uses of non-Federal lands in the proximity of national resource lands.

SEC. 103. LAND USE PLANS.—(a) The Secretary shall, with public participation, develop, maintain, and, when appropriate, revise land use plans for the national resource lands consistent with the terms and conditions of this Act and coordinated so far as he finds feasible and proper, or as may be required by the enactment of a national land use policy or other law, with the land use plans, including the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), of State and local governments and other Federal agencies.

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

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

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

(3) rely, to the extent it is available, on the inventory of the national resource lands, their resources, and other values;

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

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

volved and the availability of alternative means (including recycling) and sites for realization of those values;

(6) weigh long-term public benefits; and

(7) consider the requirements of applicable pollution control laws including State or Federal air or water quality standards, noise standards, and implementation plans.

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

(d) Wherever any proposed change in the classification of, or permitted uses on, any national resource lands would affect authorization for use of such lands, persons holding leases, licenses, or permits concerning the use to be affected shall be given written notice by the Secretary of such proposed change at least sixty days before it is put into effect.

(e) Areas identified pursuant to section 102 as having wilderness characteristics shall be reviewed within fifteen years of enactment of this Act pursuant to the procedures set forth in subsections 3 (c) and (d) of the Act of September 3, 1964 (78 Stat. 892–893): *Provided, however,* That such review shall not, of itself, either change or prevent change in the management or use of the national resource lands.

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SEC. 104. RECORDATION OF MINING CLAIMS.—(a) Each mining claim under the Mining Law of 1872, as amended (Revised Statutes 2318–2352), shall be recorded by the claimant with the Secretary within two years after the date of enactment of this Act or within thirty days of location of the claim, whichever is later. Any claim not so recorded shall be conclusively presumed to be abandoned and shall be void.

(b) Any claim recorded pursuant to subsection (a) for which the claimant has not made application for a patent within five years after the date of enactment of this Act or the date of location of a claim, whichever is later, shall be conclusively presumed to be abandoned and shall be void.

(c) Such recordation or application shall not render valid any claim which was not valid on the date of enactment of this Act, or which becomes invalid thereafter.

TITLE II—CONVEYANCE AND ACQUISITION AUTHORITIES

SEC. 201. AUTHORITY TO SELL.—Except as otherwise provided by law, and subject to the requirements of section 3 of this Act, the Secretary is authorized to sell national resource lands. The national resource lands may be sold if the Secretary, in accordance with the guidelines he has established for sale of national resource lands and after preparation pursuant to section 103 of this Act of a land use

plan which includes any tract of such lands identified for sale, determines that the sale of such tract will not cause needless degradation of the environment and meets the disposal criteria of section 202 of this Act.

SEC. 202. DISPOSAL CRITERIA.—(a) A tract of national resource lands may be transferred out of Federal ownership under this Act only where, as a result of land use planning required under section 103, the Secretary determines that—

(1) such tract of national resource lands, because of its location and other characteristics, is difficult to manage as part of the national resource lands and is not suitable for management by another Federal agency; or

(2) such tract of national resource lands was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract of national resource lands will serve objectives which cannot be achieved prudently or feasibly on land other than such tract and which outweigh all public objectives and values which would be served by maintaining such tract in Federal ownership.

(b) Where the Secretary determines that land to be disposed of under clause (3) of subsection (a) is of agricultural value and is desert in character, such land shall be disposed of either under the sale authority of section 201 or in accordance with existing law.

SEC. 203. SALES AT FAIR MARKET VALUE.—Sales of national resource lands under this Act shall be at not less than the appraised fair market value as determined by the Secretary.

SEC. 204. SIZE OF TRACTS.—The Secretary shall determine and establish the size of tracts of national resource lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract is sold for agricultural use, its size shall be no larger than necessary to support a family-sized farm.

SEC. 205. COMPETITIVE BIDDING PROCEDURES.—Except as to sales under section 208 hereof, sales of national resource lands under this Act shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper (i) to assure equitable distribution among purchasers of national resource lands, or (ii) to recognize equitable considerations or public policies, including but not limited to a preference to users, he is authorized to sell national resource lands with modified competitive bidding or without competitive bidding.

SEC. 206. RIGHT TO REFUSE OR REJECT OFFER OF PURCHASE.—Until the Secretary has accepted an offer to purchase, he may refuse to accept any offer or may withdraw any land or interest in land from sale under this Act

when he determines that consummation of the sale would not be consistent with this Act or other applicable law. The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bid at his invitation no later than thirty days after the submission of such offer.

SEC. 207. RESERVATION OF MINERAL INTERESTS.—All conveyances of title issued by the Secretary under this Act, except conveyances under the exchange authority provided in section 213, 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 (1) enter into covenants which provide that such activities shall not be pursued for a specified period or (2) convey the minerals in the conveyance of title in accordance with the provisions of section 208 (a) (1) and (2) and (c) of this Act.

SEC. 208. CONVEYANCE OF RESERVED MINERAL INTERESTS.—(a) The Secretary may convey mineral interests owned by the United States where the surface is in non-Federal ownership, regardless of which Federal agency may have administered the surface, if he finds (1) that there are

no mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(b) Conveyance of mineral interests pursuant to this section shall be made only to the record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(c) The patent for any mineral interests conveyed pursuant to this section shall provide that, in the event that mineral development activities are initiated within twenty years of the issuance of such patent, the mineral interests of the owner or owners of the parcel of land on which such activities are initiated, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, shall revert to the United States.

(d) Before considering an application for conveyance of mineral interests pursuant to this section—

(1) the Secretary shall require the deposit of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the

character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided,* That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(2) the applicant shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(e) Moneys paid to the Secretary for administrative costs pursuant to subsection (d) of this section shall be paid to the agency which rendered the service and deposited to the appropriation then current.

SEC. 209. TERMS OF PATENT.—The Secretary shall insert in any patent or other document of conveyance he issues under this Act such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest.

SEC. 210. CONFORMING CONVEYANCES TO STATE AND LOCAL PLANNING.—The Secretary shall not make conveyances of national resource lands under this Act which would

be in conflict with State and local land use plans, programs, zoning, and regulations. At least ninety days prior to offering for sale or otherwise conveying national resource lands under this Act, the Secretary shall notify the Governor of the State within which such lands are 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 lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning, the use of such lands prior to such conveyance.

SEC. 211. AUTHORITY TO ISSUE AND CORRECT DOCUMENTS OF CONVEYANCE.—Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title, and to correct such documents where necessary. In addition, the Secretary is authorized to make corrections on any documents of conveyance which have heretofore been issued on lands which would, at the time of their conveyance, have met the description of national resource lands.

SEC. 212. RECORDABLE DISCLAIMERS OF INTEREST IN LAND.—(a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form

suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document of disclaimer shall be issued pursuant to this title unless the applicant therefor has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefor has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be credited to the appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as quitclaim deed from the United States.

SEC. 213. ACQUISITION OF LAND.—(a) The Secretary is authorized to acquire, by purchase, exchange, or donation,

lands or interests therein where necessary for proper management of the national resource lands: *Provided,* That land or interests in land may be acquired pursuant to this title by eminent domain only if necessary in order to secure access to national resource lands: *Provided further,* That any such national resource lands acquired by eminent domain shall be confined to as narrow a corridor as is necessary to serve such purpose.

(b) Acquisitions pursuant to this Act shall be consistent with applicable land use plans prepared by the Secretary under section 103 of this Act.

(c) In exercising the exchange authority granted by subsection (a) of this section, the Secretary may accept title to any non-Federal land or interests therein and in exchange therefor he may convey to the grantor of such land or interests any national resource lands or interests therein which, under section 202 of this Act, he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land to be acquired. The values of the lands so exchanged either shall be equal, or if they are not equal, shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require.

(d) Lands acquired by exchange under this section or section 301(c) which are within the boundaries of the national forest system may be transferred to the Secretary of

Agriculture for administration as part of, and in accordance with laws, rules, and regulations applicable to, the national forest system. Such transfer shall not result in the reduction in the percentage of in-lieu payments receivable by State and local governments. Lands acquired by exchange under this section or section 301 (c) which are within the boundaries of national park, wildlife refuge, wild and scenic rivers, trails, or any other system established by Act of Congress may be transferred to the appropriate agency head for administration as part of, and in accordance with the laws, rules, and regulations applicable to, such system.

(e) Lands and interests in lands acquired pursuant to this section or section 301 (c) shall, upon acceptance of title, become national resource lands, and, for the administration of public land laws not repealed by this Act, shall become public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to section 1 of the Taylor Grazing Act (48 Stat. 1269), as amended, they shall become a part of that district.

TITLE III—MANAGEMENT IMPLEMENTING AUTHORITY

SEC. 301. STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS.—(a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in

cooperation with others, involving the management, protection, development, acquisition, and conveying of the national resource lands.

(b) The Secretary may enter into contracts or cooperative agreements involving the management, protection, development, acquisition, and conveying of the national resource lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the national resource lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

SEC. 302. SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND EXCESS PAYMENTS.—(a) Notwithstanding any other provision of law, the Secretary may establish filing fees, service fees and charges, and commissions with

respect to applications and other documents relating to national resource lands and may change and abolish such fees, charges, and commissions.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for extraordinary costs with respect to applications and other documents relating to national resource lands. The moneys received for extraordinary costs under this subsection shall be deposited with the Treasury in a special account and are hereby appropriated and made available until expended. As used in this subsection, "extraordinary costs" include but are not limited to the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities.

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of the national resource lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

SEC. 303. WORKING CAPITAL FUND.—(a) There is hereby established a working capital fund for the manage-

ment of national resource lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and regulations promulgated thereunder, supplies and equipment services in support of Bureau of Land Management programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Bureau of Land Management.

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

(c) The fund shall be credited with payments from appropriations and funds of the Bureau of Land Management, other agencies of the Department of the Interior,

other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated not to exceed $3,000,000 as initial capital of the working capital fund.

SEC. 304. DEPOSITS AND FORFEITURES.—(a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary, or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to national resource lands shall be credited to a separate account in the Treasury and are hereby appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on the national resource lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) The Secretary may require a user or users of roads,

trails, lands, or facilities under the jurisdiction of the Bureau of Land Management to maintain such roads, trails, lands, or facilities in a satisfactory condition commensurate with the particular use requirements and the use made by each, the extent of such maintenance to be shared by the users in proportion to such use or, if such maintenance cannot be so provided, to deposit sufficient money to enable the Secretary to provide such maintenance. Such deposits shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, to cover the cost to the United States of the maintenance of any road, trail, lands, or facility under the jurisdiction of the Bureau of Land Management: *Provided*, That nothing in this subsection shall be construed to require the user or users to provide maintenance or deposits to repair any damages attributable to general public use rather than the specific use or uses of such user or users.

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

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

SEC. 305. CONTRACTS FOR CADASTRAL SURVEY OPERATIONS AND RESOURCE PROTECTION.—(a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor, for airborne cadastal survey and resource protection operations of the Bureau of Land Management. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

SEC. 306. UNAUTHORIZED USE.—The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

SEC. 307. ENFORCEMENT AUTHORITY.—(a) Any violation of regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property lo-

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cated thereon and which the Secretary identifies as being subject to this section shall be punishable by a fine of not more than $1,000 or imprisonment for not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.

(c) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; (iv) search

without warrant or process any person, place, or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.

SEC. 308. COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of national resource lands.

SEC. 309. CALIFORNIA DESERT AREA.—(a) The Congress finds that—

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, and educational resources that are unique and irreplaceable;

(2) the desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, in-

adequate Federal management authority, and pressures of increased use, particularly recreational use;

(4) because of the proximity of the California desert to the rapidly growing population centers of southern California, these threats are certain to intensify;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the California desert; and

(6) to insure further study of the relationship of man and the desert environment and preserve the unique and irreplaceable resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to enable effective implementation of such planning and management.

(b) It is the purpose of this section to provide for the immediate and future protection and management of the California desert within the framework of a program of multiple use and the maintenance of environmental quality.

(c) (1) For the purpose of this section, the "California desert area" is the area generally depicted on a map entitled "California Desert Area—Proposed", dated April 1974, and on file in the Office of the Director of the Bureau of Land Management.

(2) As soon as practicable after this Act takes effect, the Secretary shall file a map and a legal description of the California desert area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) The Secretary, in accordance with section 103, shall prepare and implement a comprehensive, long-range plan for the management, use, and protection of the national resource lands within the California desert area. Such plan shall be completed and implementation thereof initiated on or before June 30, 1979.

(e) During the period beginning on the date of enactment of this Act and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage and protect the national resource lands, and their resources now in danger of destruction, in the California desert area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds

and visitor centers, and to provide for a uniformed desert ranger force.

(f) (1) The Secretary, within sixty days of enactment of this Act, shall establish a California Desert Area Advisory Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 6 of this Act.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(g) The Secretaries of Agriculture and Defense shall manage lands within their respective jurisdictions located in or adjacent to the California desert area, in accordance with the laws relating to such lands and wherever practicable in a manner consonant with the purpose of this section. The Secretaries of the Interior, Agriculture, and Defense are authorized and encouraged to consult among themselves and take cooperative actions to carry out this subsection.

(h) The Secretary shall report to the Congress no later than two years after the enactment of this Act, and annually thereafter in the report required in section 7 of this Act, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary, to remedy such problems.

(i) There is authorized to be appropriated for fiscal years 1976 through 1980 not to exceed $40,000,000 to effect the purpose of this section, such amount to remain available until expended.

SEC. 310. OIL SHALE REVENUES.—Section 35 of the Act of February 25, 1920 (41 Stat. 450), as amended (30 U.S.C. 191), is further amended by striking the period at the end of the proviso and inserting in lieu thereof the language as follows: ": *And provided further,* That all moneys paid to any State on or after January 1, 1974, from sales, bonuses, royalties, and rentals of public lands for the purpose of development of or research concerning oil shale deposits may be used by such State and its subdivisions for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services, as the legislature of the State may direct, giving priority to those subdivisions of the State socially or economically impacted by the development or research activities.

TITLE IV—AUTHORITY TO GRANT RIGHTS-OF-WAY

SEC. 401. AUTHORIZATION TO GRANT RIGHTS-OF-WAY.—(a) The Secretary is authorized to grant, issue, or renew rights-of-way over, upon, or through the national resource lands for—

(1) Reservoirs, canals, ditches, flumes, laterals,

pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, or water and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Act of June 10. 1920, as amended (16 U.S.C. 796, 797) ;

(5) Systems for transmission or reception of radio, television, telegraph, and other electronic signals, and other means of communication;

(6) Roads, trails, highways, railroads, canals, tramways, airways, livestock driveways, or other means of transportation; and

(7) Such other necessary transportation or other systems or facilities which are in the public interest and

which require rights-of-way over, upon, or through the national resource lands.

(b) (1) The Secretary shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose any or all plans, contracts, agreements, or other information or material reasonably related to the use, or intended use, of the right-of-way which he deems necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in such right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary, prior to granting a right-of-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include, where applicable: (1) the name and address of each partner; (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that

entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(c) Nothing in this title shall be deemed to limit in any way the authority of the Secretary to make grants, issue leases, licenses, or permits, or enter into contracts under other provisions of law, for purposes ancillary or complementary to the construction, operation, maintenance, or termination of any facility authorized under this title.

SEC. 402. RIGHT-OF-WAY CORRIDORS.—(a) After the Secretary has submitted the report required by section 28 (s) of the Mineral Leasing Act of 1920, as amended by the Act of November 16, 1973 (87 Stat. 576), he shall, consistent with applicable land use plans, designate transportation and utility corridors on national resource lands and, to the extent practical and appropriate, require that rights-of-way be confined to them. In designating such corridors and in determining whether to require that rights-of-way be confined to them, the Secretary shall take into consideration National and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing trans-

portation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

(b) In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across national resource lands, the use of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this title.

SEC. 403. GENERAL PROVISIONS.—(a) The Secretary shall specify the boundaries of each right-of-way as precisely as is practicable. Each right-of-way shall be limited to the ground which the Secretary determines: (1) will be occupied by facilities which constitute the project for which the right-of-way is given, (2) to be necessary for the operation or maintenance of the project, and (3) to be necessary to protect the environment or public safety. The Secretary may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) The Secretary shall determine the duration of each right-of-way or other authorization to be granted, issued, or renewed pursuant to this title. In determining the duration

the Secretary shall, among other things, take into consideration the cost of the facility and its useful life.

(c) Rights-of-way granted, issued, or renewed pursuant to this title shall be given under such regulations or stipulations, in accord with the provision of this title or any other law, and subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, and termination.

(d) The Secretary, prior to granting a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by the Secretary. The Secretary shall issue regulations or impose stipulations which shall include, but shall not be limited to: (1) requirements to insure that activities on the right-of-way will not violate applicable air and water quality standards or applicable transmission, powerplant, and related facility siting standards established by or pursuant to law; (2) requirements designed to control or prevent (A) damage to the environment (including damage to fish and wildlife habitat), (B) damage to public or private property, and (C) hazards to public health and safety; and (3) requirements to protect the interests of individuals living in the general area traversed

by the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be regularly revised. Such regulations shall be applicable to every right-of-way granted pursuant to this title, and may be applicable to rights-of-way to be renewed pursuant to this title.

(e) Mineral and vegetative materials, including timber, within or without a right-of-way may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(f) No right-of-way shall be issued for less than the fair market value thereof as determined by the Secretary. The Secretary may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however,* That rights-of-way may be granted, issued, or renewed to State or local governments or agencies or instrumentalities thereof, or to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or

business enterprises, for such lesser charge as the Secretary finds equitable and in the public interest.

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

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

(i) The Secretary shall grant, issue, or renew a right of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title.

SEC. 404. TERMS AND CONDITIONS.—Each right-of-way shall contain such terms and conditions as the Secretary deems necessary to (1) carry out the purposes of this Act and rules and regulations hereunder; (2) protect the environ-

ment; (3) protect Federal property and monetary interests; (4) manage efficiently national resource lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the national resource lands adjacent to or traversed by said right-of-way; (5) protect lives and property; (6) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes; and (7) protect the public interest in the national resource lands.

SEC. 405. SUSPENSION OR TERMINATION OF RIGHT-OF-WAY.—Abandonment of the right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and an appropriate administrative proceeding pursuant to title 5, United States Code, section 554, the Secretary determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary

to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary shall give written notice to the holder of the ground or grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Deliberate failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided, however,* That where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control the Secretary is not required to commence proceedings to suspend or terminate the right-of-way.

SEC. 406. RIGHTS-OF-WAY FOR FEDERAL AGENCIES.—(a) The Secretary may reserve for the use of any department or agency of the United States a right-of-way over, upon, or through national resource lands, subject to such terms and conditions as he may impose. The provisions of this title shall be applicable to any such right-of-way.

(b) Where a right-of-way has been provided for the use of any department or agency of the United States, the Secre-

tary shall take no action to terminate, or otherwise limit, that use without the consent of the head of that other department or agency.

SEC. 407. CONVEYANCE OF LANDS.—If under applicable law the Secretary decides to transfer out of Federal ownership, by patent, deed, or otherwise, any national resource lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576), the lands may be conveyed subject to the right-of-way; however, if the Secretary determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the national resource lands protected, he shall (1) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (2) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

SEC. 408. EXISTING RIGHTS-OF-WAY.—Nothing in this title shall have the effect of terminating any rights-of-way or rights-of-use heretofore issued, granted, or permitted by the

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Secretary. However, with the consent of the holder thereof, the Secretary may cancel such a right-of-way and in its stead issue a right-of-way pursuant to the provisions of this title.

SEC. 409. STATE STANDARDS.—The Secretary shall take into consideration and, to the extent practical, comply with State standards for right-of-way construction, operation, and maintenance if those standards are more stringent than Federal standards and if the national resource lands are adjacent to lands to which such State standards apply.

SEC. 410. EFFECT ON OTHER LAWS.—(a) After the date of enactment of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, or through national resource lands except under and subject to the provisions, limitations, and conditions of this title: *Provided,* That any application for a right-of-way filed under any other law prior to the date of enactment of this Act may, at the applicant's option, be considered as an application under this title or the Act under which the application was filed. The Secretary may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of national resource lands for highway purposes pursuant to sections 107 and 317 of title 23, United States Code.

TITLE V—CONSTRUCTION OF LAW, PRESERVATION OF VALID EXISTING RIGHTS, AND REPEAL OF LAWS

SEC. 501. CONSTRUCTION OF LAW.—(a) Except as provided in section 410, the authority conferred upon the Secretary by this Act is in addition to all other authority vested in him by law, and nothing in this Act shall be deemed to repeal any such other authority by implication.

(b) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States, or—

(1) as affecting in any way any law governing appropriations or use of, or Federal right to, water on national resource lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws ap-

plicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands;

(7) as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national resource lands; or

(8) as amending, limiting, or infringing the existing laws providing grants of land to the States.

SEC. 502. VALID EXISTING RIGHTS.—All actions by the Secretary under this Act shall be subject to valid existing rights.

SEC. 503. REPEAL OF LAWS RELATING TO DISPOSAL OF NATIONAL RESOURCE LANDS.—(a) The following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads:				
Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26: 1097	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 123	164, 169, 218.
May 14, 1880	89		21: 141	166, 185, 202, 223.
June 6, 1900	821		31: 683	166, 223.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1193	
Oct. 17, 1914	325		38: 740	168.
Revised Statute 2297				169.
Mar. 3, 1881	153		21: 511	
Oct. 22, 1914	335		38: 766	170.
Revised Statute 2292				171.
June 8, 1880	136		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 3, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 3, 1891	561	3	26: 1097	
Mar. 3, 1905	1424		33: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
May 17, 1900	479	1	31: 179	179.
Jan. 26, 1901	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40: 957	
Sept. 13, 1918	173		40: 960	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	76		41: 434	186.
Jan. 21, 1922	32		42: 358	
Dec. 28, 1922	19		42: 1067	
June 12, 1930	471		46: 580	
Feb. 25, 1925	326		43: 981	187.
June 21, 1934	690		48: 1185	187a.
May 22, 1902	821	2	32: 203	187b.
June 5, 1900	716		31: 270	188, 217.
Mar. 3, 1875	131	15	18: 420	189.
July 4, 1884	180	Only last paragraph of sec. 1.	23: 96	190.
Mar. 1, 1933	160	1	47: 1418	190a.

The following words only: "*Provided*, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96: U.S.C. title 43, sec. 190)."

Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32: 384	203.
Mar. 3, 1879	191		20: 472	204.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		24: 22	206.
Aug. 21, 1916	361		39: 518	207.
June 3, 1924	240		43: 357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26: 391	212.

The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act."

Mar. 3, 1891	561		26: 1101	

The following words only: "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: 'No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."

Apr. 28, 1904	1776		33: 527	213.
Aug. 3, 1950	521		64: 398	
Mar. 2, 1889	381	6	25: 854	214.
Feb. 20, 1917	98		39: 925	215.
Mar. 4, 1921	162	1	41: 1433	216.
Feb. 19, 1909	160		35 639	218.
June 13, 1912	166		37: 132	
Mar. 3, 1915	84		38: 953	
Mar. 3, 1915	91		38: 957	
Mar. 4, 1915	150	2	38: 1163	
July 3, 1916	220		39: 344	
Feb. 11, 1913	39		37: 666	218, 219.
June 17, 1910	298		36: 531	219.
Mar. 3, 1915	91		38: 957	
Sept. 5, 1916	440		39: 724	
Aug. 10, 1917	52	10	40: 275	
Mar. 4, 1915	150	1	38 1162	220.
Mar. 4, 1923	245	1	42: 1445	222.
Apr. 28, 1904	1801		33: 547	224.
Mar. 2, 1907	2527		34: 1224	
May 29, 1908	220	7	35: 466	
Aug. 24, 1912	371		37: 499	
Aug. 22, 1914	270		38: 704	231.
Feb. 25, 1919	21		40: 1153	
July 3, 1916	214		39: 341	232.
Sept. 29, 1919	64		41: 288	233.
Apr. 6, 1922	122		42: 491	233, 272, 273.
Mar. 2, 1889	381	3	25: 854	234.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads—Continued				
Dec. 29, 1894	14		28: 599	
July 1, 1879	63	1	21: 48	235.
Dec. 20, 1917	6		40 430	236.
July 24, 1919	26	Next to last paragraph only.	41: 271	237.
Mar. 2, 1932	69		47: 59	237a.
May 21, 1934	320		48: 787	237b.
May 22, 1935	135		49: 286	237c.
Aug. 19, 1935	660		49: 659	237d.
Mar. 31, 1938	57		52: 149	
Apr. 20, 1936	239		49: 1235	237e.
July 30, 1956	778	1, 2, 4	70: 715	237 f, g, h.
Mar. 1, 1921	102		41: 1202	238.
Apr. 7, 1922	125		42: 492	
Revised Statute 2308				239.
June 16, 1898	458		30: 473	240.
Aug. 29, 1916	420		39: 671	
Apr. 7, 1930	108		46: 144	243.
Mar. 3, 1933	198		47: 1424	243a.
Mar. 3, 1879	192		20: 472	251.
Mar. 2, 1889	381	7	25: 855	252.
June 3, 1878	152		20: 91	253.
Revised Statute 2294				254.
May 26, 1890	355		26: 121	
Mar. 11, 1902	182		32: 63	
Mar. 4, 1904	394		33: 59	
Feb. 28, 1923	105		42: 1281	
Revised Statute 2293				255.
Oct. 6, 1917	86		40: 391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service."	37: 925	256.
May 13, 1932	178		47: 153	256a.
June 16, 1933	99		48: 274	
July 26, 1935	419		49: 504	
June 16, 1937	361		50: 303	
Aug. 27, 1935	770		49: 909	256b.
Sept. 30, 1890	J. Res. 59		26: 684	261.
June 16, 1880	244		21: 287	263.
Apr. 18, 1904	25		33: 589	
Revised Statute 2304				271.
Mar. 1, 1901	674		31: 847	271, 272.
Revised Statute 2305				272.
Feb. 25, 1919	37		40: 1161	272a.
Dec. 28, 1922	19		42: 1067	
Revised Statute 2306				274.
Mar. 3, 1893	208		27: 593	275.
The following words only: "*And provided further:* That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."				
Aug. 18, 1894	301	Only last paragraph of Section headed "Surveying the Public Lands."	28: 397	276.
Revised Statute 2309				277.
Revised Statute 2307				278.
Sept. 21, 1922	357		42: 990	
Sept. 27, 1944	421		58: 747	279–283.
June 25, 1946	474		60: 308	279b.
May 31, 1947	88		61: 123	279, 280, 282.
June 18, 1954	306		68: 253	279, 282.
June 3, 1948	399		62: 305	283, 284.
Dec. 29, 1916	9	1–8	39: 862	291–298.
Feb. 28, 1931	328		46: 1454	291.
June 9, 1933	53		48: 119	291.
June 6, 1924	274		46: 469	292.
Oct. 25, 1918	195		40: 1016	293.
Sept. 29, 1919	63		41: 287	294, 295.
Mar. 4, 1923	245	2	42: 1445	302.
Aug. 21, 1916	361		39: 518	1075.
Aug. 28, 1937	876	3	50: 875	1181c.
2. Desert Land Entries:				
Mar. 3, 1877	107	2, 3	19:377	322–323, 325, 327–329.
Mar. 3, 1891	561	2	26:1096	
Except the words: "... all acts and parts of acts in conflict with this act are hereby repealed."				
Jan. 6, 1921	12		41:1086	
Mar. 28, 1908	112		35:52	324, 326, 333.
Feb. 27, 1917	134		39:946	330.
Mar. 1, 1921	102		41:1202	331.
Dec. 15, 1921	3		42:348	
Aug. 7, 1917	48		40:250	332.
Apr. 30, 1912	101		37:106	334.
Feb. 25, 1925	329		43:982	336.
July 30, 1956	778		70:715	336a–d.
Mar. 4, 1915	147	5	38:1161	335, 337, 338.
Mar. 21, 1918	26		40:458	
Mar. 4, 1929	687		45:1548	339.
Feb. 14, 1934	9		48:349	

Act of	Chapter	Section	Statute at Large	43 U.S. Code
3. Sale and Disposal Laws:				
Mar. 3, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1898	344	2	30: 418	675.
Revised Statute 2365				676.
Revised Statute 2357				678.
June 15, 1880	227	3, 4	21: 238	679, 680.
Mar. 2, 1889	381	4	25: 854	681.
Mar. 1, 1907	2286		34: 1052	682.
June 1, 1938	317		52: 609	682a–e.
July 14, 1945	298		59: 467	
June 8, 1954	270		68: 239	
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2368				691.
Revised Statute 2366				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35: 645	
May 21, 1926	353	The two provisos only.	44: 591	
Revised Statute 2375				698.
Revised Statute 2376				699.
Mar. 2, 1889	381	1	25: 854	700.
4. Townsite Reservation and Sale:				
Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68: 792	
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2386				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19: 392	725–727.
Mar. 3, 1891	561	16	26: 1101	728.
July 9, 1914	138		38: 454	730.
Feb. 9, 1903	531		32: 820	731.
5. Drainage Under State Laws:				
May 20, 1908	181	1–7	35: 171	1021–1027.
May 1, 1958	P.L. 85–387		72: 99	1029–1034.
Jan. 17, 1920	47		41: 392	1041–1048.
6. Abandoned Military Reservation:				
July 5, 1884	214	5	23: 104	1074.
Aug. 21, 1916	361		39: 518	1075.
Mar. 3, 1893	208		27: 593	1076.
The following words only: "*Provided*, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."				
Aug. 23, 1894	314		28: 491	1077, 1078.
Feb. 11, 1903	543		32: 822	1079.
Feb. 15, 1895	92		28: 664	1080, 1077.
Apr. 23, 1904	1496		33: 306	1081.
7. Public Lands; Oklahoma:				
May 2, 1890	182	Last paragraph of sec. 18 and secs. 20, 21, 22, 24, 27.	26:90	1091–1094, 1096, 1097.
Mar. 3, 1891	543	16	26: 1026	1098.
Aug. 7, 1946	772	1, 2	60: 872	1100–1101.
Aug. 3, 1955	498	1–8	69: 445	1102–1102g.
May 14, 1890	207		26: 109	1111–1117.
Sept. 1, 1893	J. Res. 4		28: 11	1118.
May 11, 1896	168	1, 2	29: 116	1119.
Jan. 18, 1897	62	1–3, 5, 7	29: 490	1131–1134.
June 23, 1897	8		30: 105	
Mar. 1, 1899	328		30: 966	
8. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 26, 1895	133		28: 687	
June 27, 1906	3554		34: 517	
Mar. 28, 1912	67		37: 77	
Mar. 9, 1928	164		45: 253	
June 28, 1934	865	14	48: 1274	
July 30, 1947	383		61: 630	
Apr. 24, 1928	428		45: 457	1171a.
May 23, 1930	313		46: 377	1171b.
Feb. 4, 1919	13		40: 1055	1172.
May 10, 1920	178		41: 595	1173.
Aug. 11, 1921	62		42: 159	1175.
May 19, 1926	337		44: 566	1176.
Feb. 14, 1931	170		46: 1105	1177.
9. Alaska Special Laws:				
Mar. 3, 1891	561	11	26: 1099	732.
May 25, 1926	379		44: 629	733–736.
May 29, 1963	P.L. 88–34		77: 52	
July 24, 1947	305		61: 414	788.
May 14, 1898	299	1	30: 409	270.
Mar. 3, 1903	1002		32: 1028	
Apr. 29, 1950	137	1	64: 94	

Act of	Chapter	Section	Statute at Large	43 U.S. Code
9 Alaska Special Laws:—Continued				
Aug. 3, 1955	496		69: 444	270, 687a–2.
Apr. 29, 1950	137	2–5	64: 95	270, 270–5.
July 11, 1956	571	2	70: 529	270–6, 270–7, 687a–1.
July 8, 1916	228		39: 352	270–8, 270–9,
June 28, 1918	110		40: 632	270–10, 270–14.
July 11, 1956	571	1	70: 528	
Mar. 8, 1922	96	1	42: 415	270–11.
Aug. 23, 1958	P.L. 85–725	1, 4	72: 730	
Aug. 17, 1961	P.L. 87–147		75: 384	270–13.
Oct. 3, 1962	P.L. 87–742		76: 740	
Apr. 13, 1926	121		44: 243	270–15,
Apr. 29, 1950	134	3	64: 93	270–16, 270–17.
May 14, 1898	299	10	30: 413	270–4, 687a to 687a–5.
Mar. 3, 1927	323		44: 1364	
May 26, 1934	357		48: 809	
Aug. 23, 1958	P.L. 85–725	3	72: 730	
Mar. 3, 1891	561	13	26: 1100	687a–6.
Aug. 30, 1949	521		63: 679	687b to 687b–4.
July 19, 1963	P.L. 88–66		77: 80	687b–5.
10. Pittman Underground Water Act:				
Sept. 22, 1922	400		42: 1012	356.

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

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

(c) Section 2 of the Act of March 8, 1922, 42 Stat. 416, ch. 96, as amended by section 2 of the Act of August

23, 1958, 72 Stat. 730, Public Law 85–725, 43 U.S.C. 270–12, is further amended to read:

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

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

(e) Section 3 of the Act of August 30, 1949, 63 Stat. 679, ch. 521, 43 U.S.C. 678b–2, is amended to read:

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

(f) Notwithstanding any other provision of this Act, all laws of the United States in effect on the date immediately preceding the effective date of this Act relating to homesteading in the United States shall, on and after such effective date, continue to be applicable to lands within the State of Alaska classified by the Secretary as suitable for homestead entry in the same manner and same extent as if this Act had not been enacted until June 30, 1984.

SEC. 504. REPEAL OF LAWS RELATING TO ADMINISTRATION OF NATIONAL RESOURCE LANDS.—The following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Mar. 2, 1895	174		28: 744	176.
2. June 28, 1934	865	8	48: 1272	315g.
June 26, 1936	842	3	49: 1976, title I.	
June 19, 1948	548	1	62: 533	
July 9, 1962	P.L. 87-524		76: 140	315g-1.
3. Aug. 24, 1937	744		50: 748	315p.
4. Mar. 3, 1909	271	2d proviso only.	35: 845	772.
June 25, 1910	J. Res. 40		36: 884	
5. June 21, 1934	689		48: 1185	871a.
6. Revised Statute	2447			1151.
Revised Statute	2448			1152.
7. June 6, 1874	223		18: 62	1153, 1154.
8. Jan. 28, 1879	30		20: 274	1155.
9. May 30, 1894	87		28: 84	1156.
10. Revised Statute	2450			1161.
Feb. 27, 1877	69	1	19: 244	
The following words only: "Section twenty-four hundred and fifty is amended by striking out in the fourth line the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior' ".				
Revised Statute	2451			1162.
February 27, 1877	69	1	19: 244	
The following words only: "Section twenty-four hundred and fifty-one is amended by striking out, in the first and second lines, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior' ".				
Revised Statute	2456			1163.
Sept. 20, 1922	350		42: 857	
The words: ". . . and sections 2450, 2451, and 2456 be amended to read as follows:" and all words following in the Act.				
Revised Statute	2457			1164.
11. Mar. 3, 1891	561	7	26: 1098	1165.
12. Revised Statute	2471			1191.
Revised Statute	2472			1192.
Revised Statute	2473			1193.
13. July 14, 1960	P.L. 86-649	101-202(a), 203-204(a), 301-303.	74: 506	1361, 1362, 1363-1383.
14. Sept. 26, 1970	P.L. 91-429		84: 885	1362a.
15. July 31, 1939	401	1, 2	53: 1144	

SEC. 505. REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY.—(a) The following statutes or parts of statutes

are repealed insofar as they apply to national resource lands:

Act of	Chapter	Section	Statute at Large	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 purpose 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	335		29: 599	664.
Mar. 3, 1899	427	1	30: 1233	665, 958 (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875	152		18: 482	934–939.
May 14, 1898	299	2–9	30: 409	942–1 to 942–9.
Feb. 27, 1901	614		31: 815	943.
June 26, 1906	3548		34: 481	944.
Mar. 3, 1891	561	18–21	26: 1101	946–949.
Mar. 4, 1917	184	1	39: 1197	
May 28, 1926	409		44: 668	
Mar. 1, 1921	93		41: 1194	950.
Jan. 13, 1897	11		29: 484	952–955.
Mar. 3, 1923	219		42: 1437	
Jan. 21, 1895	37		28: 635	951, 956, 957.
May 14, 1896	179		29: 120	
May 11, 1898	292		30: 404	
Mar. 4, 1917	184	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	961 (16 U.S.C. 5, 420, 523).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service".				
May 27, 1952	338		66: 95	
May 21, 1896	212		29: 127	962–965.
Apr. 12, 1910	155		36: 296	966–970.

(b) Notwithstanding the provisions of subsection (a) of this section, the following statute is repealed in its entirety:

Act of	Chapter	Section	Statute at Large	U.S. Code
Revised Statute 2477				43 U.S.C. 932.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 6, 1975.

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

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on S. 507, a bill "To provide for the management, protection and development of the national resource lands, and for other purposes."

While S. 507 would provide needed management authority to protect and regulate the use of the national resource lands, we recommend the enactment of the Administration's proposed "National Resource Lands Management Act", transmitted to the Congress on March 6, in lieu of S. 507.

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 irreplacable 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 these lands as it has done for the National Forest Service and the National Park Service.

S. 507, like the Administration proposal, would establish a legislative base for the management of the national resource lands. Title I of the bill declares a national policy that these lands be managed under the principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, protect the quality of environment, including requiring appropriate land reclamation as a condition for use. It directs the Secretary of the Interior to inventory the national resource lands and to develop comprehensive land use plans for such lands, giving priority to "areas of critical environmental concern". Such areas are defined to include, among others, important natural systems and scenic or historic areas. The bill also directs the Secretary to identify land suitable for wilderness study within five years, and to review and make recommendations to Congress within 15 years for inclusion of eligible land within the Wilderness System.

Title II would provide modern disposal authority for the Secretary to sell by competitive bidding national resource lands at not less than fair market value, when management of those lands would be significantly improved or when such disposal would serve important public objectives which cannot be prudently and feasibly achieved on land other than the national resource lands, or when the lands are not suitable for Federal purposes. Under certain circumstances it would authorize conveyance of mineral interests in lands to the surface owner if certain criteria are met. The bill would also authorize the acquisition of lands needed for proper management of national resource lands.

Title III would provide modern land management tools and procedures designed to facilitate achievement of the goals and objectives established for the national resource lands. Among other things, it would establish a working capital fund that would afford a more efficient method of accounting for various programs and service operations of the Bureau of Land Management. It would significantly facilitate management of the national resource lands by making violation of laws and regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees. In addition, the bill would authorize the Secretary to cooperate with State and local law enforcement agencies on national resource lands and to reimburse them for extraordinary services on national resource lands.

Title IV provides uniform and comprehensive authority for the Secretary to grant rights-of-way for purposes ranging from roads, trails and canals to powerlines and pipelines other than oil and gas pipelines. Presently this authority must be gleaned from numerous, often overlapping 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.

The bill differs from the Administration proposal in several respects:

(1) S. 507 requires the designation of areas with wilderness characteristics within five years and proposals to Congress within 15 years. We believe that these time frames put an unrealistic burden on the Department, because it would call for a review of all roadless areas of 5,000 acres or more within the 450 million acres administered by BLM.

The Administration proposal would call for a review of acrea of 50,000 acres or more and does not require a specific time frame for making the necessary study. This would provide adequate time to do the necessary work and considerably reduces the amount of land which must be reviewed, without substantially changing the intent of the provision, which is to assure that suitable areas within the vast public domain are studied for inclusion within the wilderness areas. In addition, studies of smaller areas are possible and are in fact being identified in the current land use planning process of BLM.

(2) S. 507, like the Administration proposal, calls for recordation of mining claims, to require claims to be recorded or invalidated. The Administration proposal specified one year for recording the claims and three years for obtaining a patent, or the claim would be presumed abandoned and void. S. 507 specifies two and five years respectively. The shorter time frame is adequate for the purpose and would settle the matter of unrecorded claims as expeditiously as possible.

(3) S. 507 includes a provision, section 309, which singles out the California Desert for special environmental protection. The Administration proposal does not include this provision because section 101 of both bills calls for prompt regulations for the protection of areas of critical environmental concern, which by definition (section 2(e)), would include the California Desert. To single out this area for special consideration would not be fair to other areas in need of equal protection and of equal values. We do not feel such specification necessary in light of the direction in section 101.

(4) S. 507 contains a provision, section 310, which gives priority to impacted communities in use of the State's share of oil shale revenues. While the Department favors giving the States more flexibility in use of their share of funds, and does not oppose this provision per se, we believe that such a provision is more appropriate as part of comprehensive amendments to the Mineral Leasing Act. We expect to propose such comprehensive amendments to the 94th Congress in the near future.

(5) Section 208(c) of S. 507 provides that where the United States has conveyed mineral interests, the patent shall contain a reverter clause providing that if any mining occurs within 20 years of the conveyance of the interests, the interest shall revert back to the United States. The Administration bill contains no such reverter. Such a provision unduly encumbers the interest being transferred and if the interest is transferred in the first place, under 208(a), it should not be so valuable that the United States would want it back. Also, the owner of the surface rights, to whom the transfer is made, is required to pay the United States for the fair market value of the mineral interests and once this is done, it would not be equitable to require him to wait 20 years before he can extract the minerals. Consequently, we urge that such a reverter provision not be included in the bill.

(6) The proposed bill contains a section, 503(f), which is not in the Administration proposal. This section calls for the application of the Homestead Laws to Alaska, despite their repeal by section 503(a). The repeal of the Homestead Laws should be complete in that they are cumbersome and their retention as to Alaska would not be desirable.

(7) S. 507 contains a provision, section 101(3), which allows the Secretary to revoke permits, licenses or leases. The Administration proposal does not contain this provision because section 101(1) authorizes the Secretary to regulate the use of the lands through permits, licenses and leases, which would necessarily include the right to revoke these, if necessary.

(8) The provision in S. 507, section 8, which calls for the appointment of the Director of Bureau of Land Management by the President, with the consent of the Senate, differs from the Administration proposal in the following respect. There is no requirement in the Administration bill that the Director

have experience in public land management. It is felt that if the President is to pick the Director, he should have wide discretion in doing so.

(9) S. 507 specifies in section 307(b) that law enforcement officers of the Bureau of Land Management shall have the authority to conduct warrantless searches and seizures. The Administration proposal does not. This is a power which exists in the common law in certain situations, and is commonly exercised without statutory codification by FBI and Treasury agents for example; it is felt that it is not necessary to put into statutory form an authority which already exists in the common law.

(10) S. 507, in section 213(c), authorizes exchanges of lands of unequal value between the United States and private owners, by allowing cash payments to make up the differences in value. The Administration bill adds a proviso to this section which limits the amount of cash payments to 20% of the value of Federal lands exchanged. This has been done to assure that land exchange will not be used as a substitute for land disposal, which is governed by rigid criteria as to when it can be done in section 202.

(11) In section 204, S. 507 limits the disposal of land for agricultural use to tracts only big enough for a family farm. This provision is not necessary. The Secretary should have the discretion to dispose of land in large tracts for farm use, if the disposal meets the disposal criteria set forth in the bill in the first place. Consequently, it is not in this section of the Administration bill.

(12) Section 213(a) of S. 507 authorizes the Secretary to acquire land by eminent domain where necessary for access to public lands. Since there are other, limited, situations which might arise calling for proper use of this power, this section in the Administration bill does not contain the restriction on eminent domain. It deletes the qualifying language as to acquiring access corridors only.

The foregoing are the most significant differences between S. 507 and the Administration proposal, although there are other differences of lesser importance which will be furnished to the Committee. Considering the similarities in the two bills, the recommendation that the Administration proposal be enacted essentially accomplishes the enactment into law of most of the provisions of S. 507 with the changes noted.

The Offices of Management and Budget has advised that there is no objection to the submission of this report and that the enactment of the Administration's proposal would be in accord with the program of the President.

Sincerely yours,

JACK HORTON,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 15, 1975.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs

DEAR MR. CHAIRMAN: We would like to offer our views on S. 507 and S. 1292, bills "To provide for the management, protection, and development of the national resource lands, and for other purposes" and the "Amendments intended to be proposed by Mr. Jackson to S. 507" as introduced on March 6, 1975.

The Department of Agriculture recommends that S. 1292 be enacted in lieu of S. 507 and that the Amendments to S. 507 not be adopted. S. 1292 contains the Administration's recommendations as transmitted to the Congress by the Secretary of the Interior on March 6, 1975. We defer to the Secretary of the Interior for an analysis of the differences between S. 507 and S. 1292 and an explanation of the reasons for the recommendation contained in his transmittal.

S. 507 and S. 1292 would provide general management authority for the national resource lands. The term "National resource lands" is defined to mean all lands and interests in lands now or hereafter administered by the Secretary of the Interior through the Bureau of Land Management, except the Outer Continental Shelf. The bills would also provide conveyance and

acquisition authorities, management implementing authority, and authority to grant rights-of-way for the national resource lands.

The S. 507 Amendments would add a new title to S. 507. The new title would provide for Federal-State coordination and cooperation in the planning and management of Federal and adjacent non-Federal lands. The term "Federal lands" is defined to mean any land owned by the United States, except lands held in trust for the Indians, Aleuts, and Eskimos and the Outer Continental Shelf. The S. 507 Amendments would require coordination between Federal and non-Federal lands and preparation of environmental statements and public hearings on all new Federal programs or management direction. The Amendments would provide for the establishment by the Secretary of the Interior of Federal-State joint committees to review and make recommendations on problems relating to jurisdictional conflicts and inconsistencies regarding the planning and management of Federal and non-Federal lands.

This Department supports the need and desirability of providing the Secretary of the Interior with strong statutory authority for the retention and management of the lands now being administered by the Secretary through the Bureau of Land Management. We do not, however, believe that S. 507 or S. 1292 should be expanded to provide new statutory direction for Federal-State coordination and cooperation in the planning and management of Federal and adjacent non-Federal lands.

The issue raised by the S. 507 Amendments is the complex interrelationship between national, State, and local purposes and the question of how to blend national goals and programs for Federal lands with the goals and programs of State and local governments on non-Federal lands. The National Forests were created and are administered for "national" purposes. The Secretary of Agriculture has the responsibility to insure that all National Forest System lands are managed in consonance with these national purposes. The Forest and Rangeland Renewable Resources Planning Act of 1974 provided emphasis on the need for long-range planning to meet national needs. This Act also provides for appropriate coordination with State and local governments.

We view the procedural requirements of the S. 507 Amendments as unduly cumbersome and duplicative of existing policies and practices. For example, it would expand on the requirements of the National Environmental Policy Act of 1969 by requiring statements to be prepared on the consistency of Federal policies and programs. This would be a time consuming and consequently a costly process. The National Environmental Policy Act now requires the preparation of environmental statements on major Federal actions significantly affecting the environment. Agency guidelines provide for the comment and review of these statements by affected State and local agencies. We believe that environmental statements and the associated review procedures established under the National Environmental Policy Act provide an appropriate level of review of Federal actions as they relate to State and local concerns.

We are concerned that while the required coordination of Federal land use plans with local and State plans is subordinate to paramount national policies, programs, and interests, in the proposed Amendments, there is a probability of many small decisions relating to Federal coordination with State and local land use plans which could on a cumulative basis act to block or delay the attainment of national programs. The direction provided in the Amendments would tend to focus on local issues and purposes rather than on national purposes.

We are also concerned that the establishment of ad hoc Federal-State joint committees to review jurisdictional conflicts and inconsistencies between planning and management of Federal lands and of adjacent non-Federal lands as provided in the Amendments would segment existing Federal-State cooperative arrangements aimed at coordinating a wide range of Federal-State interests.

In addition the procedures pertaining to these committees do not appropriately recognize the role and responsibilities of Federal officials, other than the Secretary of the Interior, in cooperating and consulting with State Governors and other State officials.

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

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 6, 1975.

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

DEAR MR. CHAIRMAN: This is in response to your request of February 14, 1975, for the views of the Office of Management and Budget on S. 507, a bill entitled the "National Resource Lands Management Act."

The Department of the Interior has just submitted to the Congress similar legislation which is also entitled the "National Resource Lands Management Act" and in the Department's report on S. 507, it recommends enactment of its proposal in lieu of S. 507. Enactment of the Department of the Interior's "National Resource Lands Management Act" would be in accord with the program of the President.

Sincerely,

JAMES F. C. HYDE, Jr.,
Acting Assistant Director for Legislative Reference.

STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR
FROM THE STATE OF IDAHO

Mr. Chairman, last year during consideration of S. 424, 'The National Resource Lands Management Act,' I offered several amendments which this Committee incorporated into the bill that finally passed the Senate. I thought it unfortunate that S. 424 failed to receive favorable action in the House of Representatives. I believe that the BLM needs an 'organic act' to replace the hodge-podge of laws that now govern the agency.

In reviewing provisions of the new measure to create a BLM organic act, I am pleased to note that two of these amendments, suggested last year, have been retained.

Especially important is the retention of my amendment to strictly limit the authority of the Bureau of Land Management to condemn private land for government use. Giving the BLM free rein to condemn private property, as provided for under provisions of the original bill, was simply not justified. For decades this agency has managed Federal lands without the plenary power of condemnation. In a State like Idaho, where two-thirds of the land is owned by the Federal government, it cannot be that the BLM needs general condemnation power to forcibly acquire still more land.

A second amendment, retained in the bill before this Subcommittee, provides that the Secretary of the Interior, where he has determined that the public interest will best be served by selling public lands, must offer those lands suitable for agricultural purposes, in acreages no larger than family-sized farming units. In this way, the accumulation of vast tracts by single owners, or wealthy corporations, will be prohibited.

I am, however, disturbed that the draft proposal under this Subcommittee's consideration contains language to repeal the Desert Land Act. As a result of a third amendment which I offered last year, repeal of the Desert Land Act was deleted. When the Subcommittee begins its mark-up on this bill, I will again offer an amendment to delete the repeal of the Desert Land Act.

Idaho has a large stake in retaining the Desert Land Act. How much is clearly depicted by the amount of land owned by the Federal government in Idaho; some 33.9 million acres, nearly two-thirds of the State. Of this amount, 12 million acres are administered by the Bureau of Land Management.

Several million acres of these public lands may prove to be suitable for agricultural use. Repeal of the Desert Land Act would shut the door on many prospective Idaho entrymen who might otherwise develop these desert lands into profitable production units. It would spell death to an Act which has been used for nearly 100 years to provide farm land for thousands of American families.

Idaho is unique in that we still have desert land and water available for cultivation. Individuals still have an opportunity to claim up to 320 acres of desert land if they cultivate and develop it. Denying citizens the right to utilize a law which still has a great deal of usefulness and vitality is unacceptable to me. I will work for the retention of the Desert Land Act.

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Senator HASKELL. Senator Hansen, do you have any remarks you would like to make at this time?

Senator HANSEN. No, I do not.

Senator HASKELL. Senator McClure, do you have an opening statement?

Senator MCCLURE. No, I don't. I would like to hear from the witnesses.

Senator HASKELL. The first witness will be the Assistant Secretary of the Interior for Land and Water Resources, Jack Horton.

Mr. Horton, we are very happy to have you here. You may proceed as you like. If you have a prepared statement, I would point out that your statement in its entirety will appear in the hearing record. You may summarize, if you would like to, or proceed however you wish.

STATEMENT OF HON. JACK HORTON, ASSISTANT SECRETARY OF THE INTERIOR FOR LAND AND WATER RESOURCES; ACCOMPANIED BY GEORGE TURCOTT, ASSOCIATE DIRECTOR, BLM; ELEANOR SCHWARTZ, CHIEF, DIVISION OF LEGISLATION AND REGULATORY MANAGEMENT; JAMES W. MONROE, ASSISTANT DIRECTOR, LEGISLATION AND PLANS, BLM; AND RAY TAYLOR, OFFICE OF LEGISLATIVE COUNSEL

Mr. HORTON. Mr. Chairman, it is a pleasure for me to be here representing the Department of the Interior along with other members of the Department, and I will introduce these.

To my immediate right is the Associate Director of the BLM, Mr. George Turcott; to his right is Eleanor Schwartz, Chief of the Division of Legislation and Regulatory Management; and to the far right, Mr. Tim Monroe, Assistant Director, Legislation and Plans for the BLM. To my right is Mr. Ray Taylor of the Office of Legislative Counsel for the Department.

Mr. Chairman, and members of the committee, it is a very great pleasure for all of us to be here to testify before you once again on the BLM Organic Act.

I regret that Senator Hansen has just left, because I was going to point out that it was a special privilege to have someone from the eastern part of the State of Wyoming, but he has just departed.

The national resource lands and their resource values are among the nation's greatest physical assets. They encompass mountains, rangelands, forests and lakes, and provide some of the most spectacular scenery on Earth. They are a source of food, timber, minerals, and water and offer almost unlimited recreational values.

The national resource lands were for many years used as a means of stimulating the growth and development of the West. Consequently, in the early years, 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 land disposal. Although there has been a growing awareness that these lands are an invaluable national asset and that their values must be protected, preserved, and maintained in Federal ownership, these lands have inherited an archaic and often conflicting conglomeration of laws

governing their use. The national resource lands comprise over 60 percent of all Federal lands. 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, the National Park Service, and other land managing agencies.

Title I of the bill declares a national policy that these lands be managed under the principles of multiple use and sustained yield. To accomplish this, we must use all practicable means and measures to protect the quality of the environment. This includes requiring appropriate land reclamation as a condition of use. It directs the Secretary of the Interior to inventory the national resource lands and develop comprehensive land use plans for such lands, giving high priority to areas of critical environmental concern, including important natural systems and scenic or historic areas. The bill also directs the Secretary to identify land suitable for wilderness study within 5 years, and to review and make recommendations to Congress within 15 years for inclusion of eligible land within the wilderness system.

Title II provides modern disposal authority for the Secretary to sell by competitive bidding national resource lands at not less than fair market value. Sale and other disposal would be exercised only when management of these lands would serve important public objectives not prudently and feasibly achieved on land other than the national resource lands. or when the lands are not suitable for Federal purposes. Under certain circumstances, the bill authorizes conveyance of mineral interests in lands to the surface owner if certain criteria are met. Acquisition of lands needed for proper management of national resource lands would be authorized.

Title III provides modern land management tools and procedures designed to facilitate achievement of the goals and objectives established for the national resource lands. Among the other things, it establishes a working capital fund that affords more efficient methods of accounting and management for various programs and service operations of the BLM.

It would significantly facilitate management of the national resource lands by making violation of laws and regulations pertaining to them a crime, and by vesting enforcement authority in certain designated departmental employees. In addition, the Secretary would be authorized and encouraged to cooperate with State and local law enforcement agencies on national resource lands. He would be able to reimburse them for extraordinary services on national resource lands.

Title IV provides uniform and comprehensive authority for the Secretary to grant rights-of-way for purposes ranging from roads, trails and canals to powerlines and pipelines other than oil and gas pipelines; presently this authority is derived from numerous and often overlapping laws.

S. 507 differs from the administration's proposal in several areas. S. 507 calls for the designation of areas with wilderness characteristics within 5 years, and proposals to Congress within 15 years. It is our judgment that these proposed time frames would place an unnecessarily heavy burden on the Department. The criteria of the

Wilderness Act are incorporated in S. 507 and would call for a review of roadless areas of 5,000 acres or more within the 450 million acres administered by the BLM. The administration's proposal would call for a review of areas of 50,000 acres or more. In addition, it does not limit the Secretary to a specific time frame for making the necessary studies. This gives the Secretary more latitude to complete his review of this enormous acreage comprising 20 percent of the nation's lands. It would also reduce the amount of land to be reviewed without substantially changing the intent of the provision. Nonetheless, studies of smaller areas are, in fact, regularly identified now, and certainly in the future, through BLM's planning process.

S. 507, like the administration's proposal, calls for recordation of mining claims, to require claims to be recorded or subsequently invalidated. The administration's proposal specifies 1 year for recording the claims, and 3 years for obtaining a patent, or the claim would be presumed abandoned and void. S. 507 specifies 2 and 5 years respectively. The shorter time frame is adequate, in our judgment, for the purpose, and there is no pressing reason to extend the limits as has been done in S. 507. The Department would like to clear up the claim situation as quickly as possible.

S. 507 includes a provision, sec. 309, which singles out the California desert for special environmental protection. The administration's proposal does not include this provision because sec. 101 of both bills calls for prompt issuance of regulations for the protection of all areas of critical environmental concern. By definition, this includes the California desert. To single out this area for special consideration would not be fair to other areas in need of equal protection. This approach could lead to the specification of each of these areas as areas of critical environmental concern in the bill. We do not feel that such specification is necessary in light of the directives in sec. 101 of both proposals.

Both S. 507 and the administration's proposal retain the water provision in the Desert Land Act, which is otherwise being repealed However, we have directed the language be retained in a manner designed to assure the maintenance of the status quo.

S. 507 contains a provision, sec. 310, which gives priority to impacted communities in use of the State's share of oil shale revenues.

As the Department has testified on several occasions, we favor giving the States more flexibility in the use of their share of the funds. We strongly support the objectives of that provision. However, we feel it is more appropriately addressed in the amendments to the Mineral Leasing Act, which the administration will be introducing this spring. For this reason, we are suggesting it not be included in the present proopsal. If, however, there exists a possibility of protracted delay in achieving this reform, we will not oppose its inclusion in the present legislation.

Sec. 208(c) of S. 507 provides that where the United States has conveyed mineral interests, the patent shall contain a reverter clause providing that if any mining occurs within 20 years of the conveyance of the interests, the interest shall revert back to the United States. The administration bill contains no such reverter. Such a provision unduly encumbers the interest being transferred. The owner of the surface rights, to whom the transfer is made, is required

to pay the United States for the fair market value of the mineral interests. Once this is done, it would not be equitable to have a cloud on his title for 20 years. Consequently, we have not included the reverter provision in our bill.

In addition to these differences, Mr. Chairman, other clarifying amendments have been made in the administration's proposal. I have approximately two and one-quarter double-spaced pages of these, Mr. Chairman, and if you would like me to read them into the record, or simply to present them.

Senator HASKELL. Mr. Secretary, why don't you present them for the record?

Mr. HORTON. The national resource lands are priceless and irreplaceable national assets. It is time to provide the Department of the Interior with the authority and the tools to manage and preserve them in accordance with their value to the American people. The administration urges quick enactment of this legislation in order to provide the Bureau of Land Management with management authority available to other Federal land management agencies.

S. 507 contains a section, 503(f), which is not in the administration proposal. This section calls for the continued applicability of the Homestead Laws to Alaska, despite their repeal by section 503(a) as if the Act had not been enacted until June 30, 1984. The repeal of the Homestead Laws should be complete. They are cumbersome and their retention as to Alaska would not be desirable.

Section 101(3) of S. 507 allows the Secretary to revoke permits, licenses or leases. The administration proposal does not contain this provision. Section 101(1) authorizes the Secretary to regulate the use of the lands through permits, licenses and leases. This would necessarily include the right to revoke these, if necessary.

Section 8 of S. 507 calls for the appointment of the Director of Bureau of Land Management by the President, with the consent of the Senate, but differs from the administration proposal in that there is no requirement in the administration bill that the Director have experience in public land management. It is felt that if the President is to pick the Director, he should have wide discretion in doing so.

S. 507 specifies in section 307(b) that law enforcement officers of the Bureau of Land Management shall have the authority to conduct warrantless searched and seizures. The administration proposal does not. This is a power which exists in the common law in certain situations, and is commonly exercised without statutory codification by other law enforcement officers—for example, FBI and Treasury agents. It is felt that it is not necessary to put into statutory form an authority which already exists in the common law.

S. 507, in section 213(c), authorizes exchanges of lands of unequal value between the United States and private owners, by allowing cash payments to make up the differences in value. The Administration bill adds a proviso to this section limiting the amount of cash payments to 20% of the value of Federal lands exchanged. This has been done to assure that land exchange will not be used as a substitute for land disposal, which is governed by rigid criteria in section 202.

In section 204, S. 507 limits the disposal of land for agricultural use to tracts only big enough for a family farm. This provision is not

necessary. The Secretary should have the discretion to dispose of land in large tracts for farm use, if the disposal meets the disposal criteria set forth in the bill in the first place. Consequently, it is not the Administration proposal.

Section 213(a) of S. 507 authorizes the Secretary to acquire land by eminent domain where necessary for access to public lands. There are other, limited, situations which may require the use of this power. the administration proposal does not, therefore, contain this restriction on the use of eminent domain. It deletes the qualifying language which limits the use of eminent domain acquiring access corridors only.

Mr. Chairman, that completes the formal testimony of the administration, and we will be pleased to answer whatever questions you might have at this time.

Senator HASKELL. Thank you, Mr. Secretary.

On the oil shale provision, I am pleased that the administration sees the need for it. I would stress, Mr. Secretary, that I am glad that you understand, as you obviously do, the urgency of the amendment, which permits the States to use revenues in impacted areas for general governmental purposes.

From the point of view of my State, which is much impacted by shale, I would prefer to have this oil shale provision in this particular legislation, which I hope will be enacted this Congress with some relative ease, as opposed to waiting for the mineral leasing provisions which will likely have some controversial markup sessions, and probably some pretty tough sledding on the floor. I am very pleased with the administration's attitude.

The mineral reverter, which you oppose and which our bill has, was put in, at least from our viewpoint, as a protection against somebody pulling the wool over the Department's eyes, and exploring for minerals on these lands. That is the reason—the protection of the U.S. Government.

I don't know that I would look at it as a cloud on the title, because unless he does some mining, he has no problems. Would you care to express yourself further on that, Mr. Secretary, or anyone of you?

Mr. HORTON. I will start it, and ask Mr. Turcott to continue.

I think that it could create a cloud on the title, if the title did transfer to the private individual, knowing that if minerals were discovered, either by deliberate exploration or by happenstance, that within 20 years these would revert back to the United States.

Now, I presume that in most instances, the deeds of transfer would not be for the purpose primarily of the acquisition of the mineral State, but the purchaser would be left with a period of 20 years of uncertainty with respect to the minerals in that particular piece of real estate.

The question that has come before the Department is: Is this good public policy? Those who acquire title to certain land would have a period of doubt with respect to the mineral estate for a period of 20 years.

Senator HASKELL. I suspect that it is a matter of viewpoint, Mr. Secretary, as to whether this is a cloud on the title, because as long as nobody mines, as I remember reading the provision, there is no problem. However, I see the difference of opinion.

On the California desert, Mr. Secretary, you say that it is a duplication. As I recall the testimony last year, or the year before, there was a sense of urgency in the California desert, that was not present in many other areas.

It seems to me that this is the reason for the inclusion; am I wrong on that?

Mr. HORTON. We would concur, even at this time, there seems to be a sense of urgency, even though I think we have responded in a better fashion than we did 2 years ago. We had provided at that time, for example, a total of 14 desert BLM field rangers. We have, perhaps, doubled that over a 2-year period.

We have an annual budget for planning and managing the California desert, something in the order of $2 million. We concur totally with the viewpoint that it has special pressures, on it, but we believe the authority in the bill should be general, so that we can apply our planning ability and management ability overall, without need to specify a special area of critical environmental concern.

I would hope the committee would agree that we responded with our present limited authority by addressing the special problems of the desert within a broad authority, and not simply by virtue of special legislative authority for the desert only.

Senator HASKELL. Is it correct to say that you are taking special steps now, Mr. Secretary, which were not being taken last year or the year before?

Mr. HORTON. The last hearing before you, as I recall, was in 1974, and at that time we had 14 ranger patrolmen, and we now have 29.

Senator HASKELL. Do the people in California consider that to be adequate protection, or don't you know? As I remember, artifacts were being taken off the soil, and this kind of thing.

Mr. HORTON. In the areas where the artifacts were being removed, we have taken special steps. Then, we have a question of the appropriate ratio of desert rangers to specific acreages, or specific numbers of people. For example, we anticipate this year, I think, 13 to 15 million visitor-use days. I am not sure we can define with any arithmetic certainty how many people we ought to have managing the desert as compared to how many people we expect.

Senator HASKELL. Mr. Secretary, I gather that the Department favors a repeal of the Desert Land Act. I assume that my colleague from Idaho will probably have some questions along those lines, but I wonder if you would explain a little further the department's reason for recommending repeal of that act.

Mr. HORTON. I think that our overall point is that the present way of achieving agricultural values on public lands, the present way of doing this under the Desert Land Act program is a very expensive one, both for the applicant, the entryman, and the Government.

Mr. Turcott, if you would expand on some of the figures that we have come up with as to the cost of the program?

Mr. TURCOTT. Thank you.

At the current time, we have 1,000 desert land applications pending in the southern part of Idaho. This by far is the largest concentration of applications in any one State. Our program now is to do a regional environmental analysis record. This is not an impact statement, but a regional environmental analysis record. This is an

assessment in record form that will cover these 1,100 cases. We hope that we will have this done by the middle of next month.

Using the same figures that we used in our testimony before you last year, sir, if we multiply the 1,100 applications and assume approval rate in southern Idaho, with the particularly unique soil and climatic conditions within the Snake River plains, we feel that there may be a maximum of 80 percent allowed or approved. This would total about 880.

It costs about $1,600 for the BLM to process an application. This is over and above the rather expensive environmental assessment we are making. It is going to cost us about $1,462,000.

The environmental assessment will cost us about $75,000, and if we have to go to a full formal environmental impact statement that will be another $50,000. There has not been a formal determination, or a formal decision yet, as to whether we will have to prepare a formal environmental impact statement.

Senator McCLURE. What was the figure on the environmental assessment?

Mr. TURCOTT. It will be $75,000, and if we do an environmental impact statement, it will mean another $50,000.

Now, we are talking about almost 282,000 acres as a maximum that would be put into cultivation. This of course, would take place over a rather long period of years.

Again, using the figures I used last year of $96,800 cost to the entrymen to go through all of the statutory provisions of the act to be approved as an entryman, going into entryman status, the cost to the entrymen, the total of these 880 cases comes to $85,184,000.

In addition to that, of course, we have all of the problems, and Senator McClure is most familiar with them, of the business of group entries, or group associations, and all of the extremely complex litigation that has been going on, and has gone on in the past.

To us, it is a matter of good professional planning and classification. Under the provisions of the administration's bill, if land is classified suitable for agriculture, as I have given you a rough assessment that we think 80 percent of this land in Idaho will go, we can cut this cost tremendously both to the applicant and to the Government, and get away from all these complex and intricate statutory requirements, and do something for our Nation's agriculture in the West that will be much more efficient and effective in terms of time.

Land would be sold at fair market value under the administration's bill.

Senator HASKELL. Probably, Senator McClure will have some questions along this, but that sufficies for my purposes.

Let me ask you one thing on permits or leases that you give on public lands. Let me put it in context, so that you will understand what I am getting at.

I was recently in Colorado, where controversy has arisen over various ski areas which hold permits on forest service lands. I know that the Secretary goes skiing, so he will understand the anguish which escalation in the ski toll tickets can bring, and recently three areas announced an increase.

I queried the Forest Service on what test they had for either permitting or denying increases, and they are the normal tests that you

would expect. In the course of the conversation, I found that in the agreements between the Department of Agriculture and its Forest Service and private permittees there was a clause that stated that all financial information submitted in support of an increase would be maintained on a confidential basis.

My reaction to that was that there are some people who are using public lands for private purposes. The public has a right to know, and a right to a hearing, and, if necessary, a right to intervene when the private party using the public land raises rates.

Now, I don't know whether your Department and the lands you administer have comparable provisions, providing for confidentiality of information, but I would certainly like to know now whether you do or not. Do you see the problem, Mr. Secretary?

Mr. HORTON. Mr. Chairman, it is our understanding, confirmed by Mr. Turcott, that our operating records are open to the public.

Senator HASKELL. I am very pleased to hear that, because I think when a private party makes money by charging the public for the use of public lands, I think that financial records ought to be open.

Mr. TURCOTT. Yes, sir. This is generally true. There may be information that is not made available to anyone but the permittee, where it gets into the situation of private information. When that is so, it cannot be put into the record, and the utility and use for the Government is very much weakened.

Senator HASKELL. You don't have any clauses in your leases or permits comparable to the clause that I described that the Forest Service has?

Mr. TURCOTT. We only have, to my knowledge, seven concessioner type contracts of the kind you are talking about, and most of those, I believe, we inherited. Those are in the lower Colorado River in Arizona and California. I will have to defer, sir, to have those actual contracts or concessioner leases checked to see.

Senator HASKELL. Mr. Turcott, I would appreciate if you would, and perhaps submit for the record what is in them. But, would I be correct in saying that it is the policy of the Department at present not to have such clauses in agreements with private individuals?

Mr. HORTON. In terms of a general policy for the Department, that is correct. We will see what exceptions exist because of past history. Generally, in relation to permits, the practice of today, that is correct.

[Subsequent to the hearing the Department supplied the following:]

We have only about ten concessioner operations. They are authorized under various laws including the Small Tract Act and under special land use permits. Most are located on the Lower Colorado River in Arizona and California. Contracts and permits require that rate increases be submitted to us for approval. A typical contract is attached for your reference.

Data submitted to support a rate increase is part of a record which is available for inspection by the public. However, approval or disapproval of a rate increase is based on the fair market value of the services provided primarily, rather than on the concessioner's profits or costs or other data contained in financial statements.

The contract or other authorization under which a concessioner operates requires that financial statements and other records be made available to us.

Although there are no specific provisions in the contracts or permits requiring us to keep such information confidential, financial statements and related information are proprietary information which is not required to be made available to the public under the Freedom of Information Act. It is our policy to maintain confidentiality of such information.

With respect to most other permits no financial information is submitted to us.

BUREAU OF SPORT FISHERIES AND WILDLIFE CONCESSION AGREEMENT—CONTRACT No. 14–16–0002–200

THIS AGREEMENT, made and entered into this 18th day of July, 1961, by and between the UNITED STATES OF AMERICA, acting in this behalf by the Secretary of the Interior, hereinafter called the Secretary, represented by the Contracting Officer executing this agreement, and Black Meadow Landing, Inc., hereinafter referred to as the Concessioner.

WITNESSETH

That whereas, the Havasu National Wildlife Refuge, located in County of San Bernardino, State of California, has been established for the management, protection and conservation of migratory birds and other wildlife; and

Whereas, it is the purpose of the Secretary to facilitate enjoyment by the general public of the recreational opportunities in the area to an extent consistent and compatible with the primary purpose of the refuge; and

Whereas, the accomplishment of the said purpose requires that certain facilities and services be provided for the public visiting the refuge;

Whereas, the Secretary desires the Concessioner to establish and operate such facilities and services at reasonable rates under the supervision and regulation of the Secretary; and

Whereas, the Concessioner has been determined to be capable, qualified, and financially able to provide such facilities and services;

Now, therefore, pursuant to the authority contained in section 401 of the Act of the Act of June 15, 1935 (49 Stat. 303; 16 U.S.C. Sec. 715s), as amended, and in consideration of the mutual promises herein expressed, the parties hereto do hereby mutually covenant and agree as follows:

Section 1. *Term of Agreement.* This agreement shall be for a term of twenty (20) years, beginning July 18, 1961, and ending July 17, 1931, except as it may be sooner terminated as herein provided. The Concessioner may, in the discretion of the Contracting Officer, be relieved in whole or in part of any or all of the obligations of this agreement for such stated periods as the Contracting Officer may deem proper upon written application showing circumstances beyond the control of the Concessioner warranting such relief and upon a determination by the Contracting Officer that such action is in the interest of the United States.

Section 2. *Land and Improvements.* The Contracting Officer hereby reserves to the Concessioner for and during the term of this agreement the use of the following-described land for the improvements necessary or desirable to the privileges herein granted.

That area of land within the Havasu Lake National Wildlife Refuge and under primary control of the Bureau of Reclamation, described as follows: That portion of Section 13, T. 3 N., R. 26 E., San Bernardino Meridian, as marked on the attached map, Exhibit No. 1.

Section 3. *Improvements.* (a) The Concessioner agrees to construct, equip, furnish and maintain, at his own expense, on the land herein assigned, buildings, structures, facilities and other improvements, such construction to be commenced within six (6) months and completed within a period of not less than eighteen (18 months from the date of this agreement subject, however, to the right of the parties to mutually agree to changes in the types and quantities of facilities specified.

1. *Trailer Park.* Approximately 115 spaces with a minimum of 1,200 square feet each, complete with water, electricity, and sewage connections to each unit, constructed to meet minimum State and County standards.

2. *Cabins.* Twenty units of a permanent construction provided and equipped with air-conditioning units, shower or bath, toilet, wash basin and sink. At least 10 of these units will be equipped with kitchen facilities.

3. *Camping Area.* Approximately 100 units with a minimum of 1,200 square feet of space to each camp site with appropriate facilities to meet minimum State and County requirements.

4. *Cafe and Store.* Building of permanent type construction to house a cafe and store for the sale of staple groceries, meats, confections, fishermen's supplies, souveniers, etc.

5. *Parking Facilities.* A separate parking area or areas to accommodate approximately 100 cars to be provided in the immediate concession area.

6. *Dockage and Moorage.* Facilities to accommodate approximately 110 boats including those of the concessioner.

7. *Launching Facilities.* At least one hard-surfaced launching ramp of approximately 16 feet in width.

8. *Gasoline and Oil.* Suitable facilities for dispensing gasoline and oil to boats and motor vehicles constructed and maintained to meet State and County standards.

9. *Swimminng Beach.* An area of the waterfront of approximate size and properly sanded shall be reserved for use as a swimming beach.

10. *Boats.* At least 20 boats suitable for mounting outboard motors and having a capacity of not less than 5 persons. Boats must be of a suitable type and design to permit safe operation on Lake Havasu and equipped with suitable life preservers for all occupants.

11. *Landscaping.* Landscaping of the entire area is to be in keeping with the use and development of the site subject to the approval of the Refuge Manager.

(b) *Additional Improvements.*—Subject to the approval of the Contracting Officer, additional structures and facilities may be constructed or furnished by the Concessioner.

(c) Construction, modification or alteration, other than normal and anticipated repairs, of buildings, structures, facilities, and other improvements shall be subject to the prior approval of the Contracting Officer of plans, specifications and locations thereof, and the Contracting Officer may prescribe the form and content of the application for such approval.

(d) Title to all improvements erected or otherwise furnished by the Concessioner shall vest in him subject to certain provisions hereinafter set forth in this agreement. If any buildings or improvements are removed or demolished by the Concessioner, the site occupied by the building or improvement shall be restored to the satisfaction of the Contracting Officer.

(e) In the event that a Concessioner's improvement is removed, abandoned, demolished, or substantially destroyed, and no other improvement is constructed on the site, the Concessioner shall, promptly upon request of the Contracting Officer, restore the site as nearly as possible to its original condition at no cost to the United States.

Section 4. *Concession Operations.* (a) The Concessioner shall provide during the term of this agreement accommodations, facilities, and services for the public as follows:

(a) The Concessioner shall make provision for the sale of meals and foodstuffs, alcoholic beverages, soft drinks, groceries, boating, fishing and hunting supplies and equipment, gasoline and oil, a rental boat service, storage, care and repair of private boats, and in addition may provide other miscellaneous services and supplies as authorized by the Contracting Officer, including the specific privilege contained in lease agreement dated September 19, 1956, between the Concessioner and the Douglas Long Beach Rod and Gun Club for the period of said lease unless sooner terminated, but in any event not to extend beyond the 19th day of April, 1964. Intermittent dockage for not more than two Government-owned and operated boats and equipment shall be free.

(b) Notwithstanding the provisions of subsection (a) of this section, the Contracting Officer reserves the right to determine and control the nature and type of merchandise and services which may be sold or furnished by the Concessioner within the concession area.

(c) Operation of the concession is mandatory from January 1 through December 31 of each year.

(d) The Concessioner shall obtain at his own expense all necessary Federal, State and local licenses and permits, such licenses and permits to be acquired and displayed on the premises before the establishment is opened to the public, and shall observe all Federal, State and local laws pertaining to his

operations and all orders and regulations relating to the administration and management of the Havasu National Wildlife Refuge or the operations of the Concessioner as may be presently in effect or promulgated from time to time during the period of this agreement.

Section 5. *Plant, Personnel and Rates.*—The Concessioner shall maintain and operate the said accommodations, facilities and services to the extent and in a manner satisfactory to the Contracting Officer, and shall provide the plant, personnel, equipment, goods and commodities necessary to meet said requirements.

Rates and prices charged the public for accommodations, goods and services furnished or sold hereunder shall be subject to approval by the Contracting Officer with due regard for the right or the Concessioner to realize a fair profit from the concession operation. Reasonableness of rates and prices will be judged by comparison with those currently charged for comparable accommodations, services or goods furnished or sold in the vicinity of the refuge under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availabilty and cost of labor and materials, type of patronage, and any other conditions customarily considered in determining fair charges. Due regard shall be given to such factors as the Contracting Officer deems significant, and all rates and prices shall be subject to periodic review.

Section 6. *Franchise Fee.*—(a) Upon the execution of this agreement, the Concessioner shall pay to the Contracting Officer the sum of one hundred dollars ($100) and shall pay a like amount annually on each anniversary date thereafter during the term of this agreement. In addition, the Concessioner shall pay to the Contracting Officer semi-annually a sum equal to two percent (2%) of gross receipts, as hereinafter defined: Payments will be due within 90 days following the close of each six (6) months period which shall be based upon the Concessioner's fiscal year.

(b) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to the Concessioner and to all subconcessioners from all sales, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the privileges authorized in this agreement, including commissions earned on contracts or agreements with other persons or companies operating in the refuge, but excluding earnings derived by the Concessioner from the grant of privilege to subconcessioners whose gross receipts are subject to the franchise fee provided in subsection 6 (a) above, intracompany earnings on account of charges to other departments of the operation (such as laundry, charges to employees for meals, transportation, etc.), cash discounts on purchases, interest on money loaned or in bank accounts, income from investments from subsidiary companies outside of the refuge, refunded sales and allowances, sales of property other than that purchased in the regular course of business as for the purpose of resale, sales and excise taxes, fishing licenses, (except fees received therefrom), postage stamps, (except any return in addition to the face value of such stamps) gasoline taxes whether or not the Concessioner is accountable therefor, and items for which the Concessioner is accountable in full.

Section 7. *Utilities.*—The Concessioner shall secure at his own expense water, electric light and power, telephone and telegraph service, sewage, trash and garbage disposal, if desired or required, to be used in connection with the privileges authorized.

Section 8. *Performance Bond and Lien.*—The Contracting Officer may, in his discretion, require the Concessioner to furnish and keep in force a joint and several bonds with a surety company acceptable to the Secretary of the Treasury, conditioned upon the faithful performance of this agreement in such amount as the Contracting Officer may deem adequate not in excess of ten thousand dollars ($10,000). As additional security for the faithful performance by the Concessioner of all of his obligations under the agreement and the payment to the United States of all damages or claims that may result from the Concessioner's failure to observe such obligations, the United States shall have at all times a first and prior lien on all assets of the Concessioner within the concession area.

Section 9. *Insurance.*—The Concessioner shall comply with the provisions of the Workmen's Compensation Act of the State of California and shall during the time of this contract, carry comprehensive public liability insurance of not

less than three hundred thousand dollars ($300,000) to insure against any claims which may arise by reason by the operation of the concession and in addition fire and extended coverage insurance on the concession improvements in an amount equal to eighty percent (80%) of the actual value thereof in a responsible company.

All insurance policies shall provide that the United States is a named insured as its interest may appear and shall be filed with the Contracting Officer.

Section 10. *Records and Reports.*—(a) The Concessioner shall submit for the approval of the Contracting Officer a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values.

The Contracting Officer shall notify the Concessioner in writing of his approval or disapproval of the balance sheet within sixty (60) days after its receipt. If the balance sheet as submitted is disapproved, the Contracting Officer shall set out in the notification his finding upon which such disapproval is based. If no notice is given within the time herein specified, the balance sheet as submitted shall be deemed to have received the approval of the Contracting Officer.

(b) The Concessioner shall maintain such accounting records as may be prescribed by the Contracting Officer. The Concessioner shall submit to the Contracting Officer an annual financial report, under oath, not later than thirty (30) days following the anniversary date of the agreement giving details of his operations during the year as well as other reports and data required from time to time by the Contracting Officer. The Contracting Officer or his authorized representative may verify said reports from the books, correspondence, memoranda and other records of the Concessioner which shall be maintained intact for not less than three (3) years following the close of the Concessioner's fiscal year and which shall be available for such three (3) year period at the Concessioner's principal place of business on the refuge.

(c) Nothing in this agreement shall be construed as in any way modifying, altering, or affecting any rights, claims or demands which the United States may have as a result of a final audit of the Concessioner's accounts covering his operations during the term of this agreement.

Section 11. *End of Term.*—At the end of the term of this agreement or of any extension thereof, the Concessioner shall vacate and surrender the area to the Contracting Officer. When all charges and damage claims due the United States have been paid, the Concessioner will then be permitted within a reasonable period, but not to exceed six (6) months from the end of the term or any extension thereof, to enter upon and remove all structures and/or equipment, etc., owned by him. Failure to remove said structures or equipment within said period or extension thereof, if granted by the Contracting Officer, shall amount to a forfeiture of said property to the United States. The United States shall have the first refusal to purchase Concessioner's improvements at cost less depreciation allowed by Internal Revenue Service, should he elect to sell.

Section 12. *Termination by Default.*—In case of default or unsatisfactory performance by the Concessioner under the terms of this agreement, the Contracting Officer may proceed to terminate said agreement as follows:

(a) The Contracting Officer shall submit to the Concessioner a written notice setting forth specific acts of default or unsatisfactory performance.

(b) Within thirty (30) days following receipt of such notice, the Concessioner may request an opportunity to be heard before the Contracting Officer concerning such complaint or he may remedy the acts of default or unsatisfactory performance to the satisfaction of the Contracting Officer.

(c) The Contracting Officer, after hearing, if such a hearing has been requested under Section 12(b) above, shall determine whether the default or unsatisfactory performance merits cancellation of this agreement.

(d) Should the Contracting Officer determine under Section 12(c) above that the default or unsatisfactory performance merits cancellation of the agreement, the Contracting Officer shall notify the Concessioner of his determination in writing setting forth specifically the acts of default or unsatisfactory performance, and the measures necessary and period within which the Concessioner shall correct same.

(e) Should the Concessioner neglect to remedy the default or unsatisfactory performance within the period designated by the Contracting Officer, the Contracting Officer may they declare this agreement finally terminated, setting an

effective date, determined to be proper in the public interest. Upon termination of the agreement, the Concessioner may, within a period of not to exceed six (6) months thereafter, sell, transfer, or assign to a third party acceptable to the Contracting Officer, his interest in the improvement on the area, or remove improvements owned by him from the area. During this period the Contracting Officer may invoke the provisions of subsection 13(c) hereof. In the event the Concessioner shall fail to remove, sell, transfer, or assign such improvements within said period, same shall, without cost to the United States, become the absolute property of the United States.

Section 13. *Compensation for Concessioner's Interest.*—(a) If this agreement is terminated for any proper reason, but not including termination at the end of the full term of the contract or its renewals, and operations are to be transferred to and conducted by a successor, whether a corporation, private person, or any agency of the Government, (1) the Concessioner may sell and transfer to the successor, if he (it) is acceptable to the Contracting Officer, the Concessioner's interest in the improvements and other property used or held for use in connection with said operation; and (2) the Contracting Officer will require that such successor, as a condition to the granting of an agreement to operate, purchase from the Concessioner his interest in the improvements and property at cost less depreciation, depreciation being as allowed by the Internal Revenue Service. Merchandise and supplies shall be valued at replacement cost, less depreciation or obsolescence. The Contracting Officer may assist the Concessioner in locating a successor concessioner, but is not required to do so.

(b) Should the Contracting Officer determine, during the term of the agreement or any extension thereof, (but not after declaration or default, supra) that it is desirable to discontinue the concession operation thereby rendering it necessary to abandon, remove, or demolish a part or all of the Concessioner's improvements, the Contracting Officer will, before making such decision effective, fix a fair and just compensation to be paid the Concessioner for his interest in such improvements. This compensation shall include the cost of transporting movable goods to market for sale and the actual cost to the Concessioner for removal or demolition, less salvage. Facilities shall be evaluated on the basis of cost less allowed depreciation.

(c) To avoid interruption of service to the public Concessioner consents to the use of the Concessioner's improvements and facilities by a temporary operator to be designated by the Contracting Officer at a fair monthly rental, not to exceed 10 percent (10%) of the cost less allowed depreciation: *Provided*, that such annual rental rate shall not be less than the annual depreciation of the improvements.

Section 14. *Mortgage and Assignment.*—The Concessioner shall not sell, transfer or assign this agreement or interest therein, directly or indirectly, voluntarily or involuntarily, unless such sale, transfer, or assignment be first approved, in writing, by the Contracting Officer. The Concessioner may sell, assign, or transfer his interest in the improvements to a successor acceptable to the Contracting Officer or encumber his interest in such improvements, *Provided*, no mortgage shall be executed and no bonds, shares of stock, or other evidence of interest in or indebtedness upon the assets of the Concessioner in the area shall be issued, unless for the purpose of installing, enlarging, or improving the plant and equipment or extending facilities in order to better accommodate the public in its use of the area. In the event of default of such mortgage or other indebtedness, the creditor shall succeed to the interest in Concessioner's improvements but shall not thereby acquire any additional operating or other rights or privileges under this agreement. The creditor shall succeed only to those interests of the Concessioner remaining after all claims of the Government have been satisfied.

Section 15. *Approval of Plans.*—Prior to initiation of construction of the improvements herein specified, the Concessioner shall submit for the approval of the Contracting Officer, a master plan or general development outline prepared by a professionally qualified person or organization, locating proposed buildings, structures, and related facilities, as well as roads, trails, fences, parking areas, swimming beaches, water, sewer, telephone and power lines. Upon the approval of the master plan or general development outline, but prior to construction, the Concessioner shall submit for approval of the Contracting Officer detailed plans and specifications prepared by a professionally

qualified person or agency for structures and improvements proposed to be constructed or erected on the area. The above requirements apply to modifications or alterations subsequently proposed for construction on the area, excepting those necessary for normal maintenance.

Section 16. *Approval of Subconcession Contracts.*—All contracts and agreements proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this agreement shall be submitted to the Contracting Officer for prior approval.

Section 17. *Cooperation in Emergencies.*—The Concessioner shall observe and comply with all municipal, county, State, and Federal laws and regulations applicable to the operation of the area. He shall comply with the regulations governing national wildlife refuges and all reasonable written instructions issued by the refuge officer in charge. He shall take all reasonable precautions to prevent fire and expend every effort to suppress same, and render assistance in the suppression of fires occurring on the entire refuge. The Concessioner agrees also to assist in the preservation of life and property within the refuge. Services thus rendered shall not financially obligate the United States.

Section 18. *Disputes.*—(a) Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or other wise furnish a copy thereof to the Concessioner. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Concessioner mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Concessioner shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Concessioner shall proceed diligently with the performance of the agreement and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided,* That nothing in this agreement shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 19. *General Provisions.*—(a) The Concessioner agrees that the concession area is at all times subject to the dominant use and regulation by the Secretary in his control and conservation of fish and wildlife and the Concessioner shall not do or suffer to be done by his agents or employees any act intended to interfere with the Secretary's control over the same. The Concessioner specifically waives any and all claims for damage resulting from activities of the Secretary or his representatives or employees in connection with the program of fish and wildlife conservation and protection. The Secretary reserves the right to enter the area at any time and the further right to construct, maintain and operate roads, trails, paths, bridges, automobile parking space, comfort stations and other sanitary facilities, electric, telephone, water and area lines provided the same do not damage or interfere with the improvements and facilities operated by the Concessioner.

(b) (1) Since the Parker Dam Project was constructed by the United States Bureau of reclamation for the storage and utilization of water, it is agreed that these purposes are also to be given dominant consideration in the administration of the Parker Dam Project area as a whole, and that the United States Bureau of Reclamation shall retain complete and exclusive control of the use and flow of water in Havasu Lake.

(b) (2) The Concessioner hereby releases and forever discharges the United States from any liability arising out of or by reason of any damage, loss or injury caused by or resulting from the location, administration, operation or maintenance of the Parker Dam Project and the Havasu Lake National Wildlife Refuge.

(c) The Concessioner shall have the privilege of ingress and egress through and across the lands of the refuge adjacent to the concession area.

(d) No gambling devices or games shall be operated on the premises.

(e) The Concessioner is obligated to refuse services or accommodations to drunk or disorderly persons and any difficulty with such persons shall be reported to the refuge officer in charge.

(f) The concession area and facilities are to be kept clean, sanitary, and orderly at all times.

(g) In connection with the performance of work under this contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will received consideration for employment without regard to race, creed, color, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the Concessioner's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and revelant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the Concessioner may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The Concessioner will include the provisions of the foregoing paragraph (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subconcessioner or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subconcessioner or vendor as a result of such direction by the contracting agency, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

(h) The Concessioner and his employees shall not discriminate because of race, religion, color, or national origin against any person by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the general public. Nor shall the Concessioner or his employees publicize the accommodations, facilities, services, or privileges in any manner

that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, or national origin. The Concessioner shall include and require compliance with a provision similar to the one contained in this subsection in any subcontract with respect to the operations authorized hereunder.

(i) No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement, or to any benefits to arise therefrom, but this restriction shall not be construed to extend to this agreement if made with a corporation for its general benefit.

(j) As used herein, the term Contracting Officer shall be understood to include his duly appointed successor or his authorized representatives.

(k) In connection with the performance of this agreement, the Concessioner agrees not to employ any person undergoing imprisonment of hard labor.

(l) Convenant Against Contingent Fees—The Concessioner warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessioner for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this agreement without liability, or in its discretion, to recover from the Concessioner the amount of such commission, percentage, brokerage, or contingent fee.

Senator HASKELL. I have a few more questions. I will read them off, because they are quite short.

Do you revise the terms of permits during their life, and do you require compliance with State and Federal air and water quality standards?

Do you prohibit reclassification of land during the life of the permit?

Lastly, do you favor compensation of permittees for changes in terms of land classification?

Now, I will read them again, if you did not get them. The first one was, do you revise permits during their life?

Mr. HORTON. We cannot reply categorically for all types of permits. We would have to examine the particular types of permits that might be under question.

Senator HASKELL. Maybe the best way to do this, the most efficient way would be to examine your permits in light of these four questions, counsel will give them to you afterward, and then submit for the record an analysis in response to those questions.

Mr. HORTON. We would be happy to do that.

Could I ask, perhaps, the committee counsel, by the term permit, are you including the broad interpretation of leases on rights-of-way, or do you differentiate between the lease and the permit?

Senator HASKELL. I would think that it should include leases, and I would think that permits should be considered as the broadest application.

[Subsequent to the hearing the Department supplied the following:]

In answering questions submitted to us on permits, we have addressed all written land use authorizations and especially rights-of-way, leases, licenses, and permits. The Bureau of Land Management issues and administers a variety of such written authorizations, under a variety of laws including rights-of-way, special land use permits, airport and small tract leases, recreation and public purposes leases, grazing permits and leases, special recreation use permits, prospecting permits, and mineral leases. In our answers, we have attempted to generalize where possible but to include some specifics on the major categories of authorizations.

1. *Question.* Do you revise the terms of authorizations during their life?

Answer. We attempt to fully consider other potential uses before an authorization is issued and to thereby minimize the need for changes. Generally speaking we do not revise the terms during the life but reexamine them prior to renewal. Other than grazing and mineral development permits, the largest group of permits issued with respect to the national resource lands is *rights-of-way.* Rights-of-way are issued under a variety of laws with differing provisions, some of which specifically prescribe the duration of the right-of-way. A summary of these laws and regulations relating to granting the rights-of-way is located in Group 2800 of Title 43 of the Code of Federal Regulations. As in the case of other authorizations, generally, the terms and conditions of a right-of-way are not revised during its life. Under extraordinary circumstances, the terms and conditions may be changed or revised by mutual consent of the holder and the United States (BLM). However, with respect to some rights-of-way, 43 CFR 2801.1–5(m) provides for insertion of a term in the issuing document allowing for modification, adaptation, or discontinuance of a right-of-way if found necessary by the Secretary so as not to conflict with the use or occupancy of the land for any authorized "works" which may be constructed thereon under authority of the United States. Inclusion of this term would be reflected in the appraisal of the value of the right-of-way.

Leases, other than mineral leases and grazing leases are issued under the regulations in 43 CFR 2910. *Airport, recreation and public purposes,* and small tract leases are covered in these regulations. With the exception of airport leases which provide for adjustment of rentals and revision at three year intervals, terms and conditions of leases are generally not revised during their life. However, if a change in use is permitted by the Secretary under a recreation and public purposes lease, other appropriate changes would be made to reflect the change in use. Such a change is by request of the lessee.

With respect to mineral development, *prospecting permits and competitive and noncompetitive leases* are issued. Regulations are in 43 CFR Group 3000. Prospecting permits operate as exploratory licenses with a short-term life, usually 2 to 4 years. No revision of terms and conditions during the life of permit is necessary since no extraction, removal or sale of minerals is authorized.

With respect to noncompetitive and competitive leases no revision of the specific terms and conditions of the lease takes place during the primary term. However each lease provides the lease is issued subject to the terms and provisions of the Mineral Leasing Act and to all reasonable regulations of the Secretary "now or hereafter in force, which are made a part hereof". The Mineral Leasing Act provides for readjustment of terms and conditions at 20-year intervals for coal leases (indefinite term) and other solid (hardrock) leasable minerals, most of which have a 20-year primary term.

Grazing permits and licenses are issued under the Taylor Grazing Act. Regulations are in 43 CFR Group 4100. The terms and conditions under which a term grazing permit or grazing lease is issued provide that the permit or lease is subject to termination, in whole or in part, any time, if the permittee or lessee does not comply with the rules and regulations now or hereafter approved by the Secretary of the Interior. Range improvement permits are subject to the same terms and conditions. Regulations, policies, etc., adopted by the Secretary of the Interior during the life of term grazing permits, grazing leases and range improvement permits can cancel, modify or add to the terms and conditions of these authorizations.

Most other authorizations issued on national resource lands fall into the category of *special land use permits.* Pertinent regulations are in 43 CFR 2920. "SLUPS" are short term permits issuance of which is consistent with the objectives of the regulations. They are revocable in the discretion of an authorized officer at any time if the lands should be devoted to another use or conditions have been breached. Short duration makes it unnecessary to change terms and conditions.

2. *Question.* Do you require compliance with State and Federal air and water quality standards?

Answer. We require that specific environmental conditions be met and sometimes specifically require compliance with Federal and State air and water quality standards. With respect to most rights-of-way compliance with State and Federal air and water quality standards are generally conditions of the

permit, since 43 CFR 2801.1–5(a) requires compliance with all applicable State and Federal laws.

No provision concerning State and Federal Standards is routinely included in most leases. However, environmental stipulations would be routinely included and could relate to air and water pollution specifically where necessary and appropriate. Insertion of environmental constraints along with the NEPA process and the fact that State law and Federal laws relating to air and water pollution would apply, serve to achieve the same objective as inclusion of specific conditions.

With respect to *mineral leases*, if the pre-lease environmental analysis indicates need for special stipulations to assure minimum impact on air quality or maximum protection of water quality, such conditions will be made a part of the lease agreement. However, there may not be a specific reference to State and Federal standards.

At the present time compliance with State and Federal air and water quality standards is not a condition of a term *grazing permit or lease*. Should the proposed rulemaking published in the *Federal Register* on February 20, 1975, be adopted, permittee and lessee compliance with State and Federal air and water quality standards, as set forth below, will be a condition to the issuance of a term grazing permit and lease.

Under 43 CFR 4115.2–1(e) (15), the conviction of a violation of any Federal or State law or regulation concerning the conservation or protection of natural resources or the environment (including air and water pollution laws) may result in the cancellation or reduction of a license or permit where (i) grazing land administered by the BLM is involved or affected and (ii) such violations is related to a grazing use authorized by said license or permit.

We require compliance with State and Federal air and water quality standards in authorizing range improvements on the national resource lands. *SLUPS* include those stipulations necessary to protect the land and resources involved.

3. *Question.* Do you prohibit reclassification of lands during the life of authorizations?

Answer. Generally we do not reclassify during the life of an authorization. If there is a reclassification it would be subject to the authorization, except grazing or special land use permits.

With respect to *rights-of-way*, and *mineral leases* we do not refrain from or prohibit reclassification or changing the use of lands during the life of an authorization. Any other use or disposal, pursuant to classification or reclassification, would be subject to the life of the authorization. Reclassification is generally not undertaken during the life of an *airport lease, recreation and public purposes lease or small tract lease.*

Our regulations provide that the national resource lands used under a *grazing license, permit or lease* are subject to classification and disposition under the Taylor Grazing Act or O&C Act or other applicable public land laws. Such action is subject to the right of protest, appeal, and administrative review by the Secretary.

Our present policy in regard to term grazing permits is to issue these permits only after multiple use planning and environmental assessments are completed. Term permits would not be issued where we plan to reclassify or change the use of the national resource lands. However, we can reclassify land or change the use of the land during the life of a term grazing permit if necessary.

The existence of livestock management facilities or other improvements constructed pursuant to a range improvement permit does not preclude the BLM from reclassifying or changing the use of the national resource lands. *SLUPS* are revocable at any time if there is a determination that the lands should be dedicated to another use. This is a risk that the permittee is aware of and is reflected in the value of the permit.

4. *Question.* Do you favor compensation of those holding authorizations for changes in terms or land classification?

Answer. Whether or not a holder of an authorization is entitled to compensation would be determined by the authorizing statute and implementing regulations, conditions and terms of the authorization and the effect of the changes in terms or land classification on the rights of the permittee. We do not believe that holders of authorizations should be compensated unless they are deprived of some right.

With respect to some *rights-of-way*, regulations provide for adjustment of charges at not less than five-year intervals. This could include reduction of rental charges in appropriate cases because of changes in terms (mutually agreed upon) or reclassification which would modify the grantee's use of his right-of-way. We do believe that change in circumstances should be reflected in the appraised value of the authorization. This question is not applicable to mineral leases or some other leases where the lessee is entitled to keep his lease for the full term.

Grazing on the national resources lands is a privilege granted to livestock operators meeting certain basic qualifications. We do not compensate the livestock operator (permittee or lessee) for changes in use or for reclassification of the national resource lands, nor do we favor such compensation.

Our regulations provide for compensation a permittee for his share of a range improvement when the national resource lands, on which the improvement is located, are disposed of in accordance with Sections 7 and 14 of the Taylor Grazing Act.

Senator HASKELL. One last question—Congressman Melcher chairman of the House Public Lands Subcommittee called me this morning. Apparently, he is preparing a bill dealing with grazing rights; and you are going forward with certain new regulations affecting grazing. It looks like two locomotives going down the track, about to run into each other. What is the status of this situation?

Mr. HORTON. Mr. Chairman, based on the conclusions of at least two grazing studies on the public lands, the Department with the BLM is reviewing the adequacy of existing regulations for grazing on public lands.

It was our general intention of proceeding with proposed rulemaking, with a revised set of regulations, through the Federal Register process, to ask for comments, criticism, advice from the Nation as a whole.

I think it would be appropriate, given the Congressman's intention and concern, for us, certainly, to commit ourselves to tell the committee that we would not publish any final rules on the grazing lands until his own inquiry and committee hearings have been completed.

Senator HASKELL. I think that it would be wise. I don't know too much about the problem, but it seems to me that if we can avoid this collision, the better off we will be.

Mr. HORTON. We would not think, in the Department, that this would be a head-on collision, and we would be delighted to comply with the interest that Mr. Melcher is showing.

Senator HASKELL. Senator McClure.

Senator MCCLURE. Mr. Chairman, thank you.

Mr. Secretary, I am a little intrigued by the letter of March 6 in which it refers to a bill transmitted to Congress on March 6 in lieu of S. 507. You have made reference to the administration's bill as an alternative to the pending bill. Yet, so far as I know, nobody has seen your bill. Have you seen one?

Mr. HORTON. Mr. Chairman, I have seen one, and we certainly deserve any criticism that any of the committee members or the staff have. The fact of the matter is that we did not get our bill up in time, but it was introduced yesterday.

Senator MCCLURE. It was introduced?

Mr. HORTON. It was transmitted yesterday to the Parliamentarian.

Senator McCLURE. It was transmitted to the Parliamentarian, then it will come from the Parliamentarian to somebody else for introduction, I assume that by and by we will see it.

Do you have a copy of it with you?

Mr. HORTON. Yes, we do. We have several copies with us.

Senator McCLURE. Do you think that this committee might be able to see a copy?

Mr. HORTON. The copies are now being brought up.

Senator McCLURE. We would certainly appreciate it. It would be very helpful if we had an opportunity to look at it, and make some comparisons along with the existing bill.

Does the Department have anything to do with the language that is in the bill, which is before us, S. 507? Was the Department consulted by this committee, or the committee staff, or did the Department consult with members of this committee, or the committee staff, prior to its introduction on January 30?

Mr. HORTON. Speaking now for the administration effort, we have tried to pattern our bill to the maximum extent around the bill which was passed by the Senate last year, to expedite the review by the committee, and, hopefully, the passage by the Senate.

So, we have taken the bill passed by the Senate last year as a prototype, and have based our bill on that.

Senator McCLURE. Specifically, I want to know what input the Department had in the drafting of S. 507, and whether or not there were consultations between the staff, the committee, and the Department; or between the Department, the staff and the committee, before the introduction of S. 507?

Mr. HORTON. I don't know, Senator McClure, of any specific series of meetings or communications that might have resulted, but I would ask Mr. Ray Taylor of the Office of Legislation if such cooperation did exist.

I think that we proceeded on a sequential pattern that we derived our bill from your former bill.

Senator McCLURE. You did not personally provide staff with regard to any of the provisions of this bill?

Mr. HORTON. Not to the best of my knowledge, sir.

Senator McCLURE. It is a little strange, because it came to me that you had personally suggested to the staff the deletion of the Desert Lands Act repealer.

Mr. HORTON. We testified in favor of repealing.

Senator McCLURE. I am not talking about testimony. I am talking of personal contact with the staff. I want to know whether or not you requested——

Senator HASKELL. I am informed by majority counsel that they have not had any such contact.

Senator McCLURE. And minority counsel has informed me that they received no such request. I am wondering whether the Secretary would answer the question.

Mr. HORTON. I am unaware, Senator McClure, of any request on our part to delete.

Senator McCLURE. I want to know that, because I want to find out where it came from. It came to me that you instigated it, and the staff says that you did not. I am grateful that you didn't. Maybe sometime I will find out where it came from.

Mr. HORTON. As far as I know, Mr. McClure, and certainly from the time that I have been in the Department, the position of the administration has been to delete the Desert Lands Act for the reasons that Mr. Turcott has provided.

Mr. TURCOTT. There was one contact with Ms. Schwartz, and it was on a technical matter.

Ms. SCHWARTZ. When S. 507 was printed it deleted sections 2, 3, 4, and so on, of the Desert Lands Act, but not section 1. I called to ask whether it intended to repeal section 1 as well as the other sections, and I was told that, yes, it was.

There was a clarifying amendment put in thereafter. That was the only contact that we had.

Senator MCCLURE. That was after the introduction of S. 507 and not before?

Ms. SCHWARTZ. Yes.

Senator MCCLURE. This committee has spoken to the committee in the House, both earlier when I was a member of the House, and later, and in each instance when the committee has acted, the repealer has been removed. Now, the repealer is back in.

Senator HASKELL. I will tell you why. Because during the testimony last year, it seemed to me that continuation of the Desert Lands Act *ad infinitum* would be a great mistake. Of course there might be some compromise worked out for those folks who have diligently pursued applications that are pending, but the act itself, as a permanent portion of the law of the United States, seems inappropriate. As prime sponsor of the bill, that is why the repealer was included.

Senator MCCLURE. I assume the Senator is telling me that it is there because he wanted it.

Senator HASKELL. That is right.

Senator MCCLURE. I come from the West, as does the Senator, and sometimes the same location does not lead to better communication.

I understand, and I am certain that Senator Church and I are both grateful for this information of what the source of the repealer language was. I hope that the compromise can be reached. We attempted to do it last year.

Mr. Secretary, in your testimony, you referred to the California Desert as an area of critical environmental concern, and I share the feeling with a great many people that, indeed, what is happening there is a matter of concern to our country.

I am wondering how, under the terms of the bill, you distinguish the California Desert from several million acres of other public lands in the designation of an area of critical environmental concern. I think that if we could just take it as a case in point.

Mr. HORTON. Senator, you have hit on the difficulty we have had with the retention of that section in S.507. We believe that these judgments should be made across the public domain, and not special attention given to one area, even though we do not deny the Chairman's point of view that this is an especially sensitive area.

If we provide special attention to one area, we believe that other areas should also receive special attention, depending upon the types of varying environmental impact, socioeconomic impact that one might judge following the BLM's planning system.

Senator McCLURE. Under the definition that is in the bill, an area of environmental concern—critical environmental concern, what portion of that definition is applied to determine that this is an area of critical environmental onern?

Mr. HORTON. What we have done, by way of background and in order to expedite the passage of the legislation, we have taken the definition in the bill that passed the Senate last year. That is verbatim, the same as the bill that passed the Senate last year.

Senator McCLURE. The S. 507 has this definition:

> There is a critical environmental concern in areas within the national resource lands where special management attention is required, when such areas are developed or used to protect, or where no development is required to prevent irreparable damage to important historic and cultural areas."

Is the California Desert an important historical and cultural area, any more so than any millions of acres of public lands?

Mr. HORTON. I don't think that we can quantify the difference, but for anyone who has been in the desert, and has had the opportunity to see the petroglyphs, the Indian paintings on the desert floor, and the desert cliffs, and the frequent occurrence of these types of artifacts, certainly it would be classified, it would have to be classified as an important and historic cultural area.

But, if we have to quantify the difference between that and certain areas of Idaho, I don't think that we would be able to do that.

Senator McCLURE. I think that this is the difficulty we have had in trying to draft the definition. I think that every area that was traversed by the pioneers as they went westward is an historic area, and that is most of the West.

The culture, when and where people have lived in our past has left an imprint upon the land and this culture is, in almost every acre of land that you are administering one way or another.

Scenic values—The California Desert is certainly scenic. We have just recently in this committee voted out a bill on strip mining and reclamation, and the committee in its wisdom, over my protest, voted an absolute ban on any mining in the national forest. Apparently, there is an assumption on the part of many that if it is a forest, it is a park and, therefore, subject to that kind of control, and protection.

What public lands are scenic, and which ones are not?

Mr. HORTON. I think that it would be appropriate to say, Senator, that all the public lands are scenic, but some are more scenic than others.

Senator McCLURE. How do you define that? Is that an objective test, or a subjective test?

Mr. HORTON. It would depend on the definition. Scenery is something that you look at, so it would be an objective test. How pleasant it is to look at, it would be a subjective test.

The discussion, of course, alludes to the difficulty we had with singling out a special area. I, for one, would not risk saying that any of the BLM lands have no scenic value because there is a great beauty in the wide open spaces of the desert on which there are very few topographic features that stand out.

Senator McCLURE. National systems or processes, I assume, are operative in every acre of land that you manage.

Mr. HORTON. They would have to be.

Senator McCLURE. Almost by definition, if not otherwise. Really what we have said, then, is that under areas of critical environmental concern in the definition which this committee did note last year, you go out and do some good things with these acres of land, and you will exercise some judgments with regard to those, and those judgments are going to be subjective judgments. This committee and various public and private groups across the land will be testing your decisions in a variety of different ways.

Mr. HORTON. It is a matter of judgment, Senator. There is no way you can list the very specific set of criteria. I think that the judgment must be left with the professionals in the BLM and the Department, and reviewed by the committee.

Senator McCLURE. And be reviewed by an awful lot of other people.

Mr. HORTON. Yes, through the public hearing process.

Senator McCLURE. If they don't look at it through the public hearing process, you will hear about it one way or the other from almost everybody through one vehicle or another.

What has been the number of personnel in BLM over the last several years? Have the numbers remained constant, or are they rising?

Mr. HORTON. They are rising, and I will ask Mr. Turcott, if I may, to find the numbers.

Mr. TURCOTT. Commencing 7 years ago, there was an increase in BLM personnel over a 2- or 3-year period, and there was an increase of about 1,000 personnel of all types, secretaries, professionals, and so forth.

Then, we stayed at that plateau for about 2 or 3 years, until the energy problems of our Nation became a major concern, and Interior's heavy involvement came to the fore. I guess you could say that commencing 2 years ago; the significant increases in land management have been in the energy development-environmental concern land use planning areas. We now have a ceiling for fiscal year 1975 for the Bureau of Land Management that is right at 4,700 people.

So, it is an increase over the last few years of about 800 people. However, I think that we reached over 4,000 5 or 6 years ago. There was a small attrition during that plateau period—I call it a plateau—we went down to 3,700 one year.

Senator McCLURE. So, if I were to understand, you must have gone from 2,800 or 2,900 people to around 4,700 over a period of 10 years?

Mr. TURCOTT. That is a good estimate.

Senator McCLURE. I have heard upon a number of occasions the Director of the BLM say that the personnel ceilings were too low. That you cannot adequately manage now with the personnel ceilings they have for a variety of reasons, including the intensive resource management which is now expected, which was not expected earlier.

Due to the tremendous number of visitors that do come to public lands, for instance, in the California desert, the resource must be managed in a different way and the people who come must be managed. It all requires personnel.

Mr. TURCOTT. I can confirm the Director's statement on that. You have presented a very fine abstract and summary of the BLM program need submissions to the Department.

From my long, long experience, I am a career employee with the Bureau, and I have been with them many years, I will say this. The current administration has been more receptive and more cognizant of the land management needs and program resource than some.

It is a matter of the overall balance and the very serious situation with respect to executive agency budgets. Energy and related environmental and planning activities that go with energy development have been given first priority.

Senator McClure. We have that concern, because we have asked the BLM to expand its management of those lands, to manage them more intensively. We have been requiring the BLM to take actions, which they had not taken before, and we have imposed obligations upon the BLM to perform functions which were not performed before.

If you are going to do it, and do it adequately, you are going to have to do it with people. You cannot do it in the abstract.

Mr. Horton. I agree.

Senator McClure. I am afraid that the Congress has not met its responsibility in providing the number of people necessary to carry out these responsibilities that they now impose upon the land management agency.

Senator Haskell. Before the gentleman answers the Senator's question, we have a live quorum, so we will recess in order to go and answer the live quorum. We will be right back.

[Whereupon, a recess was taken.]

Senator Haskell. The hearing will come to order.

I believe that Senator McClure had asked a question of Mr. Turcott.

Mr. Horton. Mr. Chairman, I will respond with a couple of points with respect to the personnel ceilings of the BLM.

I think that it would be fair to say that almost any Federal agency appearing before the Congress would indicate that they could use more people to administer their programs, and this is certainly true of BLM.

The process by which the administration reaches decisions, of course, is between the forces that establish a ceiling, either on the budget or on the people, and then a demonstratble need through the field, through the Director's office, through the ceilings that they believe they need to implement the programs that we are asking them to administer.

I would say that there are very few agencies that come out with 100 percent of what they would like to have. On the other hand, I think Mr. Turcott would concur, we have been, perhaps, as responsive to the personnel needs of the BLM as has happened, at least, in the recent past, and we would continue, as far as I am concerned, to provide that interest, because you simply cannot manage the public resources and the public lands without people, trained people, professional people, and we continue to push. That is a statement of personal commitment.

I would be the first to say that I don't believe that either the Director or Mr. Turcott have received all the people that they would like to have. I, for one, would like to see more people in the California desert, and in Idaho, but as we attempt to respond to almost

radically changing national priorities in the public lands in terms of energy and the environment, we have to come down with an adjustment between the demands we place on the Bureau and the people that would provide them. That is the situation we are in.

Senator McCLURE. Thank you for that statement. I share your concern, and will do what I can. If we are going to require of the Department that it do certain things, then we should not criticize them for failing to accomplish everything that we expect, unless we have given them an adequate budget to work with.

The bill contains a provision for recordation and extinguishment of mining claims, and I think our statement indicated that the administration's bill would be similar but not identical. Is that correct?

Mr. HORTON. The change suggested is that the time frame be changed from 2 and 5 years to 1 and 3, but the intent is the same.

Senator McCLURE. The laws on the books today that deal with mining claims deal not only with the national resource lands, but also management of forest lands. Would it be desirable that the changes be separated as a separate item rather than as a part of a BLM Organic Act?

Mr. HORTON. I think that a very valid argument could be made, Senator, in that respect. We addressed in our legislation only public domain or national resource lands, our area of jurisdiction. I think that we would be very hesitant to suggest that we expand the Organic Act to cover the items under the Forest Service.

If it were the committee's best judgment that the provisions best come under the Minerals Leasing Act or a separate piece of legislation, I think that overall I would not strenuously object.

However, you must realize the importance of clearing up the cloud on the title, and clearing up the state of ignorance as to where these mining claims are in terms of land use mining process. If we don't know where the claims are, and we don't know the status they are in, this is indeed a great deterrent to the effectiveness of land use planning in the Bureau. So, we are very desirous to have that part of the bill.

Senator McCLURE. I don't disagree with what you are saying, and I don't necessarily object to a requirement that the Federal Government know. There is a way by which the BLM can find out. Those claims are recorded in every county recorder's office, and the assessment certificates that are required are also filed there.

I know, as a matter of fact, that the BLM does have such records, and they do check the county recorder's office. So there is not the total lack of information which might be implied by your answer.

Mr. HORTON. There are two parts. One is the recordation of the claim and the invalidation if certain steps were not taken within a 3- to 5-year period.

Senator McCLURE. I have had legislation for at least 4 years, which deals with this problem. We don't seem to be able to get it moving, because everybody wants to look at any part of the 1872 Mining Law as amended.

I think that it is dangerous to talk about the 1872 Mining Law, because it has been amended so often that there is very little of the original left, and it is mostly a much more modern statute than that.

It seemed difficult to deal with this question of recordation, and distinguishment of stale claims without looking at every other problem that is involved in the mining claim activity.

I would hope that we can get something done, because I recognize that stale claims can be a problem. I think that you would recognize, too, Mr. Secretary, that many mining claims, and many mining ventures are marginal ventures. They become economic or subeconomic, according to the fluctuations of the mineral values.

The claimant may have a very valid claim in a mining operation, which then becomes subeconomic, and stops operating for a period of years until the economic conditions change and then they can start again.

Wouldn't the provisions of this bill, or of your suggestion, extinguish those, even where there is a mineral value present which might render it economic, or let us say uneconomic in a period of years.

Mr. HORTON. It would be my understanding, Senator, that they would be invalidated if they had not been proven within the required 5 years.

Senator MCCLURE. You are going to require them to go to patent?

Mr. HORTON. I think that they should be pushed to go to patent.

Mr. TURCOTT. That is a point that I went into in detail this morning. We do have a precedent in the Alaska Native Claim Settlement Act. Under a 5-year period, they must apply for a patent.

In the regulation, the principles are set up that an application for patent is covered if the mining claimant files an application for a mineral survey. I would like to get that clear and on the record, that in my view, in writing regulations subsequent to any such passage of this provision, that we would follow that precedent.

Senator MCCLURE. I might observe, and I say this half flippantly, if it takes you as long to look at that as it does desert land entry, you could hold onto that for a long, long time.

Mr. TURCOTT. If an applicant submits his application for a mineral survey, it does not mean a consumated mineral survey, or approved, adjudicated mineral surveys by the Bureau.

Senator MCCLURE. I understand that, and I understand your desire to accommodate for that market fluctuation, because I think it is a serious problem for people who are involved in that.

There is a difficulty for an application for a patent, however, and that is that in the current court criteria, it has to be an economically operable unit at the time the patent is sought.

The claimant may be in, and in good faith operating the mine. He makes his application for patent, and the market declines, and the mineral survey goes out. They will say, no prudent man would operate this mine in this market, and then it becomes invalid.

Mr. TURCOTT. I don't have the statistics, but I know that a large proportion of the mineral wealth developed since 1872 under this law on the public land has come from unpatened claims.

Many of them may have had a mineral patent to develop, an approval, or at least an application for a mineral survey approved, or at least application for a mineral survey. There are other economic forces at work that have come just to the fore in the last 2 or 3 years. The claimant in developing his property goes to the lending institutions, the banks, or the larger mining companies, or whatever, and people who are lending the money are insisting on patents.

There has been an upsurge in the past 2 or 3 years in requests for patent. It has not come from the Bureau.

Senator McClure. I am sure that this is correct. I am a little bit concerned that we have some kind of a recognition in the stale claims divestiture, or termination that accommodates itself to the fluctuations in the market. I am not sure that an arbitrary time period does that, and there may be a better way.

Mr. Horton. I think we would suggest, because this is a very valid point, that it would be better addressed in the amendments to the 1872 law as opposed to addressing it in the Organic Act.

Again, the thrust here is to facilitate the BLM in its land use administration efforts to really understand the status of classification of the claims imposed on the land. I don't think that we would want to push it further than that.

Senator McClure. I might note parenthetically that the bill last year had a section, at least in committee print No. 2, but that was removed from the committee print at the suggestion of Senator Bible, concurred in by Senator Metcalf, that it was better to have this in separate legislation rather than as part of the Organic Act.

I don't know what action the committee will take this year, but I think that this is a problem to which we should address ourselves so that the people on both sides of the issue, or perhaps on all sides of the issue—there may be more than two sides—at least have some certainty as to what is expected.

I am not going to belabor the question of the Desert Land Act. I think that it has been gone into extensively. The hearings are voluminous. My position is well known. Your position is well known. We don't agree.

I was intrigued, however, by your testimony, Mr. Turcott, that the Desert Land Act was expensive to administer, and that it assumes the cost of environmental assessment reports, the determination of fiscal responsibility of an applicant, the feasibility of the application, the availability of water, all the various things that you go through in the determination of whether or not the Desert Land Act application should be granted.

All of those costs, and all of those steps would not be followed, if you were disposing of land under some other provision. Wouldn't you have to go through precisely the same fact finding?

Mr. Turcott. I don't think that it would be precisely the same. I think that through the classification process we would look at the agricultural characteristics and need for the land for any purpose other than agriculture, and finally come down to a classification of the land as suitable for agricultural development, and a finding that there is no overriding reason to retain it and keep it in a multiple use situation.

I cannot do this on statistics, but on my general knowledge of the field process that would be easier, less expensive, than taking these on a case-by-case basis other wise.

In addition to that, of course, the other part and thrust of your point is that once under the provisions of the administration's bill, and S. 507, which has a sentence in it on agricultural disposition that the administration's bill does not have—yes, there would be risked capital in either situaiton.

I have had people come into my office, when I worked in the field and through the adjudication process, trying to prove up under all these complex statutory provisions of the Desert Land Act. They put

thousands and thousands of dollars in it, and now they are not going to get it. That is a sad situation.

What I am trying to get at is that there will be less risk under the administration's proposal than there is under the Desert Land Act as occurs now through the classification and adjudication process.

Senator McCLURE. The risk that is imposed on the desert land entryman is larger as a result of the administration of the Desert Land Act, and not the requirement of the Desert Land Act. The risk has not been imposed by you, folks. The cost has been imposed because of the delay.

You mention that there are 1,100 people, or 1,100 applications out there, and probably some of these are 12 years old, and people have been waiting in line for over 10 years, spending their money and spending their time, trying to get the Department to make the determination. I think that they are entitled to a determination. The law says that they are entitled to a determination, and it is the administration that says they won't.

You have suggested that there will be approximately 8 percent per year, and that is a determination that was made because somewhere in the bureaucracy, they have decided how much land should move to private ownership each year.

What is the optimum rate of development of the desert land that is not in the law, that is an administrative decision?

You have mentioned that there are 282,000 acres under application today, that is true, but it did not happen over night. It happened over a series of years, while the BLM was trying to defeat the desert land applicant, and you have succeeded in defeating some.

It has been suggested that the BLM does not want massive, large, well-financed corporate applicants to come in and succeed.

I can only report to you what I am sure you know already, that the people who have failed in the desert land application are not the well-financed people, the people with good financial backing, but it is the little guy who does not have it.

Senator HASKELL. I have to go and vote now.

Senator McCLURE. I have to go, too. I will be back, so don't go away.

[Whereupon, a recess was taken.]

Senator HASKELL. The hearing will come to order.

Senator McCLURE. I don't know, Mr. Secretary, whether you had any reply that you wished to make. You are entitled to do so, if you wish.

Mr. HORTON. Senator, we did have a couple of technical observations to make on your statement. Mr. Turcott will make those.

Mr. TURCOTT. I just had two, sir. I was sitting here listening, and I got the connotation that you felt that there was some kind of an 8-percent processing level on Desert Land Act entries in Idaho.

I have heard this before, but the Director and I have always said, even if somebody were to show this in writing back in the past someplace, that this is some kind of a program level. That is the only thing I can think of that it would be, and if so, it is not effective now.

We are attempting to process the desert land applications in Idaho as fast as we can in terms of the statutory requirements and the regulation, and the contemporary environmental land use concerns that we have to be involved in.

That is why we took this step of trying to concentrate labor on a massive regional environmental assessment, perhaps leading to an impact statement, to speed this process.

Second, I also got the connotation, sir, that somehow by word of mouth, or just bureaucratic philosophy, that we are adverse to disposing of land suitable for agricultural development in Idaho under the Desert Land Act.

I can only respectfully disagree, sir. In terms of my previous remarks, I said that on an estimated basis of this 282,000 acres, we feel that 80 percent of it is land that should be disposed of for agricultural development.

I would like to make that clear, sir, as far as our opinion on putting land into agricultural development. If that is what it should be, in terms of multiple land values and considerations, then this is what it should be.

Senator McCLURE. I thank you for the statement. I wish I believed it. I am not charging you with bad faith, but I do know at least one of your personnel in Idaho has made the statement in private conversation, that as long as he is there, there will not be any.

I know that the State director does not agree with that statement, but nevertheless, I would say, as an effective matter, the man who does not want any, is having more effect on the processing rate than the official policies of the BLM.

Mr. HORTON. There is evidence, as Mr. Turcott just said. We just recently overruled the recommendation from the State of Idaho, and the BLM there, with respect to the desert land entry, granting on the basis of its merits.

Senator McCLURE. I am aware of that one, and I appreciate it. The man who got the application is now in court defending it.

Again, one of the personnel said, this is the reason why we delayed this long it was to keep him out of court. You are not really keeping him out of court, you just delayed the start of the lawsuit by several years in this instance, which was really no service to the parties that were involved.

I appreciate the fact that once in a while something does move. I don't mean to belabor it. I know that the record has been adequately made on both sides. I sympathize with some of the problems that you have, and I sympathize too with the fact that there are some desert land entries that have turned sour, and they have turned back to the Government in bad shape, and it has imposed a burden on the BLM to deal with those lands.

I recognize that. I recognize that we must deal with that problem. I know that we can deal with it constructively rather than simply saying that the Desert Lands Act has got to go. There has to be a compromise somewhere, some way to resolve this issue.

Mr. Chairman, I would like unanimous consent that questions be submitted to the witnesses for their response in writing for the record.

Senator HASKELL. Without objection, so ordered. The hearing record will stay open for a period of 2 weeks for the answering of those questions.

[Subsequent to the hearing the Department supplied the following:]

Questions Received from Minority Counsel
at the March 7, 1975
Hearing of the Environment and Land Resources Subcommittee
of the Senate Committee on Interior and Insular Affairs
on S. 507

I

Q. What areas do you contemplate will be included as areas of critical environmental concern?

A. Under the provisions of S. 507 and the Administration's proposal (S. 1292) an area of critical environmental concern could be any one of a variety of types of areas where special management attention is required. Criteria, guidelines and procedures for designation of such areas would have to be issued before areas of critical environmental concern would be designated. We expect that, when established, criteria will reflect consideration of the following, among other things:

- environmental fragility or values
- public needs, demands, or attitudes about these values
- criteria used in the various state laws
- state, regional or national significance
- unique nature of areas or values

Although no criteria have been established yet, we believe some areas are highly likely to meet any criteria promulgated for this purpose. We have stated that the California Desert is one such area. Other examples are the San Simon Cienega Watershed and Wildlife Habitat Area in New Mexico, Birds of Prey Natural Area in Idaho, the Blanca Wildlife Habitat Area in Colorado, Bear Creek Watershed in Prineville, Oregon, Farson Fish Fossil Beds in Wyoming, and undisturbed portions of the Oregon Trail.

II

Q. Section 101 of S. 507 and the Administration proposal states that the Secretary shall manage national resource lands according to policies and procedures of this Act and "any land use plans which he prepared". (a) Isn't this blanket authority to change management policy to suit the whims of the Secretary? (b) What could be done to object to the Secretary's decision to change policy or even have it reversed?

A. (a) By the very nature of both S. 507 and the Administration's "Organic Act", management policy would not be subject to the whim of the Secretary. One of the reasons for proposing Organic legislation is to establish a legislative mission for the Bureau of Land Management, and we believe that both S. 507 and the Administration's bill contain adequate guidelines for management. The following are examples of these guidelines and directions to which any action by the Secretary must be responsive under S. 507. The Administration's bill has similar provisions:

(1) Sec. 3(b) directs that management be in accordance with the principles of multiple use and sustained yield in a manner to achieve a number of stated objectives.
(2) Section 101(b) calls for prompt development of regulations for areas of critical environmental concern.
(3) Sec. 103(b) contains specific guidelines for development of land use plans.
(4) Sec. 103(e) requires review of areas having wilderness characteristics.
(5) Sec. 201 requires that all sales be in accordance with land use plans.
(6) Sec. 202 prohibits transfer of a tract from Federal ownership, except when specified and precise criteria are met.
(7) Sections 207 and 208 permit conveyance of mineral interests only if certain specified criteria are met.

It is administratively desirable to give the Secretary sufficient flexibility to manage within the scope of Congressional policy.

(b) Aside from Congressional oversight, the bills themselves have several provisions to provide for public input. The following citations refer to S. 507 but similar provisions are included in the Administration bill.

(1) Sec. 4 requires that issuance of rules and regulations be governed by the Administrative Procedures Act.
(2) Section 5 requires establishment of procedures for public participation, including hearings where necessary, to give the public and interested parties the opportunity to comment on preparation of plans and programs.
(3) Section 6, which provides for advisory committees calls for membership representative of groups interested in the land and various potential uses thereof.
(4) Section 7 requires an annual report to the Congress on activities under the Act.

(5) Section 103 requires that land use plans be coordinated with State and local plans.
(6) Section 103(d) requires a sixty day written notice of a proposed change in classification to anyone holding a lease, license, or permit.

The same procedures and methods for administrative review would apply under the new law as now apply.

III

Q. Existing land classifications are subject to review and change pursuant to the land use plan. Are there adequate safeguards to protect existing uses? What recourse does the individual have if the Secretary does reclassify?

A. We have previously mentioned that Section 103(d) requires a sixty day notice of a proposed change in classification to anyone holding a lease, license, or permit. In addition, neither bill would work to deprive anyone of rights or privileges obtained under a different act such as the Taylor Grazing Act, the mining laws or the Mineral Leasing Act. Rights so obtained would be adjudicated under those acts. Rights previously obtained under laws to be repealed would be vested rights and would not be impaired. Where there are no rights, as a matter of policy all present and potential uses would be taken into consideration. Finally, changes in a land use plan alone would not necessitate immediate removal of authorized operations or serve to change a use. In any event there is protection in the Department's appeal procedures which insure that Department action is not arbitrary or erroneous.

IV

Q. Page 11 calls for the Secretary to revise land use plans and "coordinate" so far as he find feasible and proper . . . with Statewide Outdoor Recreation Plans and State and local plans. What deference is going to be given State wishes, particularly on lands adjacent to State lands?

A. We have been and will continue to cooperate very closely with the various State agencies and their plans for State and private lands. This involves exchange of data and participation in each other's planning process. Normally this results in a coordinated set of plans, especially at the interface between a State and Federal plan. Differences might arise only in instances of Federal land values of multi-state significance, where our responsibility is to serve the largest possible public interest. In these instances there would be substantial review given to the proposed plan. Various provisions of S. 507 and the Administration bill on public participation as well the requirements of the National Environmental Policy Act would be significant in making known and resolving any conflicts.

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V

Q. Section 3(b)(p. 5) directs the Secretary to manage under multiple use principles. Yet Section 103 (p. 11) calls for the Secretary to give priority for designating areas of critical environmental concern and protecting them. How do these policies square with one another?

A. These policies are consistent. The concept of multiple use as defined in S. 507 and the Administration bill calls for that combination of uses that best serves the public interest. It does not mean that a particular tract must be utilized for all of its potential uses. If the particular values of the land are such that an area of critical environmental concern is identified, proper protection of these values would be consistent with multiple use principles. In addition, it should be kept in mind that values of an area of critical environmental concern are not necessarily limited to recreational or scenic values. Rangeland or timber land could likewise be so designated and development and use permitted in a manner to protect the area for future development and use for these same purposes.

VI

Q. Does the Administration have a position on advisory boards as created by Statute of the Taylor Grazing Act of 1934 that would be addressed by the Administration bill?

A. Consonant with the provisions of the Federal Advisory Committee Act (P. L. 92-463), the Department on January 24 published final regulations that provide a general framework for the creation and operation of Bureau of Land Management advisory boards. Additionally, proposed regulations were published last December 30 that deal specifically with a system of national, State, and district boards for the Bureau. We are now reviewing the public comments received in conjunction with the December 30 proposed rulemaking with the expectation that final regulations will be published in the near future.

These regulations evidence the Bureau's and Department's strong support for the continuation of advisory boards, as well as a desire to perpetuate the trilevel system that has existed over the years. At the same time, they would afford the latitude necessary to structure boards more in line with programs in their areas of responsibility, and to meet the "balance" requirements of the Advisory Committee Act.

Under the proposed regulations, creation of one multiple use advisory board per administrative district would be authorized. As we see it, such boards would be constructed on an individual basis through public participation to reflect: (1) the principal programs associated with a district; and,

(2) emerging or conflicting programs or uses that impact major established programs. Citizen access to, and participation in, Bureau planning and decisionmaking would be broadened.

These smaller, broader-based, multiple use boards would replace the grazing district boards created under Section 18 of the Taylor Grazing Act. Not only would the new boards be less costly (the old advisory board system cost an estimated $600,000 annually), but they also would provide a systematic means for our land managers to receive interdisciplinary advice and recommendations to make better decisions in the context of major new and emerging programs. Membership would be balanced, countering the mounting national criticism that our boards are dominated by one user group. Moreover, their structuring would be in line with Recommendation 137 of the Public Land Law Review Commission, i.e., that boards represent a broad range of interests, and that flexibility be provided to change representation as interest in, and uses of, the land change.

Inequities and inconsistencies in representation also would be alleviated. For example, under the provisions of the Taylor Act, some 8,000 so-called Section 15 livestock operators grazing over 17,000,000 acres of BLM-administered lands could not be represented. Seven Bureau of Land Management districts encompassed two grazing districts and therefore had two advisory boards; eleven Bureau districts had no advisory boards.

Section 6 of the Administration's bill and S. 507 would confirm the approach being taken by the Department to create advisory boards whose membership would be "representative of a cross section of groups interested in the management of the national resource lands and the various types of use and enjoyment of such lands."

VII

Q. Is the BLM drafting a new set of grazing regulations? If so what effect will these have on local grazing districts?

A. For several years we have been in the process of drafting proposed regulations which would modernize grazing administration under the Taylor Grazing Act. A number of important areas of change are being considered to meet current needs for more intensive management of the national resource lands.

In addition to strengthening environmental considerations, the proposed regulations would enable the Bureau of Land Management to better accommodate other uses of rangeland by providing for allocation of forage for those uses.

If adopted, the regulations under consideration would improve livestock operations by expanding the economic opportunities and would recognize the existing grazing preference of the users on the national resource lands. They would also provide flexibility to reduce administrative requirements and emphasize intensive livestock management. At the District level, the proposed regulations would provide for more effective and responsive management of the range resource and permit the Bureau to identify and control trespass on the public range.

A copy of a discussion draft of the proposed changes is attached. This is a working draft of a BLM proposal. It is under review by the Department. It does not represent a final position of the Department.

Working Draft of BLM proposal under review by Department - not final position of the Department

MAJOR CONSIDERATIONS FOR CHANGES IN THE GRAZING REGULATIONS

For several years we have been working on a draft of suggested regulations which would modernize livestock grazing administration under the Taylor Grazing Act administered by the Bureau of Land Management. Since passage of the act in 1934 there have been few substantial changes. The rules have accomplished the intended purpose of adjudicating livestock use allowances to qualified ranch operations and designating grazing allotments. Now, regulations are being proposed to meet the modern-day needs of more intensive management of our national resource lands. We believe that the proposals have evolved to the point where advisory board and public review and comment are needed.

A number of important areas of change are being considered. Emphasis on the environment and considerations for wildlife, and other resource uses in the issuance of grazing permits need to be strengthened and incorporated into the regulations. Multiple use and environment are basic and viable objectives of the grazing management program as are sustained yield of forage and community and operator stability.

The suggested regulations are intended to:

1. Strengthen environmental considerations by incorporating those requirements which clearly provide for improvement and sustenance of environmental quality. Tie the range management activity procedures to the Bureau's resource planning system.

2. Integrate two existing sets of grazing regulations by combining regulations for Section 3 (inside grazing districts) and Section 15 (outside grazing districts) of the Taylor Grazing Act to eliminate management distinctions between these two types of land which are similar in character and are subject to the same management objectives. Remove administrative differences between the two classes of land and apply the same environmental planning and intensive management to all areas of public land.

3. Update the format of the regulations to improve the layout, the readability and the reader's understanding of the retained as well as the new provisions and concepts.

4. Provide for other uses by allowing for the accommodation of habitat needs for all wildlife and where appropriate for wild free-roaming horses and burros, and where required for the allocation of

range for wildlife and other priority uses which are not compatible with domestic livestock grazing.

5. Retain existing preferences and base property control requirements for livestock use on the public lands to provide for orderly use and stabilization of the industry.

6. Improve range livestock operations by expanding the opportunities for economic betterment of the users. Eliminate specific forage crop production requirements, and allow for livestock operation flexibility whenever the public lands are under intensive management. Reduce user administrative needs and streamline procedures for efficiency.

7. Emphasize intensive management by allowing for practices which would be responsive to today's needs from a physical, livestock, and environmental standpoint. Use the concept of livestock as a tool to change vegetation to reach multiple-use objectives for watershed, wildlife, and recreation, and at the same time increase livestock production. Provide the means to accomplish this through allotment management plans (AMP's).

8. Streamline procedures and efficiency which would reduce office administrative paper workload by a substantial amount.

9. Clarify range improvement construction policy and designate full environmental consideration in the construction of livestock control facilities on the public lands.

10. Provide better control of unauthorized use by requiring substantive penalty for trespass and the means to deal with it effectively.

DISCUSSION DRAFT

FOR SUGGESTED CHANGES IN

GRAZING REGULATIONS FOR THE PUBLIC LANDS

Bureau of Land Management

December 10, 1974

Encl. 2-1

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4100 Grazing Administration--General.

4100.0-1 Purpose.

To provide for the uniform administration and management of livestock grazing on the public lands, exclusive of Alaska.

4100.0-2 Objectives.

To manage livestock grazing to achieve the objectives of resource management programs consistent with the multiple use, environmental, sustained yield, economic, and other objectives stated in Subpart 1725 of this Chapter.

4100.0-3 Authority.

(a) Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315a-315r), which authorizes the Secretary of the Interior to establish grazing districts and to make provision for their protection, administration, regulation, and improvement. It also authorizes the Secretary to lease lands outside of such districts for grazing purposes upon such terms and conditions as he may prescribe.

(b) Various Executive Orders which authorize the Secretary to administer under the Taylor Grazing Act lands transferred to him and acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1934 (7 U.S.C. 1010-13a).

(c) The Act of August 28, 1937, as amended (43 U.S.C. 1181d), which authorizes the Secretary to lease for grazing the lands described in Subpart 5040 of this Chapter and to provide for their use, protection, improvement, and rehabilitation.

4100.0-5 Definitions.

Whenever used in this Subchapter, unless the context otherwise requires:

(a) The "Secretary" means the Secretary of the Interior or his authorized officer.

(b) The "Director" means the Director of the Bureau of Land Management or his authorized officer.

(c) "State Director" means the State Director of the Bureau of Land Management for the State or States under his administrative jurisdiction or his authorized officer.

(d) "District Manager" means the District Manager of the Bureau of Land Management of the district under his administrative jurisdiction or his authorized officer.

(e) "Authorized officer" means any person authorized by the Secretary to administer regulations in this Subchapter.

(f) "Public lands" means any federally owned or controlled land administered by the Bureau of Land Management outside of Alaska.

(g) "District" means the specific area of public lands administered by a District Manager.

(h) "Base property" means privately owned or controlled land or water that produces livestock forage or other agricultural crops or water and is used in conjunction with a livestock ranching operation which utilizes public land.

(i) "Grazing area" or "allotment" means a specific area of public lands within which grazing use is authorized under the terms of this Subchapter.

(j) "Allotment management plan (AMP)" means a livestock grazing plan that sets out the conditions under, and the manner in which livestock grazing use will be conducted in a grazing area to reach specified management goals, and which is agreed to by the permittee(s) and the authorized officer.

(k) "Additional livestock forage" means feed which is available for livestock on a sustained basis over and above that amount recognized under 4230 after all nonlivestock uses within a grazing area have been considered and accommodated to the extent practicable.

(l) "Grazing permit" means either a Management, Regular or Custodial permit authorization to graze livestock on the public lands, and may include a permit issued pursuant to Section 3 of the Taylor Grazing Act, or a lease issued pursuant to Section 15 of the Taylor Grazing Act or Section 4 of the O&C Act.

(m) "Management permit" means a grazing permit which authorizes livestock use under an allotment management plan.

(n) "Regular permit" means a grazing permit which authorizes livestock use and sets out the conditions under, and the manner in which livestock will be grazed pending the issuance of a management or custodial permit.

(o) "Custodial permit" means a grazing permit which authorizes livestock use where only limited stipulations are required.

(p) "Special permit" means either a Free-Use, Crossing, Exchange-of-Use or Nonrenewable permit authorization to graze livestock.

(q) "Animal unit month (AUM)" means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of one month.

(r) "Range improvements" means land treatments, structures, and/or facilities for livestock utilized in the management of livestock grazing.

4100.0-7 Cross-references

The regulations in Part 4 of this Title govern appeals from decisions of the authorized officer. The regulations in Part 1784 govern Advisory Boards and regulations in Part 1787 govern Livestock Associations.

4200 Allocation of grazing use.

4210 Mandatory qualifications.

4210.1 Qualifications.

The following are qualified for a grazing permit if engaged in the livestock business and they own or control land or water base property in or near the public land area which is used in support of their livestock operation:

(a) A citizen of the United States;

(b) A group or association authorized to conduct business in the State in which the permit is sought and all the members of which are citizens of the United States;

(c) A corporation authorized to conduct business in the State in which the permit is sought and in which the controlling interest is vested in citizens of the United States.

4220 Grazing areas.

4220.1 Types of Grazing areas.

The authorized officer may establish or adjust the size of a grazing area which may be allotted to a single permittee or to a group of permittees.

(a) Management allotments will be established to be intensively managed under an allotment management plan.

(b) Where the effect of livestock grazing on public land values is minimal and only limited stipulations are required, a custodial grazing area may be designated. Custodial grazing areas or allotments are established where the public land acreage contains limited resource values and/or where the public land acreage is small in comparison to the total area grazed. However, the multiple use and environmental values involved, not the size of the public land area, are the determining factors.

(c) Interim grazing areas or allotments will be designated to the extent practicable on existing grazing areas and regular permits will be issued pending the development of an allotment management plan or the issuance of a custodial permit.

4230 Preference.

4230.1 Preference allocation.

Preference for the future grazing use of public land allotments will be given to those holding a valid grazing authorization as of the date of these regulations and to their heirs and assignees, provided that they remain qualified under the regulations of this Part.

Permits will be issued to these preference operators on the basis of the grazing use recognized, including active use and authorized non-use. The permit will identify the allotted grazing areas and the percentage of the public land forage thereon to which the permittee is entitled.

4230.2 Change in acreage.

Where the public land acreage available for livestock use within a grazing area changes, permits will be adjusted accordingly.

4230.3 Additional lands available.

Where lands exclusive of a grazing area become available the livestock forage determined to exist will be allocated to the extent practicable in accordance with past authorized use. Where there are no existing regularly authorized users the available livestock forage will be allocated by management permit to qualified persons.

4300 Types of permits; issuance.

4310 Grazing permits

A grazing permit will be issued to each qualified holder of a grazing preference. Where a grazing preference is controlled through lease arrangement to another party, the initial grazing permit shall be issued to the lessor; except where the lessee originally established the grazing preference. Grazing permits will contain terms and conditions deemed necessary by the authorized officer to achieve the objectives of this Subchapter.

4310.1 Management permits.

Management permits will be issued when an allotment management plan is initiated for a grazing area. Management permits shall be for a period of not more than 10 years and will provide for renewal thereafter if grazing use is continued under the regulations in this Subchapter. Increases in use based on additional livestock forage due to intensive management under an allotment management plan may be allocated to the permittee(s) in proportion to his recognized use.

4310.2 Custodial permits.

Custodial permits will be issued when it is determined that an allotment management plan will not be required. They will be issued for a period of not more than 10 years and will provide for renewal thereafter if grazing use is continued under the regulations of this Subchapter.

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4310.3 Regular permits.

Regular permits will be issued to all others. Regular permits will be issued for periods up to 3 years. Any increase in grazing use in excess of that established under 4230 will be granted only as nonrenewable.

4320 Special permits.

4320.1 Free use.

(a) A free-use permit may be issued to an eligible individual for grazing on the public lands adjacent to the individual's residence. The permit will authorize grazing use only for the domestic livestock owned and whose products or services are used directly and exclusively by the individual and his family and will require the individual to provide for the proper care and maintenance of such domestic livestock while on the public lands, as well as other terms and conditions deemed necessary to achieve the objectives of this Subchapter.

4320.2 Crossing.

Upon request by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued upon such terms and conditions deemed necessary to achieve the objectives of this Subchapter.

4320.3 Exchange-of-use.

An exchange-of-use permit may be issued to any permittee or livestock operator having ownership or control of non-Federal land within his grazing area. The permit will not exceed the grazing capacity of

the non-Federal land. No grazing fees will be charged for such grazing capacity. During the term of the agreement the Bureau shall have management control of such non-Federal land for grazing purposes under the provisions of the Subchapter.

4320.4 Nonrenewable.

For any periods and for the number of livestock for which forage is temporarily available, nonrenewable permits may be issued to qualified persons provided the additional use does not interfere with existing operations and is in conformance with management objectives of this Subchapter.

4330 Transfers.

4330.1 Grazing perference

(a) A preference may be transferred in whole or in part and a new permit issued if all of the following conditions are met:

(1) The transferee is qualified to hold a permit under the regulations of this subchapter.

(2) The transfer will not disrupt the stability of the livestock industry in the general area where the permitted lands are located.

(3) The transferee accepts the terms and conditions of the existing permit.

(4) Within 60 days following the date of approval of the transfer by the authorized officer, the transferee furnishes to the authorized officer a properly executed assignment with evidence of certified notice to any lien holder.

(b) Failure of the transferee to comply with the regulations of this section may result in the termination of the grazing preference.

4330.2 Special permits not transferable.

Free-use, crossing, exchange-of-use, and nonrenewable permits are not transferable.

4340 Fees and bills.

4340.1 Fees; refunds; service charges.

(a) The fees for each fee year will be published in the Federal Register.

(b) Fees will be charged on all grazing, crossing, and nonrenewable permits for the grazing of livestock on public lands at a specified rate per animal unit month. The charges for any fee year will consist of a use fee and a range improvement fee and will not be less than $10 per permit. The Secretary will establish a fee based on the fair market value of the forage. Fair market value is that value established by the Western Livestock Grazing Survey of 1966 or as determined by a similar study which may be conducted periodically to update the fee base, if deemed necessary. Annual adjustments may be made for any fee year to reflect current market values.

(c) Range improvement fees shall be at least 50 percent of the total grazing fees charged or as otherwise provided by law. Other special range improvement fees may vary in accordance with the character or requirements of the various Districts or portions thereof.

(d) Whenever the annual grazing use authorized exceeds that recognized under 4230 an added range improvement charge equal to the range improvement fee will be made for that use exceeding the preference except for those permits subject to the minimum charge.

(e) For fee purposes, all livestock that reach the age of 6 months at any time during the grazing period will be considered as a part of the total number for which a permit has been issued. No fees will be charged for livestock under 6 months of age.

(f) Where a management permit has been issued, a fee notice based on the actual use reported will be issued and is immediately due and payable. Each permittee will submit within 15 days after the end of his authorized grazing period or as otherwise agreed upon in the plan, the actual livestock grazing use made. Upon failure or refusal to submit an actual use report a bill immediately due and payable shall be issued to reflect grazing use at the upper limit of flexibility as determined in the allotment management plan. With other permits, fees are due upon issuance of the fee notice and are payable in full in advance of grazing use as authorized.

(g) Refunds of fees will be made for failure to use the authorized grazing only during periods of range depletion due to severe drought, a general epidemic of disease or other natural causes.

(h) Except for actions initiated by the authorized officer, a service charge of $25 will be made for each transfer of a permit and for each supplemental or revised billing issued pursuant to 4560.

4500 Management practices; terms and conditions of use.

4510 Livestock management.

4510.1 Animals; periods of use.

The authorized officer may specify the class, breed, and kind of livestock, their numbers and their periods of use. The amount of authorized use will not exceed the grazing capacity of the allotment and will be limited or excluded to the extent necessary to accomplish management goals established for the area in accordance with the objectives of these regulations.

4510.2 Ownership and identification.

Livestock must be owned or controlled by the permittee and have registered brands or marks which must be reported to the authorized officer in advance of entry on the public lands. The authorized officer may require special marking or tagging of the permitted animals and they must be available for counting at any time during the grazing season.

4510.3 State livestock requirements.

Authorized users must comply with provisions of the State in which the public lands are located relating to the branding of livestock; breed, grade, number of bulls; sanitary requirements and any other provisions of State law relating to livestock.

4520 Intensive grazing management.

Intensive management includes designating a management allotment, developing an allotment management plan, and issuing a management permit.

4520.1 Allotment management plans (AMP's).

An allotment management plan will be required by the authorized officer where he deems that a plan will best achieve the objectives of the regulations in this Subchapter. The plan shall contain specific management objectives including the protection and enhancement of natural resources.

The allotment management plan shall be cooperatively developed and agreed to by the permittee(s) and the authorized officer. Upon failure to agree to a proposed plan, the authorized officer will stipulate a grazing system as a condition of a regular permit.

The allotment management plan shall contain a grazing system designed to meet specific management objectives. The plan shall set limits of flexibility within which the permittee may adjust his livestock operation without approval of the authorized officer. It shall provide for studies to be conducted to evaluate progress in meeting the AMP objectives and the needs and opportunities for change in livestock use. It shall contain provisions to permit the plan to be modified to reflect needed changes. Upon failure of the permittee to comply with an adopted plan, the authorized officer will revoke the management permit and plan and will stipulate a grazing system as a condition of a regular permit.

4530 Interim use.

All grazing areas on which allotment management plans have not been implemented will be administered under regular permits except as provided under 4310.

4540 Violations.

4540.1 Unauthroized acts.

The following acts are prohibited:

(a) Littering the public lands, or damaging or removing United States property.

(b) Cutting, burning, or removing vegetation from the public lands without authorization.

(c) Molesting or driving permitted livestock from the public lands without authorization.

(d) Violating a provision of Part 4700 concerning the protection and management of wild free-roaming horses and burros on the public lands.

(e) Violating on the public lands Federal and State law relating to the conservation or protection of fish and wildlife or to the conservation and protection of other natural resources.

(f) Placing range improvements or other facilities on the public lands without authorization.

(g) Allowing livestock on public lands without proper authorization.

(h) Feeding permitted livestock supplemental forage on the public land without authorization.

(i) Refusing to finance individually or to share proportionately with other permittees the cost for the construction and/or maintenance of range improvements on the public lands when so directed by the authorized officer where a permittee will benefit in substantial measure or should reasonably bear a responsibility for such costs; or failure to comply with the terms of a cooperative agreement.

(j) Interfering with lawful uses or users of the public lands.

4550 Penalties

4550.1 Procedures for assessment of penalties

(a) When the authorized officer concludes that a permittee has committed an act prohibited by Section 4540.1 of this Subpart, he may issue a show-cause order to the permittee, describing the alleged violation and prescribing the penalties therefor.

(b) When the alleged act involves a violation of one or more of the following laws, and occurs on the Federal lands and in connection with a grazing authorization, the authorized officer shall not institute show-cause proceedings unless and until the fact of violation has been established through due process procedures applicable to the law involved, such as conviction or plea of nolo contendere in a court of competent jurisdiction:

(1) State law or regulations concerning the conservation or protection of natural resources or the environment including, but not limited to, those relating to air and water pollution, protection of wildlife and fish, and the use of pesticides.

(ii) Bald Eagle Protection Act (16 U.S.C. § 668).

(iii) Endangered Species Act of 1973 (87 Stat. 884).

(c) If the permittee contests the action proposed in a show-cause order, the procedures in Part 4 of this Chapter will apply.

4550.2 Degree of penalty

(a) Preference or permitted use may be reduced or cancelled for any violation to the extent consistent with the severity of the violation.

(b) Fees for unauthorized grazing shall be at the rates prescribed in Part 4600 of this Subchapter.

(c) No grazing use will be authorized until there is paid to the United States all fees which the regulations of this Subchapter require to be paid in advance.

(d) Failure of a permittee to make full use as authorized for a period of three consecutive years may result in the revocation or adjustment of the grazing preference to the extent of failure to use.

4560 Changes in use.

4560.1 Requested change.

Any permittee who desires to change his permitted grazing use must file at least 30 days in advance of an authorized grazing period a written request for such change, except when the change is within the flexibility limits of an allotment management plan. The request may be approved if it is not detrimental to existing operations and is consistent with management objectives for the grazing area, but such approval does not preclude failure to use pursuant to 4550. Whenever forage is available within a grazing area because of a requested change in use the forage may be allocated under a nonrenewable permit.

4560.2 Special rules.

Whenever it appears to a State Director that local conditions within his administrative jurisdiction require a special rule to achieve improved administration consistent with the objectives of this Subchapter, he may recommend such a rule for approval by the Director. Approved rules will be published in the Federal Register.

4560.3 Relinquishment.

Upon written request, the relinquishment of a grazing preference in whole or in part may be accepted by the authorized officer.

4570 Closures to livestock.

Whenever conditions warrant a grazing area may be closed to grazing by the authorized officer for any class of livestock and for any period of time to be specified in a notice of closure. The notice shall be

published in a local newspaper and shall be posted at the county courthouse and at a post office near the public land area involved. The notice of closure will require all owners of livestock affected thereby to remove such livestock in accordance with the provisions of the notice. Written notification will be delivered personally or by certified mail to those who are authorized to graze livestock in the grazing areas affected. Thereafter, the authorized officer shall proceed to impound, remove and dispose of any livestock found in violation of the closing notice in accordance with Subpart 4600.

4580 Range improvements.

Any permittee may enter into a cooperative agreement for the construction and/or maintenance of range improvements needed to achieve management goals for the handling of livestock within his designated grazing area, or a permit may be issued. Title to all improvements constructed under cooperative agreement will be vested in the United States. Range improvement authorizations will specify the standard and design for the range improvement and will contain conditions and construction criteria deemed necessary by the authorized officer to achieve the objectives of these regulations. Where an existing range improvement is significantly inconsistent with these objectives, authority for the improvement may be ordered modified by the authorized officer to reflect needed changes. Upon failure to modify the improvement, authorization for the improvement may be cancelled. A period of 180 days from the date of cancellation will be allowed to salvage material owned by the permittee and to perform such rehabilitation measures as are deemed

necessary by the authorized officer. When public land upon which an authorized improvement has been placed becomes no longer available for livestock grazing, a period of 180 days from the date of cancellation will be allowed to salvage residual material owned by the permittee. When a land disposal action covers public land upon which authorized range improvements have been placed, the transferee of the land will compensate the owner for the residual interest in the range improvements. If the parties are unable to agree as to the amount or manner of compensation, the matter shall be resolved by the authorized officer. Failure of the transferee to compensate the owner or to comply with the conditions fixed by the authorized officer shall be cause for cancellation of any right or interest in the land acquired. Where improvements have been constructed with Federal funds and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R. S. 2275, as amended (43 U.S.C. 851), the application may be allowed without compensation to the United States. All interest and obligations authorized under cooperative agreements and improvement permits automatically assign to the transferee upon transfer of a permit pursuant to 4330.

4600 Unauthorized use.

4610 Notice.

Where the owner of unauthorized livestock or his agent is known, written notice shall be served upon the alleged violator. The notice shall set forth the act of alleged violation, referring to the specific

terms of the permit or the regulations of this Subchapter alleged to have been violated; and will allow the alleged violator a reasonable specified time from receipt of notice to show that there had been no violation or to make settlement

4620 Unauthorized horses and burros.

Unauthorized horses or burros on the public lands determined to be privately owned will be claimed and gathered only in accordance with the procedures outlined in Subpart 4700.

4630 Settlement.

4630.1 Without impoundment.

Settlement due the United States as a result of unauthorized livestock use will consist of (1) a base charge of $5 per head for cattle and horses and $1 per head for sheep and goats, (2) the cash rental value of forage consumed as determined by the average monthly rate for pasturing livestock on privately owned land for the 11 Western States as published annually by the Department of Agriculture, and (3) costs arising from damage to the public land and property.

4630.2 With impoundment.

Settlement due the United States as a result of the unauthorized livestock use and impoundment will consist of those costs under 4630.1 plus all expenses incurred in gathering, impounding, and caring for the livestock.

4630.3 Demand for paymert.

Where the livestock have been removed by the owner or his agent but satisfactory settlement has not been made within the time allowed, a certified letter demanding payment will be issued which allows not more than 15 days from date of receipt to settle the obligation.

4630.4 Disciplinary action.

Whenever a permittee does not make satisfactory settlement a decision will be issued reducing or cancelling the preferenced or permitted use.

4640 Impoundment and disposal.

4640.1 Under State and local law.

Unauthorized livestock may be impounded and disposed of under State and local law and procedures.

4640.2 Under Federal law.

Unauthorized livestock may be impounded and disposed of under this Subpart.

4640.2-1 Notice of intent.

A written notice of intent to impound will be sent by certified mail or personally delivered to the owner or his agent. Five days after delivery of the notice, livestock may be impounded. Where the owner or agent is unknown, or a known owner or agent refuses to accept delivery, a notice of intent to impound will be published in a local newspaper and posted at the county courthouse and at a post office near the public land involved. Any time after 15 days of the posting of such notice the unauthorized livestock may be impounded.

4640.2-2 Duration of notice.

Unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of a notice given under 4640.2-1.

4640.2-3 Means of impoundment.

The impoundment and/or disposal of unauthorized livestock will be accomplished in a humane manner.

4640.2-4 Notice of public sale.

Following the impoundment of livestock, a notice of sale will be published in a local newspaper and posted at the county courthouse and at a post office near the public land involved. The notice will describe the livestock and specify the date, time, and place of sale. The sale date shall be at least 5 days after the publication and posting of the notice. By certified mail or by personal delivery, any known owners or agents will be notified in writing of the procedure by which the impounded livestock may be redeemed prior to the sale. Proof of ownership and payment of costs will be required as outlined under 4630.

4640.2-5 Sale.

If the livestock are not redeemed they shall be offered at public sale to the highest bidder, provided the bid is not less than the minimum sale price set by the authorized officer. If a satisfactory bid is not received the livestock may be reoffered for sale, released to the State agency responsible for disposition in accordance with State law, or otherwise disposed of.

EXPLANATION

OF THE DISCUSSION DRAFT FOR SUGGESTED CHANGES IN GRAZING REGULATIONS FOR THE PUBLIC LANDS

Bureau of Land Management

December 10, 1974

Encl. 3-1

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NOTE: This is an explanation booklet outlining the purpose and mechanics of the suggested changes in the grazing regulations for the public lands (National Resource Lands). Both the discussion draft and the explanation should be reviewed at the same time for a better understanding of the proposals. Each major area of suggested change is discussed in this explanation document. Where significant modifications or administrative procedure or the use of forms are proposed these are explained. Discussion may not be given where the suggested regulation wording or procedure is self-explanatory or where no major change is proposed.

4100 GRAZING ADMINISTRATION--GENERAL

4100.0-1 Purpose

The suggested regulations are intended to include grazing rules for all of the public lands (national resource lands), exclusive of Alaska, under the jurisdiction of the Bureau of Land Management. They combine into one set the regulations applicable to Section 3 and Section 15 of the Taylor Grazing Act, the O&C western Oregon lands, and LU land acquired under the Bankhead-Jones Act.

Not all Section 15 lands (outside statutory grazing districts) are in a scattered, isolated tract situation. Southern California and southwestern Nevada have large Section 15 areas of solid public domain. Many Section 3 areas (inside statutory grazing districts) contain scattered and fragmented ownership patterns. All of these lands are similar in character and values and should receive equal management attention and standardized policies and regulations.

The regulations for Section 15 and Section 3 have been similar since the Section 15 regulations were changed in 1968. These suggested regulations bring the two together into one set of rules.

4100.0-2 Objectives

This paragraph sets out the general policy objectives relating to livestock grazing with emphasis on environmental considerations and intensive management to protect and properly manage the public lands. Correlated with these multiple use goals is the intent to provide for a continual supply of forage, community stability, and the allocation of grazing use to those who are presently recognized as preferenced to use the public lands for grazing.

The statement "To manage livestock grazing to achieve the objectives of resource management programs. . ." emphasizes the concept that grazing animals can be a compatible part of the rangeland ecosystem. When managed properly, livestock grazing can be used as a tool in reaching multiple use goals--particularly those that involve changes in native vegetation.

4100.0-3 Authority

Authorities are listed consistent with the purposes and objectives of the proposed regulations.

4100.0-5 Definitions

The number of definitions is limited to those deemed necessary for clarity. The wording not specifically defined in the proposed regulations text is intended to reflect normal usage.

4100.0-7 Cross References

Appeals and hearings procedures are found in Part 4 of this Title (43 CFR) and no change is proposed. Rules concerning advisory boards and livestock associations are found in Part 4114 of the current grazing regulations. No change in these rules is being suggested in the draft proposal. However, in the process of recodification of Departmental regulations, of various subject matter, new numbering is scheduled for advisory boards and for livestock associations, to which the cross reference is made.

4200 ALLOCATION OF GRAZING USE

4210 Mandatory Qualifications

Those who have a current grazing license, permit or lease are recognized as preferenced under the Taylor Grazing Act as citizens who are landowners engaged in the livestock business. Each such user on the public lands will be issued a grazing permit which will designate the extent of the grazing preference based on the presently recognized use (including active use and regular and suspended nonuse--also see 4230 Preference explanation).

It is the intent of the regulations to protect the interest of preferenced grazing users. Where grazing privileges are now held by a lessee, the initial grazing permit will be issued to the lessor. Where the lessor is an absentee owner, subsequent arrangements may be made between the lessor and the lessee. If, for example, direct dealings between the lessee and the authorized officer are in the best interests of all parties, the permit may be transferred to the lessee, or the lessor may give "notice of full authority" to the lessee, or such other private arrangement between the parties may be made to best affect the public land business of the livestock operation.

A grazing preference is attached to base property. Preferences are transferable and any new permittee (transferee) must meet the requirements of citizenship, land or water ownership or control and livestock business endeavor. The suggested regulation proposals do not provide for accountability of base property commensurability (base property feed and forage production). Procedures for transfering a preference are proposed to be simplified. See 4330 Transfers explanation and Attachment 1.

4220 Grazing Areas

Grazing areas may be allotted to the exclusive grazing use of one permittee or to a group of permittees by one of the following categories:

(a) Management allotments. Prior to the development of an allotment management plan (AMP), a specific planning unit will be reviewed through the Bureau's resource planning system to assure considerations for environmental protection and other uses. Where it has been determined through the planning process that domestic livestock will be importantly involved

the authorized officer will establish the area that will be intensively managed as a grazing area under an AMP. This may involve an existing allotment or it may involve combining small, previously established individual allotments into a grazing system where each former allotment may become a pasture in a common use grazing system. On the other hand, there may be a need in large community allotments for division into smaller management areas. Allotment management plans will set out any constraints on livestock grazing established through the planning process.

(b) Custodial grazing areas or allotments. Intensive planning will be applied to all public lands to determine resource values and management needs. After such planning has been accomplished, a custodial grazing permit may be issued in lieu of a management permit if the grazing permittee use practices adequately protect the public values. Generally, custodial permits will be issued only in those situations where the public land is a small part of the total grazing area. Such permits will contain only limited management stipulations.

(c) Interim grazing areas or allotments. These are currently existing grazing areas upon which no allotment management plan exists. Generally, the livestock use now authorized may remain at current levels on an interim basis until such time as resource planning can be accomplished.

4230 Preference

The allocation of preference and the issuance of grazing permits are based on the grazing use on the public lands which is recognized when the new suggested regulations become effective. Presently recognized use means adjudicated grazing qualifications, including approved nonuse and suspended (potential) nonuse. Any temporary nonrenewable use is not counted. The grazing currently made under a valid allotment management plan will continue. For those areas in the Southwest classified as ephemeral, no numbers will be indicated and use will be based on the requests for grazing during ephemeral forage years. When an adjudication has not been made or the grazing qualifications are not known, the authorized officer will make the determination of presently recognized use after reference to official records. In all cases, a determination of presently recognized use does not preclude any previous graduated reductions or use agreements now in effect.

4230.2 Change in Acreage

When land is added to or deleted from a designated grazing area due to exchange or otherwise, the permit will be changed to reflect the resulting difference in available public land forage. In case a permittee does not want to make use of additional forage it may be allocated to an applicant.

4230.3 Additional Lands Available

Whenever public land acreage outside of an existing grazing area becomes available (by revocation of a withdrawal, for example), grazing will be administered in accordance with previously authorized use insofar as it is practical and consistent with proper land management.

If there were no regularly authorized users, the forage would be allocated to applicants. Any person who is qualified pursuant to 4210 of the regulations is eligible to apply for forage available. Allocation under such circumstances would be at the discretion of the authorized officer and would be based upon criteria consistent with the objectives under Subpart 4100.0-2. Use would be allocated by the issuance of a management permit and grazing fees would be due annually for use of the forage obtained.

4300 TYPES OF PERMITS; ISSUANCE

4310 Grazing Permits

Three kinds of grazing permits are issued. Each, to varying degrees, sets out the conditions and manner in which livestock grazing use is to be authorized. Each is designated for a specific purpose, and each reflects the intended category of permit. Management permits indicate grazing areas which are under intensive management; custodial permits designate areas in which planning has been done and where only limited management stipulations are required; and regular permits cover allotments in which resource planning has not been completed. See Attachment 2.

The purpose of this regulation is not intended to provide incentives to get livestock operations under AMP's. The suggested regulation may, however, result in this happening. The purpose is to assure that livestock use is compatible with environmental protection and multiple use concepts.

Any granted increases in grazing use must remain on a nonrenewable basis until firm management objectives are established during the application of the Bureau's resource planning system (including initiation of an AMP) on the grazing area. Even under the present regulations and instructions, permanent increases in use may not be permitted until it has been determined that such increases will not endanger other resource values and adequate provisions are made for wildlife and watershed.

All grazing permits are subject to cancellation or modification for cause and other provisions contained in the regulations. The term of regular permits is thus actually not a controlling factor as far as management of the public lands is concerned.

Annual application will not be required under these new suggested regulations. An application would be needed only if the desired use is different from that specified in the permit. Otherwise, the operator will be billed for the grazing use authorized. Also see 4560 Changes in Use explanation.

4310.1 Management Permits

Management permits will be issued to each user who is operating under an acceptable AMP at the time the new regulations are approved. Thereafter, a management permit will be issued when a new AMP has been developed and implemented. "Implemented" means any definite action of livestock control or range improvements construction taken to reach the management objectives stated in the AMP.

The effective period of not more than 10 years for management permits is a limit of the Taylor Grazing Act. An AMP and its provisions are attached to and become a part of the permit document.

This Subpart allocates to the operator additional livestock forage which becomes available within a management allotment which he can properly utilize. "Additional livestock forage" is that amount which exceeds the recognized preference and which is available for livestock grazing on a sustained basis after all nonlivestock uses have been considered and accommodated to the extent practical.

The allocation of additional livestock forage to the permittee provides an incentive for proper use, and it supports land management responsibility for the public lands. It reduces uncertainty and allows for the economic stability and enhancement of local communities.

In community allotments, all permittees would receive their fair share of the additional available forage based upon their present percentage of allowable use.

If an operator(s) cannot make use of all of the additional forage, the authorized officer may allocate such grazing use to qualified applicants.

4320 Special Permits

In addition to the three kinds of grazing permits (management, custodial and regular), four different special permits may be issued--Free-Use, Crossing, Exchange-of-Use, and Nonrenewable.

4320.1 Free-Use Permits

Existing rules provide for the issuance of free-use grazing permits, and the suggested regulations continue this practice consistent with the Taylor Grazing Act.

4320.3 Exchange-of-Use Permits

Exchange-of-use permits at no charge may be issued for the grazing capacity of controlled non-Federal land which lies within the permitted grazing area. Current agreements in which grazing capacity credit is allowed for controlled lands lying outside of the individual's authorized grazing area will continue to be recognized for the effective period of the agreement. Intent, over a reasonable period of time, is to make all contrary older agreements and all new permits consistent with the suggested regulations.

4320.4 Nonrenewable Permits

Nonrenewable permits denote temporary use which carry no preference. Generally, such permits are issued for grazing above the active use preference (for example, during an exceptional forage growth year or for use on a seeding established as a result of a fire rehabilitation program within an interim allotment).

4330 Transfers

A preference is transferable. The present regulations as well as the suggested draft proposals require a transferee to be qualified, including ownership or control of land or water base property. Procedures for transfering a preference are proposed to be simplified.

An assignment is made by completing the proper notarized form and submitting the document to the authorized officer within 60 days following the date of transfer. See Attachment 1. The transferee certifies that he is a citizen, is a landowner and is engaged in the livestock business; and he assumes responsibility to comply with the terms of the existing

permit. It is incumbent upon the transferee to see that these requirements are met. He attests to these facts when he signs the notarized assignment.

Upon timely surrender of a properly executed document and review by the authorized officer a new permit will be issued. BLM's responsibility lies in checking the transfer documents submitted to see that they at face value comply with requirements.

An operator may have as much base property to which the preference is attached as he desires--this is an individual matter and no inducement to change is being made. At the present time every variation of base property exists and no modifications in these are proposed. If upon transfer a change in land or water base is desired there is the latitude to do this. The base property offered will be recognized as long as it meets the regulatory requirements.

4340 Fees and Bills

(a) Fee rates for a fee year will be published as is the present practice.

(b) No change in regular fees from the current regulations is proposed; except that (1) a charge will be made for all crossing permits and (2) a supplementary range improvement fee will be charged for use exceeding the preference (see (d) below).

(c) Range improvement fee suggested change. The Taylor Grazing Act does not specify the percentage of the total fee to be designated as the range improvement fee within statutory grazing districts. This Subpart establishes by regulation the amount at 50 percent, to be expended for the construction or maintenance of range improvements. For outside statutory grazing districts, the 25 percent amount is established by law.

This increase in range improvement fund is consistent with previous district advisory board recommendations and conservation groups' positions on the need for increases in capital investment in the public lands. These funds are not considered to be "earmarked" in that the appropriation processes of Congress must first take place before funds are actually available.

The distribution of fees collected from O&C and LU lands is set by law.

(d) This suggested rule provides for an added charge in the form of a range improvement fee for additional livestock forage. The added charge would apply whenever forage use exceeds the recognized preference level. Considerable public funds are expended on planning and implementing intensive management and rehabilitation programs on national resource lands. These programs are expected to improve range conditions, and oftentimes do to the extent that the available grazing capacity exceeds the preference demand. Any feed allocated as additional livestock forage would be subject to the range improvement assessment. The taking of such forage would not be mandatory, the fee charge is considered reasonable, and the funds when appropriated by the Congress would support further intensive management efforts on the public lands.

As an example, a rancher with a 1,000-AUM preference all of which is active use under an AMP is paying a grazing fee of $1 per AUM. As a result of intensive management the grazing capacity for livestock after other use needs have been met has increased by 300 AUM's. Under the proposed rules, if he should utilize all of the forage available he would be charged $1 per AUM for 1,000 AUM's, and $1.50 per AUM for 300 AUM's.

(e) No change in animal age for which fees are charged is proposed.

(f) At the end of the grazing season each grazing permittee under a management plan must provide the authorized officer with an accounting of the actual livestock use made on the allotment. The use report is the basis for the bill issued to the operator for that year.

Upon receipt of the permittee's actual use report the authorized officer will review it and a billing will be issued. The report is due within 15 days after the end of the grazing season. If no report is made, the bill will reflect charges at the upper limit of flexibility as spelled out in the allotment management plan.

(g) No change in refund requirements is proposed.

(h) A service charge is made for the processing of each assignment requested by the permittee and the issuance of the new permit to the transferee. A service charge is also made for each change in use requested by the permittee which requires the issuance of a revised billing or a new billing pursuant to 4560.1.

4500 MANAGEMENT PRACTICES: TERMS AND CONDITIONS OF USE

4510 Livestock Management

These Subparts provide the basis for a grazing permit which outlines the kind, class, and number of owned or controlled livestock to be grazed and the time periods of use, consistent with law. Numbers and time are predicated on the environmental considerations and management objectives for the designated grazing area.

During emergency situations (drought, fire, disease, etc.) or when the public interest so requires, the authorized officer may make a decision immediately effective. This is consistent with present full force and effect rules. Such action does not bar normal administrative procedures or appeals.

This part also provides for long-term modification or cancellation of permits to accommodate other needs, such as for wild horse and burro habitat or big game habitat, when specifically required over and above that obtained under normal management. Such other needs normally are met by providing for the necessary requirements in the livestock grazing system. For example, a grazing system might call for early spring use on a critical winter deer range pasture to reduce grass competition with browse.

All livestock run on public land under permit must be controlled by the permittee. "Controlled" means owned livestock or documentary evidence of the permittee's lawful possession and management authority over unowned livestock for a specified period of time.

Permittees must comply with local branding requirements and may be requested to special mark their animals when conditions on the public lands so require. As with the current regulations, compliance with State livestock provisions is mandatory under the suggested rules as being in the public interest and for the protection of other livestock operators.

4520 Intensive Grazing Management

This part sets out policy and criteria for the application of intensive management of livestock grazing areas. The purpose is to serve as public notice of what will constitute an AMP in connection with the issuance of management permits. Designation of an area capable of being managed as a unit, agreement to a plan of management for the allotment, and

issuance of the management permit collectively constitute the basis for intensive management. The allotment management plan spells out the details of the program.

Allotment management plan objectives spell out the reasons for the management program and the goals to be achieved. Objectives provide a reference point from which to measure progress.

Each grazing system is designed to achieve the objectives established, and it is based on the physiological requirements of selected plants within the allotment. Principles of rest and rotation grazing are used to increase plant vigor and composition. Each allotment management plan allows the cooperator specific limits of flexibility in his operation on the public lands. Flexibility includes discretionary latitude in the number of animals grazed, and may allow for changes in grazing dates. Any modifications above or below the specified limits require application and prior approval, using normal administrative procedures.

At the time that an allotment management plan is initiated, range studies are conducted on the allotment to provide a reference point from which to record conditions. Periodic readings of actual use, utilization, trend, and climate are made thereafter to measure the progress in reaching land management goals.

Upon development of an allotment management plan it is signed by the user and the authorized officer to indicate concurrence. A copy of the AMP is provided the operator, and a copy is made a part of the official district records. The AMP is attached to and made a part of a management permit when the plan is implemented. Plans may be modified in whole or in part to meet changed conditions or requirements. Upon transfer of a preference, the transferee is subject to the provisions of the AMP.

When the parties to a proposed allotment management plan cannot agree on the plan, or they do not wish to concur, a decision will be issued stipulating the grazing system requirements as a condition of a regular permit. The regular permit will specifically set out the number of livestock, and the periods of use and locations where the animals are to be grazed.

If a permittee does not comply with an AMP to which he has agreed, the plan may be cancelled and the grazing system made a condition of a regular permit.

4530 Interim Use

The development of intensive management plans for the public lands, through the Bureau's resource planning system, is a primary goal. The overall objective is to implement an allotment management plan in each area grazed by domestic livestock except as provided in 4220.1(b) of the regulations.

4540 Violations

The proposal is a consolidation and simplification of existing rules. In addition, new provisions have been added concerning littering, the management of wild horses and burros, the placement of poisons, and unauthorized supplemental feeding on the public lands.

Rule against violation of Federal or State law relating to the protection of wildlife and the conservation of other natural resources is also proposed. This does not imply that BLM personnel will undertake the police or supervisory responsibilities of other governmental agencies. Violations have to be related to the grazing use authorized by the permit. The killing of eagles in violation of the Bald Eagle Protection Act is an example of an applicable prohibition under this proposed Subpart.

4550 Penalties

To initiate any proceedings, a written decision must be issued by the authorized officer which clearly outlines the specific violation and the necessary corrective steps required of the user and/or the proposed penalty action to be taken. The alternatives of action and judgments available to the authorized officer depend upon the nature and the severity of the violation. Such decision does not bar normal administrative procedures or appeals.

This part, in general, follows current regulation concepts regarding failure to pay fees due. The proposed rule is intended to obligate a transferee to pay all fees due from the permit acquired (for example,

where a transfer has occurred before the end of the grazing season and bills are issued following grazing pursuant to 4340.1(f)). A major change is in procedure. Each permit sets forth the authorized use (the basic operation) for which the permittee will be sent a "notice of bill"--except when under a management permit. If no change in use is desired, the bill is paid prior to the beginning of grazing. The process would not involve an annual application. An application would be required only when a change in use different from that authorized in the permit is desired.

Consistent with present practice, to allow for latitude in livestock operations but to protect the public interest, the failure to make full use provision provides for the possible revocation of preference to the extent not used. Minor fluctuations below the basic operation level of a regular permit, or below the lower limit of flexibility under a management permit, are not construed as "failure to use." This Subpart is consistent with BLM's range management program needs in that proper livestock use and utilization are very often required in order to perform certain functions in attaining multiple use objectives under an AMP. In addition, available forage should be utilized to meet the Department's objective of maximizing the production of animal products from the public lands.

4560 Changes in Use

An Automatic Data Processing (ADP) system is to be used in the "billing" and the "prior to the season changes in use request" process associated with the new regulations. Interim administrative techniques may be needed until the ADP is fully implemented.

Permits set out the basic operation from which the grazing fee bills are made up (except for AMP's)--also see 4550 of the explanation.

Before the beginning of the grazing season (approximately 45 days), permittees will receive an ADP "notice of bill." If no change in use is contemplated the permittee simply submits his payment before his first authorized date of grazing. If a change is desired for that year only the permittee must submit a written request to the authorized officer at least 30 days in advance of the authorized grazing period for which a change is desired. For example, for a permit which reads 100 cattle May 1 to June 30 the request for modification must be submitted no later than April 1; for a permit which reads 100 cattle March 1 to March 31 and 100 cattle November 1 to November 30 the request for change must be submitted 30 days prior to either of the distinct authorized periods to be modified.

Upon approval of a requested change, a revised "notice of bill" is issued for payment. Upon disapproval, the permittee is notified and the matter is submitted to the advisory board for protest hearing and recommendation. There is no $25 service charge for this "first time" opportunity to change the use to be authorized for the coming year.

When under an AMP, an application for change outside the specified limits of flexibility is made to the authorized officer in writing, and such must be made within 30 days of an authorized grazing period.

After the grazing season or grazing year has begun, any permittee desiring a change from his authorized use must submit a request in writing. Approval for change is discretionary with the authorized officer and may be approved upon satisfactory showing of need. Any approved change which requires the issuance of a revised or new billing is subject to the service charge pursuant to 4340.1(h).

In those regions where year-round public land grazing is practiced, the year will be divided administratively in half. This is to provide the opportunity for a twice-a-year adjustment in authorized numbers without a $25 service charge.

Any livestock forage which becomes available due to a requested change from the use designated on the permit may be allocated at the discretion of the authorized officer to any qualified person by nonrenewable permit for the period during which the change was requested by the original permittee.

4570 Closures to Livestock

In unusual circumstances, such as range drought or wildfire, it may be necessary to temporarily close a grazing area to use by livestock to protect the resource. Widespread notice of a closure will be made to provide a reasonable time period for animal removal. Such closures are interim in nature and have no effect on the grazing preference of the users.

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4580 Range Improvements

BLM's resource planning system will identify the role of the resource use activities for a specific area and it will define the various use conflicts and constraints for such activities. The planning data will also portray the specific projects or the type of facilities, structures or land treatments, if any, to be considered or developed. As a matter of policy, private investment is allowable but will be predicated on the planning dictates for the area.

The construction of livestock management facilities, and in certain cases land treatment, that has been identified in the planning process will be authorized where there is a desire by the users to expend their own funds to further management efforts. Such improvement standards and specifications must be consistent with national environmental policy and completed BLM land use plans where they exist. Improvements authorized must meet the same environmental and engineering standards as those constructed solely by BLM.

Cooperative agreements which place title in the U.S. will normally be utilized. Work authorized under cooperative agreement may provide for all costs to be paid by the users or may provide for a predetermined cost-share arrangement between the users and BLM.

Section 4 and 15 permits which place title in the permittee may be used in those circumstances where there are no Federal funds available and the applicant is willing to provide total funding and he agrees to stipulations of the permit which will assure that multiple-use benefits will be realized.

It is preferred that all planning for an area be completed before approval is given on a request to construct management or development facilities. However, there will be situations where the resource planning has not yet been done. Cooperative agreements or permits may be issued after an environmental analysis through the normal annual work plan process. Where planning has not been completed, special stipulations, along with all of the necessary environmental and engineering requirements, will be made a part of the authorization. These special stipulations will provide for modification or removal of the improvement if incompatible with the land use plan adopted for the area.

In livestock water base areas, facilities necessary for the proper development and use of the base property on public land such as windmills, wells, pumps, storage tanks, and reservoirs may be authorized by permit which vests title with the private individual. In water base areas, the existence of a valid authorization for a water development constitutes control of water property for purposes of meeting qualification requirements.

onstruction authorization will contain those standards and condi-
eemed necessary to protect public values, health and safety.

are a number of existing agreements or permits which authorized
struction of range improvements. In those instances where the
ment constructed seriously damages environmental values, a modi-
on in the project will be requested to reflect needed changes.
the improvement is no longer needed, or the requested change
ot be made by the user, the authorizing document will be can-
and time allowed for salvage of material.

and compensation is consistent with the present regulations
vides for compensation for equity in improvements when a public
isposal occurs.

rt also simplifies procedures for recording interest and obli-
in authorized improvements and provides regulatory base for
s of private interests in range improvements upon assignments
mits.

4600 UNAUTHORIZED USE

4610 Notice

Upon discovery of unauthorized grazing use and identification of the livestock owner, a personal or certified notice will be served. Such notice will provide a reasonable period in which to remove the animals from the public lands and to make settlement, or to show that there had been no violation.

4630 Settlement

Settlement amounts will be computed on two or three different factors depending upon whether any appreciable damage has occurred to public land and property.

Regardless of the time period of an established unauthorized use, a per head base charge, regardless of age, is to be assessed. In addition, the AUM cash rental value on private land, as published by USDA, is to be charged. Damages, if any, are to be applied as an additional assessment. For example, the owner of 12 unauthorized cattle for a 10-day period would be billed a $60 base charge plus 4 AUM's at $4.57 (present rate), for a total of $78.28 (with no damages).

If unauthorized livestock are not timely removed from the public lands, they may be impounded and the costs for such gathering and caring added to the costs outlined above as settlement charges.

When the livestock have been removed but no satisfactory settlement has been made for the unauthorized use, a demand letter is to be sent which sets a date after which other action may be taken.

A grazing permittee who has not made satsifactory settlement will jeopardize his permit. A nonpermittee who has not made satisfactory settlement is subject to action by the Department of Justice.

4640 Impoundment and Disposal

State law may be utilized where the statutes provide ready means for the impoundment and disposal of unauthorized livestock on the public land, or Federal law for such purposes may be followed.

The notice of intent provides for individual or public notice of the intent to gather and impound unauthorized livestock.

After a notice of intent to impound has been issued, if unauthorized use continues periodically, the livestock may be gathered at any time during a 12-month period without further notice. This procedure allows for correcting flagrant and habitual cases of unauthorized grazing.

As humane a means as possible will be used in removing unauthorized livestock.

Timely notice of a pending sale of impounded animals is provided for in this part. The notice will adequately describe the livestock, and will set out the method and requirements for redemption.

If the impounded livestock are not redeemed, they will be sold or otherwise disposed of.

ATTACHMENT 1

MANUAL INSTRUCTIONS

4330 Transfers.

.1 Transfers of Preference. A transfer of all or part of the recognized grazing use may take place by assignment from one individual or group to another providing the transferee meets the requirements to hold a permit under the regulations and the transfer is consistent with the objectives of the Taylor Grazing Act.

.11 Land Base Property. A transfer which entails either all or less than all of the recognized preference must include either all or part of the base property currently a matter of BLM record, or new base property, or may include a combination.

.12 Water Base Property. A transfer which entails all of the recognized preference need not necessarily include all of the base property currently a matter of BLM record, but the water base property platted and made a part of the assignment will be considered as "base water in the aggregate" upon which the grazing capacity of the grazing area is determined. A transfer which entails less than all of the preference must include either a part of the water base property currently a matter of BLM record, or new base property, or may include a combination, any of which will be considered as "base water in the aggregate" upon which the grazing capacity of the grazing area is determined.

.2 Qualifications. A transferee must meet the requirements of 43 CFR 4210.1 to become a valid recipient of an assignment of any part of a recognized preference. It is incumbent upon the transferee to see that he meets these requirements of citizenship and landowner engaged in the livestock business. He attests to these facts when signing the assignment document. BLM's responsibility lies in checking the transfer documents submitted to see that they at face value comply with requirements.

.21 Engaged in the Livestock Business. A completed assignment will be taken by the authorized officer as prima facie evidence that the transferee is in fact engaged in the livestock business and no effort will be made to dispute that assumption unless evidence exists to the contrary. "Engaged in the livestock business" is determined to mean a gainful business where profits to the transferee are or can be derived from livestock products from either an ongoing enterprize or from the enterprize being acquired.

.22 Own or Control Land or Water Base Property. A transferee must have control (own or lease) of base property to be qualified. Such base property must conform to the general objectives of the Taylor Grazing Act, and if it does not the authorized officer may reject a completed assignment. See 4330.34D below.

.23 Citizen. A completed assignment will be taken by the authorized officer as prima facie evidence that citizenship requirements are met and no effort will be made to dispute that assumption unless evidence exists to the contrary.

.3 Procedures.

.31 Executed Assignment. Form 4330-1, Grazing Preference Transfer, Illustration 1, must be submitted properly executed to the authorized officer within 60 days following the date of transfer.

.32 Completing Forms. District employee emphasis will be placed on providing needed data on the livestock operation, the proper forms to be used, and information on correct completion of the forms for an assignment. Deemphasis will be placed on district personnel actually completing the forms, and participants will be encouraged to obtain commercial services (such as a bank, title company or attorney) to do the preparation work.

.33 Conditions. It is the responsibility of the transferee to see that the assignment is properly executed, including notice to a lien holder of record, and that the offered base property generally meets Taylor Grazing Act objectives. The authorized officer will generally examine the assignment for the following base property factors:

A. Location. The offered base property must be in or reasonably near the public land area which is used in support of the livestock operation.

B. Size. Productive capacity or gross area size is immaterial as long as the offered base property generally meets the definition of 4100.0-5(h).

C. Stability of Operations. Is it readily apparent that the stability of livestock operations or intensive range management efforts in the area will be unduly disrupted by recognition of the offered base property?

D. Local Economy. Is it readily apparent that the local economy will be unduly disrupted by recognition of the offered base property?

E. Advice to Lien Holder. Have lien holders of record been timely advised of the assignment by certified notice? Timely advised means far enough in advance to have taken some action if desired.

.34 Action

A. Not Timely Submitted. The authorized officer may, if he deems such action appropriate, issue a decision revoking the grazing preference involved in the transfer whenever the assignment has not been filed within the 60 days required. The decision will be issued to the transferee.

B. Not Properly Executed. Whenever the assignment forms have been improperly completed or required information is lacking the authorized officer will immediately return the assignment to the transferee by certified mail with a copy to the transferor indicating the defects and giving a time period in which to correct the documents.

C. Improper Notice to Lien Holder. Whenever a lien holder of record (one which has recorded his interest in the preference with the authorized officer) has not been properly and timely advised by the transferor, the authorized officer shall treat the assignment as not properly executed in accordance with 4330.34B, with a copy of his notice to the transferee.

D. Base Property Inconsistent. Whenever it is readily apparent that the offered base property, either by location, definition, stability or local economy, is inconsistent with Taylor Grazing Act objectives the authorized officer will:

1. Issue a preliminary decision within 15 days of receipt of the assignment to both the transferor and the transferee indicating that based on initial findings the assignment does not appear to meet regulatory requirements and that a final decision will be issued within 30 days.

2. Issue a final decision to both parties rejecting the assignment on the basis that it does not meet regulatory requirements if in fact the offered base property is clearly inconsistent with Taylor Grazing Act objectives.

.35 Permit Issuance. Whenever an assignment meets regulatory requirements the authorized officer will issue a new permit to the transferee consistent with 4310.

.36 Noncompliance. Whenever it is determined that a permittee no longer qualifies by reason of loss of any mandatory qualifications as set forth under 4210 the authorized officer may revoke the preference on the basis thereof, or he may allow the permittee a reasonable period to properly qualify if the deficiency was created after the assignment and issuance of the permit.

Form 4330-1 ILLUSTRATION 1 (page 1)

GRAZING PERFERENCE TRANSFER

Harlen D. Webster assignor, hereby sets over 100 percent constituting 700 animal unit months (AUM's) of the grazing preference attached to base property of which 600 AUM's are now in active use, which is concurred in by any lien holder on the base property who has been timely and properly notified of this transaction per the documentary evidence attached.

R. E. Smythe assignee, hereby attests to controlling base property and being engaged in the livestock business in or near the district in which the grazing preference is sought pursuant to the regulations, 43 CFR Part 4000; that the base property is platted on the reverse hereof or attached with documentary evidance of control of the property; and that this assignment is subject to the terms and conditions of the existing grazing permit and that all interests and obligations under any range improvement cooperative agreement or permit are transferred.

Harlen D. Webster
(Assignor)

R. E. Smythe
(Assignee)

ACKNOWLEDGEMENT

State of Oregon)
) ss:
County of Harney)

On the 29 day of February, 1973, personally came before me, a notary public in and for said County and State, the within-named both to me personally known to be the identical persons described in and who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year in this certificate first above written.

Nancy E. Moore

[SEAL]

Notary Public in and for the
State of Oregon
Residing at Burns

My commission expires: 12/31, 1975

Encl. 3-26

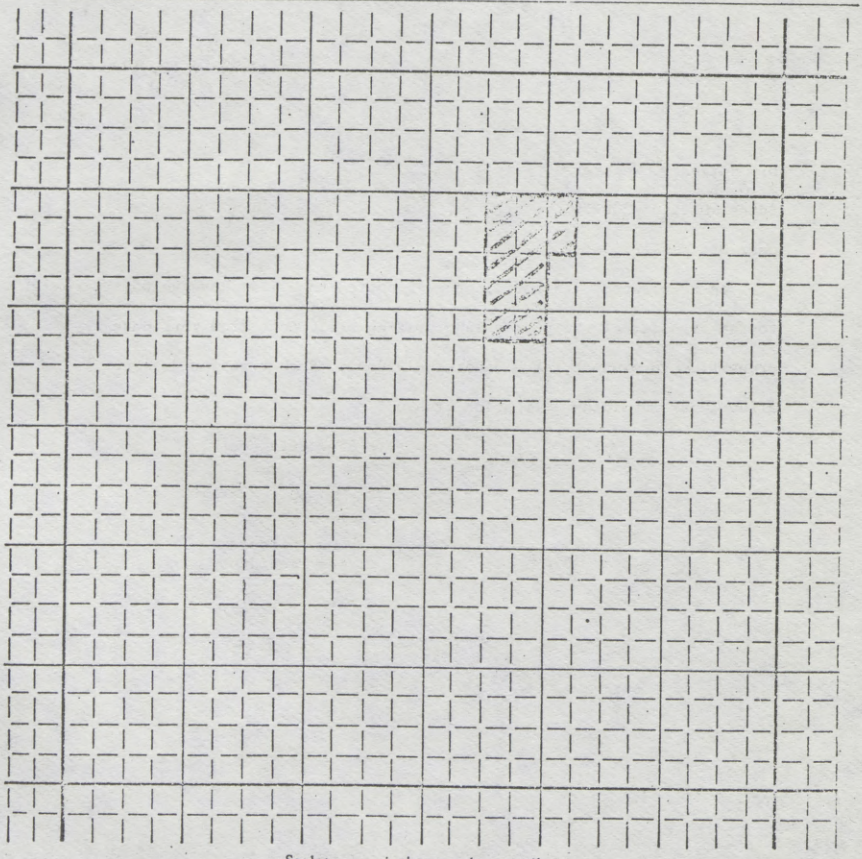
BASE PROPERTY LOCATION PLAT

State	Township	Range
Oregon	23 S.	33E. W.M.

BLM District: Burns

Transferor: Harlen D. Webster
P.O. Box 18, Burns, Oregon 20642

Transferee: R. E. Smythe
Box 46, Hines, Oregon



Scale: inches equals one mile

Date February 29, 1973

Page 1 of 1

ILLUSTRATION 1 (Page 2)

WESTERN BANK & LOAN

1110 6th STREET

PORTLAND, OREGON 20603

January 15, 1973

Mr. Harlen D. Webster
P. O. Box 18
Burns, Oregon 20642

Dear Mr. Webster:

In accordance with your January 5 notice to us, we have no objections to the transfer of the public land grazing preference from your base properties to property of another individual. Such transfer does not affect your remaining obligation with us.

Sincerely yours,

Donald Alder

Donald Alder
Vice President

Encl. 3-28

ILLUSTRATION 1 (page 3)

CONTRACT OF SALE

For ten dollars and other valuable consideration Robert L. and Sallie F. Moore of Route 2, Box 86, Bend, Oregon, sellers, do convey to R. E. Smythe of Box 46, Hines, Oregon, buyer, the E 1/2 of Section 10, the W 1/2 of the NW 1/4 of Section 11 and the N 1/2 of the NE 1/4 of Section 15, all in Township 23 South, Range 33 East, W.M., within Harney County in the State of Oregon, on this 12th day of November 1972.

Sallie F. Moore

Robert L. Moore

R E Smythe

Jessie A. Knell
(witness)

Recorded the 15th day of November 1972 KT

Encl. 3-29

ATTACHMENT 2

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANAGEMENT PERMIT

Issuing Office: Burns

Number: 3602731

Name of Permittee	Address *(Include zip code)*
R. E. SMYTHE	Box 46 Hines, Oregon. 20643

Phone No. *(include area code)* [redacted]

TERM OF PERMIT	
From 3-15-73	To 3-14-83

YOU ARE HEREBY preferenced to utilize national resource lands for grazing livestock to the extent of 600 animla unit months (AUM's) active use and 100 AUM's suspended nonuse within the Grey Butte grazing area 100 percent public land in accordance with the Grey Butte Allotment Management Plan attached hereto and made a part of this permit.

THE UNITED STATES OF AMERICA

By _____
(Authorized Officer)

District Manager
(Title)

March 10, 1973

Encl. 3-30

Senator McCLURE. Senator Hatfield wanted one question asked, and I suspect that you can guess what it is. Will this legislation in any way affect the management of the O. & C. land, or the O. & C. formula?

Mr. HORTON. The answer to that is categorically no with respect to the formula. Of course, general management would be enhanced because all of the provisions, including management tools such as law enforcement authority and a broader more flexible exchange authority, would apply to the O. & C. However, timber resource management and disposition of revenues authorized by present law would not be affected.

Senator McCLURE. Thank you, and I am sure that Senator Hatfield will thank you.

Senator HASKELL. We have gone on a great length here, and I don't think that we will have time before lunch to hear from the next witnesses. So, I will recess the hearing until 1:30 p.m.

Senator McCLURE. Before we recess, could I read a couple of communications into the record at this point?

Senator HASKELL. You certainly may.

I will say, after the Senator from Idaho has directed his two communications in the record, then the hearing will be recessed until 1:30 p.m. The first witnesses will be the representatives from the Forest Products Association.

Senator McCLURE. I have had communications from two groups in Idaho, and I would ask that those communications be made part of the record.

The first communication is from the Idaho Water Users Association, Inc. It is a letter dated March 7, directed to the chairman. The letter is as follows:

The Idaho Water Users Association are pleased to be able to present their statement for the record at this hearing. Our association represents more than two million acres of irrigated land, owned or operated by more than 2,200 individuals.

The IWUA has read and is opposed to the portion of the legislation referred to as the Bureau of Lands Management Organic Act. We are especially in opposition to the section of the Bill repealing the Desert Lands Entry Act. This Act has been responsible for helping to develop thousands of acres of land in Idaho and in the West, and there exists a potential for the development of many thousands of additional acres.

In these times of critical food needs, both within our nation and internationally, we feel that Congress should be supporting any and all measures to promote new agricultural grants in order to build our economy, and sustain life.

The repeal of the Desert Lands Entry Act would be totally contrary to this concept.

Additionally, we urge that Idaho retain all of her existing rights under the Federal Carry Act included within this Organic legislation. There exists the potential for the development of more than a million acres of land in Idaho alone under this portion of the legislation.

In summary, we would strongly urge that you strike the repealer of the Desert Lands Entry Act, and support continued use of the Carry Act in Idaho.

Respectfully submitted, Sherl L. Chapman, Executive Director.

The other communication comes from the Idaho Public Lands Resource Council, signed by Vernon Ravenscroft.

The Idaho Public Lands Resource Council Board of Directors at their annual meeting, March 6, unanimously petitioned the retention of the desert lands law. We object to repealing the language in the BLM Organic Act, also urge that no special new powers in condemnation be included in the Organic Act.

With those communications in the record, the hearing will be in recess, to reconvene at 1:30 p.m.

[Whereupon, at 12:10 p.m., the hearing recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Senator HASKELL. The hearing will come to order, and we will hear the testimony of the National Forest Products Association. I believe that Mr. Hagenstein of the Industrial Forestry Association will be the first speaker.

Because of the situation on the floor this afternoon, I am going to invoke the 5-minute rule of questioning, and I hope the witnesses when they answer questions will not emulate the distinguished Senator from Alabama, who is holding forth on the floor.

Mr. Hagenstein, I am told by counsel, is prepared to go first.

STATEMENT OF W. D. HAGENSTEIN, EXECUTIVE VICE PRESIDENT, INDUSTRIAL FORESTRY ASSOCIATION, PORTLAND, OREG.

Mr. HAGENSTEIN. Thank you, Mr. Chairman.

First, I want to apologize for the error on my statement, I did not find out until yesterday that the name of the subcommittee is now Environment and Land Resources.

My name is W. D. Hagenstein, and I reside in Portland, Oreg. I am executive vice president of the Industrial Forestry Association of that city.

I want to commend the administration and the Congress for addressing themselves to codifying the public lands laws. any of us who participated in the hearings of the public lands review commission were afraid that the report had been filed and forgotten, but this kind of reinforces my belief in the system, that the Congress is really responding to the report of that commission and doing what the commission set out to do to modernize our public lands laws. I commend all of you who have a hand in that.

I have a very brief statement, and I would like to ask that it be included in whole in the record.

Senator HASKELL. The statement will be included in the record in full.

Mr. HAGENSTEIN. We have a few suggestions.

First I would like to say that we support the bill in principle.

Turning over to the middle of page 2, we would like to address ourselves primarily to title IV, which relates to the exchange of rights-of-way and road use and then discuss some of the philosophical considerations in other sections and propose some suggestions for language modification.

Preliminary to discussing title IV in detail, so as to make certain that the rest of the bill relates to it as appropriate, we would suggest insertion in sec. 101(1), after the word "leases" on line 22, page 8, the phrase "grant of easements."

In sec. 101(3) we would also recommend, following the word "leases" on line 10, page 9, the insertion of the phrase "grant of easements."

In sec. 211, we recommend that after the word "patents" in line 16, page 19, the phrase "grant of easements" be inserted.

The foregoing recommendations for insertion of the phrase "grant of easements" will be consistent with the definition contained in sec. 2(f) which sets forth "easement" as the first definition of "right-of-way," and that is on line 15, page 4.

We don't understand the reason for including the burdensome disclosure provisions contained in sec. 401(b), sub (1) and (2). It does not seem to us that such should be applicable to rights-of-way granted over national resource lands for forest protection and management of intermingled or adjacent non-Federal lands.

We also believe that it is appropriate in title IV to add a new section, probably between present secs. 401 and 402, which would authorize and direct the Secretary of the Interior to enter into agreements which would grant easements for forest protection and management of intermingled or adjacent non-Federal lands. We would suggest language similar to that contained in Public Law 88–657, which I have cited here, and I included the two most pertinent sections thereof for your easy inspection.

In sec. 403(a), the word "practicable" in line 13 needs clearer definition. We would suggest that following the word "as" in line 13, the sentence be concluded by adding "may be indicated by the proportionate values involved."

What is being sought here apparently is to do no more surveying than indicated by the circumstances.

Sec. 403(d) directs the Secretary to revise regulations regularly for the apparent purpose of requiring that activities in connection with a specific right-of-way will be in accordance with applicable air and water quality standards and to prevent damage to the environment, property and public health and safety. Any such revisions would be applicable to every right-of-way granted, irrespective of when it was granted.

Because of unknown and possible future changes in requirements, this could mean substantially increased costs to the grantee. So, the

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only way to assure equitable treatment would be to recognize and provide for a compensable interest.

A few general remarks on the granting of easements are pertinent. If S. 507 is modified by use of our suggestions, it would facilitate the exchange of rights-of-way and road use in the intermingled forest lands so common in western Oregon.

The reason for cooperation is obvious when one recognizes that without it there could be thousands of miles of unnecessary duplicating roads, difficulties in obtaining access to property on the part of both the Government and the intermingled private owners and unduly complicating the protection and management of the total land area on which our economy heavily depends, preventing the construction of unnecessary duplicating roads, also has the bonus of less environmental impact, and better access with less cost to everyone.

I would like to comment briefly on some of the specific language in other parts of S. 507 which I believe need smoothing out to prevent unnecessary disruption in the management of the lands protected and managed by the Bureau of Land Management.

In section 3, line 4, page 5, the phrase "maintenance of a livable environment" should be broadly defined to include recognition of the need for commodities, jobs, and the renewability of those resources such as trees, forage, and water, through management and use.

Under the definition in section 2, we would recommend that following the word "resources" on line 24, page 3, the following be inserted: "and the part they play in supplying food, fiber and other necessities."

In section 101(2), lines 4 through 9, page 9, it is obvious to us that this section is intended to cover surface mining of nonrenewable resources, but a broad construction of it might imply that timber harvesting is also covered.

Because the Government itself, as the landowner, undertakes the reforestation of harvested and burned-over forest lands, it should be made abundantly clear that this section does not construe timber harvesting as "extraction."

I might note, parenthetically, that I am co-author of the textbook used in Northern American Schools, and nowhere in that book, Senator, to the best of my recollection, is the word "extraction" used in connection with the harvesting of timber.

We appreciate greatly having the opportunity to discuss S. 507 with your committee, Mr. Chairman, and hope that our suggestions will be helpful in completing your efforts with the bill.

[The prepared statement of Mr. Hagenstein follows:]



INDUSTRIAL FORESTRY ASSOCIATION

SERVING FOREST OWNERS, LOGGERS, WOOD USERS
THROUGHOUT THE DOUGLAS FIR REGION

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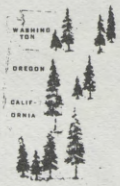

Statement of
W. D. Hagenstein, Executive Vice President
Industrial Forestry Association
Portland, Oregon
on
S. 507
before the
Subcommittee on Public Lands
Senate Committee on Interior and Insular Affairs
Washington, D. C.
March 7, 1975

Mr. Chairman and Members of the Committee:

My name is W. D. Hagenstein and I reside in Portland, Oregon. I am a professional forester. I am a registered professional engineer in the States of Washington and Oregon and a registered professional forester in the State of California. I am Executive Vice President of the Industrial Forestry Association which has been working for a permanent timber supply for the forest industry of the Douglas Fir Region in Western Washington, Western Oregon and Northwestern California for 41 years. Timber supply is our Association's only function and everything we do is directed to that end.

Industrial Forestry Association consists of 116 companies and individuals in the business of growing and harvesting timber and manufacturing lumber, pulp and paper, plywood and veneer, shingles and shakes, hard and soft boards, poles and piling, doors, furniture and other forest products. Our members operate more than 400 wood processing plants and conduct more than 200 different logging operations in our Region. They employ 90,000 people. The annual payroll of their employees is nearly $1 billion.

Because of the importance of the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands to the economy of Western Oregon, the

Members of our Association have a vital interest in any legislation which may affect them. Our Membership owns more than two million acres of forestlands intermingled with the O & C and Coos Bay Wagon Road Grant Lands in Western Oregon and purchases varying amounts, between 25 and 40 per cent, of the total timber offered for public sale from these lands every year. Therefore, we must carefully consider anything which proposes to modify the policies under which these lands are administered and managed and to support any improvement thereof.

Generally, the proposal for a "BLM Organic Act," which is proposed in S. 507, meets wide public acceptance because it is obviously an attempt to consolidate, in one basic statute, various authorities and responsibilities now widely separated in the United States Code.

We would like to address ourselves primarily to Title IV, which relates to the exchange of rights-of-way and road use and then discuss some of the philosophical considerations in other sections and propose some suggestions for language modification.

Preliminary to discussing Title IV in detail so as to make certain that the rest of the Bill relates to it as appropriate, we would suggest insertion in Sec. 101 (1), after the word "leases" on line 22, page 8, the phrase "grant of easements."

In Sec. 101 (3) we would also recommend, following the word "leases" on line 10, page 9, the insertion of the phrase "grant of easements."

Sec. 304 (d) should be amended to require that if any deposit or forfeiture not needed for performing maintenance occurs, such amount be returned to the party making such deposit or forfeiture. In other words, if more monies are estimated than are needed for the performance of maintenance, why should they be covered into the Treasury as a miscellaneous receipt? It is common for people to overestimate costs and in many business relationships between private parties excess estimates are refunded to the depositor once the work has been performed. A business relationship between the Government and a private citizen should be no different.

In Sec. 211 we recommend that after the word "patents" in line 16, page 19, the phrase "grant of easements" be inserted.

The foregoing recommendations for insertion of the phrase "grant of easements" will be consistent with the definition contained in Sec. 2 (f) which sets forth "easement" as the first definition of "right-of-way" (line 15, page 4).

We don't understand the reason for including the burdensome disclosure provisions contained in Sec. 401 (b), (1) and (2). It doesn't seem to us that such should be applicable to rights-of-way granted over national resource lands for forest protection and management of intermingled or adjacent non-Federal lands.

We also believe that it is appropriate in Title IV to add a new Section, probably between present Secs. 401 and 402, which would authorize and direct the Secretary of the Interior to enter into agreements which would grant easements for forest protection and management of intermingled or adjacent non-Federal lands. We would suggest language similar to that contained in Public Law 88-657 (16 U.S.C. 533 and 534), which reads as follows:

> "The Secretary (of Agriculture) 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 (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it.
>
> "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."

Substitute "Interior" for "Agriculture," "BLM" for "Forest Service" and "national resource" for "national forest" for applicability to the Department of the Interior.

In Sec. 403 (a) the word "practicable" in line 13 needs clearer definition. We would suggest that following the word "as" in line 13 the sentence be concluded by adding "may be indicated by the proportionate values involved." What is being

sought here apparently is to do no more surveying than indicated by the circumstances.

Sec. 403 (d) directs the Secretary to revise regulations regularly for the apparent purpose of requiring that activities in connection with a specific right-of-way will be in accordance with applicable air and water quality standards and to prevent damage to the environment, property and public health and safety. Any such revision would be applicable to every right-of-way granted irrespective of when it was granted. Because of unknown and possible future changes in requirements, this could mean substantially increased costs to the grantee. So, the only way to assure equitable treatment would be to recognize and provide for a compensable interest.

In this connection we would also raise the question as to whether the National Environmental Policy Act doesn't already take care of the substance of Sec. 403 (d) because if any activities are considered "significant," they should be studied, but, if not, then the activity should be allowed to proceed expeditiously.

A few general remarks on the granting of easements are pertinent.

If S. 507 is modified by use of our suggestions, it would facilitate the exchange of rights-of-way and road use in the intermingled forest lands so common in Western Oregon. The reason for cooperation is obvious when one recognizes that without it there could be thousands of miles of unnecessary duplicating roads, difficulties in obtaining access to property on the part of both the Government and the intermingled private owners and unduly complicating the protection and management of the total land area on which our economy heavily depends. Preventing the construction of unnecessary duplicating roads also has the bonus of less environmental impact and better access with less cost to everyone.

I would like to comment briefly on some of the specific language in other parts of S. 507 which I believe need smoothing out to prevent unnecessary disruption in the management of the lands protected and managed by the Bureau of Land Management.

In Sec. 3, line 4, page 5, the phrase "maintenance of a livable environment"

should be broadly defined to include recognition of the need for commodities, jobs and the renewability of those resources such as trees, forage and water, through management and use.

Under the definitions in Sec. 2, we would recommend that following the word "resources" on line 24, page 3, the following be inserted, "and the part they play in supplying food, fiber and other necessities."

We wonder whether the intent of the phrase contained in lines 1 and 2, page 4, "not necessarily the combination of uses that will give the greatest economic return or the greatest unit output," won't erect a legal barrier which will allow the agencies not to act when it is clear that they should provide optimum management for the subject lands which in many instances may be imperative to provide Americans with homes, jobs and good local government.

Another question we would raise is about the term "areas of critical environmental concern" in Sec. 2 (e). We believe that if forest and related lands were left unprotected and unmanaged because of designation by the Secretary as "areas of critical environmental concern," just setting them aside by designation, in our opinion, is not enough. They should be protected and managed.

In Sec. 101 (2), lines 4 through 9, page 9, it is obvious to us that this Section is intended to cover surface mining of non-renewable resources, but a broad construction of it might imply that timber harvesting is also covered. Because the Government itself, as the landowner, undertakes the reforestation of harvested and burned-over forest lands, it should be made abundantly clear that this Section does not construe timber harvesting as "extraction."

In Sec. 209, unless the terms "proper land use" and "protection of the public interest" are clearly defined, we would recommend that they be stricken and a period inserted following the word "necessary" on line 21, page 18. If they are left in the Bill, they should be clearly defined because recent Court interpretations of other public land policy laws seem to err on the side of preventing,

prohibiting or severely restricting opportunities for employment, production of essential commodities and contribution of the Federal Government's fair share of the support for local government by the productive management and use of adjacent Federal lands.

We appreciate greatly having the opportunity to discuss S. 507 with your Committee, Mr. Chairman, and hope that our suggestions will be helpful in completing your efforts with the Bill.

Senator HASKELL. Thank you very much, Mr. Hagenstein. Most of your suggestions are of a technical nature, not that they are unimportant, but technical in the sense of clarifying and this type of thing. I would ask the staff, the minority and the majority, to go over them and confer, and see which ones they might feel are meritorious.

Mr. MacCleery, is your statement rather long?

Mr. MACCLEERY. About 8 minutes, or so.

Senator HASKELL. Any other people who are witnesses, if these votes keep on all afternoon, I am going to have to adjourn this hearing to another time, because I don't think it is fair to the people who are testifying, and it is not really fair to me or to any other Senator who wishes to be here, to have this 5-minute type of hearing.

I will be back, Mr. MacCleery, after I go over to the Senate floor, and I will just have to play it by ear from there.

[Whereupon, a recess was taken.]

Mr. QUARLES. It would appear that the situation on the floor precludes receiving further testimony today. Therefore, the hearing will be adjourned, subject to the call of the Chair.

[Whereupon, at 2:35 p.m. the hearing was adjourned, subject to the call of the Chair.]

MANAGEMENT OF NATIONAL RESOURCE LANDS

THURSDAY, MAY 15, 1975

U.S. SENATE,
SUBCOMMITTEE ON ENVIRONMENT AND LAND RESOURCES,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

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

Present: Senators Haskell, Metcalf, Fannin, and Hansen.

Also present: Steven P. Quarles, counsel; Thomas B. Williams, professional staff member; and W. O. Craft, Jr., deputy minority counsel.

Senator HASKELL. The subcommittee will come to order. This is the time and place set for the hearing on S. 507, the National Resource Lands Management Act, and S. 1292, the administration's proposal.

S. 1292 was submitted by the administration too late to be considered at the March 7 hearing. I will, however, insert it in the record at this point.

[The bill and Department report follow:]

94TH CONGRESS
1ST SESSION

S. 1292

IN THE SENATE OF THE UNITED STATES

MARCH 21 (legislative day, MARCH 12), 1975

Mr. HASKELL (for 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, and development of the national resource lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Resource Lands Management Act".

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Sec. 3. Declaration of policy.
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Sec. 9. Appropriations.

TITLE I—GENERAL MANAGEMENT AUTHORITY

Sec. 101. Management.
Sec. 102. Inventory.
Sec. 103. Land use plans.

TITLE II—CONVEYANCE AND ACQUISITION AUTHORITIES

Sec. 201. Authority to sell.
Sec. 202. Disposal criteria.
Sec. 203. Sales at fair market value.
Sec. 204. Size of tracts.
Sec. 205. Competitive bidding procedures.
Sec. 206. Right to refuse or reject offer of purchase.
Sec. 207. Reservation of mineral interests.
Sec. 208. Conveyance of reserved mineral interests.
Sec. 209. Terms of patent.
Sec. 210. Notification to States.
Sec. 211. Authority to issue and correct documents of conveyance.
Sec. 212. Recordable disclaimers of interest in land.
Sec. 213. Acquisition of land.

TITLE III—MANAGEMENT IMPLEMENTING AUTHORITY

Sec. 301. Studies, cooperative agreements, and contributions.
Sec. 302. Service charges, reimbursement payments, and excess payments.
Sec. 303. Working capital fund.
Sec. 304. Deposits and forfeitures.
Sec. 305. Contracts and cadastral survey operations and resource protection.
Sec. 306. Unauthorized use.
Sec. 307. Enforcement authority.
Sec. 308. Cooperation with State and local law enforcement agencies.
Sec. 309. Recordation.

TITLE IV—AUTHORITY TO GRANT RIGHTS-OF-WAY

Sec. 401. Authorization to grant rights-of-way.
Sec. 402. Right-of-way corridors.
Sec. 403. General provisions.
Sec. 404. Terms and conditions.
Sec. 405. Suspension or termination of right-of-way.
Sec. 406. Rights-of-way for Federal agencies.
Sec. 407. Conveyance of lands.
Sec. 408. Existing rights-of-way.
Sec. 409. State standards.
Sec. 410. Effect on other laws.
Sec. 411. Applicant before other Federal agencies.

TITLE V—CONSTRUCTION OF LAW, PRESERVATION OF VALID EXISTING RIGHTS, AND REPEAL OF LAWS

Sec. 501. Construction of law.
Sec. 502. Valid existing rights.
Sec. 503. Repeal of laws relating to disposal of national resource lands.
Sec. 504. Repeal of laws relating to administration of national resource lands.
Sec. 505. Repeal of laws relating to rights-of-way.

DEFINITIONS

SEC. 2. As used in this Act:

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

(b) "National resource lands" means all lands and interests in lands (including the renewable and nonrenewable resources thereof) now or hereafter administered by the Secretary through the Bureau of Land Management, except the Outer Continental Shelf.

(c) "Multiple use" means the management of the national resource lands and their various 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 balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, and harmonious and coordinated management of the various resource without undue impairment of the productivity of the land and the quality of the environment, with consideration being given to the relative values of the resources and not necessarily

to the combination of uses that will give the greatest dollar return or the greatest unit output.

(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 and productivity of the land or its environmental values.

(e) "Areas of critical environmental concern" means areas within the national resource lands where special management attention is required when such areas are developed or used to protect, or where no development is required to prevent irreparable damage to, important historic, cultural, or scenic values, or natural systems or processes, or life and safety as a result of natural hazards.

(f) "Right-of-way" means an easement, lease, permit, or license to occupy, use, or traverse national resource lands granted for the purposes listed in title IV of this Act.

(g) "Holder" means any State or local governmental entity or agency, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title IV of this Act.

DECLARATION OF POLICY

SEC. 3. (a) Congress hereby declares that—

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

(2) sound, long-term management of the national resource lands is vital to the maintenance of a livable environment and essential to the well-being of the American people;

(3) the national interest will be best realized if the national resource lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal, State, and local planning efforts; and

(4) except where disposal of particular tracts is made in accordance with title II, and other applicable laws, the national interest will be best served by retaining the national resource lands in Federal ownership.

(b) Congress hereby directs that the Secretary shall manage the national resource lands under principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, assure consideration of: (i) the environmental quality of such lands to assure their continued value for present and future generations; (ii) such uses as provision of food and habitat for wildlife, fish, and domestic animals, minerals, materials, and energy production, supplying the products of trees and plants, human occupancy and use, and various forms of outdoor recreation, or other uses; (iii) scientific, scenic, historical, archeologi-

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cal, natural ecological, air and atmospheric, water resource, and other public values; (iv) continuation of certain areas in their natural condition, and to assure; (v) evaluating of various demands on such lands in light of national goals; (vi) payment of fair market value by users of such lands except as otherwise provided by law; (vii) opportunity for the public to participate in decisionmaking concerning such lands; and (viii) consultation, cooperation, and, to the maximum extent practicable, coordination of his activities with other interested Federal agencies.

RULES AND REGULATIONS

SEC. 4. The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedure Act (5 U.S.C. 553). Prior to the promulgation of such rules and regulations, the national resource lands shall be administered under existing rules and regulations concerning such lands.

PUBLIC PARTICIPATION

SEC. 5. In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of

standards and criteria for the preparation and execution of plans and programs concerning, and in the management of, the national resource lands.

ADVISORY BOARDS AND COMMITTEES

SEC. 6. In providing for public participation in planning and programing for the national resource lands, the Secretary, pursuant to the Federal Advisory Committee Act (86 Stat. 770) and other applicable law, may establish and consult such advisory boards and committees as he deems necessary to secure full information and advice on the execution of his responsibilities. The membership of such boards and committees shall be representative of a cross section of groups interested in the management of the national resource lands and the various types of use and enjoyment of such lands.

ANNUAL REPORT

SEC. 7. The Secretary shall prepare an annual report which he shall make available to the public and submit to Congress no later than one hundred and twenty days after the close of each fiscal year. The report shall describe, in appropriate detail, activities relating or pursuant to this Act for the fiscal year just ended, any problems which may have arisen concerning such activities, and other pertinent information which will assist the accomplishment of the provisions and purposes of this Act. The report shall contain a detailed

list and description of all transfers of national resource lands out of Federal ownership for the fiscal year just ended. It shall include such tables, graphs, and illustrations as will adequately reflect the fiscal year's activities, historical trends, and future projections relating to the national resource lands.

DIRECTOR

SEC. 8. Appointments made on or after the date of the enactment of this Act to the position of the Director of the Bureau of Land Management, within the Department of the Interior, shall be made by the President, by and with the advice and consent of the Senate.

APPROPRIATIONS

SEC. 9. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act.

TITLE I—GENERAL MANAGEMENT AUTHORITY

MANAGEMENT

SEC. 101. The Secretary shall manage the national resource lands in accordance with the policies and procedures of this Act and with any land use plans which he has prepared, pursuant to section 103 of this Act, except to the extent that other applicable law provides otherwise. Such management shall include—

(1) regulating, through permits, licenses, leases, or such other instruments as the Secretary deems appro-

priate, the use, occupancy, or development of the national resource lands not provided for by other laws: *Provided, however,* That no provision of this Act shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands;

(2) requiring appropriate land reclamation as a condition of use, and requiring performance bonds or other security guaranteeing such reclamation in a timely manner from any person permitted to engage in an extractive or other activity likely to entail significant disturbance to or alteration of the national resource lands;

(3) the prompt development of regulations for the protection of areas of critical environment concern.

INVENTORY

SEC. 102. (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all national resource lands, and their resource and other values (including outdoor recreation and scenic values) giving priority to areas of critical environmental concern. Areas containing wilderness characteristics as described in section 2(c) (1), (2), and (4) of the Act of September 3, 1964 (78 Stat. 890) shall be identified: *Provided,* That such areas be comprised of fifty thousand contiguous, roadless acres or more.

The inventory shall be kept current so as to reflect changes in conditions and in identifications of resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change in the management or use of national resource lands.

(b) The Secretary, where he determines it to be appropriate, may provide (i) means of public identification of national resource lands, including signs and maps, and (ii) State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in the proximity of national resource lands.

LAND USE PLANS

SEC. 103. (a) The Secretary shall, with public participation, develop, maintain, and, when appropriate, revise land use plans for the national resource lands consistent with the terms and conditions of this Act and coordinated so far as he finds feasible and proper, or as may be required by law.

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

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

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

(3) rely, to the extent it is available, on the inventory of the national resource lands, their resources, and other values;

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

(5) consider the relative values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(6) weigh long-term public benefits; and

(7) consider the requirements of applicable pollution control laws including State or Federal air or water quality standards, noise standards, and implementation plans.

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

(d) Wherever any proposed change in the classification of, or permitted uses on, any national resource lands would affect authorization for use of such lands, persons holding leases, licenses, or permits concerning the use to be affected shall be given written notice by the Secretary of such proposed change at least sixty days before it is put into effect.

(e) Areas identified pursuant to section 102 as having wilderness characteristics shall be reviewed pursuant to the procedures set forth in subsections 3 (c) and (d) of the Act of September 3, 1964 (78 Stat. 892–893). The review procedures shall include mineral resource surveys by the United States Geological Survey and the Bureau of Mines: *Provided, however,* That such review shall not, of itself either change or prevent change in the management or use of the national resource lands.

TITLE II—CONVEYANCE AND ACQUISITION AUTHORITIES

AUTHORITY TO SELL

SEC. 201. Except as otherwise provided by law, and subject to the requirements of section 3 of this Act, the Secretary is authorized to sell national resource lands. The national resource lands may be sold if the Secretary, in accordance with the guidelines he has established for sale of national resource lands and after preparation, pursuant to section 103 of this Act, of a land use plan which includes any tract of such lands identified for sale, determines that the sale of such tract will not cause needless degradation of the environment and meets the disposal criteria of section 202 of this Act.

DISPOSAL CRITERIA

SEC. 202. (a) A tract of national resource lands may be transferred out of Federal ownership under this Act only

where, as a result of land use planning required under section 103, the Secretary determines that—

(1) such tract of national resource lands, because of its location and other characteristics, is difficult to manage as part of the national resource lands and is not suitable for management by another Federal agency; or

(2) such tract of national resource lands was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract of national resource lands will serve objectives which cannot be achieved prudently or feasibly on land other than such tract and which outweigh public objectives and values which would be served by maintaining such tract in Federal ownership.

SALES AT FAIR MARKET VALUE

SEC. 203. Sales of national resource lands under this Act shall be at not less than the appraised fair market value as determined by the Secretary.

SIZE OF TRACTS

SEC. 204. The Secretary shall determine and establish the size of tracts of national resource lands to be sold on the basis of the land use capabilities and development requirements of the lands.

COMPETITIVE BIDDING PROCEDURES

SEC. 205. Except as to sales under section 208 hereof, sales of national resource lands under this Act shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper (i) to assure equitable distribution among purchasers of national resource lands, or (ii) to recognize equitable considerations or public policies, including but not limited to a preference to users, he is authorized to sell national resource lands with modified competitive bidding or without competitive bidding.

RIGHT TO REFUSE OR REJECT OFFER OF PURCHASE

SEC. 206. Until the Secretary has accepted an offer to purchase, he may refuse to accept any offer or may withdraw any land or interest in land from sale under this Act when he determines that consummation of the sale would not be consistent with this Act or other applicable law. The Secretary shall accept or reject, in writing, any offer to purchase, made through competitive bid at his invitation, no later than thirty days after the submission of such offer.

RESERVATION OF MINERAL INTERESTS

SEC. 207. Where the United States owns a mineral estate, all conveyances of title issued by the Secretary under this Act, except conveyances under the exchange authority provided in section 213, 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 reservation of the mineral interest to the United States would interfere with or preclude the appropriate use or development of such land, the Secretary may convey the minerals in the conveyance of title in accordance with the provisions of section 208 of this Act.

CONVEYANCE OF RESERVED MINERAL INTEREST

SEC. 208. (a) The Secretary may convey mineral interests owned by the United States where the surface is in non-Federal ownership, regardless of which Federal agency may have administered the surface, if he finds (1) that there are no mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(b) Conveyance of mineral interests pursuant to this section shall be made only to the record owner of the surface upon payment of administrative costs and the fair market value of the interests being conveyed.

(c) Before considering an application for conveyance of mineral interests pursuant to this section, the Secretary shall require the deposit of a sum of money which he deems suffi-

cient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the date obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance. If the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess.

(d) Moneys paid to the Secretary for administrative costs pursuant to subsection (d) of this section shall be paid to the agency which rendered the service and deposited to the appropriation then current.

TERMS OF PATENT

SEC. 209. The Secretary shall insert in any patent or other document of conveyance he issues under this Act such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest.

NOTIFICATION TO STATES

SEC. 210. At least ninety days prior to offering for sale or otherwise conveying national resource lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the gov-

erning body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning, the use of such lands prior to such conveyance.

AUTHORITY TO ISSUE AND CORRECT DOCUMENTS OF CONVEYANCE

SEC. 211. Consistent with his authority to dispose of national resource lands, the Secretary is authorized to issue deeds, patents, and other indicia of title, and to correct such documents where necessary. In addition, the Secretary is authorized to make corrections on any documents of conveyance which have heretofore been issued on lands which would, at the time of their conveyance, have met the description of national resource lands.

RECORDABLE DISCLAIMERS OF INTEREST IN LAND

SEC. 212. (a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law; or (2) the

lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document of disclaimer shall be issued pursuant to this title unless the applicant therefor has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefor has paid to the Secretary the administrative cost of issuing the disclaimer as determined by the Secretary. All receipts shall be credited to the appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as a quitclaim deed from the United States.

ACQUISITION OF LAND

SEC. 213. (a) The Secretary is authorized to acquire, by purchase, exchange, donation, or otherwise, lands or interests therein where necessary for proper management of the national resource lands.

(b) Acquisitions pursuant to this Act shall be consistent with applicable land use plans prepared by the Secretary under section 103 of this Act.

(c) In exercising the exchange authority granted by subsection (a) of this section, the Secretary may accept title to any non-Federal land or interests therein and in exchange therefore he may convey to the grantor of such land or interests any national resource lands or interests therein which, under section 202 of this Act, he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land to be acquired. The values of the lands so exchanged either shall be equal, or if they are not equal, shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require, provided that payment does not exceed 20 per centum of the total value of the lands transferred out of Federal ownership.

(d) Lands acquired by exchange under this section or section 301 (c) which are within the boundaries of units of the National Forest System may be transferred to the Secretary of Agriculture for administration as part of, and in accordance with laws, rules, and regulations applicable to, the National Forest System. Lands acquired by exchange under this section or section 301 (c) which are within the boundaries of national park, wildlife refuge, wild and scenic rivers, trails, or any other system established by Act of Con-

gress may be transferred to the appropriate agency head for administration as part of, and in accordance with the laws, rules, and regulations applicable to, such system.

(e) Lands and interests in lands acquired pursuant to this section or section 301 (c) shall, upon acceptance of title, become national resource lands, and, for the administration of public land laws not repealed by this Act, shall become public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to section 1 of the Taylor Grazing Act (48 Stat. 1269), as amended, they shall become a part of that district.

TITLE III—MANAGEMENT IMPLEMENTING AUTHORITY

STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS

SEC. 301. (a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the national resource lands.

(b) The Secretary may enter into contracts or cooperative agreements involving the management, protection, development, acquisition, and conveying of the national resource lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the national resource lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function, toward the administration of which the contributions were made, and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND EXCESS PAYMENTS

SEC. 302. (a) Notwithstanding any other provision of law, the Secretary may establish filing fees, service fees, and charges, and commissions with respect to applications and other documents relating to national resource lands and may change and abolish such fees, charges, and commissions.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for extraordinary costs with respect to applications and other

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documents relating to national resource lands. The moneys received for extraordinary costs under this subsection shall be deposited with the Treasury in a special account and are hereby appropriated and made available until expended as the Secretary directs. As used in this subsection, "extraordinary costs" include but are not limited to the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities.

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of the national resource lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

WORKING CAPITAL FUND

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

Bureau of Land Management programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Bureau of Land Management.

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

(c) The fund shall be credited with payments from appropriations and funds of the Bureau of Land Management, other agencies of the Department of the Interior, other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated not to exceed $3,000,000 as initial capital of the working capital fund.

DEPOSITS AND FORFEITURES

SEC. 304. (a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary, or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to national resource lands shall be credited to a separate account in the Treasury and are hereby appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on the national resource lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) The Secretary may require a user or users of roads, trails, lands, or facilities under the jurisdiction of the Bureau of Land Management to maintain such roads, trails, lands, or facilities in a satisfactory condition commensurate with the particular use requirements and the use made by each, the extent of such maintenance to be shared by the users in

proportion to such use or, if such maintenance cannot be so provided, to deposit sufficient money to enable the Secretary to provide such maintenance. Such deposits shall be credited to a separate account in the Treasury and are hereby appropriated and made available until expended, as the Secretary may direct, to cover the cost to the United States of the maintenance of any road, trail, lands, or facility under the jurisdiction of the Bureau of Land Management: *Provided*, That nothing in this subsection shall be construed to require the user or uses to provide maintenance or deposits to repair any damages attributable to general public use rather than the specific use or users of such user or users.

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

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

CONTRACTS FOR CADASTRAL SURVEY OPERATIONS AND RESOURCE PROTECTION

SEC. 305. (a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and service,

prior to the passage of an appropriation therefor, for airborne cadastral survey and resource protection operations of the Bureau of Land Management. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

UNAUTHORIZED USE

SEC. 306. The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

ENFORCEMENT AUTHORITY

SEC. 307. (a) Any violation regulations which the Secretary issues with respect to the management, protection, development, acquisition, and conveying of the national resource lands and property located thereon and which the Secretary identifies as being subject to this section shall be

punishable by a fine of not more than $1,000 or imprisonment for not more than twelve months, or both.

(b) For the specific purpose of enforcing any law or regulation relating to lands or resources managed by the Secretary, the Secretary may designate any employee, while within the national resource lands, to: (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(c) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from using the national resource lands in violation of laws or regulations relating to lands or resources managed by the Secretary.

COOPERATION WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES

SEC. 308. In connection with administration and regulation of the use and occupancy of the national resource lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political

subdivision thereof. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of national resource lands.

RECORDATION

SEC. 309. (a) All mining claims under the Mining Law of 1872, as amended and supplemented (30 U.S.C. chapters 2, 12A, and 16 and sections 161 and 162) shall be recorded with the Secretary of the Interior (hereinafter referred to as the Secretary) within one year after the effective date of this Act or within thirty days of location of a claim, whichever is later. Any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any claim which was not valid on the effective date of this Act, or which becomes invalid thereafter.

(b) Any claim recorded pursuant to subsection (a) of this section, for which the claimant has not made application for a patent within three years from the date of recordation, shall be presumed to be invalid and shall be void.

(c) The Secretary is authorized to issue such rules and regulations as are necessary to carry out the purpose of this section. They shall include, but need not be limited to, regulations prescribing the form and substance of the informa-

tion submitted by claimants pursuant to subsection (a) of this section.

(d) Notwithstanding any provision of the Mining Law of 1872, as amended and supplemented (30 U.S.C. chapters 2, 12A, and 16 and sections 161 and 162), the Secretary is authorized to issue such rules and regulations pertaining to prospecting and mining as he deems necessary to protect the environmental quality of lands administered by him. Such regulations shall include, but need not be limited to, requirements for either notification to the Secretary or registration by prospectors or miners prior to commencement of any activity undertaken pursuant to the Mining Law of 1872, and reclamation of affected lands.

TITLE IV—AUTHORITY TO GRANT RIGHTS-OF-WAY

AUTHORIZATION TO GRANT RIGHTS-OF-WAY

SEC. 401. (a) The Secretary is authorized to grant, issue, or renew rights-of-way over, upon, or through the national resource lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than oil,

natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, or water and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry, and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Act of June 10, 1920, as amended (16 U.S.C. 796, 797);

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

(6) roads, trails, highways, railroads, canals, tramways, airways, livestock driveways, or other means of transportation; and

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, or through the national resource lands.

(b) (1) The Secretary shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose any or all plans, contracts, agreements, or other

information or material reasonably related to the use, or intended use, of the right-of-way which he deems necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in such right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary, prior to granting a right-of-way pursuant to this title, may require the applicant to disclose the identity of the participants, in the entity. Such disclosure shall include, where applicable: (1) the name and address of each partner; (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate. Failure to make the disclosures required by this section shall result in rejection of the application.

RIGHT-OF-WAY

SEC. 402. (a) After the Secretary has submitted the report required by section 28(s) of the Mineral Leasing Act of 1920, as amended by the Act of November 16, 1973 (87 Stat. 576), he shall, consistent with applicable land use plans, designate transportation and utility corridors on national resource lands and require that rights-of-way be confined to them where practical and appropriate. In determining whether to require that rights-of-way be confined to them, the Secretary shall take into consideration National and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

(b) In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across national resource lands, the use of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this title.

GENERAL PROVISIONS

SEC. 403. (a) The Secretary shall specify the boundaries of each right-of-way as precisely as is practicable. Each right-of-way shall be limited to the ground which the Secretary determines: (1) will be occupied by facilities which constitute the project for which the right-of-way is given, (2) to be necessary for the operation or maintenance of the project, and (3) to be necessary to protect the environment or public safety. The Secretary may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) The Secretary shall determine the duration of each right-of-way or other authorization to be granted, issued, or renewed pursuant to this title. In determining the duration the Secretary shall, among other things, take into consideration the cost of the facility and its useful life.

(c) Rights-of-way granted, issued, or renewed pursuant to this title shall be given under such regulations or stipulations, in accord with the provision of this title or any other law, and subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, and termination.

(d) The Secretary, prior to granting a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by the Secretary. The Secretary shall issue regulations or impose stipulations which shall include, but shall not be limited to: (1) requirements to insure that activities on the right-of-way will not violate applicable air and water quality standards or applicable transmission, powerplant, and related facility siting standards established by or pursuant to law; (2) requirements designed to control or prevent (A) damage to the environment (including damage to fish and wildlife habitat), (B) damage to public or private property, and (C) hazards to public health and safety; and (3) requirements to protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be regularly revised. Such regulations shall be applicable to every right-of-way granted pursuant to this title, and may be applicable to rights-of-way to be renewed pursuant to this title.

(e) Mineral and vegetative materials, including timber, within or without a right-of-way may be used or disposed of

in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(f) No right-of-way shall be issued for less than the fair market value therefor as determined by the Secretary. The Secretary may, by regulation or prior to promulgation of such regulations, as a condition for consideration of a right-of-way, require reimbursement to the United States for all reasonable administrative and other costs incurred in processing the right-of-way including processing the application, and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such rights-of-way. However, rights-of-way may be granted, issued, or renewed to State or local governments or agencies or instrumentalities thereof, or to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profit-making corporations or business enterprises, for such lesser right-of-way charge or cost reimbursement charges as the Secretary finds equitable and in the public interest.

(g) The Secretary shall promulgate regulations specifying the extent to which holders of rights-of-way under this title shall be liable to the United States for damage or injury incurred by the United States in connection with the rights-of-way. The regulations shall also specify the extent to which such holders shall idemnify or hold harmless the

United States for liabilities, damages, or claims arising in connection with the rights-of-way

(h) Where he deems it appropriate, the Secretary may require as a condition for consideration of a right-of-way that there be furnished a bond, or other security, satisfactory to the Secretary to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary.

(i) The Secretary shall grant, issue, or renew a right-of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title.

TERMS AND CONDITIONS

SEC. 404. Each right-of-way shall contain such terms and conditions as the Secretary deems necessary to (1) carry out the purposes of this Act and rules and regulations hereunder; (2) protect the environment; (3) protect Federal property and monetary interests; (4) manage efficiently national resource lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the national resource lands adjacent to or traversed by said right-of-way; (5) protect lives and property; (6) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and biotic

resources of the area for subsistence purposes; and (7) protect the public interest in the national resource lands.

SUSPENSION OR TERMINATION OF RIGHT-OF-WAY

SEC. 405. Abandonment of the right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and an appropriate administrative proceeding pursuant to title 5, United States Code, section 554, the Secretary determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary shall give written notice to the holder of the ground or grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of

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the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided, however,* That where the failure of the holder to use right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary is not required to commence proceedings to suspend or terminate the right-of-way. This section does not apply to rights-of-way which are permits or licenses.

RIGHTS-OF-WAY FOR FEDERAL AGENCIES

SEC. 406. (a) The Secretary may reserve for the use of any department or agency of the United States a right-of-way over, upon, or through national resource lands, subject to such terms and conditions as he may impose. The provisions of this title shall be applicable to any such right-of-way.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of that other department or agency.

CONVEYANCE OF LANDS

SEC. 407. If under applicable law the Secretary decides to transfer out of Federal ownership, by patent, deed, or

otherwise, any national resource lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576), the lands may be conveyed subject to the right-of-way; however, if the Secretary determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the national resource lands protected, he shall (1) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (2) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

EXISTING RIGHTS-OF-WAY

SEC. 408. Nothing in this title shall have the effect of terminating any rights-of-way or rights-of-use heretofore issued, granted, or permitted by the Secretary. However, with the consent of the holder thereof, the Secretary may cancel such a right-of-way and in its stead issue a right-of-way pursuant to the provisions of this title.

STATE STANDARDS

SEC. 409. The Secretary shall take into consideration

and, to the extent practical, comply with State standards for right-of-way construction, operation, and maintenance if those standards are more stringent than Federal standards and if the national resource lands are adjacent to lands to which such State standards apply.

EFFECT ON OTHER LAWS

SEC. 410. (a) After the date of enactment of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, or through national resource lands except under and subject to the provisions, limitations, and conditions of this title: *Provided,* That any application for a right-of-way filed under any other law prior to the date of enactment of this Act may, at the applicant's option, be considered as an application under this title or the Act under which the application was filed. The Secretary may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of national resource lands for highway purposes pursuant to sections 107 and 317 of title 23, United States Code.

SEC. 411. Applicants before Federal agencies other than the Department of the Interior seeking a license, certificate or other authority for a project which will involve national

resouce lands must simultaneously apply to the Secretary of the Interior for the appropriate authority to use national resource lands and submit to the Secretary all information furnished to the other Federal agency.

TITLE V—CONSTRUCTION OF LAW, PRESERVATION OF VALID EXISTING RIGHTS, AND REPEAL OF LAWS

CONSTRUCTION OF LAW

SEC. 501. (a) Except as provided in section 410, the authority conferred upon the Secretary by this Act is in addition to all other authority vested in him by law, and nothing in this Act shall be deemed to repeal any such other authority by implication.

(b) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States, or—

(1) as affecting in any way any law governing appropriations or use of, or Federal right to, water on national resource lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common

agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands;

(7) as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national resource lands; or

(8) as amending, limiting, or infringing the existing laws providing grants of land to the States.

VALID EXISTING RIGHTS

SEC. 502. All actions by the Secretary under this Act shall be subject to valid existing rights.

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REPEAL OF LAWS RELATING TO DISPOSAL OF NATIONAL RESOURCE LANDS

SEC. 503. (a) The following statutes or parts of statutes are repealed:

1. HOMESTEADS

Act of—	Chapter	Section	Statute at large	43 U.S.C.
Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26: 1097	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 123	164, 169, 218.
May 14, 1880	89		21: 141	166, 185, 202, 223.
June 6, 1900	821		31: 683	166, 223.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1193	
Oct. 17, 1914	325		38: 740	168.
Revised Statute 2297				169.
Mar. 3, 1881	153		21: 511	
Oct. 22, 1914	335		38: 766	170.
Revised Statute 2292				171.
June 8, 1880	136		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 3, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 3, 1891	561	3	26: 1097	
Mar. 3, 1905	1424		33: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
May 17, 1900	479	1	13: 179	179.
Jan. 26, 1901	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40: 597	
Sept. 13, 1918	173		40: 960	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	76		41: 434	186.
Jan. 21, 1922	32		42: 358	
Dec. 28, 1922	19		42: 1067	
June 12, 1930	471		46: 580	
Feb. 25, 1925	326		43: 981	187.
June 21, 1934	690		48: 1185	187a.
May 22, 1902	821	2	32: 203	187b.
June 5, 1900	716		31: 270	188, 217.
Mar. 3, 1875	131	15	18: 420	189.
July 4, 1884—Only last paragraph of sec. 1.	180		23: 96	190.
Mar. 1, 1933	160	1	47: 1418	190a.

The following words only: "*Provided*, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 43, sec. 190)."

Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32: 384	203.
Mar. 3, 1879	191		20: 472	204.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		24: 22	206.
Aug. 21, 1916	361		39: 518	207.
June 3, 1924	240		43: 357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26:391	212.

The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the lands laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act:"

Mar. 3, 1891	561	17	26: 1101	

The following words only: "and that the provision of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."

Act of—	Chapter	Section	Statute at large	43 U.S.C.
Apr. 28, 1904	1776		33: 527	213.
Aug. 3, 1950	521		64: 398	
Mar. 2, 1889	381	6	25: 854	214.
Feb. 20, 1917	98		39: 925	215.
Mar. 4, 1921	162	1	41: 1433	216.
Feb. 19, 1909	160		35: 639	218.
June 13, 1912	166		37: 132	
Mar. 3, 1915	84		38: 953	
Mar. 3, 1915	91		38: 957	
Mar. 4, 1915	150	2	38: 1163	
July 3, 1916	220		39: 344	
Feb. 11, 1913	39		37: 666	218, 219.
June 17, 1910	298		36: 531	219.
Mar. 3, 1915	91		38: 957	
Sept. 5, 1916	440		39: 724	
Aug. 10, 1917	52	10	40: 275	
Mar. 4, 1915	150	1	38: 1162	220.
Mar. 4, 1923	245	1	42: 1445	222.
Apr. 28, 1904	1801		33: 547	224.
Mar. 2, 1907	2527		34: 1224	
May 29, 1908	220	7	35: 466	
Aug. 24, 1912	371		37: 499	
Aug. 22, 1914	270		38: 704	231.
Feb. 25, 1919	21		40: 1153	
July 3, 1916	214		39: 341	232.
Sept. 29, 1919	64		41: 288	233.
Apr. 6, 1922	122		42: 491	233, 272, 273.
Mar. 2, 1889	381	3	25: 854	234.
Dec. 29, 1894	14		28: 599	
July 1, 1879	63	1	21: 48	235.
Dec. 20, 1917	6		40: 430	236.
July 24, 1919	26	Next to last paragraph only.	41: 271	237.
Mar. 2, 1932	69		47: 59	237a.
May 21, 1934	320		48: 787	237b.
May 22, 1935	135		49: 286	237c.
Aug. 19, 1935	560		49: 659	237d.
Mar. 31, 1938	57		52: 149	
Apr. 20, 1936	239		49: 1235	237e.
July 30, 1956	778	1, 2, 4	70: 715	237f, g, h.
Mar. 1, 1921	102		41: 1202	238.
Apr. 7, 1922	125		42: 492	
Revised Statute 2308				239.
June 16, 1898	458		30: 473	240.
Aug. 29, 1916	420		39: 671	
Apr. 7, 1930	108		46: 144	243.
Mar. 3, 1933	198		47: 1424	243a.
Mar. 3, 1879	192		20: 472	251.
Mar. 2, 1889	381	7	25: 855	252.
June 3, 1878	152		20: 91	253.
Revised Statute 2294				254.
May 26, 1890	355		26: 121	
Mar. 11, 1902	182		32: 63	
Mar. 4, 1904	394		33: 59	
Feb. 23, 1923	105		42: 1281	
Revised Statute 2293				255.
Oct. 6, 1917	86		40: 391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service"	37: 925	256.
May 13, 1932	178		47: 153	256a.
June 16, 1933	99		48: 274	
July 26, 1935	419		49: 504	
June 16, 1937	361		50: 303	
Aug. 27, 1935	770		49: 909	256b.
Sept. 30, 1890	J. Res. 59		26: 684	261.
June 16, 1880	244		21: 287	263.
Apr. 18, 1904	25		33: 589	
Revised Statute 2304				271.
Mar. 1, 1901	674		31: 847	271, 272.
Revised Statute 2305				272.
Feb. 25, 1919	37		40: 1161	272a.
Dec. 28, 1922	19		42: 1067	
Revised Statute 2306				274.
Mar. 3, 1893	208		27: 593	275.

The following words only: "*And provided further:* That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."

Aug. 18, 1894	301	Only last paragraph of section headed "Surveying the Public Lands"	28: 397	276.
Revised Statute 2309				277.
Revised Statute 2307				278.
Sept. 21, 1922	357		42: 990	
Sept. 27, 1944	421		58: 747	279–283.
June 25, 1946	474		60: 308	279.
May 31, 1947	88		61: 123	279, 280, 282.
June 18, 1954	306		68: 253	279, 282.
June 3, 1948	399		62: 305	283, 284.
Dec. 29, 1916	9	1–8	39: 862	291–298.
Feb. 28, 1931	328		46: 1454	291.
June 9, 1933	53		48: 119	291.

Act of—	Chapter	Section	Statute at large	43 U.S.C.
June 6, 1934	274		46: 469	292.
Oct. 25, 1918	195		40: 1016	293.
Sept. 29, 1919	63		41: 287	294, 295.
Mar. 4, 1923	245	2	42: 1445	302.
Aug. 21, 1916	361		39: 518	1075.
Aug. 28, 1937	876	3	50: 875	1181c.
2.—DESERT LAND ENTRIES				
Mar. 3, 1877	107	2, 3	19: 377	322–323, 325.
Mar. 3, 1891	561	2	26: 1096	327–329.
Except the words: ". . . all acts and parts of acts in conflict with this act are hereby repealed."				
Jan. 6, 1921	12		41: 1086	
Mar. 28, 1908	112		35: 52	324, 326, 333.
Feb. 27, 1917	134		39: 946	330.
Mar. 1, 1921	102		41: 1202	331.
Dec. 15, 1921	3		42: 348	
Aug. 7, 1917	48		40: 250	332.
Apr. 30, 1912	101		37: 106	334.
Feb. 25, 1925	329		43: 982	336.
July 30, 1956	778		70: 715	336a–d.
Mar. 4, 1915	147	5	38: 1161	335, 337, 338.
Mar. 21, 1918	26		40: 458	
Mar. 4, 1929	687		45: 1548	339.
Feb. 14, 1934	9		48: 349	
3. SALE AND DISPOSAL LAWS				
Mar. 3, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1898	344	2	30: 418	675.
Revised Statute 2365				676.
Revised Statute 2357				678.
June 15, 1880	227	3, 4	21: 238	679, 680.
Mar. 2, 1889	381	4	25: 854	681.
Mar. 1, 1907	2286		34: 1052	682.
June 1, 1938	317		52: 609	682a-e.
July 14, 1945	298		59: 467	
June 8, 1954	270		68: 239	
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2368				691.
Revised Statute 2365				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35: 645	
May 21, 1936	353	The 2 provisos only.	44: 591	
Revised Statute 2375				698.
Revised Statute 2376				699.
Mar. 2, 1889	381	1	25: 854	700.
4. TOWNSITE RESERVATION AND SALE				
Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68: 792	
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2386				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19: 392	725–727.
Mar. 3, 1891	561	16	26: 1101	728.
July 9, 1914	138		38: 454	730.
Feb. 9, 1903	531		32: 820	731.
5. DRAINAGE UNDER STATE LAWS				
May 20, 1908	181	1–7	35: 171	1021–1027.
Mar. 3, 1919			40: 1321, ch. 113	1028.
May 1, 1958	Public Law 85–387.		72: 99	1029–1034.
Jan. 17, 1920	47		41: 392	1041–1048.

6. ABANDONED MILITARY RESERVATION

Act of—	Chapter	Section	Statute at large	43 U.S.C.
July 5, 1884	214	5	23: 104	1074.
Aug. 21, 1916	361		39: 518	1075.
Mar. 3, 1893	208		27: 593	1076.
The following words only: "*Provided*, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."				
Aug. 23, 1894	314		28: 491	1077, 1078.
Feb. 11, 1903	543		32: 822	1079.
Feb. 15, 1895	92		28: 664	1080, 1077.
Apr. 23, 1904	1496		33: 306	1081.

7. PUBLIC LANDS: OKLAHOMA

May 2, 1890	182	Last paragraph of sec. 18 and secs. 20, 21, 22, 24, 27.	26: 90	1091–1094, 1096, 1097.
Mar. 3, 1891	543	16	26: 1026	1098.
Aug. 7, 1946	772	1, 2	60: 872	1100–1101.
Aug. 3, 1955	498	1–8	69: 445	1102–1102g.
May 14, 1890	207		26: 109	1111–1117.
Sept. 1, 1893	J. Res. 4		28: 11	1118.
May 11, 1896	168	1, 2	29: 116	1119.
Jan. 18, 1897	62	1–3, 5, 7	29: 490	1131–1134.
June 23, 1897	8		30: 105	
Mar. 1, 1899	328		30: 966	

8. SALES OF ISOLATED TRACTS

Revised Statute 2455				1171.
Feb. 26, 1895	133		28: 687	
June 27, 1906	3554		34: 517	
Mar. 28, 1912	67		37: 77	
Mar. 9, 1928	164		45: 253	
June 28, 1934	865	14	48: 1274	
July 30, 1947	383		61: 630	
Apr. 24, 1928	428		45: 457	1171a.
May 23, 1930	313		46: 377	1171b.
Feb. 4, 1919	13		40: 1055	1172.
May 10, 1920	178		41: 595	1173.
Aug. 11, 1921	62		42: 159	1175.
May 19, 1926	337		44: 566	1176.
Feb. 14, 1931	170		46 :1105	1177.

ALASKA SPECIAL LAWS

Mar. 3, 1891	561	11	26: 1099	732.
May 25, 1926	379		44: 629	733–736.
May 29, 1963	Public Law 88–34		77: 52	
July 24, 1947	305		61: 414	738.
May 14, 1898	299	1	30: 409	270.
Mar. 3, 1903	1002		32: 1028	
Apr. 29, 1950	137	1	64: 94	
Aug. 3, 1955	496		69: 444	270, 687a–2.
Apr. 29, 1950	137	2–5	64: 95	270, 270–5.
July 11, 1956	571	2	70: 529	270–6, 270–7, 687a.
July 8, 1916	238		39: 352	270–8, 270–9,
June 28, 1918	110		40: 632	270–10, 270–13, 270.
July 11, 1956	571	1	70: 528	
Mar. 8, 1922	96	1	42: 415	270–11.
Aug. 23, 1958	Public Law 85–725	1, 4	72: 730	
Aug. 17, 1961	Public Law 87–147		75: 384	270–13.
Oct. 3, 1962	Public Law 87–742		76: 740	
Apr. 13, 1926	121		44: 243	270–15.
Apr. 29, 1950	134	3	64: 93	270–16, 270–1.
May 14, 1898	299	10	30: 413	270–4.
Mar. 3, 1927	323		44: 1364	687a to 687a–5.
May 26, 1934	357		48: 809	
Aug. 23, 1958	Public Law 85–725	3	72: 730	
Mar. 3, 1891	561	13	26: 1100	687a–6.
Aug. 30, 1949	521		63: 679	687b to 687b–4.
July 19, 1963	Public Law 88–66		77: 80	687b–5.

10. PITTMAN UNDERGROUND WATER ACT

Sept. 22, 1922	400		42: 1012	356.

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

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

(c) (1) The Act of March 3, 1877, as amended (19 Stat. 377; 43 U.S.C. 321, 322, 323, 325, 327–329), is repealed, except that portion of section 321 of title 42, United States Code, reading as follows: "The water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights.".

(2) Section 321 of title 43, United States Code, is amended as follows: "*Provided, however,* That nothing contained in this Act shall be deemed to abrogate or extinguish any claim to or ownership of rights under, or adjacent to lands withdrawn from the public domain.".

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

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

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

Section 3 of the Act of August 30, 1949 (63 Stat. 679, ch. 521, 43 U.S.C. 678b–2), is amended to read:

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

REPEAL OF LAWS RELATING TO ADMINISTRATION OF NATIONAL RESOURCE LANDS

SEC. 504. The following statutes or parts of statutes are repealed:

Act of—	Chapter	Section	Statute at Large	43 U.S.C.
1. Mar. 2, 1895	174		28: 744	176.
2. June 28, 1934	865	8	48: 1272	315g.
June 26, 1936	842	3	49: 1976, Title I	
June 19, 1948	548	1	62: 533	
July 9, 1962	Public Law 87-524.		76: 140	315g-1.
3. Aug. 24, 1937	744		50: 748	315p.
4. Mar. 3, 1909	271	2d proviso only	35: 845	772.
June 25, 1910	J. Res. 40		36: 884	
5. June 21, 1934	689		48: 1185	871a.
6. Revised Statute 2447				1151.
Revised Statute 2448				1152.
7. June 6, 1874	223		18: 62	1153, 1154.
8. January 28, 1879	30		20: 274	1155.
9. May 30, 1894	87		28: 84	1156.
10. Revised Statute 2450				1161.
Feb. 27, 1877	69	1	19: 244	

The following words only: "Section twenty-four hundred and fifty is amended by striking out, in the fourth line, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior' ".

Revised Statute 2451				1162.
Feb. 27, 1877	69	1	19: 244	

The following words only: "Section twenty-four hundred and fifty-one is amended by striking out, in the first and second lines, the words 'Secretary of the Treasury' and inserting the words 'Secretary of the Interior' ".

Revised Statute 2456				1163.
Sept. 20, 1922	350		48: 857	

The words: ". . . and sections 2450, 2451, and 2456 be amended to read as follows:" and all words following in the Act.

Revised Statute 2457				1164.
11. Mar. 3, 1891	561	7	26: 1098	1165.
12. Revised Statute 2471				1191.
Revised Statute 2472				1192.
Revised Statute 2473				1193.
13. July 14, 1960	Public Law 86-649	101-202(a), 203-204(a), 301-303	74: 506	1361, 1362, 1363-1383.
14. Sept. 26, 1970	Public Law 91-429		84: 885	1362a.
15. July 31, 1939	401	1,2	53:1144	

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

SEC. 505. (a) The following statutes or parts of statutes are repealed insofar as they apply to National Resource Lands:

Act of—	Chapter	Section	Statute at large	43 U.S.C.
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	335		29: 599	664.
Mar. 3, 1899	427	1	30: 1233	665, 958 (16 U.S.C. 525).

The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."

Act of—	Chapter	Section	Statute at large	43 U.S.C.
Mar. 3, 1875	152		18: 482	934–939.
May 14, 1898	299	2–9	30: 409	942–1 to 942–9.
Feb. 27, 1901	614		31: 815	943.
June 26, 1906	3548		34: 481	944.
Mar. 3, 1891	561	18–21	26: 1101	946–949.
Mar. 4, 1917	184	1	39: 1197	
May 26, 1926	409		44: 668	
Mar. 1, 1921	93		41: 1194	950.
Jan. 13, 1897	11		29: 484	952–955.
Mar. 3, 1923	219		42: 1437	
Jan. 21, 1895	37		28: 635	951, 956, 957.
May 14, 1896	179		29: 120	
May 11, 1898	292		30: 404	
Mar. 4, 1917	184	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	961 (16 U.S.C. 5, 420, 523.)

Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service".

May 27, 1952	338		66: 95	
May 21, 1896	212		29: 127	962–965.
Apr. 12, 1910	155		36: 296	966–970.

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

Act of—	Chapter	Section	Statute at large	U.S. C.
Revised Statute 2477				43 U.S.C. 932.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

March 6, 1975

Dear Mr. President and Dear Mr. Speaker:

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

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

The national resource lands administered by the Secretary of the Interior through the Bureau of Land Management comprise 60% of all Federal lands. 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 irreplacable 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 in Federal ownership for the benefit of the general public, these lands have inherited an archaic and often conflicting conglomeration of laws which govern their use.

From 1812 to 1946, these lands were under the custodial administration of the General Land Office in the Department of the Interior. Its primary job was to survey the land and convey it to qualified applicants. The dust storms and other distress of the 1930's focused national attention on western lands. In 1934, the Taylor Grazing Act brought a large measure of protection and management to the "forgotten lands" in the West. For the purpose of managing grazing of the western lands, the Grazing Service was created within the Department of the Interior.

From 1934 to 1946, the Grazing Service and the General Land Office shared administration of the western range. The Bureau of Land Management was created in 1946 primarily through consolidation of the functions of these two existing agencies. The variety of responsibilities of the Bureau of Land Management is extraordinary among the Federal resource management agencies:

-- It has exclusive jurisdiction over and responsibility for managment of 450 million acres of national resource lands. In addition, BLM has some management responsibilities on millions of acres of withdrawn lands.

-- In cooperation with the Geological Survey, it has responsibilities for administration of the mineral laws on more than 800 million acres of land including public domain, acquired lands and lands in which the United States has reserved mineral interests. In addition, BLM administers the mineral leasing program on the Outer Continental Shelf.

-- It keeps the basic public land records and does land boundary surveys for most Federal lands.

Despite the extensive responsibilities of BLM, Congress has never clearly defined BLM's mission or made a comprehensive grant of authority to BLM to accomplish its mission. Unlike other Federal conservation agencies such as the National Park Service and the National Forest Service, the mission and authority of BLM must be gleaned from some three thousand land laws which have accumulated over some 170 years. This piecemeal collection of laws is seriously inadequate, incomplete, and sometime conflicting.

Although the Bureau of Land Management is responsible for more Federal land than any other Federal agency, its authorization to administer the land is inadquate. For example, BLM has insufficient sale and exchange authority and has no general authority to enforce its rules and regulations. It does not have essential administrative authority enjoyed by other Federal agencies, such as really workable exchange authority, or a working capital fund and authority to contract with State and local law enforcement agencies for protection of Federal lands and their uses. The bill transmitted herewith would provide the basic mission statement, and authority for management, protection, development, sale and administration national resource lands. It would be a Congressional declaration, for the first time, of national policies governing the use and management of the national resource lands and would provide specific guidelines for the management of these vast lands.

The format of the bill is designed in view of the long-range needs for a legislative base for the management of the national resource lands, as pointed out in various analyses, including that of the Public Land Law Review Commission. Each title of the proposal is designed to permit separate consideration of its provision and to permit modifications without review of other titles. It provides for a separte repealer title, to consolidate administrative authority in one act and eliminate archaic laws.

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Title I of the proposal, the "National Resource Lands Management Act", declares a national policy that these lands be managed under the principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, protect the quality of environment, including requiring appropriate land reclamation as a condition for use.

It directs the Secretary of the Interior to inventory the national resource lands and to develop comprehensive land use plans for such lands, giving priority to areas of critical environmental concern. "Areas of critical environmental concern" are defined to include, among others, important natural systems and scenic or historic areas. The bill also directs the Secretary to identify land suitable for wilderness study, and to review and make recommendations to Congress for inclusion of eligible land within the Wilderness System.

Title II, Conveyance and Acquisition Authorities, would provide modern disposal authority for the Secretary to sell by competitive bidding national resource lands at not less than fair market value, when management of those lands would be significantly improved or when such disposal would serve important public objectives which cannot be prudently and feasibly achieved on land other than the national resource lands, or when the lands are not suitable for Federal purposes. Under certain circumstances it would authorize conveyance of mineral interests in lands to the surface owner if certain criteria are met. Acquisition of lands needed for proper management of national resource lands would be authorized.

Title III, Management Implementing Authority, would provide modern land management tools and procedures designed to facilitate achievement of the goals and objectives established for the national resource lands. Among other things, it would establish a working capital fund that would afford a more efficient method of accounting for various programs and service operations of the Bureau of Land Management.

It would significantly facilitate management of the national resource lands by making violation of laws and regulations pertaining to them a crime and by vesting enforcement authority in certain designated Departmental employees. In addition, the Secretary would be authorized to cooperate with State and local law enforcement agencies on national resource lands and to reimburse them for extraordinary services on national resource lands.

Title IV provides uniform and comprehensive authority for the Secretary to grant rights-of-way for purposes ranging from roads, trials and canals to powerlines and pipelines other than oil and gas pipelines. Presently this authority must be gleaned from numerous, often overlapping laws.

Title V of the proposal would repeal a number of obsolete, duplicative, or superseded laws. These include a hodgepodge of land disposal laws, and a number of other laws relating to fees, charges, and other administrative matters.

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

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

Sincerely yours,

Jack Horton

Assistant Secretary of the Interior

Honorable Nelson A. Rockefeller
President of the
Senate
Washington, D. C. 20510

Enclosure

Identical letter to:

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D.C. 20515

Senator HASKELL. Our first witness will be the Honorable John McGuire, Chief, U.S. Forest Service.

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

Chief MCGUIRE. Mr. Chairman and members of the committee, we appreciate this opportunity to present our views on legislation pertaining to the management of the national resource lands and the amendments to S. 507 which would be applicable to Federal lands, including national forest system lands.

This Department supports the need and desirability of providing the Secretary of the Interior with strong statutory authority for the retention and management of the lands now administered by the Bureau of Land Management.

The administration's proposal is contained in S. 1292 and we recommend that it be enacted in lieu of S. 507. Witnesses from the Department of the Interior have previously testified on the administration's proposal and its relationship to S. 507.

We defer to the Secretary of the Interior with regard to a comparison and analysis of the two bills. We would like to concentrate our testimony on the proposed amendment to S. 507 which would add a new title.

The new title would provide additional statutory direction for Federal and State coordination and cooperation in the planning and management of Federal and adjacent non-Federal lands.

S. 507 and S. 1292 are applying now only to lands administered by the Bureau of Land Management. Inclusion of the new title, as proposed in the amendment, would expand the application of the legislation to other Federal lands managed by the Secretary of the Interior, the Secretary of Agriculture, and other departments and agencies.

We do not recommend the adoption of the amendment to S. 507. The issue raised by the S. 507 amendment is the complex interrelationship between national, State, and local purposes and the question of how to blend national goals and programs for Federal lands with the goals and programs of State and local governments on non-Federal lands.

The national forests were created and are administered for national purposes. The Secretary of Agriculture has the responsibility to insure that all national forest system lands are managed in consonance with these national purposes.

The Forest and Rangeland Renewable Resources Planning Act of 1974 provided emphasis on the need for long-range planning to meet national needs.

This act also provides for appropriate coordination with State and local governments. We interpret the provisions of section 601 of the amendment as requiring the coordination of Federal land planning with adjacent non-Federal land planning, except in cases of paramount national interest, as leading to a focus on local issues and purposes in land planning rather than on national purposes.

There is a probability of many small decisions relating to Federal coordination with State and local land use plans which could

on a cumulative basis act to block or delay the attainment of programs nationally.

We view the procedural requirements of section 601(b) and section 603 of the amendment as unduly cumbersome and duplicative of existing policies and practices.

The Executive Office of the President through the Office of Management and Budget in furtherance of title IV of the Intergovernmental Cooperation Act of 1968, section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and the National Environmental Policy Act of 1969 issued Circulars A–85 and 95 which provide a comprehensive intergovernmental review and coordination procedure applicable to Federal agency rulemaking and Federal assistance programs and projects.

Part II of OMB Circular A–95 requires that agencies having responsibilities for direct Federal development, including the acquisition, use, and disposal of Federal land and real property will consult with Governors and local elected officials, as well as with A–95 clearinghouses, usually comprehensive planning agencies, to assure consistency of Federal plans and projects with State, area wide, and local plans and programs.

Senator HASKELL. Are you talking about a statute or regulations?

Chief MCGUIRE. They contain direction but they elaborate on such laws as the Intergovernmental Cooperation Act and the National Environmental Policy Act.

A–95 procedures are also applicable to the development and review of environmental statements prepared pursuant to the National Environmental Policy Act.

We view these procedures as more appropriate than establishing a new system of ad hoc Federal and State joint committees to review jurisdictional conflicts and inconsistencies between Federal plans and State and local plans.

Present procedures are aimed at providing Federal and State coordination over a wide range of Federal and State interests rather than a separate procedure applicable to only one aspect of Federal, State coordination.

We are also concerned that the proposed ad hoc committee procedures contained in the amendments do not appropriately recognize the role and responsibility of Federal officials, other than the Secretary of the Interior, in cooperating and consulting with State Governors and other State officials.

The Secretary of Agriculture through the Forest Service, for example, has broad responsibilities, carried out through the State foresters or other State officials, to coordinate insect, disease and fire control activities on both Federal and adjacent non-Federal lands.

We also provide a broad range of technical assistance regarding agricultural and forest land resources to State planning groups for use in their water and related land resource planning.

We are also concerned with the provisions of section 601(b). This section appears to expand on the requirements of the National Environmental Policy Act of 1969 by requiring statements to be prepared on the consistency of Federal policies and programs with State and local land-use planning.

This would be a time-consuming process, duplicating existing coordinating procedures and present NEPA requirements.

The National Environmental Policy Act now requires the preparation of environmental statements on major Federal actions significantly affecting the environment.

Our guidelines for the preparation of environmental statements require that the relationship of a proposed action to land use plans, policies, and controls for the affected area be described.

The Council on Environmental Quality and agency guidelines provide for the comment and review of environmental statements by affected State and local agencies in accordance with the procedures set forth in OMB Circular A–95.

We believe that environmental statement and the associated review procedures established under the National Environmental Policy Act provide an appropriate level of review of Federal actions as they relate to State and local concerns.

This concludes my formal statement. I will be happy to answer questions.

Senator HASKELL. Thank you, Chief. I suppose you and I could agree on this. If we are going to have a land resource planning assistance bill and ask the States to do some planning, particularly in western States, where there is so much Federal land, we have to be sure the Federal Government is in gear.

I guess we could start with that premise and then I guess the question is how best to get the job done. Your suggestion is, present procedures get the job done principally through these OMB Circulars.

Chief MCGUIRE. That is correct, Mr. Chairman. That is the principal guideline, but we do agree the job needs to be done.

The States vary quite a bit. The Federal Government also varies. In a State, such as yours, where land planning must be closely coordinated—other States, such as Kansas, Nebraska, Oklahoma, the situation is quite a bit different, as far as we are concerned.

I think we need to work out the best procedures for each State, rather than make them all conform to a single pattern.

Senator HASKELL. I would agree with that. Counsel has just informed me that most of the Western States have criticized this amendment as being too heavily balanced toward the Federal Government.

I gather that your view is quite the opposite.

Chief MCGUIRE. It depends on what sections of the amendment you read, Mr. Chairman.

Senator HASKELL. I see. I wonder, Chief, if it would be possible—maybe you have done all that you can in your statement—for you to indicate how we could best achieve this coordination.

But, if you have any further thoughts on the subject, we would appreciate it if you would send those our way. I hate to depend on OMB regulations—I do ont think that is a good basis to work from.

Chief MCGUIRE. We certainly will, Mr. Chairman.

Senator HASKELL. Thank you very much, Chief McGuire. Our next witness is John Goodier, appearing on behalf of the Governor of Wyoming.

Mr. Goodier, it is good to welcome you here.

STATEMENT OF JOHN GOODIER, CHIEF, MINERAL DEVELOPMENT DIVISION, WYOMING DEPARTMENT OF ECONOMIC PLANNING AND DEVELOPMENT, APPEARING ON BEHALF OF HON. ED HERSCHLER, GOVERNOR OF THE STATE OF WYOMING

Mr. GOODIER. In view of the long list of people who will testify later on, I think most of the committee has a copy of our prepared statement and I will summarize it as I go through.

Senator HASKELL. That is fine. Submit it for the record and then just summarize it.

Mr. GOODIER. My name is John T. Goodier and I am chief of the Mineral Development Division of the Wyoming Department of Economic Planning and Development and I am here on behalf of the Governor of the State of Wyoming.

We find S. 507, the National Resource Land Management Act, is a very important bill to Wyoming, since out of Wyoming some 62 million acres, approximately 48 percent, is controlled by various Federal agencies.

The Bureau of Land Management administers about 30 percent of that total Federal land. One of the predominant uses, of course, is grazing.

We have some 1,100 operators who graze on section 3 lands and some 1,700 operators who graze on section 15 lands.

In addition to agriculture, we have some 90 coal leases on Federal lands in Wyoming today. Our projections have indicated in excess of 100 million tons of coal per year will be produced from these leases by 1985.

Many other minerals—such as oil, gas, uranium and bentonite are produced from these lands administered by the BLM.

The act is a far-reaching land management act for the National Resources Lands, but we are pleased to see it will be managed for multiple use and sustained yield, since western agriculture and mineral producers must be able to use these lands if they are to continue to contribute their share to the food, fiber, and mineral needs of the Nation and the world.

In section 6, table of contents, concerning advisory boards and committees, we think that they should be made up of local people similar to the Taylor Grazing Act Advisory Board with permittees and other users as members.

Section 101, paragraph 3, on revocations or suspensions, we are not sure as we read the bill, but we think people should at least have a warning before they are hit with a suspension or revocation.

Senator HASKELL. I would concur with that. Is there an opportunity for this? Counsel says that we do have it. I think that is very important.

Mr. GOODIER. In section 103, we believe section 103 and section 601 in the amendments should be combined. There appears to be some duplication.

These sections fairly well state that the Federal Government will be the authority over all Federal land and it appears they will be authority for adjacent, private, and non-Federal lands.

We feel Federal and State land use plans must be developed and coordinated in accordance with common goals and objectives.

Senator HASKELL. I think that this is very important.

Chief McGuire addressed the other side of the coin. Is it your opinion the bill as written gives the Government authority to adjacent, State or private lands? We do not want the Federal lands infringing on the Federal.

Mr. GOODIER. It is a two-edge sword. You do not want either party dictating to the other party. How you coordinate it remains to be seen.

Wyoming passed a Land Use Planning law in the last session and hopefully, this could be coordinated with Federal action along those lines, but it is a fear that we have.

Senator HASKELL. I understand.

Mr. GOODIER. In section 104(b), we may not understand it completely, but it appears to us any holder of a recorded mining claim has to apply for a patent within 5 years after the date of the enactment of this act or the date of location of a claim.

This appears to force the holders of mining claims to apply for a patent even if they do not have a mineral survey. This may create a logjam on patent applications and in many years, it will take years to take the patent and we wonder if some of the operators might have a questionable right on those mining claims.

Senator HASKELL. In other words, it is your theory that 5 years is too short a time to ask the owner of the mining claim to take a patent.

Mr. GOODIER. If I understand it correctly, sir, before you can go to patent, the geological survey or some Federal agency that has expertise in minerals is supposed to do the mineral survey of the claim or a piece of land that has been taken to patent.

I wonder if they will have time to do all of these in a 5-year period. To survey and nd out if it is truly a producible mineral deposit.

Senator HASKELL. Certainly, if delay was due to the Federal Government a person should not be foreclosed. The administration bill has a 3-year time limit.

But, that is neither here nor there. I think the idea is to get these claims to patent or dropped. Certainly, if there is a delay caused by action of the Federal Government, this should not affect the private individual.

Mr. GOODIER. Either get them to patent or off the books, but I do not know what the time frame should be. If it is a mineral property and a man is operating without a patent, he may be in jeopardy.

We do not quite understand his legal position. Now, section 202, concerning disposal criteria states land can be disposed of, either under the sale of authority or in accordance with existing law. We are especially concerned, the repeal of the Desert Land Entry law, as it concerns agriculture, however, the ease of obtaining a Desert Land Entry must be simplified.

We are also concerned with the sale criteria. We would hope that those areas adjacent to towns suffering impact that lands could be conveyed to these towns, rather than sold on a competitive bid procedure.

If they are sold, we would hope it would be a price the towns can afford to pay. Section 204 concerns size of tracts and says, where any such tract is sold for agricultural use, it shall be no larger than necessary to support a family sized farm.

Our concern here is what criteria will be used in determining family sized farms. You will understand, it is the criteria of the area and the climate and we have some questions on that.

Section 208 specifies the Secretary may convey mineral interests of the United States where the surface is in non-Federal ownership.

It further states that if any mineral development takes place within 20 years, the mineral interest revert back to the Federal Government.

This seems, to us, to be restrictive and if these minerals may be of great value to the nation and in all probability they will not be developed prior to the expiration of that 20-year period.

Section 213 specifies methods the Secretary may use to acquire land. One of the methods provided is for eminent domain.

No acquisition should be made without adequate public participation in the area of planned acquisition. Section 304 discusses deposits and forfeitures, and in (A) discusses who should maintain roads.

In some cases, the users of these roads will be the general public. It does not seem quite fair for the private user to pay for the maintenance of a road that has general public use.

On Section 309, the California Desert Area—we are not qualified to discuss it per se, but we wonder if there may not be other geographic areas under BLM that are also unique and should be considered as separate entities.

Senator HASKELL. This area in California is within a few hours drive of massive population centers.

Mr. GOODIER. So, it has a large impact.

Senator HASKELL. Yes.

Mr. GOODIER. Section 310, oil shale revenues. This section is excellent as far as States with pending oil shale development are concerned.

At this time, it would affect only Colorado or Utah with the possibility of Wyoming having oil shale development in the future.

We suggest that this section be amended to include the revenues from all mineral sources. Wyoming and other public land States are facing serious impact problems from coal developments and their legislature should have as much latitude with all mineral revenues as is being granted under this section to the use of oil shale revenues.

Senator HASKELL. I think that there is something pending along those lines. Senator Metcalf is here and he is chairman of the Minerals, Materials, and Fuels Subcommittee.

He may want to talk about it.

Senator METCALF. Mr. Chairman, as you know, my subcommittee has been involved in strip mining. Hopefully, that whole problem will be resolved by next week.

I have assured you that the next hearings will be on oil shale.

Senator HASKELL. We are very much aware, Mr. Goodier, as both Senator Metcalf and I will agree, of the desirability of expanding

the proposition to include coal leases in royalties. They are having a big impact on your State and my State and Senator Metcalf's State.

Senator METCALF. I am going to hold hearings on that just as soon as I am finished with the strip mining bill.

Mr. GOODIER. Again, in section 401(b), discussing rights-of-way and specifically section 403(f) says again, the Secretary shall determine fair market value.

We are concerned about how this will be determined and will this value be so high that sales will not be possible and right-of-way cannot be acquired, depending on the user, I suppose.

But, our concern really is the definition of fair market value. We think perhaps it should be determined by a competent independent appraisal and we do not object to fair market value, but we do not quite understand what that will entail.

Again, under section 503, repeal of laws—we are not qualified to comment on all of the various laws that will be repealed but we are concerned about the desert land entry law and we would like to see it maintained.

This act is a very broad act giving the Secretary many powers, especially that of making rules and regulations. In our opinion, this may lead to indiscriminate rules and regulations being promulgated and could cause agricultural mineral producers and other users many problems in their use of national resources lands.

We would like to see this law encompass the philosophy of trading of private and non-Federal lands and blocking of the Federal lands, but some of the isolated tracts could be traded and we could block the areas together for better usage.

Senator HASKELL. Your thought is that it should be on an equivalency value?

Mr. GOODIER. Yes, sir. I do not think anybody needs to give anything away, but lands could be traded and brought together for better management.

With respect to amendments in S. 507, we find on page 2, paragraph (h), the amendment is talking about Federal lands and the bill is talking about national resource lands.

We think that they should be compatible. In section 602, planning and management of adjacent non-Federal lands, we find our problem of the Federal Government being in a position to dictate to adjacent landowners.

We think the States and Federal Government should make their plans consistent. We have some fear section 602 would in some way remove property rights from private or non-Federal owners.

If we cannot work this thing out in a cooperative nature, this might happen. I would like to further elaborate on the possible repeal of the desert land entry law.

In Wyoming, from 1877 to 1973, there were some 17,000 original desert land entries involving 5 milion acres.

The final entries amounted to 8,139 entries and 1.6 million acres. We request the committee to continue the desert land entry law, to speed up the process of allowing entries.

It should not take the Secretary of the Interior an inordinate length of time to render a decision.

Senator HASKELL. Mr. Goodier, I know very little about the desert land entry law, and I did not, until this moment, realize that Wyoming took advantage of it.

There has been some discussion in Idaho—I think—that some people who were really not interested in agriculture were trying to take advantage of it for prospecting purposes. Do you think it serves any real useful purpose for the future and if so, tell me about it.

Mr. GOODIER. Prior to getting involved in the mineral development business, I was in the water aspects of State government.

The State of Wyoming has a loan program in which we will loan money to bona fide farmers and ranchers to put in irrigation projects.

In many cases, these loans have been made on desert land entry lands. Granted, they were isolated tracts adjacent to that farmer or rancher's operation.

These have proved to be extremely valuable developments and it has enhanced the operations of that individual's overall program.

I would tend to agree with you. I would not like to see large tracts of public land made into huge large developments.

This seems like an equitable way of getting them into good production. If they are isolated, they are difficult to manage.

Senator HASKELL. It has been a benefit.

Mr. GOODIER. Yes, sir.

Senator HASKELL. Thank you, Mr. Goodier.

Senator Hansen, I do not know if you have any questions.

Senator HANSEN. Thank you, Mr. Chairman. Let me say how pleased I am, John, to have you here. I know of your long association with State government and the understanding and expertise you have acquired during those years.

I am certain—despite the fact that I have not had a chance to read your testimony—that your observations will merit the considerations of the committee.

The situation, as you know as well as anyone, is that in Wyoming, often times cities find themselves surrounded by essentially federally owned land, from time to time, and as the needs of cities have grown and the need, particularly, for real estate, has come into sharper focus, there have been efforts made by various cities to acquire through purchase or otherwise federally owned real estate.

I think Rawlins has had such an experience. Perhaps you have not addressed this specific question—I am not certain.

Senator HASKELL. Mr. Goodier mentioned the desirability of making land available to cities. He was concerned about the use of the word fair market value in this regard. He was not quite sure what that meant.

Mr. GOODIER. We were specifically referring to a recent case of the city of Rock Springs experiencing substantial impact from coal development and oil and gas exploration among other things.

They are surrounded, in essence, by Bureau of Land Management lands and by the Union Pacific Railroad's grant lands.

There is very little other private land that is available. To provide housing and trailer courts, the city needed additional land.

Over a period of time, the Bureau of Land Management did put up a tract of land. I cannot tell you what the size of it was, but half a section, say. As I understand, the value placed on it was somewhere in the neighborhood of $200,000.

It went for bid and nobody bid on it. It appeared to us that this was not a fair market value. It was not a situation where a willing buyer and willing seller could not agree on a price. And, the town did not buy the land.

Senator HASKELL. It occurred to me that you should use the normal test, or maybe have a court look over the Secretary's shoulder to be sure the normal test is used. I do not think we can give the land away. On the other hand, we certainly do not want to hold anybody up.

Mr. GOODIER. The concern is that it does not go to a speculation type situation, but the towns do need assistance. If the towns could acquire it under some procedure where it is not a speculative venture and it could be developed with proper plans for growth, this is the type of thing that we are looking for.

Senator HANSEN. Would I be correct in inferring the situation in Rock Springs—in the Rock Springs area—was that the BLM had an appraisal made of the land in Federal ownership which was desired by the city of Rock Springs and that was the amount below which sale would not be consummated?

Mr. GOODIER. As I understand it, Senator Hansen, yes; this was the minimum bid price.

Senator HANSEN. I think there may be some merit in having some idea, perhaps of what land would be worth, but if I understand the chairman correctly, on the basis of what he has said, would it be your feeling that if a determination is made to make an offer of land to a city, I do not think the city should have the exclusive right, so as to be the only bidder, in order first, to protect the wide public interest and second, to be responsive to a particular need of a community.

I should think a mechanism for this could be implemented whereby an opportunity would be afforded, the city and others as well, to make bids.

That would seem to me to be a more equitable way than to arbitrarily set values.

Mr. GOODIER. There is some difficulty in my mind in trying to determine how much money a city such as Rock Springs would truly have available to bid on this type of land?

As you know, the revenues that are going to come from coal production are always 2 to 3 years behind the impact itself.

This may also be a problem. They simply did not have revenues they could obligate on a bid of this nature. You run into the problem—if the city cannot pay for it, private developers purchase it and if so, under what plan do they develop it? It becomes a question of properly organized planned development for this city.

Senator HANSEN. Was this land offered not only to the city, but to any and all persons who might choose to bid on it?

Mr. GOODIER. Yes, sir. As I understand it, a minimum price was set for bid and there were no bidders.

Senator HANSEN. With the exception of certain land, I know from time to time there are statutes that allow cities to acquire land for recreational purposes.

I do not argue with that. I am duly persuaded by the argument that cities need special consideration above and beyond that for areas in which normal growth would take place.

I think that there I would have to come down on the side of the Federal Government in seeing that some Federal objectives were met.

I think that the best way to answer that question is: Though a city may not have the funds necessary to equal or exceed a bid by private individuals—if that be the case—then I say whoever will pay the best price for it should receive title.

I think that in the long run, that would pretty well address the wide public interest, as well as a particular city's interest.

I am concerned with what you speak about—did you have any further observations?

Senator HASKELL. No, but if you are going into fair market value, I would concur and go a little further, Senator Hansen, to say there would probably be certain circumstances in which the city ought to have first crack at it and they ought to have fair market value, but not necessarily as determined by the Secretary.

Senator HANSEN. One of my neighbors sold out at a certain amount per acre and I said to the person who purchased his land, what is the land worth?

And, he said, it is worth whatever you can get for it. If you do not think that is true, you have not been in the real estate business.

What your neighbor may get does not guarantee the person next door can get that same amount. You have got to find a guy with the dough who wants the place.

There is a problem—we have the unique situation of a national elk reservation juxtaposing the city of Jackson, Wyo.

Several years ago, in an effort to acquire real estate for a hospital, we concluded the only logical place for a hospital, a new building, was in an area within the national elk refuge.

In that instance, the Federal Government made an appraisal of it—16 acres of land or 19, I do not recall precisely, but I believe about 16 acres right next to the city of Jackson. They did not make it on the basis of what that land produce in the way of hay and forage for the Elk herd, but rather what that particular real estate appraiser felt that it would be worth by virtue of its location and proximity to the city.

In order to get that, the hospital had to acquire 160 acres of land, which was relatively just as productive per acre as the 16 we eventually wound up with.

And, we had to trade that to the Federal Elk Refuge. We could not get it any other way. They said this land is worth 10 times as much as that out there because this is right against the city of Jackson.

Mr. GOODIER. I think that type of situation is one we mentioned earlier in that the State of Wyoming has school lands and—in perhaps some situations—the school lands or State lands could be traded for lands that are adjacent to towns experiencing growth problems and assuming equivalent value lands, the State could work out the planning arrangements with the local community.

These lands are going to have to fall into the overall land use planning concepts which we hope are done in cooperation.

Senator HANSEN. Thank you very much. Thank you, Mr. Chairman.

Senator HASKELL. Thank you very much Mr. Goodier.

[The prepared statement of Mr. Goodier follows:]

STATEMENT OF JOHN GOODIER, CHIEF, MINERAL DEVELOPMENT DIVISION, WYOMING DEPARTMENT OF ECONOMIC PLANNING AND DEVELOPMENT

My name is John T. Goodier and I am chief of the Mineral Development Division of the Wyoming Department of Economic Planning and Development. On behalf of the Governor's Office and the State of Wyoming, I would like to present testimony concerning Bill S–507, the "National Resource Land Management Act". Wyoming has a vital interest in the National Resource Lands and their management, since Wyoming's total acreage of 62,664,960 acres is 47.9 percent controlled by several federal governmental agencies. The Bureau of Land Management administers 17,531,000 acres or about 27.9 percent of the 47.9 percent controlled by the Federal Government. Grazing is one of the predominant uses with 1,187 operators grazing 316,037 cattle and horses and 835,511 sheep on Section 3 lands (inside grazing districts) and 1,728 operators grazing 853,744 cattle and horses and 1,044,712 sheep on Section 15 lands (outside grazing districts).

In addition to the agricultural aspects of these National Resources Lands there are some 90 coal leases on Federal Lands in Wyoming. Most of these coal leases fall under the jurisdiction of the Bureau of Land Management. We have projected that in excess of 100 million tons of coal per year will be produced from these leases by 1985. Many other minerals such as oil, gas, uranium and bentonite are produced from these lands.

The State of Wyoming agrees that the Bureau of Land Management and the Secretary of Interior need clarification, revisions, and updating of laws relative to management of the National Resource Lands. However, the State is concerned about some of the specific points mentioned in Bill S–507.

This Act is a far reaching land management act for the National Resource Lands, however, we are pleased to see that the National Resource Lands will be managed for "multiple use and sustained yield," since Western agriculture and mineral producers must be able to use these lands if they are to continue to contribute their share to the food, fiber, and mineral needs of the nation and the world.

In *Section 6*, Table of Contents concerning advisory boards and committees, it must be recognized that agriculture has been an integral part of National Resource Land Management in the past, and must continue to be in the future. Other user groups must recognize the experience and expertise of these Boards. We further believe that these boards should be local in makeup, similar to the *Taylor Grazing Act advisory boards* with permittees and other users as members.

Section 101, "Management" paragraph 3, we note "revocations or suspensions" are provided for if any violations of regulations are found. This gives Secretary board sweeping powers and places any licensee or permittee in an untenable position subjecting his business to administrative decisions that may not be supported by facts. Few businessmen could plan for the future under these conditions.

Section 103, is concerned with Land Use Plans. We believe that Section 103, and Section 601, in the Amendments should be combined, since there appears to be overlap and duplication. We believe that all National Resource Land users must be consulted on land use plans, and we further believe that federal plans must be consistent and in harmony with state land use plans, rather than in the reverse. This Section fairly well states that the federal government will be the authority over all federal land and *adjacent private and non federal lands.* Federal and State Land Use Plans must be developed and coordinated in accordance with common goals and objectives.

Section 104(b) states that a holder of a recorded mining claim must have applied for a patent within five years after the date of enactment of this Act or the date of location of a claim or the claim will be void. This language appears to force the Holders of mining claims to apply for patent to protect their claims even though a complete mineral survey has not been performed. It may take years to take these claims to patent and claim holder or mining operator on a claim is going to have a questionable right to mine or operate on a claim during this patent process.

Section 202, concerns Disposal Criteria and under 202(b) ". . . such land shall be disposed of either under the sale authority of Section 201 or in accordance with existing law." Since Section 503 repeals many laws, it is extremely important that we know what laws or parts of laws will be retained

concerning land disposal. We are especially concerned with the repeal of the *Desert Land Entry Law* as it concerns agriculture, however, the ease of obtaining a Desert Land Entry must be simplified if the law remains. We are also concerned with the sale criteria. Land of agriculture value must be valued agriculturally, rather than as a real estate or other speculative values. We would hope that those areas adjacent to towns and cities could be conveyed to them, rather than sold, since in many cases fair market value for land adjacent to cities and towns is more than many of these places can affort to pay.

Section 204, concerns Size of Tracts and says, " . . . where any such tract is sold agricultural use, it's size shall be no larger than necessary to support a family-sized farm." Originally 160, then 640 acres, was considered a "family-sized farm" But now with production costs and new technology, we are concerned with the criteria that will be used in determining a "family-sized farm."

Section 208, specifies that the Secretary may convey mineral interests of the United States when the surface is in non-federal ownership. If any mineral development takes place within twenty years after the conveyance of such mineral interests, the interest revert back to the Federal Government. This seems to be restrictive in that such minerals, no matter how vital they may be to the needs of the nation will in all probability not be produced prior to the expiration of this twenty year period.

Section 213, specifies methods the Secretary may use to acquire land. One of the methods provided for is "eminent domain." The taking of these lands reduces the tax base in those areas where this might occur. We are concerned that the right of "eminent domain" may be abused. No acquisition should be made without adequate public participation in the area of planned acquisition.

Section 304, Discusses Deposits and Forfeitures, and in (a) discusses who should maintain roads. In some cases the users of these roads will be the general public. They should maintain the roads as would the other users. It does not seem quite fair for the private user to pay for the maintenance of a road that has general public use. We would like to know who will determine who should maintain the road when users and the general public use many of the same roads.

Section 307, discusses law enforcement authority. We believe that this may conflict with state, county, and local laws. Since there will be a law enforcement area, the federal enforcement personnel will need proper law enforcement training before they attempt to enforce laws, carry sidearms, serve warrants, etc.

Section 309, California Desert Area. We cannot comment on this section except to ask if other specific geographic areas under the bureau of land management may not also be of such a unique character as to warrant special consideration.

Section 310, Oil Shale Revenues. This section is excellent as far as States with pending oil shale development are concerned. At this time only Colorado and Utah would be affected with the possibility of Wyoming having oil shale development in the future. We suggest that this section be amended to include revenues from all mineral resources. Wyoming and other public land states are facing serious impact problems from coal developments and their legislatures should have as much latitude with all mineral revenues as is being granted under this section to the use of oil shale revenues.

Section 401(b), under Right of Way, there appears to be a stumbling block prior to the rights of way being granted. Many times environmental assessments and hearings will be needed and the Secretary is again putting another block in the way of needed progress. Under *Section 403(f)*, we are again confronted with the Secretary determining "fair market value." How will this be determined, and will this value be so high that sales will not be possible? This has recently happened in Wyoming in one of the impacted areas where the determined "fair market value" was so high that no bids were received. We suggested that "fair market value" be determined by competent independent appraisal. We don't object to the "fair market value" of right-of-ways but wonder if all the various interests that will end up using some of these right-of-ways will pay equally.

Under *Section 503*, "Repeal of Laws," we are unable to comment on this section, since we do not know whether all of these laws are to be repealed or only portions of them, however, to be efficient the repeal of obsolete and unworkable laws would be constructive. If portions of these laws are repealed, then to be able to comment, a legal research of these must be accomplished.

We are, however, not in favor of the repeal of the *Desert Land Entry Law*, Under (b) of this section we note, that the Secretary may determine that some of the grazing lands " . . . which are more valuable or suitable for any other use" . . . may be disposed of. We would hope that the Secretary does not take discretionary powers, and if lands are to be disposed of, that present users have the first opportunity to purchase them.

This Act is a very broad act, giving the Secretary many powers, especially that of making rules and regulations. In our opinion, this may lead to indiscriminate rules and regulations being promulgated and could cause agriculture, mineral producers and other users many problems in their use of the National Resources Lands.

For all intensive purposes we would prefer that National Resource Lands be sold or conveyed to the states or to those users who surround or adjoin them. This would be especially important in areas where there are isolated tracts of small acreages. Either "blocking" of the federal lands using fair and equitable exchange methods or "blocking" of private and nonfederal lands surrounding federal lands would aid in the management of the lands. Disposal of National Resource Lands should be the criteria, rather than acquiring any more lands. Disposal should be made especially to towns and cities who are surrounded by National Resource Lands, and this disposal should be conveyance to a city, or town, not a sale.

REVIEW OF S-507 AMENDMENTS:

On *page 2, paragraph "h"*, we are concerned that the amendment is now talking about "Federal Lands" when the original Act S-507, discusses "National Resource Lands." To make the amendments compatible with the original act, we would suggest that continuity be considered. The original Bill was a "National Resource Lands Management Act" and had to do with those lands administered by the Bureau of Land Management, and the amendments now concern themselves with "all" federal lands.

In *Section 601*, Planning and Management of Federal Lands"—we note considerable overlap with Section 103 in the original Act S-507. We also note that under this section consideration is given and coordination of activities is taken into account for local land use planning, " . . . to the extent such coordination is not inconsistent with paramount national policies, programs, and interests." We therefore, have the Federal Government dictating private and nonfederal land use planning. The States should make the land use plans and the *Federal Government should make theirs consistent with the states.*

Section 602, "Planning and Management of Adjacent Non-Federal Lands" states that federal laws will " . . . take such steps as necessary to assure that federal lands within the State are not significantly damaged or degraded as a result of inconsistent land use patterns on adjacent nonfederal lands." This Section in effect, removes any property rights of private or nonfederal owners.

Section 603, sets up an Ad-Hoc Federal-State Joint Committee, with no real power. It would be better to use the existing advisory boards set up under the taylor grazing act. Paragraph (g) also gives the Secretary dictatorial federal powers over the "Federal Lands" and adjacent non-federal lands.

We would suggest that these amendments be incorporated into the original Act S-507, and all references to "Federal Lands" be deleted. This amendment to the original act might be good for a Department of Natural Resources having authority over all federal lands, but Act S-507 is to help The Bureau of Land Management to manage more efficiently the National Resource Lands.

We would like to further elaborate on the repeal of the Desert Land Entry Law. In Wyoming from March 3, 1877 to June 30, 1973 there were 17,554 original desert land entries involving 5,597,826 acres and final entries amounted to 8,139 entries involving 1,661,442 acres. We respectfully request the committee to continue the Desert Land Entry Law but to speed the process up of allowing entries. It should not take the Secretary of the Interior an inordinate length of time to render his decision on these entries. This law has been important to the State of Wyoming and as more

land is needed for food, fiber, and mineral production these will be acres that can be put to that type of use.

We appreciate the opportunity to make these comments on this important piece of legislation which could have far reaching effects on the economic future of Wyoming if it is enacted in it's present form.

Senator HASKELL. The next witnesses are Burton Silcock and David S. Jackman, Federal-State Land Use Planning Commission for Alaska.

We look forward to hearing from you.

STATEMENT OF BURTON W. SILCOCK, FEDERAL CO-CHAIMAN, JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA, AND DAVID S. JACKMAN, STATE CO-CHAIRMAN, JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA; ACCOMPANIED BY JOHN KATZ, COUNSEL FOR JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

Mr. SILCOCK. We have with us today Mr. David Jackman, our State co-chairman and Mr. John Katz, the counsel for the commission.

I have a prepared statement which is very brief and I think it would be best if I read it with your permission.

We appreciate the opportunity to appear before you to discuss S. 507, the National Resource Lands Management Act.

The land use planning commission was created by the Alaska Native Claims Settlement Act and by an enactment of the Alaska State Legislature. The commission is a joint instrumentality of government. As such, it is composed of five Federal and five State members, and it is financed on a 50–50 matching fund basis. Both the Federal and State enabling statutes charge the commission with broad advisory responsibilities in matters pertaining to the ownership, management, and use of lands located in Alaska.

Our appearance here today is made pursuant to portions of the commission's statutory mandate, as described in sec. 17 (a) and (b) of the Settlement Act, which authorize and direct us to make recommendations concerning possible changes in laws, policies, and programs which apply to lands in Alaska.

Regarding the programs and budgets of agencies responsible for administering the public lands, and concerning ways to improve coordination and consideration between the Federal government and the State of Alaska. The commission considered S. 507 at a meeting held during the week of April 30 through May 2, 1975. As a consequence of this consideration, we have been authorized to express the views discussed below. The commission believes that S. 507 is a well conceived and well drafted piece of legislation. Accordingly, with the exception of the few items referred to below, we strongly support this measure and believe that it should be enacted as soon as possible.

The principal reasons for the commission's position may be summarized as follows. S. 507 seeks to change the general orientation of the BLM from a land disposal to a land management agency. If this legislation is enacted, the primary responsibility for making Alaska lands available for settlement, commercial development, and other private acquisitions would devolve upon the State. For

the most part, the State would appear to be the proper focus for such responsibility.

The Organic Act provides the Bureau of Land Management with the enforcement and other management authority which it presently lacks. In Alaska, this lack had made it more difficult for the BLM to protect the lands currently withdrawn for possible native selection under the Settlement Act and for possible inclusion in one of the four Federal management systems pursuant to sec. 17(d)(2) of the act. The continuing lack of adequate authority could create difficult management and enforcement problems within easements reserved under section 17(b) of the Settlement Act.

S. 507 would repeal a number of archaic land laws regarding settlement, access, and other matters and would substitute in lieu thereof of a more rational and less complicated legislative scheme.

Of great significance, private land acquisition would be effected through fair market value sales rather than the hodgepodge of private settlement and acquisition laws which now exists.

Moreover, the repeal of 43 NSC 932 and certain other laws relating to access would significantly improve the opportunity for prudent transportation planning in Alaska. Under the present statutory regime, section line and other easements have been created without prior consideration of needs or impacts.

The Organic Act would provide the BLM with new authority to effect land exchanges necessary to facilitate prudent land management.

Senator HASKELL. Excuse me, Mr. Silcock, but this addresses one of Mr. Goodier's problems where there is a need to consolidate State and Federal authority.

Mr. SILCOCK. I would agree with that, Mr. Chairman. This is why S. 507 corrects the matter that exists now in that it provides for substituting or making cash available to reach the equal value point.

In the past, exchanges, appraisals of lands has shown it is almost impossible to bring them to an equal value. You do all the work and get down to the end and find out you cannot do it, so it makes a lot of sense.

This measure would mandate a land planning process designed to bring about prudent implementation of the multiple use concept.

The bill contains mandatory recordation and other provisions for removing clouds on title created by long abandoned or invalid mining claims.

In Alaska, the existence of so many of these claims creates special problems for management agencies and for Native corporations making land selections under the Settlement Act.

The Organic Act mandates cooperative and consultative mechanisms designed to insure the compatability of Federal, State, and private land planning and use to the maximum extent possible.

As a joint instrumentality of government whose mandate includes this responsibility, we are especially conscious of the need for cooperative planning and management in Alaska, where the pattern of governmental and private land ownership is already becoming extremely complex.

The bill formalizes and provides additional mechanisms for insuring adequate public participation in the decisionmaking process respecting national resource lands.

Relating this improvement to the Alaska context, we believe that full public awareness and participation is especially important because so many of Alaska's citizens utilize the public domain for subsistence, commercial, and other purposes.

S. 507 gives the Secretary of the Interior new authority to resolve problems resulting from the Federal Government's continuing ownership of the subsurface estate in lands the surface of which has been conveyed to private parties pursuant to laws authorizing surface conveyance only. By establishing a working capital fund, the Organic Act creates a new source of funding for the management of natural resource lands.

The following comments are addressed to specific aspects of the proposed legislation. One, we believe that the 5-year deadline provided in section 104(b) for filing a patent application on a mining claim is too stringent in the Alaska's context, where development seasons are often no more than 3 or 4 months long.

The brevity of such seasons would make it very difficult for a miner to generate enough information over a 5-year period to enable prudent decisionmaking respecting the filing of a patent application.

This problem is exacerbated by the large investment which is associated with a decision to go to patent. Thus, we estimate on the basis of discussions with knowledgeable persons that the cost of a mineral survey in Alaska will average approximately $2,300 per claim.

Senator HASKELL. The same thing might pertain in Montana. Winters are severe and the season for development is quite short.

Mr. SILCOCK. It could possibly apply there and in other Western States also. Added to this cost will be the expenses incident to obtaining an abstract of title and complying with the other prerequisites stipulated in the general mining laws and implementing regulations. In view of these considerations, we suggest that the deadline for applying for patent on a mining claim located in Alaska be extended from 5 to 7 to 8 years.

Senator HASKELL. Excuse me—I hate to keep interrupting, but Mr. Goodier was concerned that there might be some delays from the Federal Government's side—would you agree with that?

Mr. SILCOCK. Yes.

Senator HASKELL. Do you have any comments?

Mr. SILCOCK. There would not be any delay in the beginning of the process. That would be up to the individual to have his claim surveyed and do his discovery work and so on.

But, the delay would probably come when the Government had to make the investigation to determine whether it was, in fact, a valid claim or not.

So, the beginning of the process would have no delay but there would be a delay in the final process.

Senator HASKELL. It seems to me we ought to write into the bill, if it is not there already, that if the delay in meeting whatever deadline we pick is caused by the Federal Government, people should not lose their rights.

That seems very important. Would you agree with that?

Mr. SILCOCK. Yes, it is something I would agree with. I would concur in that, Mr. Chairman. With respect to section 409, relating to State standards for right-of-way construction and operation, we believe that the fortuity of adjacent non-Federal lands should not be the critical factor in determining whether the Secretary should comply with more stringent State regulations.

The fact that a pipeline crosses a State will inevitably create impacts that would appear to give such a State a legitimate interest in right-of-way regulation.

Accordingly, we suggest that the complaints requirement stipulated in section 409 be extended to the situation just described.

With respect to section 503(f), a majority of the commission disagrees with the classification approach stipulated therein and recommends that the homesteading laws cease to operate in Alaska on the effective date of the Organic Act.

This recommendation is premised on the following considerations. Virtually all of the land which is suitable for such production has been or will be selected by the State of Alaska or Native corporations under the Alaska Statehood and Settlement Acts, respectively.

Accordingly, we believe that these entities should be looked to as the source for agricultural lands, as well as for other kinds of private land acquisition. Climatic and soil conditions of the public lands combine to create a physical environment which is generally inhospitable to agricultural production.

Studies conducted in Alaska demonstrate that only potato farming can be successfully undertaken at acreage levels obtainable under the homestead laws.

These studies also show that investment requirements for all types of farming are substantial. Therefore, only those persons who possess the required capital will have a reasonable opportunity to succeed.

This entry requirement belies the historical conception that a person by his own efforts alone can convert a tract of raw land into a viable agricultural operation.

Since capital is required for either successful farming or for the fair market value sales authorized in the Organic Act, the latter alternative should not impose an undue burden on those desiring to obtain land for agricultural purposes.

Moreover, such an approach would tend to reduce environmental degradation and other difficulties created by the operation of the homestead laws in physical conditions where they were never intended to apply.

The continuing possibility that homesteading will be permitted, even though subject to classification, will tend to raise public expectations. As a result, undue pressure may be exerted on Government decisionmakers to classify marginal lands for homesteading purposes.

Most of the relatively small amount of Federal land which is even marginally suitable for homesteading, is located in remote areas of Alaska.

The public costs associated with providing access, police protection, schools, and other needed public services far outweigh the benefits to be derived.

Previous experience in Alaska indicates that people have used the homestead laws to acquire property for nonagricultural purposes. Such nonagricultural needs can be better satisfied through sales effected by the State, private parties, including Native corporations, and the Federal Government in certain instances. Despite the considerations referred to previously, we believe that should the Congress decide to follow the approach presently contained in section 503(f), the public interest will not be significantly impaired, provided that the BLM exercises its classification authority in a prudent manner. In our opinion, well-conceived land classifications could resolve many of the difficulties referred to earlier in this section.

With respect to section 603(b), relating to the termination of the joint committee authorized in title VI, the planning commission's experience indicates that a 2-year lifespan may be too short. Such a time frame reduces the likelihood that well informed and coordinated problem solving will occur. In addition, problems relating to funding and personnel recruitment may result. For these reasons, we suggest a long lifespan, such as 4 to 5 years, or that the committees be established on a permanent basis unless the secretary or the Governor of a State explicitly objects.

The adoption of either alternative would be especially beneficial in Alaska, where increasing problems relating to Federal-State land management and resource allocation demonstrate that an intergovernmental consultative body like the joint committees will be needed for many years to come.

Title VI does not mention the Joint Federal-State Land Use Planning Commission for Alaska. Since the joint committees provided for in title VI would have a number of functions which are similar to those presently performed by the commission, it would seem appropriate to utilize this ongoing instrumentality to carry out such responsibilities as long as it remains in existence.

The approach just suggested would enable the Federal and State Governments to draw immediately upon an existing source of experience and expertise at this critical juncture in the decisionmaking process respecting Alaska's lands.

In closing, we want to emphasize our belief that S. 507 contains the statutory authority and institutional mechanisms necessary to resolve the types of land use and management problems which have confronted the Bureau of Land Management in the past and which the commission has also considered at various times during its existence.

Accordingly, we respectfully urge the speedy enactment of this legislation. Thank you for the opportunity to appear here today.

Senator HASKELL. Thank you, Mr. Silcock. As a former Director of the Bureau of Land Management, your comments carry a great deal of weight to say nothing of your experience on the Federal-State Commission in Alaska.

Do you have any comments on this problem of desert entry claims? You heard Mr. Goodier. He did not like the idea of repealing that particular legislation.

Mr. SILCOCK. Mr. Chairman, I believe I could comment on both ways. The desert land entry situation in Wyoming is a kind of peculiar situation with the creeks and small streams coming out of the

mountains and the sawtooth type of land pattern that developed. Then, as the land was surveyed and they identified where the capable land was that was subject to desert entry there were pieces of land that would lie out in a meadow, for example, that would be subject to the use of the same ditch.

In some cases, it was applicable in Wyoming.

Senator HASKELL. It served a useful purpose?

Mr. SILCOCK. In some cases, but when you are talking about a large block of land, then I think it ought to be sold off and disposed of in that manner. So, there are situations where it would apply.

Senator HASKELL. On the commission's position on the homesteads in Alaska, it might be helpful if you would convey your thoughts to Senator Stevens.

Mr. SILCOCK. Mr. Chairman, we have talked to the Senator.

Senator HASKELL. Thank you, Mr. Silcock. We appreciate your testimony.

Now, the next witness is James Evans of the National Association of Counties.

STATEMENT OF JAMES EVANS, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF COUNTIES, WASHINGTON, D.C.

Mr. EVANS. Thank you, Mr. Chairman. My name is Jim Evans, legislative representative for the National Association of Counties.

I thank you for the opportunity to appear here today to testify on behalf of Naco. Since you have a long list of witnesses, I would like to summarize.

Senator HASKELL. That would be fine. Your statement will be reproduecd in full.

Mr. EVANS. I would commend your committee for its efforts to develop resource and land management. We are particularly pleased to see that the proposed legislation contains many of the recommendations made by the Public Land Law Review Commission in its report to Congress in 1970. On page 2 of the testimony, I would like to call your attention to our support for section 310, which would amend the Mineral Leasing Act of 1920.

This would help allow State and local governments to meet their needs on energy impact developments. We think a lot more legislation is needed in this area to help with the impact problems, but we feel that this is a good step.

Senator HASKELL. For example, coal?

Mr. EVANS. Yes; there is another amendment in the legislation to do the same thing for coal as this would do for oil shale.

Senator HASKELL. Incidentally, this particular amendment has been passed by the Senate in various forms three times already. We hope to make it through the House this year.

Mr. EVANS. We hope to get it through too, thank you. We would like to call your attention three amendments. We have a list of about eight amendments attached.

The first one, we think is critical—to amend section 3, subsection (a), which would add a policy statement as follows:

The Federal Government should make, on a basis equitable to both the Federal and local taxpayer, payments to compensate States and local governments

for burdens created as a rsult of the immunity of Federal lands from State and local taxation.

I would note the House, in its efforts, the subcommittee has included this statement in its efforts. We have encouraged the Senate to do the same.

The second amendment we would call your attention to today, also on page 2, No. 2, we are recommending the following section to either section 103(b) or the new title 6, section 106(a), and this would be an addition as follows:

In the development and maintenance of land use plans, the Secretary shall prohibit the authorization of uses on public lands that are inconsistent with State or local zoning regulations unless BLM makes a finding that overriding national interest requires the use.

This would be a stronger term for coordination. This recommendation is also based on the land law Review Commission Report.

Senator HASKELL. Wouldn't this be implicit in the legislation as it is now. You would like to make it explicit, is that correct?

Mr. EVANS. Yes. Rather than coordination, we would like to see a true consistency clause, which I think that this would be. Our fourth recommended amendment is to section 203, which would speak to the issue under discussion a few minutes ago.

Sales of national resource land under this act shall be at not less than the appraised fair market value as determined by the Secretary, except for sales to State and local governments for public purposes when a sale may be made at nominal price.

Our feeling is, especially in critical areas where we have up to 90 or 95 percent of the land in Federal ownership in many of our counties in the west.

For the Federal Government to have this land tax exempt, limiting the tax base of a local community and then to turn around and charge market value for the land when it is needed for a State or local government purpose, we think is unfair in these cases.

Senator HASKELL. Mr. Evans, I could go along with giving the State and local government the first crack at it, but I do not know if I could go along with this nominal price approach.

Mr. EVANS. Our committee has reviewed this legislation and would prefer the nominal price rather than preference.

Senator HASKELL. I understand that. I was just telling you my reaction to it.

Mr. EVANS. I appreciate that. I wanted to make that point here today. As I mentioned, we have other amendments attached for your committee's consideration. Since you have a busy day before you, I would conclude my testimony and be glad to answer any questions.

Senator HASKELL. You might consider, Mr. Evans, what is called the Recreation and Public Purposes Act, which allows certain restrictions of sales to public entities for recreation or other public purposes.

Mr. EVANS. Yes; and we are aware of that, but this particular amendment to our people—if we could get your support.

Senator HASKELL. Thank you very much, Mr. Evans. We will look particularly at those three you have emphasized, but we will look at all of your suggested amendments. We welcome your support.

[The prepared statement of Mr. Evans follows:]

STATEMENT OF JAMES EVANS, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF COUNTIES, WASHINGTON, D.C.

Mr. Chairman and members of the committee; my name is Jim Evans, Legislative Representative for the National Association of Counties, Washington, D.C. Thank you for the opportunity to appear here today to testify on the proposed "National Resource Lands Management Act" on behalf of the National Association of Counties (NACo).

NACo is the only organization in Washington, D.C. representing county governments on the federal level. There are currently more than 1350 member countries representing approximately 75% of the nation's population.

NACo commends your committee on its efforts to develop a resource and land management act that will set policy for the natural resource lands administered by the Bureau of Land Management (BLM). We are particularly pleased to see that the proposed legislation contains many of the recommendations made by the Public Land Law Review Commission in its report to Congress in 1970.

The purpose of this testimony is to provide support and to recommend amendments to several sections of the proposed act.

Our analysis and recommendation are based on S. 507, the proposed "National Resource Lands Management Act of 1975." We believe this is one of the most important pieces of legislation now before the Congress.

In addition to the general support for your efforts NACo supports the following specific sections and recommends that these sections be retained in the Act:

1. NACo supports Section 310 (pg. 34) that would amend the Mineral Leasing Act of 1920 to allow the state and local share of oil shale development revenues to be used for general local purposes rather than be limited to roads and schools only. This amendment will help county government cope with energy development impact problems.

2. NACo supports Section 210 (pg. 18) which prohibits BLM from making sales of natural resource lands that would be in conflict with state and local land use plans and zoning.

3. NACo supports Section 101, subsection 1 (pg. 8) that would prohibit BLM from requiring hunting or fishing licenses. We believe this function should be left to the states.

4. NACo supports Section 103, subsection e (pg. 12) that would prevent a "freeze" of land use in areas under study for wilderness characteristics.

NACo recommends the following amendments to S. 507. An explanation of each amendment is attached to this statement.

1. NACo recommends addition of the following policy statement to Section 3, subsection a:

"The federal government should make, on a basis equitable to both the Federal and local taxpayer, payments to compensate states and local governments for burdens created as a result of the immunity of federal lands from state and local taxation."

2. NACo recommends addition of the following section to Section 103(b):

"In the development and maintenance of land use plans, the Secretary shall prohibit the authorization of uses on public lands that are inconsistent with state or local zoning regulations unless BLM makes a finding that overriding national interest requires the use."

3. NACo recommends an amendment to Section 103(d), (pg. 12) to include a notification for local governments when there is a proposed change in classification or permitted uses on natural resource lands.

4. NACo recommends an amendment to Section 203 (pg. 15) so that Section would read:

"Sales of national resource land under this Act shall be at not less than the appraised fair market value as determined by the Secretary, *except for sales to state and local governments for public purposes when a sale may be made at a nominal price.*"

5. NACo recommends deletion of Section 307, subsection (c) in its entirety. This subsection would provide an unnecessary authority for BLM to establish its own police force.

6. NACo recommends an amendment to Section 102, subsection (b) (pg. 10) to make the provisions *mandatory* (rather than permissive) for BLM to provide public identification of natural resource lands and ot provide state and local governments with land inventory data.

7. NACo recommends an amendment to section 6 (pg. 7) to make the Advisory Boards mandatory rather than permissive.

An explanation of each recommended amendment is attached for your consideration. Thank you again for the opportunity to testify on this important legislation.

Recommended Amendment to S. 507, Section 203 (pg. 15)

Add the italic phrase to Section 203:

"Sales of national resource lands under this Act shall be at not less than the appraised fair market value as determined by the Secretary, *except for sales to state and local governments for public purposes when a sale may be made at a nominal price.*

Reason: State and local governments should not be further penalized financially by the requirement to pay the Federal Government market value for lands no longer required by the federal government as long as the lands would remain in use for public purposes. States and local governments are already penalized by the tax immunity of the federally owned lands.

The sale at nominal prices to state and local governments would facilitate the accomplishment of public purposes involved and thereby serve the public interest.

Recommended Amendment to S. 507, Section 102(b)

Delete the phrase included in parenthesis () from Section 102(b) (pg. 10), and add the words in italic:

102(b) The Secretary, (where he determines it to be appropriate, may) *shall* provide means of public identification of national resource lands, including signs and maps, and *provide* state and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in the proximity of national resource lands.

Reason: Congress should clarify by law that it is the congressional policy to require BLM to provide state and local governments with inventory data. Leaving this to the discretion of BLM might result in some future ill will that could be avoided now by the amendment proposed above.

Recommended Amendment to S. 507, Section 103(d) (pg. 12)

Add the italic words to Section 103(d):

"Wherever any proposed change in the classification of, or permitted uses on, any national resource lands would affect authorization for use of such lands, persons holding leases, licenses, or permits concerning the use to be affected *and* state and local *governments with jurisdiction in the affected area* shall be given written notice by the Secretary of such proposed change at least sixty days before it is put into effect."

Reason: This amendment is recommended to insure that affected state and local governments are kept informed of proposed changes in the classification or use of natural resource lands. State and local governments are invariably impacted by these changes for land use planning, local government services and often local government facilities.

Recommended Addition to S. 507, Section 3 (pg. 5)

Add new sub section, page 5, following line 16:

"The federal government should make, on a basis equitable to both the Federal and local taxpayer, payments to compensate states and local governments for burdens created as a result of the immunity of federal lands from state and local taxation."

This would follow the policy statement (number 4) in S. 507 Section 3 of the proposed "National Resource Lands Management Act of 1975" which states:

(4) "The national interest will be best served by retaining the national resource lands in Federal ownership."

NACo believes that if this policy statement No. 4 is adopted it is essential the burden of the tax immunity of the public lands be recognized. Therefore NACo is recommending the additional policy statement, number 5.

Additional Policy statement No. 5:

NACo believes that if this policy statement is adopted it is essential that the burden of the tax immunity of the public lands be recognized. Therefore NACo is recommending the additional policy statement.

The recommended policy statement is based largely on the findings of the Public Land Law Review Commission. In its report to Congress in 1970 it made the following finding:

"This commission is convinced that the United States must make some payments to compensate state and local governments which have burdens imposed on them because of Federal ownership of public lands within their borders. Even though it is recognized that Federal expenditures must be held to the minimum necessary to provide essential Federal programs, the Federal Government, as a landowner, must pay its way. Whatever the costs, fairness and equity demand that such payments be made."

The Public Land Law Review Commission in its deliberations recognized the importance of this issue. County governments normally rely on property taxes for at least ⅓ of our revenue sources. When the Federal government establishes a policy that large holdings of land will remain in federal ownership and thus exempt from property tax this places an unfair burden on other taxpayers within the county where the lands are located.

The recommended amendment would be a continuation of unwritten policy since the Federal government partially recognizes the tax immunity problem through a variety of shared receipt programs. In 1907 the Federal government recognized the tax immunity problem and authorized a 25% sharing of timber sale receipts for state and local roads and education. In 1920 the Mineral Leasing Act authorized 37½ sharing of oil and gas development leases on public lands. Although neither of these programs comes close to providing sufficient funds to compensate for the tax immunity of the public lands, they do provide the precedent for Congress in the proposed "Public Land Policy and Management Act of 1975."

Recommended Amendment to S. 507, Section 6 (page 7, line 7)

Delete the word "may," Section 6, page 44, line 14. *Add* in its place the word "required," page 44, line 14.

This amendment would require, rather than encourage, the Bureau of Land Management to establish advisory councils to advise on problems related to land planning of the management of the public lands located within the region, state, district or local government.

NACo believes that this section should be made mandatory in order to insure that local governments and the public are guaranteed participation in the land management process for the public lands.

Recommended deletion of Section 306(c) of S. 507

Delete, in its entirety Section 306(c), page 29.

Section 306(c) would authorize the Secretary of the Interior to designate BLM employees to (1) execute and serve warrants; (2) make arrests for a misdemeanor or felony; (3) carry firearms; (4) search without a warrant; and (5) seize without warrant evidentiary items as provided by law.

NACo believes that the broad police powers that would be authorized by this section are unwarranted. Too many conflicts could arise with state and local law enforcement agencies.

NACo does support improved law enforcement on the public lands through the addition of the other subsections in Section 306 and Section 308 of the proposed act. These sections would provide for fines and imprisonment for certain violations and would authorize cooperation with state and local law enforcement agencies.

Recommended Addition to S. 507, Section 103 (pg. 12).

Add, as a new subsection:

(8) Prohibit the authorization of uses on public lands that are inconsistent with state or local zoning regulations unless BLM makes a finding that overriding national interest requires the use.

Since the state and local governments represent the citizens affected by the Federal actions on public lands it is essential that, except where overriding national interest prevails, state and local government land use regulations must be considered.

This recommended amendment is supported by the Report by the Public Land Law Review Commission with the following finding:

"State and local governments should be given an effective role in Federal agency land use planning. Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state or local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning."

There are two basic reasons for involving state and local governments in Federal land use planning. First, these governments represent the people and institutions that will be most directly affected by Federal programs growing out of land use planning.

For example, disposal of land to private ownership may involve substantial service burdens to state and local government such as education and highway costs, which are not matched by a corresponding increase in taxes.

Secondly, the objectives of land use planning can be frustrated unless all land within the planning area is included, regardless of ownership. Land use decisions often have important economic and environmental impacts at the regional state, or local level.

Senator HASKELL. Our next witness is Mr. Richard P. Cullen.

STATEMENT OF RICHARD P. CULLEN, ROCKY MOUNTAIN OIL & GAS ASSOCIATION

Mr. CULLEN. Mr. Chairman, I appreciate the opportunity to be here this morning. I do not purport to be expert in all public land matters, however, I have been involved with regard to oil and gas matters involving public lands for over 25 years.

First as an attorney for a major land-grant railroad, second for a small independent oil operator, third for a major oil company.

Presently, I am in private practice in Denver, Colo. I am an inde- Oil & Gas Association and the Independent Petroleum Association pendent oil operator also. I am representing the Rocky Mountain of the Mountain States, of which I am the president.

These remarks I make will supplement the statement previously filed at the earlier hearing by Mr. Kenneth Whiting and he did not have the opportunity to make an oral presentation due to the shortness of time.

Basically, we feel this is a worthwhile piece of legislation and we salute to the opportunity and endeavors that have gone on here to bring the public lands together for an overall management system.

However, we do feel S. 507 as well as S. 1292 could stand some changes. One of our prime considerations is first, the tremendous amount of power given to the Secretary of Interior. I think we

feel S.1292 does make some minor changes which sets forth better guidance.

One of our objections or suggestions, actually, to both bills is, in the realm of what we feel is a possible imbalance between environmental matters and oil and gas development and mineral matters, the bill is replete with worthwhile references to the environment and we are certainly in favor of protection and maintenance of the environment, however, we feel greater emphasis or the same amount of emphasis should be placed upon the development of our mineral resources.

Therefore, in our statement, we have suggested the addition of certain phrases, both in the policy declaration, policy statement, and in section 103, that it should be the policy of this act to foster and encourage private enterprise in the orderly and economic development of our domestic mineral resources and reserves.

In line with the goals of Project Independence, the act considers the Nation's need for continuous and reliable supply of domestic energy resources for national security and economic well being.

Of course, I do not have to go into all of the matters concerning this country today with regard to energy, and I am sure that the committee is well aware of the need for development of our domestic oil, gas, and mineral resources.

Senator HASKELL. You might say energy and other resources. I am looking at your statement on page 2. This might add a balance to the bill.

Mr. CULLEN. I believe that would be a worthwhile improvement. We like certain aspects of S. 1292 which, as you are quite aware, closely parallels S. 507.

I think there are some changes in wording and definitions of multiple use that are somewhat better that give a broader interpretation, do not restrict the Secretary in his planning.

We particularly like the deletion of the provision of deletion or suspension of a permit or lease by one single act.

Senator HASKELL. I think the previous witness mentioned that. Counsel showed me a place in the bill—on page 13—where this appears. You might just make a note. It is section 101, subsection 3. After you have had a chance to look that over, if you do not think that gets the job done, please let us know. I think that this is very important—the opportunity to cure any default without canceling that out.

Mr. CULLEN. As you are aware, people make tremendous investments on this. Any willful act to suffer the loss of a lease would be a tragic act.

Both bills in our opinion are very deficient in that they do not consider the problem of executive withdrawals. We strongly urge this question or this matter be incorporated in the bills.

I understand there is another plan which does consider executive withdrawals, where the Secretary's withdrawals would be within this act, and the Secretary would have the right to make with-

drawals of 5,000 acres for a period of some 40 years, which then would go to the Congress for either approval or disapproval.

If they did not disapprove, the withdrawal would stand. There are tremendous areas in the West that are withdrawn, that are being withdrawn for all sorts of various purposes.

I have a copy of an article here regarding Utah where two-thirds of the State is effectively withdrawn for oil or gas development, by the Bureau of Land Management.

The various Bureau offices have different rules for withdrawals. That situation that first started in Utah a couple of years ago is being remedied by the administrative processes.

Our objectives in working with the administrators—but this question is of prime importance. Once the withdrawals get on the books, they stay there forever.

You can go to the BLM records—there has been a withdrawal in 1935, it is still there. Power service withdrawals, all of these matters. That is one of the main deficiencies of this act. It fails to consider the subject of withdrawals.

Senator HASKELL. Probably there certainly should be the right to withdrawal, but is should be subject to some kind of standards or review I am not too familiar with the entire problem.

Mr. CULLEN. It is a vital problem. It is tying up a lot of lands that should be constantly reviewed and it should be reviewed to see if withdrawal is necessary and effective.

In our prevous statement that Ken Whiting had, he had some suggestions as to the withdrawals that go along with this bill under consideration on the other side. We go along with that idea, the Secretary should have the power to withdraw, I think, if it is a substantial withdrawal, they put the number at 5,000 acres—then it should have congressional oversight.

Certainly, with smaller withdrawals, he should have the basic right within his own department to do so. The other matter we have put some attention to here is with regard to exchanges.

In the act, as presently drafted, in order for the Secretary to make an exchange, the national resource land must fit the same criteria as for a sale.

The requirements which are in section 202, subsections 202 and 203 require that the land be difficult to manage or is no longer necessary for a specifically acquired purpose, or its failure to serve the objectives of the bill—the National Land Resource Management bill.

We feel that unduly ties the Secretary's hands, that for an exchange they have got to fit those criteria.

Senator HASKELL. You were not here when Mr. Goodier from Wyoming was testifying but he said of Wyoming—and I am sure it is true in Colorado—that isolated Federal tracts, and isolated State tracts should be put together.

Mr. CULLEN. I am afraid that it would tie the Secretary's hands. You have that little window of Federal land or State land—actually

that little window is not necessarily difficult to manage or as it loses its purpose of being acquired, we feel that criteria should be eliminated and discretion be given to the Secretary to make the determination that the national interest will best be served and better land management will result from the exchange.

Senator HASKELL. I guess it is your feeling that section 202(a)1—which says that one of the criteria for such tracts "because of its location and other characteristics is difficult to manage" that this is not sufficient for withdrawal.

Mr. CULLEN. I do not think so: There might be a limit numberwise where he might have some discretion where the sale criteria could be left in on a larger exchange. I have not mentioned that, but there could be a possibility here.

Also, I think it would be well to check into the the possibility of giving the Secretary of Agriculture the same right to make these exchanges on Forest Service lands which is not as I read it—he still has control over Forest Service lands.

As you are aware, there are lots of Forest Service lands in the mountain States and other places.

Senator HASKELL. I am not sure we can do it in this bill. We might run into jurisdictional problems.

Mr. CULLEN. That is possible. But, I comment on that because there are a tremendous amount of federal lands which are under the jurisdiction of the Secretary of Agriculture.

Overall, that really sums up our recommendation. We did not intend, at this time, to get into the nuts and bolts changes, but, we would intend to followup with something along those lines if permissible.

Senator HASKELL. That is fine. Thank you.

Mr. CULLEN. We commend the bill. I think it is worthwhile and being the only representative of the oil industry present, I think we certainly can live with it.

I think it is a worthwhile necessary step in the development of our public lands.

Senator HASKELL. Thank you very much, Mr. Cullen. I have been asking questions as we go along and I have no further questions. Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman. I appreciate very much your being with us this morning. I am sorry I missed most of your testimony.

I will get a chance to read the statement and if I have any questions, I will present them in writing if that is agreeable to you?

The part of your testimony I have heard was certainly very impressive.

Mr. CULLEN. Thank you very much.

[The prepared statements of Rocky Mountain Oil & Gas Association dated March 7 and May 15 follow:]

STATEMENT OF

ROCKY MOUNTAIN OIL AND GAS ASSOCIATION
INDEPENDENT PETROLEUM ASSOCIATION OF THE MOUNTAIN STATES
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

on S. 507,
"National Resource Lands Management Act"

submitted to
SUBCOMMITTEE ON THE ENVIRONMENT AND LAND RESOURCES
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

March 7, 1975

March 7, 1975

Mr. Chairman and Members of the Subcommittee:

My name is Kenneth R. Whiting. I am executive vice president of Ladd Petroleum Corporation, a Denver based independent oil and gas producing company. I appear on behalf of the Rocky Mountain Oil and Gas Association, the Independent Petroleum Association for the Mountain States and the Independent Petroleum Association of America. These organizations represent individuals and companies, large and small, engaged in all facets of the oil and gas business, including exploration and production on the public lands. I appreciate this opportunity to appear on behalf of those organizations to comment on Senate Bill 507, the "National Resource Lands Management Act."

Our special concern with the nation's natural resource lands and their management lies in the interrelation between those lands and our country's energy problems. Almost all of the energy used in the United States comes from mineral resources which must be extracted from the land and many of these resources lie beneath the public lands of the United States. Therefore, policy affecting the management of these public lands inexorably affects energy and the economic strength of our nation.

Perhaps some statistics will help to dramatize the importance of the public lands in general and those in the Rocky Mountain states in particular to our nation's energy problems. Of the total 2,271,343,360* acres in the 50 states, approximately one-third or 760,203,563* acres are owned by the federal government. Out of this, over 156,000,000* acres are located in the 8-state area of the United States from

* Public Land Statistics 1972, Bureau of Land Management, United States Department of the Interior

which the members of our organizations are drawn. These federal lands comprise a substantial amount of the land in the Rocky Mountain states, e.g., 36% of Colorado's, 30% of Montana's, 66% of Utah's and 48% of Wyoming's. While private and other lands are important, this concentration of federal lands is often the key to resource development.

The National Petroleum Council has estimated remaining discoverable oil reserves in the Rocky Mountain area of the United States total 66.3 billions barrels or 27.4% of estimated total remaining discoverable oil in place in the lower 48 states. With such important resources in an area of dominant federal ownership, an obvious key to its utilization will be the federal land policy under which development must take place.

For many years spokesmen for the oil and gas industry have warned of the danger of our becoming dependent upon foreign energy supplies. These warnings were largely ignored and the consequences have been demonstrated vividly in the events of the last 15 months. We have no choice but to concentrate our united and undivided attention upon the development of the great natural resources with which we have been blessed while at the same time giving careful attention to minimizing the impact of such activities on our environment.

For at least a decade, the environmental cause has enjoyed the support of dedicated and articulate advocates. They have shaped the thinking of an entire generation of Americans, their rhetoric has been pervasive, and their capable but sometimes strident voices have occasionally delayed the development of important sources of domestic energy supplies.

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We recognize, as do all responsible citizens, the importance of not despoiling our environment, of preserving the recreational, historical and scenic values of the public domain, and of avoiding irreparable damage to natural systems or processes of life. But recent world events give graphic evidence that there are other important considerations in managing the public lands.

New legislation adopted to govern the management of the national resource lands should promote and encourage the full utilization of the lands on a multiple use basis. Senate Bill 507 does not adequately meet that standard since the greater emphasis seems to be placed on environmental concerns with a lesser and possibly subservient emphasis placed on the development and utilization of resources under the public lands. This imbalance in emphasis should be corrected in order that all of the nation's critical needs, including energy independence and national security, can be met. Our suggestions today are directed primarily toward correcting this deficiency.

The proposed bill would give the Secretary of the Interior extensive discretionary powers in the management of natural resource lands. But the bill itself does not carry a clear message for multiple use of the public lands so that the Secretary and other officials in the Department will not be misdirected in their administrative duties. The national resource lands should be managed so as to insure intelligent utilization to meet the needs of all of the citizens of the United States. If we are to meet the challenge of adequate supplies of energy for fuel, for factories, to heat our homes and schools, and to run our automobiles and public transportation, our legislation must encourage the development of the energy resources underlying our public domain.

In order for the concept of multiple use to be adequately woven into Senate Bill 507, and to encourage the development of the natural resources on the public lands by our energy companies, both large and small, we recommend that the "Declaration of Policy" as stated in Section 3 of the Bill be implemented by adding the following as a new subparagraph to Section 3(b):

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

Consistent with the goals of Project Independence, it is crucial that the need for energy be given proper consideration in the management of the public lands. We therefore urge that Section 3(b) and Section 103(b) be amended to include in each case a new item which would call upon the Secretary to:

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

Section 101(1) states that the Secretary's management of the national resource lands shall include ". . . regulating, through permits, licenses, leases or such other instruments as the Secretary deems appropriate, the use, occupancy or development of the national resource lands not provided by other laws. . ." This is an extremely broad delegation of legislative authority to the Secretary.

We submit that more precise guidelines should be established to govern the acts of the Secretary in the management of the national resource lands. Such guidelines are indispensable to effective administration. Where guidelines are vague and not precise, there is an understandable tendency for governmental

employees to delay or avoid taking action in fear that they will be criticized for doing so. Likewise, private industry needs to know the guidelines within which the officials of the Department of Interior must operate as an aid to planning and so that industry can exert pressure upon government officials to take needed actions within such guidelines.

We are also concerned with the provisions of Section 101(3) authorizing the revocation or suspension of leases. It has long been a requirement of federal oil and gas leases that the lessee comply with relevant 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 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.

We are also concerned about the procedures for revocation or suspension under this provision. As Section 101(3) 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.

For the reasons outlined above, we recommend that Section 103(3) be modified as follows:

> "(3) inserting in permits, licenses, leases, or other authorizations to use, occupy, or develop the national resource lands, provisions authorizing revocation or suspension, after notice and hearing, of such permits, licenses, leases, or other authorizations, upon final administrative finding of a repeated and willful violation of any regulations issued by the Secretary under any Act applicable to the national resource lands or upon final administrative finding of a repeated and willful violation on such lands of any applicable State or Federal air or water quality standard or implementation plan: . . . ."

(additions to existing language are underlined)

Finally, we are concerned that the legislation now before you fails to touch upon what we regard as one of the most important aspects of public land management -- the issue of executive withdrawals. The present system of land management is grievously deficient because existing laws permit lands to be set aside or withdrawn by executive order for a single purpose or limited purposes.

Senate Bill 507 should be amended to provide that the executive branch be required to obtain congressional approval for the withdrawal of public lands in excess of 5,000 acres. We further recommend that all executive withdrawals be limited to a period of 10 years, that there be a provision for thorough review by Congress of all existing and future withdrawals, and that the power to make effective withdrawals should be vested in the Secretary of Interior only under precise guidelines. Otherwise the purpose of the entire system of management of the national resource lands could be frustrated by removing substantial portions of such lands from the management jurisdiction established by Congress.

Congress has recently shown a commendable willingness to reassert its constitutional prerogatives and powers. It is in the public interest that it should not abrogate these powers by the delegation of unreasonable powers of withdrawal to the executive branch.

Already large portions of the national resource lands have been made unavailable for exploration and development. We do not need more legislation which enlarges the areas which are not available for energy development. Rather, what is needed is an examination and modification of some of the existing statutes and practices of the Department of the Interior to insure that the principles of multiple use will operate for the national resource lands.

For the most part the members of the organizations for which I speak believe that the provisions of the Mineral Leasing Act of 1920 and the mining laws have worked satisfactorily in encouraging development of the minerals on the public domain while at the same time providing reasonable protection to the environment. It is hoped that any legislation adopted by the Congress will not depart from the basic concepts and management philosophies contained in this past legislation.

CONCLUSION

We join with the proponents of the bill in desiring this first comprehensive statement of congressional goals, policies and authority for the management, protection and development of the natural resource lands. We urge that our recommendations, which are offered in a spirit of cooperation, be given serious consideration and that they be incorporated in the final version of the bill.

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

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March 11, 1975

Subcommittee on the Environment
and Land Resources
Senate Committee on Interior and Insular Affairs
Dirksen Senate Office Building, Suite 3106
Washington, D. C.

Gentlemen:

On March 7, 1975 I filed with your committee a statement on behalf of the Rocky Mountain Oil and Gas Association, the Independent Petroleum Association of the Mountain States and the Independent Petroleum Association of America regarding Senate Bill 507, the "National Resource Lands Management Act." The statement was to be made by me orally in hearings before the subcommittee on March 7. As you know, the subcommittee hearings were adjourned before many of the witnesses (including me) had an opportunity to testify.

One of the groups for which I was to appear, the Independent Petroleum Association of America, does not concur with the last part of the first full sentence on page 5 of the statement which reads as follows:

> ". . . and so that industry can exert pressure upon government officials to take needed actions within such guidelines."

Therefore, the Independent Petroleum Association of America does not endorse the quoted phrase.

I had intended to make this disclaimer on behalf of the Independent Petroleum Association of America during the oral presentation of my statement. Since I was unable to present the oral testimony, I am making the disclaimer by this letter.

Yours very truly,

Kenneth R. Whiting
Executive Vice President

KRW:je
cc: Mr. Ron Frank
Mr. Walter Mote
Mr. Jim Rose

SUPPLEMENTAL STATEMENT OF ROCKY MOUNTAIN OIL AND GAS ASSOCIATION INDEPENDENT PETROLEUM ASSOCIATION OF THE MOUNTAIN STATES

(Supplement to March 7, 1975, Statement, May 15, 1975)

Mr. Chairman and Members of the Subcommittee, my name is Richard P. Cullen. I am a self-employed attorney in private practice in Denver, Colorado, and am actively engaged as an independent oil operator. I appear on behalf of the Rocky Mountain Oil and Gas Association and the Independent Petroleum Association of Mountain States. I appreciate this opportunity to make additional comment on S. 507, to those presented by these associations at the hearing held March 7, 1975, at which, regretably, time did not permit oral presentation and discussion by our representative, Mr. Kenneth R. Whiting, but only of filing with the committee of our statement of position.

By way of introduction to our remarks in this appearance, we wish to emphasize our earlier recommendations and remarks remain as presented and especially the conclusionary statement I now quote:

"We join with the proponents of the bill in desiring this first comprehensive statement of congressional goals, policies and authority for the management, protection and development of the national resource lands. We urge that our recommendations, which are offered in a spirit of cooperation, be given serious consideration and that they be incorporated in the final version of the bill."

As earlier stated, we feel S. 507, in order to *accomplish* the meaning of multiple use and to encourage development of natural resources on the public lands, the Declaration of Policy as stated in Section 3 of the Bill be implemented by adding to the directives of Section 3(b) an additional subparagraph:

"Foster and encourage private enterprise in the orderly economic development of domestic mineral resources and reserves."

Consistent with the goals of Project Independence, it is crucial that the need for energy be given proper consideration in the management of the public lands. We, therefore, urge that Section 3(b) and Section 103(b) be amended to include in each case a new item which would call upon the Secretary to:

"Consider the nation's need for a continuous and reliable domestic supply of energy resources for national security and economic well being."

Since the March 7 hearing, S. 1292 was introduced on March 21 which bill closely parallels S. 507 in many respects as you are aware. We have carefully considered the provisions of this additional bill in conjunction with S. 507.

S. 1292 remedies certain of the objectionable features of the definition of multiple use of S. 507 and does not include the provision for revocation or suspension to which we strongly addressed ourselves in our previous statement; however, S. 1292, like S. 507, does not include additional policy directives we have earlier recommended for Section 3(b) and Section 103(b).

Like S. 507, S. 1292, as introduced, does not address itself to the problem of executive withdrawal. We strongly urge that either bill is fatally deficient without the inclusion of a provision with regard to executive withdrawals. We understand that this matter is under consideration and that planning, generally along the lines as proposed in our earlier statement, is now underway. We cannot urge strongly enough that this matter be considered in the final draft of this legislation.

A further matter of prime importance involves the exchange provisions of Section 213(c) of the act. As presently drafted in order for the Secretary to make an exchange, the national resource lands must fit the same criteria as for a sale of such lands. In our opinion, such requirements, as found in Section 202(1), (2), and (3) concerning difficulty of management, being no longer necessary for a specifically acquired purpose or failure to serve national resource land objectives, unduly tie the hands of the Secretary and should be broadened. We recommend that the reference to the disposal criteria be eliminated and in place the Secretary be given the determination whether or not the national interest will be best served and that better land management will result by making the exchange. We would further recommend that the Secretary of the Agriculture be given the same discretion with regard to Forest Service lands.

In summary, and as stated earlier, we join with the proponents of this legislation for a comprehensive statement of congressional goals, policies, and authority for the National Resource Lands. We sincerely believe and strongly urge that the final version of the bill incorporate our recommendations so that

a viable authority acceptable to the people, industry, *and* government of the nation be timely enacted to assure proper utilization of the national resource lands essential to the economic well being and security of our nation.

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

Senator HASKELL. The next witness is Hon. Andrew L. Bettwy, Land Commissioner of the State of Arizona.

We are pleased to have you here today. I am sure Senator Fannin will have some comments to make at this time.

Senator FANNIN. It is a pleasure to welcome our State land commissioner this morning. He has served in that capacity very capably for the last 8 years and we are very proud of Mr. Bettwy.

He is highly respected by his fellow land commissioners around the country. I have talked with a number of them and prior to his service with the State of Arizona, he was in private law practice for 20 years, dealing extensively with public land problems.

It was my pleasure, as Governor, to discuss matters with Mr. Bettwy, before he was land commissioner. I have great respect for him and we are very pleased to to have the opportunity to present Mr. Bettwy to you and to the committee and I am sure he will have some very important information for us.

Senator HASKELL. We look forward to hearing from you sir.

STATEMENT OF ANDREW L. BETTWY, LAND COMMISSIONER, STATE OF ARIZONA

Commissioner BETTWY. Thank you for those kind remarks. I realize there is a considerable time problem and I would like to indicate the concept of the structure of my presentation, so I might be turned off at any time.

I would like to make some general observations with what the bill contains and then proceed with the relationship of awarding particular statements.

The generalized statements—those are the ones I would prefer to make, because I think that there might be areas—I do not have references to specific sections of the bill.

Now, at the outset, I would like to in all sincerity state the Bureau of Land Management is the outstanding Federal agency in the State of Arizona—they are doing a job certainly consistent with the will of the people in that state. In my opinion, for the benefit of the Nation as a whole, I think they conduct themselves in a very mature and responsible manner.

There are a lot of problems they face. Whether or not this bill is the one that should be written to assist them, I do not know.

I have one caveat in the written portion, as I appear here as land commissioner, not officially for the State of Arizona, there are too many areas that transcend many areas of the land commission, but I think some of these questions may suggest some ridiculous possibilities that were never in the minds of the draftors of the bill, which is often the case, when people are intent on solving some emergency.

The result that can be achieved is often not what was intended. I would like to make a few statements about Arizona. Obviously it is only one of the six or seven largest States—I cannot remember what

Alaska did to us, but it is not the largest, it only represents 3.8 percent of the total land area, in this country, excluding Alaska.

Yet, the 15 percent of Arizona owned by private people today, if it were developed to the density of Washington, D.C., it could hold all of the people in the United States. Two hundred ten million people and it would still leave 85 percent of Arizona left and 49 other States to frolic in, if we wanted to.

I think there is some point in this, as we move through, however, we have a great limitation in water. If all of our water, as we understand it is inventoried to be, were dedicated to industrial and municipal purposes, we could probably accommodate 15 million people, significant too—in my opinion—is if you can calculate the density of Arizona's people to private land, we are the 15th most dense State in this country.

Only 14 other States in this country, in 1970, had a density greater than we have. I heard on TV the other night, we are now the fastest growing State in the Nation, which poses, I think, a great deal of problems in relation to the proper allocation and distribution of people and management of the Federal asset which when included with the Indian lands represents 72 percent of the State. I now go to the general observations, as I have indicated. I do not think that there is any question that S. 507 mandates a complete Federal land use plan for the State of Arizona.

When you take into account the effect of the mandate that people must plan their adjacent Federal lands——

Senator HASKELL. Because of your tremendous amount of Federal lands?

Commissioner BETTWY. Yes, sir. The concept of 8½ acres for school areas, section 216 and sections 32 and 36 has really confused the ownership in such a manner, that it is completely a kaleidoscope—in my opinion—of land ownership.

But, I think of equal significance, because in my opinion, and vicariously reading about bills that come out of Congress, people in the East are included to feel, these are all the Western problems, and they can ignore the effect of some of these bills.

By the definition of what Federal lands means—and I might refer to that—it is one of the amendments on page 4 and it says, Federal lands means any land owned by the United States without regard to ownership, how they acquired the lands—

There is a further definition I will get into which adds the facts of lands or resource lands—page 3.

It says, lands are all interest in lands. Now, the basic property law—I think most States in this country still subscribe to the old English concept that a person who has full fee ownership owns from the center of the Earth all the way out into space into infinity, but I would like to suggest this possibility is entirely available to any State today that has no Federal lands in it, that people who desire to bring Federal land planning process into the State might well give the spatial ownership to that total package ownership that might exist say 10 miles below the surface or as far out as the air space as beyond the Moon.

These are real rights that are recognized subject to the laws of flight. As I understand it, there are many many ways in which seemingly significant processes could be given to the Federal Govern-

ment, to the Secretary of the Interior and make the Secretary of the Interior a dominating influence in the land planning process of this State in which those grants were made.

This, in my opinion is probably the most significant part of this bill. If, in fact, it is a land use plan, it certainly has some very obvious differences than the bills which have been before this Congress and are before it now that proposed to allow the States some control of their destiny.

Very obviously, the clear wording of this bill does not give any discretion of the part of States in regard to the decisions the Secretary of the Interior makes in accordance with his interpretation of this law.

There is some water boiling and perhaps therapeutic benefit of attending hearings by members of the public by States, but in the final analysis the bill mandates the Secretary to make those decisions which in his opinion fulfill the requirements of this bill.

I think it is far, far more harsh in its potential effect than any land use bill I have read that exists before this Congress and certainly if it is also true what I state, this bill lacks all of the sophistication which you gentlemen have been putting into this bill for the last 5 years and enormous cost and finest minds in the country coming before you and suggesting how you develop a land use plan.

That is totally ignored, in my opinion, in this bill. It seems to me it would onerous—I do not think it would be productive and I do not think that it would represent the will of any of the people regardless of where they live.

Senator HASKELL. You are basically referring now to the amendment, rather than the bill itself.

Commissioner BETTWY. It fortifies the amendment and it gives license, as I see it, to extend the program throughout the United States.

Omitting the amendment, my comments would remain insofar as the public land States of the West, generally 11 States, plus Alaska. The bill completely omits 19 million acres of Indian land in Arizona.

They happen to be located either by accident or by design, and hopefully it was by design, because they did get some good lands, to which they are totally entitled, but they border our major communities. They are in the path of progress and it seems to me it is indefensible to command adjacent land compatibility and to ignore that enormous asset. I cannot distinguish in my mind between undesirable activities on non-Federal adjacent land which is Indian, to nondesirable activities on adjacent Federal lands owned by the State or by private parties.

The other point I see in this bill, ignoring, I suppose, from this point, forward, the prime concern of the effect of this being made a Federal land planning authority for the State of Arizona.

There is no deadline in this bill to make a plan for other than—as I remember—areas of critical environmental concern and the California desert area.

It would appear to me in the bills that have been proposed for land use planning for these States that it is meritorious and defensible to set a deadline in which the States must perform, that it is equally responsibile to set a deadline within which the Federal Government must perform. There are all reasons to support that can be done; if anybody has the assets to do it with, it would be the Federal Government.

I have talked about land planning, but I think the effect of this bill on Arizona would also mean the management of the State of Arizona would almost be subjected to the Secretary of the Interior.

When I am making these comments, I am certainly not alluding nor do I intend in any way to imply that there would be any wrong doing or abuse or anything else.

I think it is inherent the possibility of those is something that has to be considered. I think that one other thing that strikes me again in terms of generalities but in terms of significant importance is the police authority which this bill proposes to give, an alien police authority, not elected by the people, not susceptible to impeachment—to me, this is just completely contrary to anything I have been taught or anything that people want to live by.

I have a great deal of doubt in my mind whether it is constitutional for the Federal Government to maintain police forces, except for purposes of quelling rebellions and insurrections and things of that nature, but the capability of the police force authorized here is almost incredible to me.

I will digress to one specific point in that because I do not have time—I do not think that you have time to listen to specifics—but in relationship to the arrest of authority to these Federal police officers, it would seem they change the basic concept of arrest by a public person in the area of a misdemeanor, a person can make an arrest if they merely have a belief that a misdemeanor is being committed in their presence. As I understand the law, misdemeanors must be made on the basis of a misdemeanor being committed, not merely the belief a misdemeanor is being committed.

I would suggest if a highly intelligent computer operator is armed on a certain afternoon and he goes out to help manage an asset and he hears loud shouting—he is a reasonable man, he reasonably concludes that is a misdemeanor, he arrests somebody, incarcerates them, deprives them of their liberty and he has no responsibility, neither does the Government just because the test is his reasonableness of what is a misdemeanor.

I would think that this deserves immediate attention. I would say that this—the request for police authority is a very valid one.

The managers of public land, I think, are in a state of absolute desperation in attempting to keep down the damage that is being done by nonregulated, nonpermitted, nonpaying users of public lands. It takes me partly to the subject of California. I read this bill in a manner of authorizing the Secretary of the Interior mandating the Secretary of the Interior to stop any number of economic

activities now being conducted on public lands until such time as he completes his plan. If there is some validity, and there is no mandate as to when the plan can be completed, the implications for this are incredible.

Obviously, we come from the boondocks—as I do—and we tend to think of things as the way we see it, but I do think that the people are not familiar with the West and tend to ignore the contribution of the West and the general wealth of this country. I would suppose that I could defend easily $3 to $5 billion a year out of natural resources coming out of Arizona. The beneficiary of this is the East and I do not think the people are fully aware of what implications for the Nation could result from a total demoralization and stoppage of development being pursued on public lands in the West.

Now, there is one other general area that this bill has—this bill authorized the Secretary of the Interior to acquire lands by purchase and by donation.

I would like to touch on the donation phase for one moment. Unless that authority—and obviously it carries with it the right on the part of the grantor to give—is somehow tied in with the right to deduct the value of gifts to the government.

It seems to me we could have a complete runaway of gifts and create an imbalance in gifts, particularly in the State of Arizona, that could not be supported by the people.

If a person could give a property of enormous value and deduct it from his income tax, he has created two purposes.

Senator HASKELL. He could give it to the State of Arizona and get a deduction.

Commissioner BETTWY. I do not know if we have a provision for gift to the State.

Senator FANNIN. It would still come off the tax rolls, then.

Senator HASKELL. Yes.

Commissioner BETTWY. I have three more general comments I would like to make. It would appear if there is merit to some of the comments I have made, the net effect for Arizona and certainly it seems to me for the other States I am familiar with, that the management—the ultimate management—of these States would impose transient personnel management and remote planning.

And, by the force of control over adjacent non-Federal lands, does this change basic State law over authority of lands within its State? As I understand the law today, land law is that law which has been developed by the State and not by the Federal Government.

One other point in the planning process, it would appear to me the Secretary could create enormous imbalances interregionally by suggesting, for example, all copper mining should take place in Colorado, where none of it should take place in Colorado—that type of thing.

The compounding of the effect of that I think would create an absolute bankruptcy in one State economically and environmentally in another State.

There are no standards in here. Environmental quality areas of critical environmental concern—these are beautiful words.

Maybe they are because nobody understands what they mean. I certainly do not. I sat on the Environmental Planning Commission of the State of Arizona for the last 2 years and we had a mandate to come up with the State land use plan and we gave up after 3 months trying to define environment and environmental quality because nobody could agree on what it meant.

There are enormous hazards in words of that kind where you have no standard to judge whether the conduct of the administering officer is consistent with what the intent of the legislator was.

I would suggest someone trying to beat their head against the wall could come up with more practicable use of the words. But, there were people on our commission who would not accept the definition of Webster's Unabridged Dictionary.

They said, that is not what it means to me. We were unable to come up with a definition. We started out very parochially thinking it might be advantageous to have an agreement as to what environmental quality meant, what does a plan mean, what does a program mean, what does a policy mean?

It took us 6 months to define planned program policy and progress. We abandoned them because nobody was willing to go back to the definition.

I see also in this bill, if all tax claims were wiped out because of that 5-year requirement in which people must go to patent, in that area I have had some area and fortunately or unfortunately with small mining operators in proceeding to patent under the laws, I would say most people cannot even afford the cadastral survey and the opportunity for abuse would overbear the small operator.

I do not think the intent of the bill is to wipe out the legitimate operator. It seems to me that there would be some process to determine the validity of the existence of the standard of a reasonable test of marketability and that would be all. I come to one point that is most significant to me as land commissioner and that is that I believe this bill should attempt to codify the Federal Government's responsibility to fulfill its promises made to the State of Arizona when it engaged in a contract to create that State.

It offered the State, as a condition to its enactment and its creation, about 10½ million acres of land. In very superficial terms, it says, if you cannot find them where we have given them to you, you take them anywhere in the public domain.

Obviously, I am an advocate for the State of Arizona in this regard, but I think an excellent case could be made on this in a court of law.

The State of Arizona, as many other States did, delayed the in-lieu selection of its lands for various reasons, probably lack of funds, to study the lands for some time.

We still have 185,000 acres of land owed to the State of Arizona to select. Now, speaking in the terms of advocacy, the right of the State of Arizona to select land from the public domain attached as of the date Arizona became a State in 1912 and not to the public domain as the Government from time to time kept restricting and reducing that asset.

Interestingly enough, I do not think today, except in the Grand Canyon National Park, that the State of Arizona owns 1 inch along the Colorado River. It is an interesting result of Federal agencies periodically, since 1912, identifying with a heavy hand and a broad pencil what they felt they should have.

This area of authorizing that nothing will be done to restrict the rights of the State, but qualifying it with a responsibility on the Secretary's part to classify the lands for disposition under those provisions in effect gives the Secretary authority to deny any more land to the State of Arizona.

However, one other interesting anomaly and confusion exists and that is this—in the Enabling Act of Arizona, the Federal Government can come in and take State lands for recreation purposes.

A considerable amount of land is now being taken for the Central Arizona Project Canal. Under that provision, when the Federal Government takes land, the State is entitled to in-lieu rights somewhere else.

If these in-lieu rights are going to be delayed as to such time the Secretary classifies the land and the Secretary makes a plan and there is no provision as to when the Secretary must make his plans, I think in all points of view, we might as well say those lands are lost and we are not going to get them.

There are some other brief points I would like to make. In the national interest, this bill should provide some immediate effort for all the restrictive provisions to be avoided. We have gone through a couple of wars in my lifetime, and I cannot imagine waiting 1[illegible] years to decide whether or not we can enter a wilderness area to remove minerals in necessity of the defense of our country, and also for the States.

Another factor that deserves serious comment—I did have the experience of working specifically in the field of mining with a very sophisticated gentleman in a law firm in Mexico City for 2 years. That is all I worked at, and obviously, you are going to be making comparison of the laws of your country with the comparison of another country, which perhaps shows my lack of sophistication to the fact that I was not aware that civil laws country which adopted its laws from the Code of Napoleon absolutely preclude the mineral state going into private hands.

Most of those countries—certainly Mexico—to my knowledge, also precludes the mining interest going into alien hands. I think it is realistic today to be concerned about who might well own the minerals of this country and be able to tie them up, if in our system we will not confiscate without due process and what effect that might have on antiquation of national emergency. I would strongly suggest people review the laws of Mexico and what Mexico has done, for this reason. Mexico has had to live for a long time with this wealthy neighbor to the North. She has had to periodically make laws to protect herself from having total control of her important activities in foreign hands. It is interesting in Spanish demora, which comes from demoralize, means a complete stoppage of everything. We do not so define it.

It is possible under these circumstances to so demoralize a nation, it cannot proceed. One other general comment is that this bill makes a lot to do over Southern California's outdoor lands.

I have great sympathy with that problem. We have the same problems in Arizona on our State lands as well as our Federal lands, but it seems to me making a special subject out of California lands, all we are going to create is the same problem in Arizona and probably in much greater volume. The people using those lands in an irresponsible manner are merely going to travel another hundred miles and do it in Arizona.

It does give me opportunity to relate to one other thing about land use planning. I had a comment here I bypassed, but I want to regress to it. Any complete land planning authority, and I think S. 507 has that effect for Arizona, has this double-edged sword.

Ostensibly, it is to do everything good but there are a lot of things that have to be done that are bad. There are a lot of things in the national interest and the State interest that must be done and they are undesirable in many cases.

Where they are the most desirable, they are put there because the law to restrict them does not exist. On the coast of California, if one would read the problems—the problems of placing the nuclear sites along the Colorado River, this is a direct sort of result of forcing the bed into an area least able to support it and least able to defend it. I think, obviously, the other side of that sword ought to be looked at in this bill, particularly with the enormous control of Federal lands in the State of Arizona.

People proved they did not advance with the sophistication that advance technology and expertise defended. If that is so, and I would ascribe the justification for that, then in my opinion reason says let's go back and look at all of those things that we did when we were not paying attention to those things that we know now we should have paid attention to.

An enormous part of Arizona is tied up in matters of national defense and things of that nature, but my opinion as far as S. 507 is concerned is that there it is enormously clearly stated in terms of powers but very nebulous in its duties. I feel words people can understand, words people can relate to, objectives, desires, can be stated in such a manner everybody knows where we are going. That is the substance of my general remarks. I have 10 more pages of specific remarks and I won't burden you with those.

Senator FANNIN. Thank you, Mr. Bettwy, and I say this also on behalf of the committee, for the very detailed statement you have submitted and practical explanation of what is involved.

I know you to be very objective. I have been very impressed with the work you have done, coordinating the efforts of the Federal with the State government, and working for the interests of both Federal and State lands along with the public interest.

Certainly for the protection that is needed, I just ask you how we are coming along with the work surveys and the work that was arranged through your leadership when you came back to Wash-

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ington with your colleagues and met with Secretary Morton and the assistant secretaries of the different departments involved, different agencies involved, and discussed the great potential in working with the proper protection of State and Federal lands along with needed private developments. How is that project coming along?

Mr. BETTWY. If I deserve any credit for the idea, I have come to the conclusion the people who deserve the credit are the people who make it above, and you made it move, sir, and I want that stated publicly.

We have completed, I think, a very sophisticated study of all of the disciplines involved in the Department of the Interior, the finalized report. We found many areas of agreement. We found enough areas of agreement to utilize the entire unsatisfied in lieu grants to the State of Arizona.

We found enough to trade with the Federal Government 200,000 acres with that they now want.

Should this bill be passed, I think that would entirely go out the window. The comment I wanted to make, if the bill progresses, there should be provision in the bill to allow those actions that are in progress to proceed with the existing law. There is too much value, in my opinion, being accumulated by this effort to lose it.

Senator FANNIN. I think it would be a great loss.

I will call to the attention of the Chairman the land commissioner has brought out some of the details of the program that has been progressing in Arizona with the Federal Government and the State Government working together for some land exchanges for property developments along the Colorado River and other areas of the State, where it is advantageous to both the Federal Government and the State Government, and to the needs of the people of Arizona and the Nation.

I don't know if you would want him to further explain that. I think it is very important, and perhaps other States would take the same position as taken by Arizona. I don't say that the State of Arizona is the first to become involved but it was certainly something new at the time.

Mr. BETTWY. I would like to make one summary remark if I may. I would think my time here was not well served nor was our country or a State if the effect was to delay consideration of specific problems that the Bureau of Land Management is facing, and the realistic approach is, in my opinion, to take those problems, legislation-by-legislation.

For example, transmission lines and siting is a significant subject, that time be taken so it is understood and be worked individually. This is so encompassing and a great deal of this relates to powers that already exist in my opinion.

As I say, it is so involved, it has so many implications that I don't think it is intended by the people who drafted it, that the delay in having the authority to proceed with the proper management tools, it just would not be well served.

May I make one other comment? I do think it is significant, I don't know if my points will make it clear—the total thrust of the Federal Government appears to me to be concerned with the environment.

Now, permit me to say one of the elements I think we are talking about when we are talking about environmental quality, quality of life, is an outdoor experience for people. I have talked to sociologists on this, sophisticated park people. They all agree, or they have stated the conception on their own, the great need for outdoor experience is near home, not 150 miles up in the mountains, 85 miles over the river, it is right near home.

Now, the Federal Government has an incredible capability of using some of its lands to acquire lands within communities within or adjacent to communities in the West or anywhere in the United States by trade or by sale, and then making those lands available to the communities in those areas at a price they can pay.

Phoenix, Ariz., the metropolitan area of Phoenix, has 2,500 acres of contiguous patented land. Senator Fannin would understand what I am talking about. If that were developed to the density of Nogales, one three story building, if it were developed to that density, the Salt River Valley would hold 18 million people in it.

The areas that have been provided for parks are zero. Society has to go back in and buy those acreages. The land department recently sold some land inside the city of Phoenix, for example. We appraised it at $18,000 and it sold for $28,000 an acre.

Communities just don't have the money to go back and acquire these lands. With one-third of the Nation's land, it seems to me a bill of this kind could provide authority to make trades to acquire an asset in Federal ownership and allow the local authority to have it with a reverter clause where it would revert on the failure of complying with the provisions. It would revert if it did not comply with the provisions.

This does not just apply to the West, to Colorado and Arizona, if they need that in South Carolina, I think the Federal Government ought to do that.

Senator FANNIN. Mr. Chairman, I want to point out the work that is being done by the Federal Government and the people living in the areas involved on these exchanges. They could not go forward if this bill in its present language is adopted, the ongoing programs.

Senator HASKELL. If this bill goes through——

Mr. CRAFT. Absent the agreement to allow to make those selections between the States and the Federal Government to be consummated, if this bill becomes law there is nothing in the grandfather clause that that can be done, that is concerning that which is contemplated to be done.

Senator HASKELL. We better examine that, Senator Fannin.

Thank you, Mr. Bettwy. You made comments on specific sections of the bill which will be of great help to us when we go to mark-up. I want to thank you very much for appearing.

Mr. BETTWY. I am honored to be here.

[The prepared statement of Mr. Bettwy follows:]

STATEMENT BY ANDREW L. BETTWY

ARIZONA STATE LAND COMMISSIONER

Before

U.S. SENATE SUBCOMMITTEE

ON

ENVIRONMENT AND LAND RESOURCE

re

S-507

May 15, 1975

There is a great need to consider Federal management of all lands under its control and under its trust ownership for the people.

The USDI BLM in my opinion does an outstanding job in Arizona and it does need some new managment tools.

Both the U.S. Congress and the USDI should be commended for attending to their needs.

Regardless of any of the comments to follow regarding S-507, something should be done to make it possible to cope with new problems on the federal lands.

Because much of S-507 transcends the function of a Land Commissioner and there are many subjects for higher authority, many of my comments will be in question form. Surely, each question can be answered in more than one way, and obviously, it will be up to Congress to write the law so that it provides the tools for the best answers for our people.

Should I answer some or appear to advocate in particular areas my remarks should be understood as being those of the Land Commissioner's level.

It is my duty to report back to our Governor, the Honorable Raul H. Castro for his consideration of the matters he deems necessary.

BRIEF BACKGROUND: Arizona has private land which if used to the density of Washington, D.C. would hold 210 million people. It probably has water for 15 million if all used for M & I. It now has a density of people to private land of 125 people to the square mile. Only 14 other states had a more dense population in 1970.

SOME GENERAL OBSERVATION:

1. S-507 would mandate a federal land use plan for all of Arizona.

   a. Adjacent non-federal land would omit 19 million acres of Indian land.

   b. Adjacent non-federal land would include 11.5 million acres of Trust land.

   c. Adjacent non-federal land would include 9.6 million acres of Trust land.

   d. As 507 is written without a deadline for a plan everything must halt until that unknown date.

2. The entire State of Arizona except Indian lands would be subject to management by the Secretary of Interior.

3. S-507 would authorize a federal police force in Arizona. Even if this might be desirable, one must question its constitutionality. An alien, unelected, unimpeachable police does not appear desirable.

4. S-507 would authorize stoppage of most of all of Arizona's major industries at least until a plan is developed,

and forever thereafter depending on the plan.

Recreation, livestock, mining, energy production, farming.

Even if this were desirable one must question if that is the contract Arizona made for statehood.

5. S-507 set no limit as to the land area the USDI can acquire except by implication the entire nation.

Should there be some standard, some limit, some right of a state to regulate, and should there be some payments in lieu of lost taxes?

6. Would S-507 only provide for transient management and remote planning?

7. By the force of control over-adjacent non-federal lands does S-507 change basic state law over its lands?

8. Would S-507 authorize federal inter-regional displacement of resources. Water? Minerals by the affect of planning? i.e. promite the use in one region to the detriment of another.

9. S-507 could allow property confiscation by denial of access.

a. Implied grants?

b. Overriding values of "environmental values"

10. S-507 could destroy local tax base of unpatented mines.

11. S-507 would codify a breach of faith by U.S. government when it created the western states particularly Arizona.

a. Arizona still owed 185,000 access.

12. Like any complete land-use authority S-507 can enable the locating of the undesirable where most undesirable.

13. S-507 provides no quick vehicle to allow action in national interest. S-507 provides no quick vehicle to allow action in state's interest.

14. S-507 provides the vehicle for much if not all of our mineral resources to be foreign owned.

15. S-507 provides the vehicle to remove much of our mineral resources from the national inventory.

16. S-507 may drive all of Southern California's outdoor land problems into Arizona and Nevada.

17. S-507 omits any authority for planned disposition in order to acquire needed lands for reverter on various states and its people.

18. S-507 omits to specifically face the kaleidescope of land ownership caused by federal programs.

a. Surface

b. Mineral

19. S-507 omits to face the unsophisticated origins and justiification for National Parks, Beer Relm, Department of Defense and ockers.

20. S-507 is a bill of enormous well stated powers but with nebulous duties.

Many if not most of the foregoing must be addressed by states at a level above that of Land Commissioner's. If would seem basically fair to air S-507 at hearings at the state level at least in select eastern states and all of the public land states.

All it takes for S-507 to apply anywhere is for someone to give some resource (not necessarily complete fee) to the Secretary of the Interior.

Anyone of the foregoing points are of national interest. Western production supports easter affluence. A bankrupt west is a national burden.

SOME SPECIFIC OBSERVATIONS:

Page 3, line 23 "Quality of environment" what does it mean? Do these words permit too much power because no standard test?

Page 4, line 1 &2 Why is the bill negative toward man's industry? Can we isolate "1/3 of the nations land?"

Page 4, line 5 The bill makes no point of timely harvest and use of "renewable resources." Renewable resources cannot be warehoused.

Page 4, line 8 "Areas of critical environmental concern." Would any two people make the same decision as to what this means? How can the people contest a decision made on this basis?

Page 4 between lines 21-22	New definition "Federal Lands" makes S-507 a land planning bill (see page 3, et seq of 3-6-75 amendment). Does S-507 consider all that S-984 and HR 3510 for example synthesize of the best minds for over 5 years?
Page 4, line 11	Indian Lands in Arizona cover 19 million acres, abut the largest cities, control a major share of water, have unlimited potential. Why are they omitted? Are undesirable uses of an adjoining Indian lands distinguishable from undesirable uses on non-Indian lands?
Page 4, line 18	"Immediate proximity of and border" how wide and how long is this. If it only meant a mile it would probably equal half of Arizona's private and best lands? Does the USA have the right -- the power -- to force land use on a sovereign state's property?
Page 5, Lines 13 thur 16	What is the historic and constitutional basis for this conclusion -- that the sovereign should be the land owner? If so, why for example does this bill provide for sale of its minerals?
Page 5, line 20	S-507 provides that the primary policy the primary test for management must be for

"environmental quality". Because of sub-paragraph ii line 22 "environmental quality" means something else than food, etc. Again do phrases like "environmental quality" offer any standard for a responsible society? Arizona says food, fiber and mineral as its policy -- are those national concerns also? Are they not the primary concerns and should they not be the primary objective?

Page 6, line 19 et seq — Because of the mandates of the bill "Public Participation" is as meaningless as "state participation" (see 3-6-75 amendment page 8 lines 1 thru 6 and general duty and power of the Secretary throughout the bill. Is America a society of local level government and life -- is this where judgment as to life style shild repose?

Page 8, lines 4-10 — To whom will the Director of the BLM be responsible? Can he ignore the Secretary? How long will he serve? Who will he serve? What are his duties and powers?

Page 9, line 1-3 — Can the Secretary deny hunting and fishing? Can the states require permits? Can the Secretary allow a greater use than state authority permits?

Page 9, line 6 "Reclamation." In a given case might reformation, restoration or maybe nothing at all be better for society? Does this supercede all mining laws 1872 etc.?

Page 9, line 10-16 Admits no authority or option to comply upon notice of violation.

Page 9, line 24 Again what standard of "environment" is to be used?

Page 10, line 12 Again what standard for "are as of critical environmental concern?"

Page 10, line 12-15 What is the national concern that puts "wilderness characteristics" above those values that support life? The bill provides no mandate to plan for human life supporting factors -- is this defensible?

Page 10, line 22 "When the Secretary deems it appropriate." Why should the Secretary's "inventory" be confidential?

Page 11, line 4-5 "When appropriate." By whose standard will it be appropriate? Would it be desirable to have a process to force consideration of a situation?

Page 11, line 7 "Coordinated so far as he finds feasible and proper?" Is there any responsible standard recognizable here?

Page 11, line 18 "Priority" is to the "areas of environmental concern" The policy is primarily for "environ-

mental concern" -- is it possible to use words that can be weighed by reasonable people? Is there no priorty for energy, water, food, fiber minerals?

Page 12, lines 13-18 Are no hearings for a primary user contemplated? If not, why not? All recreation, mineral, energy, farming (using federal resource water) livestock, forestry and much fishery seemingly could be wiped out in 60 days.

Page 12, line 19-25 Should it be possible to delay any review of any resource for 15 years?

Page 13, line 1-6 "Whichever is later" Does this mean a new claim can be recorded within two years?

Again, reconsider, if you please page 9 lines 4-24, and page 10 lines 1-8. Will the bonding "or other securely guaranteeing" (page 9 line 6) effectively wipe-out all mining. "Reclamation" line 6; "violation of any regulation" line 15; "immediate temporary suspension" line 21, what do they mean to present and future mining. Please refer again to page 3 line 4. "National resource lands" means all lands and "interests in lands." Does the Secretary hereby control all other land interests because the USA may have reserved minerals? If so, what do the old titles now mean?

Page 13, lines 7-8	If "abandoned and shall be void" would apply, are there implied sanctions for trespass, loss of property, criminal jeopardy (see page _ line_) and implied rights to recover state taxes, e.g.?
Page 13, lines 9-13	Pose the same problems and add an impossible financial burden to an honest effort. Cadastral surveys alone may be too expensive. Also"whichever is later"means than what?
Page 13, beginning line 19	Sales may be made after the plan. There is no time limit for the plan. If most federal land plans propose time limits for states, why is that not essential for the USA? How can a sale degrade the environment?
Page 14, line 26	What will be the"existing law" after S-507 becomes law?
Page 14, Sec. 202	Makes no provision for sale to states and local government to achieve local needs.
Page 15, Sec. 204	This removes all concept of a fair share that was inherent in almost all previous laws.
Page 15, line 10	What is a family-sized farm? What family?
Page 15, line 21	The absence of competition should exist only for sales to states and local government.

Page 16, Sec. 207&208	Can any responsible sovereign risk putting its mineral resources out of reach from timely expoitation? This concept is alien to that of most successful mining nations. Should the mineral estate be available for alien ownership?
Page 17, line 8	How can a mineral estate ever be fairly valued?
Page 17, lines 10-19	It would be preferrable to reserve an interest in USA for 20 years. The interest to be one that is economically rational and that will not inhibit mining if there is a need. The need to be determined by public will and desire.
Page 18, Sec. 209	Can clutter the record and make valuable deposits unrecoverable.
Page 18, Sec. 210	Sales should merely be subject to local zoning -- a time period of notice for local zoning has two edges.
Page 19, Sec. 212	To whom disclaimer should issue? In reliction, accretion and there are often Indian, state and various private claims and claims of other federal agencies.

Page 20, Sec. 213 — In general, the authority to purchase, exchange and accept donations could mean eventual total federal ownership. This authority can create unbearable tax imbalances, and where the donor can also beneift tax-wise by deductions it could place an undesirable burden on the tax-paying public that might reject the donation (in affect the purchase) if it knew the facts.

Considering recent legislation and how almost anything has been read into generalized mandates, it would seem most important to consider every possible aspect of the "interests in lands" (see page 3 line 5). Legally an interest in land - by basic and real property law includes all right within diverging planes from the center of the earth through surface boundaries out to infinity subject to the right of flight. Could the U.S. Secretary of Interior command a land plan for an entire state if the property owners "donated" all rights beyond the distance of the moon at its summer solstice?

Page 21, line 12 et seq — Provides the vehicle to create so much title confusion as to make property worthless to anyone or for any purpose. Would it not be much more deisrable to move toward merging of all interests for total control?

Page 21, line 18-19 — Is there any reason, for example to deny a Maryland owner the right to acquire federal land in Nevada, thereby creating a needed federal holding in Maryland for Maryland people? Might not this be desirable upon approval of both Governors?

Page 21, lines 19-21 — Would allow an exchange to be in fact a sale without competition.

Page 22, line 16-20 — The Secretary should be able to freely trade from District to District and from District to non-District.

Page 23, lines 8-10 — Pose same problems of contributions and donations as reflected on Page 20, Sec. 213

Page 24, line 12-13 — The cost of environmental impact statements could be prohibitive for any project. Does anyone know what their total cost effect is today? Might they be reconsidered for need in given areas and for cost-benefit purposes?

Page 24, Sec. 303 — Might be read in the first sentence to authorize purchase of land or interests in land.

Page 26, line 25 et seq — The burden of maintenance roads may be tantamount to confiscation of the property to which the roads lead. Are there now not implied grants to reach all lands granted or sold by the USA in the past?

Page 28, Sec. 307 & 308 — This is a national police force authority.

Page 28, line 21 and 22 — "Arrests without a warrant for a misdemeanor he has reasonable grounds to believe is being committed." This is authority to arrest on the resonableness of the individual and only on the belief of the violation.

In other words if an armed reasonable computer operator who because of his ignorance of the law resonably believed that loud talking was a misdemeanor could he arrest, incarcerate, submit one to charges and humiliation without recourse?

Page 30, Sec. 309 — How does the California area distinguish from the same country over much of the west? Will protection of that area compound the misuse in other areas?

Page 32, lines 12-18 — Again a specific date for a specific situation fortifies the absence of a duty to ever come up with a plan for the balance.

Page 33, lines 17-20 — Why are not agencies commanded to cooperate? And why is no vehicle provided to require a conclusion of disputes?

Page 34, Sec. 401 — The length of the subject of rights of way provides much area for variance on the rule of exclusion.

Page 36, line 3 What consideration is there for stabilizing implied grants?

Page 43, line 10-12 The environment for abuse here is wholesome.

Comments from pages 34 on have been omitted because of lack of time.

This office would appreciate the opportunity to comment further in writing.

The coverage of the rights of all people affected and affectable by S-507 is so comprehensive, this commentator merely expresses his sincere concern that your deliberations not be made in any haste.

One point deserves being stated, however, and should the provision remain, a

Request for colloquy on the floor is made for clarification of the meaning of page 47 lines 17 & 18. Every conceivable interference with grants have been interposed. Is Congress ready to reaffirm the enabling acts?

What is the affect of the foregoing where read with page 51 lines 1 through 16? The right to classify is the right to deny. No restrictions were imposed in the enabling act of Arizona.

The most difficult part of dealing with S-507 is not knowing just why it is needed.

There are problems in controlling uncompensated uses; there are land ownership problems; there are resource misplacements; but to my knowledge there are vehicles to correct them today.

In my opinion it would be far safer to stick with present laws and attack each specific problem in individual legislation only in that manner, again in my opinion, can the full impact of a proposal be evaluated.

Respectfully submitted,

Andrew L. Bettwy

Andrew L. Bettwy

Senator HASKELL. Our next group is a panel. I will ask them if they think they can finish by 12:30 p.m. to go ahead. If not, I will have to interrupt them and we will have to recess and come back.

STATEMENT OF GEORGE ALDERSON, DIRECTOR OF FEDERAL AFFAIRS, THE WILDERNESS SOCIETY

Mr. ALDERSON. We will follow the order that is on the list.

I am George Alderson, director of Federal Affairs of The Wilderness Society. If my statement can be included in full in the record, I will summarize it.

Senator HASKELL. It will be included in full.

Mr. ALDERSON. I will just touch on the major points. I would like to point out before presenting the Wilderness Society's views, that our presence here on the panel before the committee was not a suggestion of any of us, and should not be taken to indicate that we necessarily all share the views that any of us is going to present. Other organizations represented on this panel do not necessarily share the views of the Wilderness Society in some respects.

I make that statement to clarify the point.

The Wilderness Society strongly favors the concepts behind this bill, and we testified in favor of the Organic Act for the Bureau of Land Management in the last Congress. We still support these concepts and we favor much of what is in S. 507. However, our message today is one of concern for whether this bill will do the job. It may actually not and may result in hurting the management of the national resource lands instead of helping them because of the particular circumstances that surround the Bureau of Land Management and its administration of these lands at the present time. We have come to the conclusion in the past year, since our last testimony on this legislation, that as presently organized the Bureau of Land Management is fundamentally incapable of managing the national resource lands under multiple use and sustained yield principles.

We believe the BLM is basically not capable of carrying out the mandate as written in this bill. The reason we came to this conclusion is that looking back over the last few years, in the record of the BLM we have detected a strong conflict between the multiple use and sustained yield concept and the conflicting mandate the Bureau is carrying out of exploitation of energy resuorces under different laws.

The oil and coal leasing, geothermal leasing—these are laws that are in conflict with multiple use. The Bureau of Land Management in the last 5 years——

Senator HASKELL. Excuse me, Mr. Alderson, but staff has gone over your statement and finds some factual inaccuracies in it. I think it is unfortunate to come before the committee without researching your statement thoroughly.

The first one marked is on page 4, paragraph 2 where you say the BLM ousted the Fish and Wildlife Service in violation of the

intent of Congress. I am informed that the legislation concerning the Wildlife Refuge System does not specify which agency shall administer the various components of the system. On the same page, the BLM succeeded in getting control of millions of acres of the National Resource Lands in Alaska. Again, section 17(d)(2) of the Alaska Native Claims Settlement Act and relevant legislation does not specify agency jurisdiction. I might also add that BLM does not yet have permanent control. The Congress must first act on the so-called "d–2 lands" legislation.

On page 5, paragraph 5, you state:

BLM has also been involved in a headlong drive to lease Federal coal, and was only stopped by the moratorium imposed by the Interior Department in 1972–73.

I am informed it was the BLM who instituted the moratorium in 1971 against Departmental opposition.

On page 6, paragraph 7, leasing of geothermal,

the regulations issued by the BLM under this law in January, 1974, incredibly allow geothermal leasing in wilderness areas * * * .

The law itself permits it. Maybe it shouldn't but it does permit it.

I just mention these because I think it is terribly important that people who come before this committee know the facts. I am making this statement because I think it is very bad to come before the committee with a statement that has factual holes in it.

With that I will stop and you go right ahead.

Senator FANNIN. Mr. Chairman, I would like to join with you. Some of the statements which they say will "show that BLM is dominated by an overwhelming bias toward exploitation of energy resources at the expense of other land values" that is absolutely unacceptable on the part of a land management agency, I happen to be very familiar with the Kofa Range mentioned on one of the pages, and I know that that statement is inaccurate.

Mr. ALDERSON. Mr. Chairman, I would like to respond to those points. We don't see them as differences in fact, but as differences in the way the situation are viewed.

For example, the question of the intent of Congress in the 1966 law, the National Wildlife Refuge Administration Act—although that law delegates the power to the Secretary, and it is the view of the Interior Department they have the power to assign that responsibility to the Bureau of Land Management, the chairman of the relevant subcommittee in the House of Representatives has strongly stated it was the intent of his committee——

Senator HASKELL. OK. Why didn't you say that in your statement?

Mr. ALDERSON. We feel this is a violation of the intent of Congress.

Senator HASKELL. The statement of the subcommittee chairman in one of the two Houses of Congress is not necessarily speaking for the Congress. That was exactly the kind of thing I am talking about. If you had said that in your statement, I would have had no quarrel with it.

Mr. ALDERSON. A lot of times the intent of Congress is the views of those involved.

With respect to the National Interest Lands in Alaska, point 3 on page 4, the Alaska Native Claims Settlement Act definitely did in-

volve four systems on which the proposals were to relate, and the systems were the National Wildlife Refuge system, the National Forest System, National Park System, and the National Wild and Scenic Rivers system.

It did not include any proposals with respect to the Bureau of Land Management. Again, the Interior Department believes they can delegate that authority apparently in the same respect as the National Wildlife ranges.

Senator HASKELL. Now, let me take you back. The act refers to systems; it did not, I am informed by counsel, refer to any particular agency to which the authority would be delegated. Here you are trying to indicate the BLM stuck its nose in what Congress did not intend it to.

Again, it is not a complete statement.

Mr. ALDERSON. It is our view of the situation. It is our view and that of many others that the agency with primary responsibility for the National Wildlife Refuge System in the U.S. Fish and Wildlife Service, which has always been the Agency with that responsibility. To now say the Bureau of Land Management should take primary control over two units of the system under the Alaska proposals is a departure from the historical situation at time of the passage of the Alaska Native Claims Settlement Act.

With respect to the coal leasing, I was possibly mistaken on the date the moratorium was imposed, but it was our understanding this was a moratorium that came from the Secretarial level. If I am mistaken on that——

Senator HASKELL. My information is that it came from the BLM, and my information can be wrong, of course——

Mr. ALDERSON. With respect to the geothermal leasing, the act left discretion to the Interior Department to allow leasing in wilderness areas because it contained no provisions that exempted wilderness areas from the coverage of that act.

Former Under Secretary John Whitaker told us a year ago they would say no to any geothermal leasing applications filed in wilderness areas. But in spite of that——

Senator FANNIN. Was that in writing?

Mr. ALDERSON. No. He stated it to me at a press conference at the Interior Department.

Senator FANNIN. Is there a public record to that extent?

Mr. ALDERSON. No. It was not stated during the formal press conference.

Senator FANNIN. We have had quite a number of conversations in regard to the development of geothermal areas, and I was not aware of any stipulation to that effect.

Senator HASKELL. If the Senator will yield. This is a case in point. Senator Fannin and I may well disagree as to whether there should be geothermal leasing in a wilderness area. This statement, however, carries the inference that the BLM exceeded its authority and it did not exceed its authority. This is what I object to.

Senator FANNIN. I would say, Mr. Chairman, these inflammatory statements, are very damaging to the witness. The witness appears before this committee quite often. I feel his statements are irresponsible. It is not in order or beneficial to the Wilderness Society.

Mr. ALDERSON. Mr. Chairman, our point on geothermal leasing is that the Bureau of Land Management could well have issued regulations that define the discretion the Department has under that law and ruled out geothermal leasing in wilderness areas of the national forests. They did not do so. They did not take advantage of that opportunity to supply protection to those lands.

We feel it is a matter of their discretion, and we felt they should have used their discretion on the side of the preservation of the wilderness values.

Senator HASKELL. If you had said that, there would have been no quarrel.

Senator FANNIN. Mr. Chairman, there are regulations. You could say the regulations are inadequate, that would be fine; I guess he is entitled to express his opinion.

Mr. ALDERSON. We feel it is incredible that they did not use their discretion in that manner.

Senator FANNIN. That is your opinion.

Mr. ALDERSON. Maybe that is how my testimony should have been worded, but the Wilderness Society feels the way I have stated——

Senator HASKELL. It doesn't serve any useful purpose to pursue this subject. But I felt the committee should call this to your attention.

Mr. ALDERSON. Thank you. But I feel they are matters that are more a matter of judgment and a matter of the way we view the facts, rather than a matter of facts.

Mr. Chairman, we feel the conflict between the energy exploitation mandates that now govern BLM activities and the mandate that will be contained in this Organic Act are so great that the Bureau of Land Management should be reorganized to separate out the land management, the multiple use and sustained yield functions. We also suggest it would be productive for the committee to take up the Alaska National Interest Lands first, before proceeding with the Organic Act. We are afraid you will have to come back and adopt amendments to the Organic Act within a couple of years with respect to Alaska, because so much of this act has been based primarily on experience with the Western States of the lower 48, rather than with situations in Alaska.

We feel it would be productive to get into some of those conflicts we see in the energy and land management functions and in the Alaska proposals that are now before the subcommittee.

Now, turning very briefly to the comments in our statement about specific provisions of the bills, we recommend stronger interim protection of the wilderness study areas. We suggest specific language in my written statement. We also criticize the administration bill's recommendation for a wilderness review provision. It is deficient in two ways.

In one respect, it lacks any deadline for completion of the wilderness reviews. We favor a 10-or 15-year deadline for that process, as in last year's Senate passed bill.

The administration bill also contains a "50,000 contiguous, roadless acres or more" criterion that is completely new; it was not used in the Wilderness Act or any previous legislation. Under their cri-

terion the only areas to be studied for possible wilderness designation are those roadless areas 50,000 or more acres in size. That has the effect of eliminating more than three-fourths of the roadless areas identified by BLM to date.

We also recommend a study of potential wildlife refuge, wild and scenic river, national forest, and national park areas which could be established from the public domain. These would be areas better suited to management in those four systems, as opposed to management as part of the national resource lands. We feel this is strongly needed so it can be done as part of the inventory process this bill establishes.

It would involve the other appropriate agencies, and Congress could dispose of the recommendations in somewhat the same manner as with the Alaska Native Claims Settlement Act and national interest lands provisions.

We recommend that the bill be changed to establish a system of named units of the national resource lands system, which would be analogous to the national forests in the national forest system. We suggest these named units be prepared and formulated by the Interior Department and brought back to Congress for approval, so that each unit of the national resource lands system would have sanction from Congress and would be protected.

We feel this whole national resource lands system would provide much better identification in the public mind and support for good management programs on the national resource lands.

Thank you, Mr. Chairman. That concludes my statement.

Senator HASKELL. Thank you, Mr. Alderson.

I don't quite understand your last statement.

Mr. ALDERSON. The last statement was not in reference to wilderness, my last statement concerned establishing a national resource lands system analogous to the national forest system. It would consist of named units, such as we have named forests, the Arapaho National Forest, the White River National Forest, and so forth.

Under the BLM, there are no units like that so the public can identify with them. They are all just public lands. That is about as far as it goes.

Senator HASKELL. I am sorry it took so long; could we recess and come back at 2 o'clock?

Mr. CLUSEN. I cannot but I will submit a written statement.

Ms. WILSON. I will also file a statement.

Mr. GARRETT. I will be back, Mr. Chairman.

[Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 2 p.m.]

[The prepared statements of Mr. Alderson, Mr. Clusen, and Ms. Wilson follow:]

STATEMENT OF GEORGE ALDERSON, DIRECTOR OF FEDERAL AFFAIRS, THE WILDERNESS SOCIETY

I am George Alderson, Director of Federal Affairs of The Wilderness Society, an organization devoted to the conservation of our nation's remaining wilderness resources and to proper use of the public's lands. Our offices are at 1901 Pennsylvania Avenue, N.W., in Washington, D.C. We appreciate the opportunity to testify today on proposed organic legislation for the national resource lands.

When The Wilderness Society testified before this subcommittee two years ago, we endorsed legislation along the lines of the bill that is now before you, with certain reservations. Today our testimony is very different. We bring to you a message of concern for what this bill will do to the public domain lands. We raise serious questions as to whether the land itself will be properly administered and not helped by this bill. And we will recommend a basic change in the thrust of the bill.

The Wilderness Society strongly favors more effective management of the public domain lands, under conservation and multiple-use principles. That is our objective in the context of this legislation. More specifically, we favor eight basic objectives:

1. To provide a statutory mandade for retention of the public domain lands and for their management under principles of multiple-use and sustained-yield.
2. To establish a National Resource Lands System, with local units identified by name.
3. To provide authority, including enforcement powers, to carry out these stated objectives.
4. To authorize acquisition and exchange of lands.
5. To repeal obsolete land disposal laws.
6. To establish a single policy and procedure for sale of certain lands.
7. To require an inventory of the resources, including wilderness, on the public domain.
8. To require an inventory of potential new units of the National Park System, National Wildlife Refuge System, National Forest System and National Wild and Scenic Rivers System.

Of these, six are already covered in some manner in S. 507.

The crucial question at this juncture is: If these mandates are enacted, will they be properly carried out? Do we have an agency that will conscientiously implement this multiple-use conservation mandate?

The Wilderness Society has been hopeful that the Bureau of Land Management would respond well to this proposed law. It has long been common belief that the BLM has been handicapped by the conflicting statutory policies governing the public domain and by lack of funds and personnel. We believed that BLM had the will to correct these long-standing problems, if given the means to do so.

However, the events of the past year have led The Wilderness Society to reconsider these long-held beliefs, and we have come to a different conclusion: As presently organized, the Bureau of Land Management is fundamntally incapable of managing the public lands under conservation principles.

Recent events, some of which we will enumerate, show that BLM is dominated by an overwhelming bias toward exploitation of energy resources at the expense of other land values. This bias would not be changed by S. 507. While the bill requires BLM to follow multiple-use and sustained-yield principles, the agency would still have its present major responsibilities for energy exploitation, including offshore oil leasing, coal leasing and geothermal leasing. These alone establish a fundamental conflict between mandate of this organic act and the mandates of the energy exploitation laws.

Some of the recent actions of BLM which have led us to this conclusion are:

1. On October 1, 1974, BLM released a proposed "Primary Corridor System" for Alaska, consisting of 10,046 miles of highway and pipeline routes which BLM asked Secretary Morton to set aside, without any prior study of their environmental or social impact. Several of these routes would breach Secretary Morton's proposed National Interest Lands units, while others would cross Alaska Natives' land selections in an attempt to renege on the Alaska Native Claims Settlement Act of 1971. The routes were justified in BLM's memorandum as being "keyed essentially to tapping a variety of identified energy resources of high prospective value."

2. On February 15, 1975, BLM announced that Secretary Morton had decided to turn over to BLM three great national wildlife ranges, comprising more than 2 million acres of prime wildlife habitat. This was the culmination of a long-standing effort by BLM to oust the U. S. Fish and Wildlife Service from these ranges—the Charles M. Russell National Wildlife Range (Montana), Charles Sheldon Antelope Range (Nevada) and Kofa Game Range (Arizona)—in violation of the intent of Congress in the National Wildlife Refuge System Administration Act of 1966. The long-range implications of this action may involve

future BLM attempts to take over other units of the National Wildlife Refuge System and subject them to intensified exploitation for energy and other commodities. Twenty-five national conservation organizations have united in opposition to this transfer of the wildlife ranges, in a telegram to President Ford, which we are submitting for the record.

3. BLM has also succeeded in its attempt to gain control over millions of acres of the National Interest Lands in Alaska. Although the Alaska Native Claims Settlement Act did not call for any proposals involving BLM, the agency talked Secretary Morton into giving it primary control over two of the greatest scenic and wildlife areas—the proposed 8-million-acre Noatak National Arctic Range and the proposed 3-million-acre Iliamna National Resource Range.

Like the case of the three wildlife ranges, this points up an extremely ill-advised trait of BLM to assert itself as an all-purpose land management agency. If it is a wildlife area, they say they can manage it as well as the Fish and Wildlife Service. If it is scenic, they say they can manage it as well as the National Park Service. This must stop. BLM should realize that it has its own role among the Interior Department agencies—to manage lands that are best suited to multiple-use management.

4. In its administration of outer continental shelf oil leasing, BLM has shown the same exploitation bias. Even if we acknowledge that Secretary Morton made the decision to expand the leasing program, it is BLM that is to blame for the incompetent environmental impact statement on the program and for completely inadequate baseline studies of the areas to be open for nomination. As a result, next to nothing is known about other resources in the areas to be leased. These are the criticisms made not only by conservationists, but by state and local governments affected by the program. BLM did not even hire a marine science staff in connection with the OCS leasing, but put its major efforts into influencing public opinion.

5. BLM has also been involved in a headlong drive to lease federal coal, and was only stopped by the moratorium imposed by the Interior Department in 1972–73. Prior to the moratorium, BLM had enthusiastically approved almost every application that was filed for coal leasing or prospecting, with the result that 780,000 acres of federal coal are now under lease, most of it to be strip-mined. Even now, BLM takes the position that another 300,000 acres will have to be leased, claiming that their issuance of prospecting permits binds them to lease these.

6. With phosphate leasing, the story is similar. BLM claims that, because they issued prospecting permits for about 25 percent of the Osceola National Forest, in Florida, they must grant leases for this. It will be open-pit mined, destroying all other land values of that portion of the National Forest.

7. BLM also handles the leasing of geothermal energy under the Geothermal Steam Act of 1970. The regulations issued by BLM under this law in January, 1974, incredibly allow geothermal leasing leasing in wilderness areas of the National Forests.

8. BLM has failed to carry out the intent of Sec. 17 (d)(1) of the Alaska Native Claims Settlement Act, which was to classify the remaining public domain lands in Alaska for multiple-use management. Instead, BLM has focused its energies on interfering with the National Interest Lands, which were never intended to involve BLM.

Mr. Chairman, these are some of the actions that have opened our eyes to deep-seated problems in the Bureau of Land Management. They reveal a bias toward unmitigated exploitation that is absolutely unacceptable on the part of a public land management agency.

There is no easy solution to this dilemma. We believe that S. 507 is not the answer, although we are steadfast in our support for its concepts. But to give BLM the mandate of S. 507 now will not solve the problems of mismanagement that result from the conflicts with BLM's energy exploitation functions. We believe a basic reorganization is needed.

We would favor establishment of an agency devoted solely to management of the renewable resources of the public domain lands under the provisions of S. 507. The energy and minerals functions should be assigned elsewhere in the executive branch.

The Subcommittee on Environment and Land Resources will soon be taking up legislation to establish new national wildlife refuges and national forests in Alaska. This will certainly involve questions of BLM as well as other agencies,

and it will involve conflicts between energy exploitation and conservation objectives for these National Interest Lands. We believe it would contribute to your perspective on S. 507 to take up some of the Alaska proposals first. As our eyes were opened to BLM's built in conflicts, you would gain insights that would contribute toward the reconsideration of this legislation. A bill can certainly be devised that will accomplish the objectives we all share, without putting the public domain lands squarely in the pocket of the energy industries. We too will continue our consideration of this matter and seek an equitable solution.

We also have some specific recommendations on S. 507:

1. We recommend that the wilderness review provisions be strengthened by addition of language providing interim protection for the wilderness study areas during the studies directed by Sec. 102 (e). The proviso at the end of Sec. 102 (e) should be deleted, and the following inserted in lieu thereof:

> During the period of review of such areas, the Secretary shall continue to administer such lands according to his existing authority in a manner as to preserve the wilderness character of each such area. The conduct of the review under this section shall not, of itself, prohibit existing uses to continue in such areas during the period of review so long as such uses do not substantially impair the suitability of such area for preservation as wilderness. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act shall apply with respect to the administration and use of such designated area.

2. We recommend the addition of a new section to provide identification of public-domain areas that would be best suited to management as units of the National Park System, National Wildlife Refuge System, National Forest System, or National Wild and Scenic Rivers System. The following language is suggested:

> Sec. (a) Before the close of the 5-year period following the effective date of this Act, the Secretary shall review all lands and waters under his jurisdiction on the effective date of the Act (including lands previously classified or withdrawn, but excluding lands in the National Park System, National Wildlife Refuge System, and lands recommended for inclusion in those Systems and in the National Forest System pursuant to section 17(d)(2) of the Alaska Native Claims Settlement Act) and withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, those lands and waters which he deems suitable for addition to, or classification as, units of the National Park System, National Forest System, National Wildlife Refuge System, and Wild and Scenic River System.
>
> (b) The Secretary shall submit recommendations to the President with respect to those lands withdrawn by the Secretary pursuant to subsection (a). The President shall promptly advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to the additions proposed by the Secretary. The Secretary shall, in conducting the review required by this subsection, hold public hearings in accordance with the procedures set forth in section 3(d) of the Wilderness Act (78 Stat. 890).

3. We urge that the bill establish a National Resource Lands System, with identified and named local units, analogous to national forests. This would give the lands more identity in the public mind, and thereby create long-term public support for good management programs. It would also provide the agency with the means to request and defend budgets and personnel on a more planned and systematic basis.

4. We find the public participation requirements in Sec. 5 to be deficient, inasmuch as public participation is not required on management plans and programs. It is at the state and local levels that citizen participation is most needed. We suggest that on page 7, lines 1 and 2 be deleted, and the following inserted in lieu thereof:

> ration and execution of plans and programs concerning, and to comment on the planning and management of, the national resource lands, and to participate in the formulation of plans and management programs.

5. In the sections repealing the obsolete disposal laws, we urge that the Taylor Grazing Act be amended to eliminate the preference given to grazing by that Act, to eliminate any reference to "pending its final disposal," and to require that permittees allow public access easements through their lands.

Thank you for the opportunity to present our views.

STATEMENT OF CHARLES M. CLUSEN, A WASHINGTON REPRESENTATIVE OF THE SIERRA CLUB

Mr. Chairman, and members of the Committee, I am Charles M. Clusen, a Washington Representative of the Sierra Club, on whose behalf I am appearing here. The Sierra Club is an international environmental organization of over 145,000 members founded in 1892 which has had a long, historic concern with the protection of this nation's public lands. We feel the public domain lands left under the jurisdiction of the Bureau of Land Management, the national resource lands, have been for too long neglected and abused. They have been considered the left-overs—available for exploitation for private and corporate profit. For this reason we welcome these hearings and the opportunity to testify. We support the passage of a good BLM Organic Act which can put our nation on the road of solving what has become a crisis for our national resource lands. We commend Senators Haskell, Jackson and Metcalf for introducing S. 507, which is intended to initiate the redress of what has become a crisis for our national resource lands. We endorse many of the concepts embodied in this Bill.

Yet, we must report to you that we have concluded that this legislation alone will unfortunately not correct the fundamental problem without amendment. Where the BLM has many problems not of their making—such as a lack of proper enforcement authority, manpower and funds—problems this legislation would correct or at least set improvement in motion—there is no assurance that the practices of maladministration by the BLM will be corrected. Because of the long record of past and current abuses of lands under BLM management, we have been forced to seriously question BLM's commitment and ability to manage the land properly. Because of BLM's apparent dedication to land exploitation and their insensitivity to environmental values, we urge the Committee to consider whether it is still a good idea to give the BLM an Organic Act with far-reaching powers and a commitment of greatly increased resources. The Sierra Club has been a strong supporter of a BLM Organic Act for many years. Mr. Chairman, I submit that our dedication toward seeking proper management of the national resource lands has not waned in the least. It is the need of proper land protection and management which should be the focus of attention here today, not an agency with an undistinguished or even negative track record. The lands need an organic act—not BLM. Consequently, we urge the Committee to consider creating through this legislation an entirely new agency—perhaps called the National Resource Lands Service which would be the managing agency of the renewable resources of our remaining public domain lands with a multiple use—sustained yield—environmental protection mandate. The administration of the mining laws, the Outer Continental Shelf lands and other energy development programs could remain with the existing BLM since these programs and the philosophies behind them have received the main emphasis and attention from the agency in recent years or these programs could be transferred to the U.S. Geological Survey. An alternative approach would be to transfer the National Resource Lands to the Forest Service in the Department of Agriculture. I might point out that if this approach were selected, the legislation necessary would be very short and simple since the Forest Service already has Congressionally enacted authority. We must make sure we have an administering agency which will do the job properly. Once the new organizational arrangement is launched, we then strongly urge the Committee to consider and report legislation reforming the mining laws and perhaps reorganizing the remaining components of the BLM.

AN ANNOTATION OF GRIEVANCES

1. Recently a policy shift of the Nixon Administration to reduce the federal involvement in wildlife management took another leap in the wrong direction under the Ford Administration. Secretary of the Interior Morton has decided to transfer three of the largest units of the National Wildlife Refuge System—some two million acres—to the BLM from the Fish and Wildlife Service. The areas are the Kofa Game Range in Arizona, comprising 660,000 acres; the Charles Shelton Antelope Range in northern Nevada, comprising 578,000 acres; and the Charles M. Russell National Wildlife Range in Montana, comprising 970,000 acres. While these ranges have been under joint Fish and Wildlife Service/BLM management since their establishment by President Franklin D. Roosevelt in the 1930's, it has been Fish and Wildlife that looked after wildlife habitat while the BLM handled grazing and mining. Threatened by the shift

are such endangered species as the peregrine and prairie falcons and some of our nation's finest populations of desert bighorn sheep. Studies have repeatedly shown that BLM has allowed extensive overgrazing and other practices detrimental to wildlife habitat protection. In 1965 a jointly-sponsored BLM and Fish and Wildlife study conducted by Harper and Wiseman concluded, ". . . the delicately balanced vegetative complex on the desert areas involved cannot support livestock and maintain its inherent potential to serve wildlife." The Harper-Wiseman report recommended that grazing be phased out within seven years, but the BLM has allowed it to continue.

In the Kofa Game Range, the BLM people turned their backs on unauthorized activities of one particular grazing permittee. The Phoenix District of BLM authorized the permittee to maintain a virtually abandoned road for the purpose of moving cattle. A fairly major road construction project resulted. In a letter to a Sierra Club representative, the Arizona State BLM Director stated, "The grader operator skimmed the surface of the road to an extent not authorized." But the permittee was only "cautioned" against further such activities. Certainly the grazing problem can't be solved by giving BLM sole jurisdiction. These transfers must be viewed in the context of other proposed transfers of units of the National Wildlife Refuge System to the States. The Administration may be on its way to denying any Federal role in wildlife management, saying the States should do it all, reserving only land management to the Federal Government agencies. Who will make sure then that wildlife habitat is properly managed? In spite of BLM's apparent disregard for wildlife, they say they can manage wildlife as well as the Fish and Wildlife Service. Next they will say they can manage parks as well or better than the National Park Service. Rumors are already surfacing that the BLM wants to manage National Parks in Alaska. We deplore this empire-building ambition of the BLM. How can they possibly in any form or manner do a job comparable to the National Park Service and the Fish and Wildlife Service, which are preservation-oriented agencies, when the BLM cannot hold up against the exploitative interests on the national resource lands?

2. A matter in Alaska which has outraged conservationists is the BLM's Primary Corridor System for Alaska as outlined in the October 1974 document, titled "Multimodal Transportation and Utility Corridor Systems in Alaska: A Preliminary, Conceptual Analysis." This hastily-drawn "study" proposing 39 primary utility and transportation corridors crisscrossing Alaska, if implemented, would bring pipelines, roads and railroads across many of the areas the Administration has recommended for National Parks, Wildlife Refuges, and Wild and Scenic Rivers—unalterably damaging critical wildlife and scenic values. The study appeared to a ssume total development of all known mineral and energy resources by the year 2000. I submit, the BLM does not know except in a few cases which resources will be developed or even which ones are economically feasible for development. Yet they don't hesitate to jeopardize well-documented and studied land areas which BLM's sister bureaus—the National Park Service, Fish and Wildlife Service and the Bureau of Outdoor Recreation—have identified as areas necessary for preservation in the national interest.

3. A very general complaint about the BLM is its refusal to comply with the National Environmental Policy Act of 1969—a landmark piece of legislation designed in this Committee—whether it be for their land use planning activities, grazing management, oil and gas leasing, or land exchanges. In Utah the BLM has yet to concede that an environmental impact statement is required for the proposed Castle Valley land exchange, located near Moab, which involves some highly scenic land. It required a law suit by the Natural Resources Defense Council to force the BLM to do something more than the overall programmatic impact statement concerning the BLM's grazing activities.

In the Outer Continental Shelf oil leasing program, the BLM has hurriedly put out a totally inadequate EIS which virtually ignores the associated on shore impacts of OCS oil development. The environmental studies and analysis that should be done could hardly be done for a million acres of OCS lands—much less 10 million acres.

4. BLM's leasing and management policies for Federal coal lands in the West for the last five years should be an embarrassment to the BLM and this Administration and serve as a striking example of how not to operate a natural resources management program. It has failed to encourage resource development,

failed to provide fair market value to the public and Indian resources and has now left us in a situation where millions of acres have been leased but not mined, leaving us in a very confused state for energy resource planning.

Oil shale development is being pushed despite the fact that it probably is uneconomic at this time and will create tremendous water problems.

5. Specific protective actions taken by the BLM have frequently been lacking. In the Escalante area of southern Utah rather than designating a primitive area which should have been done, the BLM designated it as an "outstanding natural area" which provided little protection outside of the mineral withdrawal. The same exists with the El Malpais outstanding natural mineral withdrawal. The same exists with the El Malpais outstanding natural area in New Mexico.

In Aravipa Canyon in Arizona, one of BLM's first Primitive Areas designated over six years ago, the upper portion of this unusually beautiful canyon is still badly overgrazed.

Last year Director Berklund supposedly told his state directors to establish one new Primitive Area in each state during that year. None were established.

6. The Sierra Club and other conservation groups have pointed to the critical condition of the public lands due to improper use and overgrazing for many years as one of the most crucial public land management problems. At times some people have not believed the problem to exist. However, the Bureau of Land Management has in the past few months prepared and released two reports which document this problem. While the declining condition of these lands was cited in the Public Land Statistics as far back as 1955, the "Range Condition Report" prepared by the Bureau of Land Management for the Senate Committee on Appropriations and the report entitled "Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values in Nevada" have both documented the problem and brought great public attention to it. The "Range Condition Report" indicates that only 28 million acres or 17 percent of the public grazing lands are in satisfactory or better condition. Some 135 million acres, or 83 percent, are in some unsatisfactory category. In fact 54 million acres, or 33 percent, are in poor or bad condition—an area roughly the size of the entire state of Utah. Further analysis shows that 16 percent of range conditions are declining with only 19 percent improving. While the general rangeland condition reached its most critical level at about the time of the passage of the Taylor Grazing Act in the 1930's, subsequent management has only slowed the rate of decline and has only reversed it on the 16 percent, or 25 million acres. According to the "Range Condition Report," the rangeland will continue to deteriorate—"projections indicate that in 25 years productive capability could decrease by as much as 25 percent . . . losses will be suffered in terms of erosion, water quality deterioration, downstream flooding, loss of wildlife and recreation values, and decline in basic productive capability."

Of tremendous concern to some people in the western states is "the possible loss of livestock grazing privileges resulting in local economic disruption" as a result of this land deterioriation.

The report further states, "Stabilization of the basic soil mantle from which all renewable resources are permeated is of primary importance in management of surface use of the public lands. At present only slightly more than half of the public lands is in satisfactory erosion condition." The report goes on to say that the remainder, over 60 million acres, is in an "unacceptable condition because of depleted vegetation and excessive runoff." It is estimated that another 11 or 12 million acres will deteriorate to an unacceptable condition within 25 years.

One of the findings of the Nevada report states, "Full consideration was not given to wildlife in the subsequent development of range management plans and facilities." Another finding found that of 883 miles of streambank riparian habitat identified "livestock grazing is having an advers effect." Furthermore, another finding states, "Protection and enhancement of wildlife, aesthetic, recreation and cultural values have not had sufficient emphasis in the past during range improvement contsruction." The discussion of this finding starts by saying. "Range improvement projects, uch a fencing, water development, vegetative manipulation project and roads, have had an adverse effect on wildlife, aesthic, recreation and cultural values." When Director Berklund issued the first printing of the report, he stated that similar problems existed in other states as well.

Between 1968 and 1973 increases in the amount of unsatisfactory habitat occurred as follows:

	Percentage of unsatisfactory habitat	
	1968	1973
Big game	38	41
Small game	21	38
Waterfowl	14	37
Streams	30	41

Clearly poor grazing management has been especially severe on wildlife as these statistics show. There has been a very rapid decline in wildlife habitat. These statistics come from a paper entitled "The BLM's Wildlife Program Missions, Challenges, and Funding Levels."

This very poor situation exists in spite of the fact that BLM lands have, potentially, extremely significant wildlife values. Thirty-three endangered species are found on BLM lands. But less than one cent per acre is spent by BLM on all wildlife—the average area each BLM professional biologist must cover in seven million acres.

Because of these deplorable conditions we commend the Environmental and Land Resources Subcommittee for examining this area. While the Sierra Club strongly supports the use of appropriate public lands for lievstock grazing, it must be done as part of a well-balanced multiple use program under the principles of sustained yield and conservation. It is absolutely vital to improve the management of these lands—environmental quality and local economics are at stake. All uses of these lands in the long run are dependent on the health of the land.

7. The Bureau of Land Management has been authorizing organized off-the-road vehicle events to take place on the desert with disturbing frequency. These events often involve from 400 to 1,000 vehicles (in some cases, four-wheel vehicles) which traverse courses across fragile desert lands, often near archaeological sites or affecting the habitat of rare desert animals. Moreover, such special use permits have recently been issued which allow races to take place in areas of the desert where there have previously been no organized events.

These races are intensely destructive of the desert's natural beauty and its resources. Often the vehicles traverse the same course three or four times, creating deep scars in the fragile soil of the desert. Equally destructive are the large numbers of uncontrolled spectators who are attracted to such organized events.

Although, with regard to the largest of such events, the BLM has occasionally prepared a so-called environmental assessment statement, the Bureau ordinarily does not prepare an environmental impact statement in connection with such events and has not acknowledged that it has a legal obligation to do so under the law. Moreover, the Bureau often does not require sufficient surety or bond to indemnify the public against the damage which takes place to the desert. The Bureau will accept the signatures of individuals on such bonds without appropriate inquiry concerning their financial responsibility. Moreover, to our knowledge, there has been only one instance where the Bureau has attempted to recover damages against a race sponsor for damage to public lands.

There is a crying need for congressional legislation relating to the issuance of special use permits for such organized events. BLM should be required specifically to prepare EIS's for such events prior to the issuance of a permit. Bonds should be furnished only by financially responsible bonding companies, not by individuals. By law, ample time should be furnished to environmental organizations to comment on such EIS's before a permit is issued as appropriate for ORV use after a full opportunity for public hearing with regard to the propriety of such designation. Only land which heretofore has been used for such organized events and which does not contain critical desert resources, such as animals, archaelogical sites, and so forth, would be appropriate for such designation.

8. One over-looked but extremely important part of the national resource lands are their forested parts, particularly those portions which have commercial forest land. The most important commercial forests on the national resource lands are those under BLM management in western Oregon, in what are known as the "O and C lands," which form a checkerboard pattern of several million acres, from an old revested railroad land grant. These are some of the richest timberlands in the entire nation, and they also have prime scenic, wilderness, recreation, and wildlife characteristics.

Unfortunately, these lands have been managed by the BLM with dominant attention to timber, and very little attention to other values. Severe damage has been done to other multiple use values, even beyond the normal recreational/aesthetics which are of general concern. Outside foresters who have examined the situation feel that serious over-cutting is now taking place, with the results that, if something is not done, the productivity of the land will be depleted, many people will be out of work, and all other values lost as well.

A few years ago in response to the growing public outcry about such practices, the Administration announced a review of the situation. The Sierra Club, through its experts and foresters, submitted extensive testimony and documentation of the problems in these lands, which we can furnish for the record here if desired. Finally, after much investigation, then-Secretary Hickel announced a reduction in the cut, but it was only a slight reduction—about 100 million board feet a year (out of a total of about 1.3 billion). Much documentation had been submitted to the effect that the cut could properly only be sustained at a level of around 7–900 million, and no more.

We submit that it is imperative that other multiple use values be protected here and on the other commercially forested parts of the national resource lands. It is imperative that over-cutting not be permitted by the Secretary, and that resource depletion like this be halted.

GENERAL DISCUSSION OF ORGANIC ACT PROVISIONS

The national resource lands are vital to our nation, not only because of their vastness, approximately 450 million acres, one-fifth of our nation's total land area, but also because of the diversity and richness of natural resource values found on them. Our nation is dependent on these lands for many environmental and economic benefits—wildlife, watershed, recreation, agricultural, and raw materials. To sustain the flow of benefits from these lands, the highest quality of management—based on conservation principles—is an absolute necessity. These national resource lands must be managed, in such a manner that the integrity of ecosystems and environmental quality is protected, restored and enhanced. This includes the dedication of Wilderness, Wild and Scenic Rivers and natural areas, provision of fish and wildlife habitat, the protection of scientific and archeological values and opportunity and access for outdoor recreation. The principles of multiple use and sustained yield and the tenets of the National Environmental Policy Act should be practiced and firmly adhered to. Good sound environmental management can afford economic uses such as the production of forage, timber, minerals, and allow certain forms of occupancy. But the location of such uses, the manner in which they are done, the degree to which they are done, and the rate at which they are done can make all the difference in the world. The adherence to multiple use, sustained yield, and environmental protection principles will lead to good management decisions—not only for our generation, but for our children and generations to come. To maximize public benefits, the national resource lands must be retained in Federal ownership and management. Only in the most limited of situations where disposal is necessary for proper management of Federal lands should public lands be disposed of. To facilitate such proper and effective management, a system to identify and designate units of the national resource lands should be designed and implemented.

In addition to the problems already addressed regarding the administration of BLM, the present crisis over our public lands is caused by a number of factors. First, the Bureau of Land Management since the expiration of the Classification and Multiple Use Act in 1970 has been without basic guidance from Congress on long-range objectives for the national resource lands. The time has long since passed for administering our national resource lands under a patchwork of ancient disposal laws and piecemeal reform acts.

Second, the obsolete disposal laws, including but not limited to all the Homestead and Desert Land Entry laws must be repealed. There must not be any special exemption of Alaska. The new organic act on the other hand must not open new avenues for disposal with discretionary administrative authorities. Congress must retain its basic constitutional authority over public land disposition.

Third, the new act must require the Secretary to review all roadless areas for their suitability for Wilderness designation and require the President to make his Wilderness recommendations to the Congress.

Fourth, the new act should give fish, wildlife, recreation, aesthetics—indeed all environmental values—full consideration.

Fifth, the new act must require the filing of all new mining claims with the Federal land management agency. The present system of filing such claims with the local county courthouse makes it extremely difficult for the managing agency to know of—much less control—the use of the land under its jurisdiction. S.507 gives this authority to the BLM in Section 104, Recordation of mining claims. We endorse this sort of provision.

Mr. Chairman, we do strongly recommend that the word "permanent" be struck from both the definition of "multiple use" (page 3, line 22) and sustained yield (page 4, line 6). This is essential to avoid the overcutting and unnecessary site destruction I have described already in regard to the "O and C" lands in Oregon.

Another amendment is also necessary. This is the addition to the bill of a National Park, Forest, Wildlife Refuge, and Wild and Scenic River Study provision. There may be a number of significant areas where it would be desirable and appropriate to expand these systems into specific areas of the remaining public domain lands. Only by conducting such a study may the necessary identification of significant areas be made and brought to the attention of the Congress. Opportunities for such new designations are disappearing with time—so such a study must be done now. An amendment for this purpose is attached.

CALIFORNIA DESERT

The Sierra Club has long been concerned with the preservation of the natural values and the environmental quality of the California Desert. During the past few years our Desert Committee has made extensive investigations of both the resources and problems of the California Desert. We have actively sought the implementation of an interim plan by the Bureau of Land Management to control present indiscriminate use of off-road vehicles and to protect the resources of the California Desert. As I have already indicated, the BLM by and large has not been responsive to our recommendations. Consequently, we support the Cranston-Tunney California Desert legislation pending before this Committee and the similar provisions of S. 507.

The urgency is apparent to all those who are familiar with the California Desert. It is a land of strong contrasts; serrated mountain blocks rise from desert valleys, searing heat subsides near spring-fed groves of native palms, and seemingly barren plains support some of the plant and animal world's most interesting adaptations. Until recently most Americans viewed the desert as a great void which was best ignored and many of the desert's values remained essentially unspoiled. But then came the growth of Southern California's population and the creation of the off-road vehicle and self-contained camper. The unmanaged recreational onslaught began and the desert has suffered accordingly. Desert ecosystems have a slim margin of safety—they must withstand great climatic stresses—and recovery is extremely slow when this margin of safety is exceeded.

It is clear that unregulated, irresponsible use of motorized vehicles has caused a substantial adverse impact on desert lands. A large population of desert tortoises, a totally protected reptile in California, has almost been wiped out by off-road vehicle use in Stoddard Valley. In areas such as Dove Springs and Johnson Valley most plant life and the animal community dependent upon this plant life has been destroyed. Irreplaceable historical sites such as Ivanpah and Woods Wash and archeological sites such as Calico have been vandalized and disturbed until they are no longer historically valid or worthy of scientific investigation. Vehicular noise disturbs desert wildlife as well as human residents and visitors. The few permanent flowing sources of water in the desert

such as Afton Canyon and the Amargosa River have been churned up by recreational vehicle users who think of these stream beds as obstacle courses.

We thank you for this opportunity to express our views.

ATTACHMENT

SEC. *National Park, Forest, Wildlife Refuge, and Wild and Scenic River Study.*—(a) Before the close of the 5-year period following the effective date of this Act, the Secretary shall review all lands and waters under his jurisdiction on the effective date of this Act (including lands previously classified or withdrawn, but excluding lands in the National Park System, National Wildlife Refuge System, and lands recommended for inclusion in those Systems and in the National Forest System pursuant to section 17(d)(2) of the Alaska Native Claims Settlement Act) and withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, those lands and waters which he deems suitable for addition to, or classification as, units of the National Park System, National Forest System, National Wildlife Refuge System, and Wild and Scenic River System.

(b) The Secretary shall submit recommendations to the President with respect to those lands withdrawn by the Secretary pursuant to subsection (a). The President shall promptly advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to the additions proposed by the Secretary. The Secretary shall, in conducting the review required by this subsection, hold public hearings in accordance with the procedures set forth in section 3(d) of the Wilderness Act (78 Stat. 890).

STATEMENT OF CYNTHIA E. WILSON, NATIONAL AUDUBON SOCIETY

Thank you for the invitation to comment on the proposed National Resource Lands Management Act. As this Committee knows, the National Audubon Society has advocated such an Act for many years, and our 330,000 members have a great interest in protecting and conserving the many values of the public lands.

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 became the Charles Sheldon National Wildlife Refuge for antelope in northwestern Nevada. The first portions of it were bought with Audubon funds and 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 lands resources.

Now, as this Committee knows, the Secretary of the Interior has decided to turn over the Sheldon Antelope Range, the Charles M. Russell Game Range and the Kofa Game Range to the Bureau of Land Management. We oppose this transfer from the Refuge system and would like to know how on earth BLM is supposed to manage these large areas and their enormous wildlife resources when they are unable to manage properly the millions of acres of valuable wildlife habitat they already have? Furthermore, is the purpose of these transfers to provide another bonanza for the graziers and miners? On the basis of BLM's performance thus far, we fear that this will be the case.

The abuses to the public lands over the years by various user groups are well-known and include overgrazing, environmentally disastrous mining, off-road vehicle use and pollution. Governed by a crazy-quilt of some 3,000 obsolete give-away laws, which have long since outlived their rationale, the BLM has been a stepchild of the Interior Department, and the poor condition of the land

demonstrates this all too well. In fact, 83% of the land is in fair, poor or bad condition!

The wildlife resources of the public domain lands are enormous, but are given short shrift compared to other uses. Less than one cent per acre is spent by BLM on wildlife. The average area of responsibility for each professional biologist is seven million acres.

Between 1968–1973, the following increases in amount of unsatisfactory wildlife habitat occurred:

	Percentage of unsatisfactory habitat	
	1968	1973
Big game	38	47
Small game	21	38
Waterfowl	14	37
Streams	30	41

The tiny staff of professional fish and wildlife biologists work extremely hard, but their task is overwhelming. Without an organic act, many of the uses and abuses which conflict with wildlife and other public values go unchecked, because BLM does not have clear authority to stop them nor personnel to oversee the land.

We hope that this act will provide the necessary authority to correct mismanagement and abuses, but we are too realistic to think that without sufficient funds and personnel—and a change in philosophy—these new authorities will of themselves protect and restore this irreplaceable resource, the land, upon which so many other living resources depend. No matter how good an Act the Congress passes, unless the top level administrators adopt a philosophy of conservation and wise use, rather than hasty exploitation, the abuses will continue with disastrous consequences. The energy crunch has placed severe new pressures on the public lands, and we believe that many non-energy related values of those lands are being sacrificed to permit hasty, destructive exploitation of energy sources which will be detrimental to the other public values in the long run and will not necessarily alleviate the energy problem. Oil shale development is a good example of this problem.

Although we have some specific amendments to suggest, in general we endorse this long overdue piece of legislation and want to thank the Interior Committee for its past efforts to enact it into law.

The following are specific changes we hope the Committee will consider:

In section 2(c), we strongly urge that "permanent" be struck from page 3, line 22 and page 4, line 6. This modifier would permit a great deal of damage to occur under the definition of multiple use and will surely end up being debated in the courts. What is permanent? Are you will to put up with practices which will damage the land forever? We are not, nor can the nation afford to allow practices that will impair the land's productivity for the next 100 years, much less forever.

In section 103(d) we suggest the addition of language which would provide for public notice of changes in classification for tracts over 1,280 acres and opportunity for a public hearing. In this way, the public, not just permitees, will be aware of such changes in classification and have an opportunity to make its views known before a final decision is reached.

In section 204, Size of Tracts, we recommend striking line 8, beginning with "and," through line 10. Since it is nearly impossible to define what comprises a "family farm," we think this phrase adds nothing to the bill.

In section 205, we recommend striking lines 16–18 and line 19 as far as "users," and substituting the following: "to assure proper land management for protection of environmental values."

This language would provide flexibility in allowing modified competitive bidding, without guaranteeing a preference to users which would not always be appropriate.

We would also like to suggest that in addition to reviewing lands for suitability for wilderness designation, the Secretary review all public lands to

determine whether any are suitable candidates for inclusion in the National Park, National Wildlife Refuge and Wild and Scenic River Systems. We would be happy to provide specific language to the staff to accomplish this.

Thank you for your consideration of our views.

AFTERNOON SESSION

Senator HASKELL. We will reconvene the hearing. As I understand it, Mr. Garrett, you have a statement.

Mr. GARRETT. Yes, I do, Mr. Chairman.

I am the conservation director of Friends of the Earth. I think if you don't mind, this is not a very long statement, I will read most of it. It does represent a fairly divergent and distinctive point of view.

Senator HASKELL. Fine.

STATEMENT OF TOM GARRETT, CONSERVATION DIRECTOR, FRIENDS OF THE EARTH

Mr. GARRETT. Mr. Chairman, as you know, the Bureau of Land Management is the result of a shotgun marriage in 1946 between the General Land Office, formed in 1813 and transferred from the Treasury to the newly formed Interior Department in 1849, and the Grazing Service which was formed following passage of the Taylor Grazing Act of 1934.

This union, decreed by Congress, with Senator McCarran of Nevada fingering the trigger of the shotgun, was an unhappy one from the onset. It occurred because the Grazing Service, having become used to deploying seasonal armies drawn from the CCC, had become "uppity." It began with a 79 percent reduction in Grazing Service personnel, the closure of four regional offices, and has had as a persisting result three decades of stultification of active management of living resources on public lands.

Today, we are in a period of historic change, with the BLM's efforts to liberate itself from the paternal repression of Congress evidently nearing fruition. But as this time approaches, many of those who found the BLM noble in adversity, and urged that it be unchained, are taking a second look at the creature that is about to be initiated into bureaucratic adulthood. There is a growing suspicion that the BLM has developed a very ugly personality, that it is exchanging domination by Western Senators and Congressmen for internal domination by the international oil and mining companies; that those people within the Bureau concerned with preservation and management of living resources will remain subordinate, and that many of the constraints placed upon it earlier may not have been such a bad idea.

We share the unease of our friends in the Wilderness Society and the groups representing stockmen and agricultural interests over what is being now proposed in these committees. We have a number of concerns which I should be happy to enumerate, although my colleagues have done so already. At the core of our concern is the question of whether Congress should provide this great dowry to a union which should probably never have been forced to begin with, namely that of an agency concerned with management of living resources, and that concerned with mineral leasing and other nonliving

resources. In the current climate, there is little doubt which set of concerns would be given priority.

Disposal and management of Public Lands has historically been dominated by two conflicting themes, one attuned to Hamilton's view of an industrial state and the other subserving Jefferson's vision of an agrarian democracy. A third view, first espoused by John Muir, that some public lands should be preserved, received first expression only during the Administration of Theodore Roosevelt and has, unfortunately, had a rather limited overall effect on public policy.

The Jeffersonian idea, distorted by pre-Civil War politics, exploited by demagogues and by the corrupt, dominated land policies for a century or more. And though the homestead laws left in their wake enormous ecological damage and human suffering, they also left, as Senator Thomas Benton said they would, in 1825:

> . . . a race of virtuous and independent farmers, the true supporters of their country, and the stock from which its best defenders must be drawn.

I believe that the Taylor Grazing Act was really, despite claims to the contrary in three decades of debate preceding it, an only modestly impure implementation of Jeffersonian ideas. It had as one of its primary goals and effects the protection of incumbent settlers and landowners against absentee livestock owners, such as Senator Stanfield of Oregon who ran 15,000 sheep on free range in the State of Colorado without owning a square foot of land in the State. It aimed to preserve the public lands in order, in part, to achieve rural stability through stabilizing the production of livestock.

The fact that overgrazing and degradation of many public lands has continued was not in my view because the Taylor Grazing Act was inherently defective, or because the concept of grazing districts was defective, or even that the decentralized structure first developed by Farrington Carpenter was faulty. It resulted instead, through constant meddling by Congress, often in individual cases and on behalf of individual petitioners. Secretary McKay reorganized the BLM in 1953 into State offices to make such meddling more convenient.

I am convinced that many of the problems attending local control of grazing districts occurred because control was not local enough, but was distorted by the influence of prominent stockmen with their congressional buddies.

I think in writing this legislation, the committee must guard against Toynbeean over-reactions. Rather than railing against ranchers as a convenient shibboleth, I would invite my colleagues to notice who, in the West, is providing the backbone of the resistance to the destructive invasion of the multinational oil and mining companies.

We propose that in writing any new legislation which may supplant, override or redirect the Taylor Grazing Act, the committee refocus the major social purposes of that bill. We believe that any new bill should explicitly state as one of its purposes to promote rural stability and well being, and discourage rural emigration and social dislocation, through stabilizing the production of livestock and through using other means available to ameliorate effects highly adverse climatic or market conditions.

We believe that a major stated purpose of any such legislation should be to discourage the use of public resource lands for agricultural purposes by corporations, other than family corporations formed for the sole purpose of conducting agriculture.

We believe that the acquisition of ranch lands and farmlands by industrial and agribusiness corporations, usually as speculative investments or as tax shelters, is profoundly against the public interest. We believe that grazing leases should not be automatically reassigned when ranches change hands, but withheld from such corporations and either redistributed for the use of incumbent independent landowners, or placed in reserve perhaps in a kind of grass bank.

We believe that any person or corporation either bidding for lands up for disposal, or applying for any lease, license, or permit should provide a sworn affidavit listing all real and corporate holdings, and that such affidavit should be made public record.

We believe that public hearings should be conducted on any application for any lease permit by any corporation other than a family corporation formed for the sole purpose of conducting agriculture, and that the administrator should, on reasonable request, hold public hearings on any application to determine if granting such application would be consistent with the purpose of the act.

We believe that the Secretary should not accept bids under bidding procedures established from any corporation except a family corporation formed for the sole purpose of conducting agriculture, except after a public hearing to determine if such sale would be consistent with the purposes of the act. The Secretary should, in all cases, publish results of bidding under competitive procedures prior to the acceptance of any bid, and should hold a public hearing upon reasonable request.

Mr. Steiger, on the House side, has informed me that such language discriminating against corporations is probably in violation of the equal protection provision of the Constitution. I believe it is far less liable to be in such violation than the landowner consent section of the recently passed Strip Mining bill, and that a legal base exists in the substrata provided by earlier land use and disposal laws.

I hope that the committee will not become excessively carried away with the term fair market value applied to permits and leases. It is an incontrovertible fact that long before the passage of the Taylor Grazing Act, and the withdrawal of lands in the West from homesteading, all but the least valuable land had passed into private ownership. As Powell predicted over 100 years, practically all the land in the West containing or adjoining water has passed from the public domain. I consider the argument that landowners with animal grazing on public domain are being subsidized, and are thus competing unfairly with livestock raisers who operate entirely on private land, to be rather hollow. Most operations adjoining public land are by definition rather marginal, always were and still are predicated on the availability of public grazing at limited cost.

In any case, one of the consistent elements in overgrazing is financial instability. In the West today those ranching families which are well established and reasonably secure financially are the least liable to overgraze. It is the operator under financial pressure, hard pressed

to meet the next loan payment who overstocks. Raising grazing permits in sec. 15 leases is liable to have about the same result as rising taxes have on farming operations throughout the nation; intensification of use leading eventually to disposal. I have no doubt that an organic act, written and slanted as this proposed legislation, and that of the administration, are written and slanted, would have the effect of accelerating the takeover of the West by speculators and big corporations, and hasten the demise of independent ranching operations.

I would urge the committee, if it is intent on raising leases and permits to exempt at least the first several hundred animal units per owner.

We are opposed to any granting of powers of eminent domain to the Bureau of Land Management, not only for condemnation of tracts of land but for condemnation of rights of way. The massive misuse and abuse of eminent domain power by the Bureau of Reclamation, and by numerous other Federal agencies, have convinced us that such powers must be limited rather than increased. As far as road corridors are concerned, there are already far, far too many roads in the West, without providing the BLM a pretext to construct more.

The misuse and abuse of eminent domain power by the Bureau of Reclamation, and by numerous other Federal agencies, have convinced us that such power must be limited, rather than increased. As far as road corridors are concerned, there are already far far too many roads in the West, without providing the BLM a pretext to construct more. The prospect of the BLM using such powers to force roads through Indian lands in Alaska, claiming such routes represented the only feasible access to lands which they administer cannot be discounted.

I will not take up the committee's time in belaboring those areas where our views are identical to those of the spectrum of fellow conservation organizations. We feel that it is most important that all areas of more than 5,000 contiguous acres be reviewed for inclusion in the national wilderness preservation system, and that protection should be afforded these lands during the review period to prevent destruction which might affect their status.

We believe that not only California desert lands, but all desert lands should be included under a special desert lands section. We agree with our colleagues in other propositions they have endorsed.

We believe most of all, that the committee should not plunge into any legislation until it is quite sure that it undertsands all of the implications. The conservation movement, which though it understood all it needed to understand, is beginning to perceive that it has become entrapped by earlier rhetoric. There is occuring now a period of reassessment and realinement among all of the people affected by this issue. While we may become impatient over a protracted gestation period, I believe that it is better to spend additional time in analysis than to let the internal impetus attaching to this act carry us blindly on to a new disaster in public land policy.

The key question is: Should that agency charged with management of living resources on public lands be entirely separate from that engaging in other administrative functions. I am increasingly convinced that it should.

Thank you, sir.

Senator HASKELL. How would you separate out public lands where oil and gas is to be sought from public lands that are to be used for other purposes? What is your organizational concept?

Mr. GARRETT. Mr. Haskell, it is really a forming concept. Because we have been so concerned about the permit that the BLM is showing and I must say that I agree with George, Mr. Alderson, that there is a distinct energy bias emerging inside the BLM. It seems to me the initial bifurcation has never healed over the merging of the general land offices and the grazing service. It might be best to leave the management of grazing and the management of the wagon road lands and the California and Oregon railroad grant lands and other timber and wildlife resources that exist on BLM lands, better to leave those to one completely separate agency as the grazing service was once, and let another separate agency handle mineral leasing and the oil and gas leasing and that sort of thing, so one fraction would not come to predominate another. So the people who are entrusted with looking after living resources can devote their full attentions to living resources and get in there and lobby for their point of view, rather than being overridden by a commissioner or an assistant secretary who has voted to exploit energy sources and that sort of thing. That is, of course, what we have now.

Senator HASKELL. I see your viewpoint but I don't know whether I agree with it or not. It is a difficult administrative problem. I appreciate your coming here. Thank you very much.

[Subsequent to the hearings Mr. Garrett supplied the following:]

I should like to talk first about grazing. There is no doubt that overgrazing is occurring on public lands, and that this has led to vegetational changes, favoring brush over grasses and forbes, and hastened the invasion of undesirable exotics such as cheat grass and halogeten. There is no doubt that overgrazing can produce irrevocable damage. Francois Bourierre, the French mammogologist, once aptly remarked that the Near East nomod, with his flocks, was far less a son of the desert than his father.

On Iceland, which I visited last summer, the introduction of sheep in the 15th Century has resulted in the almost total deforestation of the island, which was once 80% clothed in scrub birch. According to Dr. Bjarnson, the island's chief forester, Iceland has lost half its topsoil through wind and water erosion caused by improper grazing. I observed erosion continuing on steep slopes, and dust blowing against the backdrop of the central glaciers.

In New Mexico, the Rio Puerco River Basin has changed from a thriving agricultural area a century ago to a virtual desert because of riparian erosion brought about by overgrazing. The deepening of the stream channel, which in places now reaches 40 feet, has drained aquifers, and critically lowered the water table of the valley floor. The same thing has happened, and is happening, elsewhere in the Southwest and to a lesser extent further north.

Overgrazing, rather than climatic change, was the real cause of the disaster in the Sahel, as evidenced by the presence of various fenced enclaves which have remained productive in the midst of almost lunar desolation. One fenced 250,000 acre ranch in western Niger had, as of May, 1974, retained an evidently sustainable carrying capacity of about one cow per 25 acres, which is just as good as Eastern Montana though the surrounding region had been abandoned by the nomads and appeared totally devastated.

However, before becoming too enthused by evidence of the success of modern range management, I think it best to point out that modern technology in fact caused the disaster.

The period of intense overgrazing which destroyed the carrying capacity of the region was a function of a sudden explosion in livestock numbers. In Mali,

for example, the number of cattle increased from six to eleven million in five years. The population explosion of domestic herbivores was made possible by the drilling of hundreds of deep wells through the Sahel, permitting the nomads to intensely utilize areas which were unavailable to them for grazing during dry periods as long as they were dependent on natural sources of water.

If the major natural check on overgrazing had not been eliminated, the initial expansion of herds could not have occured. With the advent of drought, and the disappearance of surface water, large areas of the Sahel would simply have had to have been vacated by the nomads with their flocks for the duration of the dry period, and the calamity could not have occurred.

The United Nations agencies, UNESCO and the others, by the way, who drilled the wells, were searching for a technological solution to mitigate social problems which they had previously helped create themselves by promoting commercial over subsistance agriculture. The nomads were becoming restive over the usurpation of much of their best range in the southern Sahel for peanut and cotton farming. This was undertaken in party by agribusiness interests, tenderly encouraged by the food and agricultural organization.

I guess the point I am striving here to illustrate, is that we must be chary of technological panaceas to social and economic problems. It is always comforting to swallow a technological nostrum. While various range improvement techniques are clearly valuable in mitigating the effects of overgrazing, this is not where the solution is to be found. The only long term solution of overgrazing is a limitation of livestock numbers.

There are several things about overgrazing which I think alot of people overlook. One thing is that overgrazing in our country is an overfunction of financial instability. I have noticed that the long established incumbent families who have had time to adapt to the land, who maintained stable financial operations for a long time, are not likely to overgraze. Some of the best preserved land I have seen anywhere, including parks, is on privately owned land held by the old families.

On the other hand, if the bank is breathing down a rancher's neck for its interest on his loan, while taxes and expenses are rising and livestock prices are falling, he is liable to abuse the land as an alternative to immediate financial collapse.

Now, the fact is that in the states of Wyoming and Montana particularly, the public interest lands are arranged in a checkerboard pattern with private land. It is rarely feasible to fence off such lands and manage them separately. This means that management of privately owned rangeland inevitably spills over onto public land. It also means, if the relationship which I have suggested between financial stability and grazing practices is valid, any person interested in public lands has some stake in stability of western ranching and farming operations.

I believe that the stake is far greater however, than this. The success which the conservation movement has had in the past few years in brunting the invasion of the West by multinational oil and mining corporations has been dependent on the stubborn resistance of western landowners, and on the development of a close alliance between these landowners and the national conservation movement.

If it is not possible for livestock raisers to make a living because of depressed prices, it does precious little good to protect them from condemnation at the hands of strip-miners, as was painfully accomplished in the strip mining bill.

Now this is one reason why we support your attempt to attach the grazing fees to the market conditions. I think that is a very laudable section of your bill, one that we can wholeheartedly support.

Senator HASKELL. Our next witness is Mr. Doug MacCleery of the National Forest Products Association.

If possible, if you could possibly summarize your statement in view of the fact I know we are going to have a lot of votes this afternoon and we have other witnesses, I will include your entire statement in the record.

Mr. MACCLEERY. Very well. I will do that.

STATEMENT OF DOUG MacCLEERY, FORESTER, NATIONAL FOREST PRODUCTS ASSOCIATION; ACCOMPANIED BY JOHN F. HALL, VICE PRESIDENT FOR FORESTRY AFFAIRS

I am Douglas W. MacCleery, a forester for the National Forest Products Association, headquartered in Washington, D.C. Appearing with me today is John F. Hall, vice president for forestry affairs. We appreciate this opportunity to appear before you to give testimony on S. 507, the National Resource Lands Management Act of 1975. NFPA is a federation of 26 regional and wood products associations representing the growers, manufacturers, and wholesalers of wood products throughout the country.

Our industry is vitally concerned with timber management on all of our Nation's commercial forest lands. We are as concerned about achieving constructive public policies and programs affecting timber growth and harvest on Federal lands as we are on lands owned by the forest industry or on nonindustrial private lands. The forest products industry supports legislation which would enable productive management of federally owned commercial forest lands.

The Bureau of Land Management has long been in need of legislation clearly defining its mission. It is the only major Federal land management agency without such basic authority. We believe that S. 507, with appropriate amendment, could provide the congressional direction needed for management of lands currently administered by BLM.

However, we have several major areas of concern about the bill as presently drafted. For each of these areas of concern we have offered suggested amendments, which are included at the end of my written testimony.

Senator HASKELL. I noticed that. They will be included in the hearing record.

Mr. MACCLEERY. On the subject of reclamation, section 101(2), authorizes the Secretary to require land reclamation as a condition of use for those engaged in "extractive or other" activities likely to cause significant disturbance or alteration of land. The language is not clear that this is intended to apply to land disturbing activities, such as strip mining. Timber harvest activities are not extractive because they are followed promptly by reforestation and forest renewal. This reforestation has historically been the responsibility of the forest landowner.

It is our understanding that the intention here is primarily to exercise authority over major extractions of nonrenewable resources. That being the case, section 101(2) should be amended so that it applies solely to extraction activities, not to timber harvest. Section 101(3) would authorize revocation or suspension of any permit, license, lease, or other authorization for a violation of any agency regulation promulgated under the act, or of any State or Federal air or water quality standard or implementation plan. This provision would inject extreme uncertainty into the continuance of federally granted permits. The revision of air and water quality stand-

ards after the permit had been granted would subject the instrument to revocation upon finding of a violation of the new standard.

Section 101(3) was written due to the legitimate concern that permits issued by the Federal Government comply with appropriate environmental standards. However, existing laws already provide penalties for noncompliance with applicable State air and water quality laws that should be adequate to insure that environmental standards are met.

Section 101(3), as presently worded, would authorize revocation of permits and similar instruments upon the finding of even a minor violation of air and water quality standards. For instance, a power line right-of-way granted to a utility might be put in jeopardy upon finding that some of the emission control devices on motor vehicles owned by the utility were not operating properly. In addition, a violation by the permittee in another region unrelated to the permit could, under the present wording, subject the permit to possible revocation. This is clearly undesirable. We recommend major modifications to this and call your attention to suggested modifications, which are in my statement.

We have similar objections to section 103(d). This section would subject permits, leases, and licenses to modification due to changes in land classification. Here again a permitee has a right to expect that the conditions under which his permit was granted will remain in effect until the established renewal date, or at the very least, that he should be adequately compensated for economic loss resulting from any modification of the permit arising from a unilateral revision of the existing land classification by the Secretary.

While giving cursory recognition to land exchanges in sections 207 and 213, title II does not give the attention to the land exchange program which we believe is needed. Land exchanges are treated only as a method of adding lands to the public domain, but not as an appropriate method of developing more efficient management of existing public ownership. Full authority should be explicitly provided which would allow the exchange of lands or interests free from onerous conditions such as the strict land disposal criteria established under section 202. BLM administrators should be allowed flexibility needed to exchange lands for purposes advantageous to the public, such as the consolidation of ownership and simplification of land management. Such flexibility under S. 507 is very restricted. I have attached some suggested amendments which would allow greater flexibility in this regard.

In regard to conveyance of mineral interests, section 208(a) allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership if he finds that there are no mineral values in the land, or that the reservation of the mineral rights of the United States is interfering with the appropriate nonmineral development of the land, and that such development is more a beneficial use of the land than mineral development. A new subsection should be added to this subsection which allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership, if he

finds that the surface ownership has been conveyed through exchange and that the other party of record will reciprocate with respect to mineral rights on lands he conveyed to the Federal Government.

Subsection 208(c) requires that mineral interests conveyed pursuant to section 208 revert to the United States in the event that mineral activities are initiated within 20 years of the issuance of the patent. This subscription should be amended to provide exceptions for mineral interests conveyed pursuant to the exchange authority of section 213. Otherwise, the language as written would render any mineral interests acquired from the Federal Government pursuant to a land exchange virtually worthless, except to clear title. The result would be that private parties exchanging land with the Federal Government would reciprocate with respect to mineral reservations and neither party would benefit. Such an amendment is very important. Many desirable land exchanges which would be highly advantageous to the United States would be made virtually impossible unless Federal agencies are authorized to convey full fee title with no encumbrance for what may be found later by the new owner.

Section 209 requires the Secretary to attach covenants to any patent or other document of conveyance issued under the act "to insure proper land use and protection of the public interest." This could conceivably encumber the lands conveyed to the point where they are, in fact, privately owned public lands.

In effect, this section gives the Secretary the latitude of encumbering any lands or interests conveyed under the act to whatever extent he so desires, regardless of other provision of the bill. If not deleted, this language could destroy the effectiveness of any sales or exchange programs the Secretary may enter into under the bill. At one extreme, if he offers property for sale or exchange with highly restrictive environmental covenants, and land use requirements, it will be difficult to find purchasers. It will also serve to greatly reduce the value of the lands conveyed by the Government. On the other hand, if the Secretary offers land with few or no covenants, all such conveyances will be subject to endless lawsuits claiming that he has violated the direction given him by Congress.

If the lands in question are determined to be suitable for disposal under the limited criteria of section 202, the Federal Government should relinquish all of its rights, title and interest to said lands. Further, in the case of land exchanges, it should be presumed that the total national resource land base will not change significantly and, thus, there is no need to subject such transactions to the provisions of this section.

We urge that section 209 be eliminated. The objective of this section is to insure that lands conveyed by the Federal Government are subject to proper land use and that public interests are protected. Land use plans developed by the States and applicable State air and water quality and other environmental standards will normally insure that these objectives are met without necessarily encumbering lands conveyed by the Federal Government.

RIGHTS-OF-WAY

Section 401(b)(1) on page 36 requires that a right-of-way applicant disclose any or all plans, contracts, agreements, or other information related to the use or intended use of the right-of-way, and also requires the disclosure of various information relating to all of the participants in the entity which applies to the right-of-way. This section should allow administrative flexibility regarding information required prior to granting a permit. While such requirements may be appropriate with respect to grants for major utility rights-of-way, such as pipelines and powerlines, they will be extremely cumbersome for the numerous forest roads rights-of-way the BLM deals with each year. Where there is intermingled Federal and private ownership, it would require that forest landowners disclose all timber harvest and road construction plans on their own lands. This would be extremely impractical since these plans must remain flexible to meet changing conditions, such as harvesting insect or fire-killed timber. At the very least, the disclosure provisions should not apply to rights-of-way granted over the national resource lands to allow access to adjacent non-Federal lands for the purpose of forest management.

Attached to my statement are additional specific suggested amendments to title IV concerning rights-of-way.

We strongly recommend that the subcommittee adopt language similar to that developed in 1964 in the National Forest Roads and Trails Systems Act [Public Law 88–657] which provided the basis for the existing cost-share road program between the Forest Service and non-Federal forest landowners.

The purpose of this program is to foster and encourage the planning and development of a single road system jointly owned, operated, and maintained to serve the land management objectives of both the public and private landowners involved. This way the costs of road construction and maintenance are shared, and these costs, as well as the resulting environmental impact, are much reduced over what they would have been had separate road systems been built.

Excellent cooperation has been achieved between the public and private owners. The system is now valued in excess of $100 million and is being expanded at a value of $10 million annually.

The Bureau of Land Management administers a considerable acreage of land involved in intermingled ownership patterns in several western states, principally Washington, Oregon, California, Idaho, and Montana. We believe the current laws governing access rights to and across intermingled Federal and private lands should be brought up to the level of the authority exercised by the Secretary of Agriculture for the administration of the National Forest lands. A copy of that act is appended to my statement.

SUGGESTED AMENDMENT NO. 26

Proposed amendment No. 26, introduced by Senator Jackson, represents a significant expansion of the scope of S. 507. The objective of

this amendment is to provide for coordinated planning and management of Federal lands and adjacent non-Federal lands. It would apply to all Federal lands, not just those administered by BLM. This is a desirable objective, but there is a serious question whether this amendment as presently worded would achieve it.

Section 601 of the suggested amendment directs all Federal land managing agencies to consider State, local, and private needs and requirements and to coordinate the land use inventory, planning, and management activities on Federal lands with those activities on State and local lands "to the extent such coordination is not inconsistent with paramount national policies, programs, and interests." Section 601(b) requires that Federal land management agencies publish draft and final statements, and provide for public inputs before enacting any new program, policy, rule or regulation relating to Federal lands. These statements must assess the consistency of the new Federal proposal with existing State and local land use plans. Section 601 would impose a quite proper and very welcome requirement, namely that Federal agencies develop detailed analyses of the effect proposed Government policies will have on local communities, including private lands. At present, Federal programs and policies are imposed with little analysis of the kind required by section 601. It would be to everyone's benefit if Government policies which affect State and local economies were more comprehensively evaluated.

However, the effect of section 602 of the suggested amendment would be to completely negate the requirements of section 601. Under section 602, any State which receives money from the Federal Government to assist in land use planning or management on non-Federal lands would be required to plan the use of non-Federal lands to insure that Federal lands within the state are not "significantly damaged or degraded as a result of inconsistent land use patterns on adjacent non-Federal lands." Left open is the question of what is meant by "significantly damaged or degraded' and equally important, who would make this highly subjective determination.

Under section 602, land use on Federal lands is held supreme over land use on adjacent private lands. The effect of section 602 would be be to establish a dangerous precedent. The amendment would give Federal agencies control over private land use. Any land use which an agency does not want to occur could be claimed to result in "significant damage or degradation" to Federal lands. One case in point is the significant rights-of-way owned by the United States upon which interstate highways have been constructed. It is conceivable that section 602 could require States to dictate land use on adjacent private lands to comply with any scenic criteria or other regulations in effect on the federally owned right-of-way.

We strongly urge the subcommittee not to adopt suggested amendment No. 26. That concludes my statement.

Senator HASKELL. Thank you very much, Mr. MacCleery. I notice that you attach specific suggestions for statutory changes to your statement. That is particularly helpful to the committee.

[The prepared statement of Mr. MacCleery follows:]

NATIONAL FOREST PRODUCTS ASSOCIATION
1619 Massachusetts Avenue, N. W., Washington, D. C. 20036
FORESTRY

Statement of National Forest Products Association
before the
Subcommittee on Environment and Land Resources
Committee on Interior and Insular Affairs
United States Senate
on S. 507 (Including Suggested Amendment No. 26)
"National Resource Lands Management Act"
May 15, 1975

Mr. Chairman and Members of the Subcommittee:

I am Douglas W. MacCleery, a forester for the National Forest Products Association, headquartered in Washington, D.C. Appearing with me today is John F. Hall, Vice President for Forestry Affairs. We appreciate this opportunity to appear before you to give testimony on S. 507, "The National Resource Lands Management Act of 1975." NFPA is a federation of 26 regional and wood products associations representing the growers, manufacturers, and wholesalers of wood products throughout the country.

Our industry is vitally concerned with timber management on all of our nation's commercial forest lands. We are as concerned about achieving constructive public policies and programs affecting timber growth and harvest on Federal lands as we are on lands owned by the Forest industry or on non-industrial private lands. The forest products industry supports legislation which would enable productive management of Federally owned commercial forest lands.

The Bureau of Land Management (BLM) has long been in need of legislation clearly defining its mission. It is the only major Federal land management agency without such basic authority. We believe that S. 507, with appropriate amendment, could provide the Congressional direction needed for management of lands currently administered by BLM.

However, we have several major areas of concern about the bill as presently drafted. For each of these areas of concern we have offered suggested amendments which are included at the end of my written testimony:

1. Definitions. The definitions of "Multiple Use" and "Sustained Yield" contained in Sections 2(c) and (d) on pages 3 and 4 are somewhat different than the definitions currently applied by law to National Forest lands under the Multiple Use-Sustained Yield Act of 1960. It would seem unnecessary and confusing to distinguish between "multiple use" on National Forest lands and "multiple use" on national resource lands. In particular, it is unclear why the only resources specifically listed in the definition of "multiple use" are recreation and scenic values. If it is necessary to list resources, then all resources, including range, timber, recreation, watershed, fisheries and wildlife, should also be listed. It is hoped, however, that the definition of multiple-use in S. 507 will be made consistent with that contained in the Multiple Use-Sustained Yield Act of 1960.

The concept underlying the phrase "areas of critical environmental concern" in Section 2(e) is not constructive. The implication is a negative one since the focus is directed toward restricting or limiting management practices to "prevent irreparable damage" rather than being positive and and encouraging those practices which will achieve desirable objectives, while at the same time protecting all resource values. This section should be deleted.

Rather than being given special legislative status, ecologically sensitive areas requiring special management consideration are best identified in the comprehensive land use planning process required in Section 103 of the bill. It is during this planning process that such sensitive areas are properly identified and appropriate management practices developed to protect resource values.

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It is understood that the concept of "areas of critical environmental concern" was inserted in earlier versions of the bill to insure conformance with potential Federal land use legislation. Federal land use legislation has not yet been enacted, and, even if it were in this Congress, it may not contain this concept. Present bills before Congress dealing with land use contain the term "areas of critical State concern" rather than "areas of critical environmental concern." Because of this, we believe that this definition, and all references to it throughout the bill, are unnecessary and should be deleted.

2. Reclamation. Section 101(2) on page 9, authorizes the Secretary to require land reclamation as a condition of use for those engaged in "extractive or other" activities likely to cause significant disturbance or alteration of land. The language is not clear that this is intended to apply to land disturbing activities, such as strip mining. Timber harvest activities are not extractive because they are followed promptly by reforestation and forest renewal. This reforestation has historically been the responsibility of the forest landowner.

It is our understanding that the intention here is primarily to exercise authority over major extractions of nonrenewable resources. That being the case, Section 101(2) should be amended so that it applies solely to extraction activities, not to timber harvest.

3. Treatment of Permits, Licenses, Leases, etc. Section 101(3) would authorize revocation or suspension of any permit, license, lease, or other authorization for a violation of any agency regulation promulgated under the Act, or of any state or Federal air or water quality standard or implementation plan. This provision would inject extreme uncertainty into the continuance of Federally granted permits. The revision of air and water quality standards after the permit had been granted would subject the instrument to revocation upon finding of a violation of the new standard.

Permits and similar instruments granted by the government are usually long-term obligations and often involve a substantial investment by the permittee or lessee. This individual has a right to expect that the conditions under which the permit was granted will remain in effect until it is renewed, or at a minimum, if Federal standards are changed, that he will receive adequate compensation for the burden imposed by the new standard.

Section 101(3) was written due to the legitimate concern that permits issued by the Federal Government comply with appropriate environmental standards. However, existing laws already provide penalties for non-compliance with applicable state air and water quality laws that should be adequate to insure that environmental standards are met. We recommend that the entire Section 101(3) be deleted. However, if this is not possible, we have offered suggested amendments which are appended to this testimony.

Section 101(3), as presently worded, would authorize revocation of permits and similar instruments upon the finding of even a minor violation of air and water quality standards. For instance, a power line right-of-way granted to a utility might be put in jeopardy upon finding that some of the emission control devices on motor vehicles owned by the utility were not operating properly. In addition, a violation by the permittee in another region unrelated to ~~the~~ HIS permit could, under the present wording, subject ~~the~~ THAT permit to possible revocation. This is clearly undesirable.

We have similar ~~objections to~~ CONCERNS WITH Section 103(d). This section would subject permits, leases, and licenses to modification due to changes in land classification. Here again a permittee has a right to expect that the conditions under which his permit was granted will remain in effect until the established renewal date, or at the very least, that he should be adequately compensated for economic loss resulting from any modification of the permit arising from a unilateral

revision of the existing land classification by the Secretary. This entire subsection should be deleted.

4. Land Exchanges. While giving cursory recognition to land exchanges in Section 207 and 213, Title II does not give the attention to the land exchange program which we believe is needed. Land exchanges are treated only as a method of adding lands to the public domain, but not as an appropriate method of developing more efficient management of existing public ownership. Full authority should be explicitly provided which would allow the exchange of lands or interests free from onerous conditions such as the strict land disposal criteria established under Section 202. BLM administrators should be allowed flexibility needed to exchange lands for purposes advantageous to the public, such as the consolidation of ownership and simplification of land management.

5. Conveyance of Mineral Interests. Section 208(a) allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership if he finds that there are no mineral values in the land, or that the reservation of the mineral rights of the United States is interfering with the appropriate non-mineral development of the land, and that such development is more a beneficial use of the land than mineral development. A new subsection should be added to this subsection which allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership, if he finds that the surface ownership has been conveyed through exchange and that the other party of record will reciprocate with respect to mineral rights on lands he conveyed to the Federal Government.

Subsection 208(c) requires that mineral interests conveyed pursuant to Section 208 revert to the United States in the event that mineral activities are initiated within twenty years of the issuance of the patent. This subsection

should be amended to provide exceptions for mineral interests conveyed pursuant to the exchange authority of Section 213. Otherwise, the language as written would render any mineral interests acquired from the Federal Government pursuant to a land exchange virtually worthless, except to clear title. The result would be that private parties exchanging land with the Federal Government would reciprocate with respect to mineral reservations and neither party would benefit. Such an amendment is very important. Many desirable land exchanges which would be highly advantageous to the United States would be made virtually impossible unless Federal agencies are authorized to convey full fee title with no encumbrance for what may be found later by the new owner.

6. Covenants on Documents of Conveyance. Section 209 requires the Secretary to attach covenants to any patent or other document of conveyance issued under the Act "to insure proper land use and protection of the public interest". This could conceivably encumber the lands conveyed to the point where they are, in fact, privately owned public lands.

In effect, this section gives the Secretary the latitude of encumbering any lands or interests conveyed under the Act to whatever extent he so desires, regardless of other provisions of the bill. If not deleted, this language could destroy the effectiveness of any sales or exchange programs the Secretary may enter into under the bill. At one extreme, if he offers property for sale or exchange with highly restrictive environmental covenants, and land use requirements, it will be difficult to find purchasers. It will also serve to greatly reduce the value of the lands conveyed by the government. On the other hand, if the Secretary offers land with few or no covenants, all such conveyances will be subject to endless lawsuits claiming that he has violated the direction given him by Congress.

If the lands in question are determined to be suitable for disposal under the limited criteria of Section 202, the Federal Government should relinquish all of its rights, title and interest to said lands. Further, in the case of land exchanges, it should be presumed that the total national resource land base will not change significantly and, thus, there is no need to subject such transactions to the provisions of this Section.

We urge that Section 209 be eliminated. The objective of this section is to insure that lands conveyed by the Federal Government are subject to proper land use and that public interests are protected. Land use plans developed by the states and applicable state air and water quality and other environmental standards will normally insure that these objectives are met without necessarily encumbering lands conveyed by the Federal Government.

7. Reimbursement for Federal Administration Costs. Section 302(b) allows the Secretary to require that applicants for any agreement pertaining to the national resource lands reimburse the Federal Government for "extraordinary costs," including the costs of preparation of environmental impact statements and monitoring construction, operation, and maintenance. The broad language in this section is entirely inappropriate. It could result in the establishment of "user fees" to pay for the administration of public programs which have been specifically implemented at the direction of Congress. The requirements that applicants be charged the administrative costs involved in the preparation of environmental impact statements under the National Environmental Policy Act is unprecedented. Those programs which provide public benefits should continue to be paid for by the public.

This subsection should be amended to allow BLM discretion when dealing with the administrative costs of land exchanges, easement exchanges, and cooperative cost-share road agreements. Applicants should not be required

to pay BLM's share of administrative costs when such costs are for programs which are mutually beneficial.

8. Enforcement Authority. The enforcement authority provided by Section 307 fails to provide for any resolution of violations on an administrative basis. Every violation, whether intentional or unintentional, is delegated to the courts. There should be some provision which allows the Secretary flexibility in gaining restitution for damages resulting from accidental or unintentional trespass during forest management operations, or other activities, on ownerships adjacent to national resource lands. Administrative flexibility should be provided to resolve the innocent trespass incidents which occur frequently.

In addition, Subsection 307(a) should be changed to require conviction of a violation before a penalty is imposed.

9. Rights-of-way. Section 401(b)(1) on page 36 requires that a right-of-way applicant disclose any or all plans, contracts, agreements, or other information related to the use or intended use of the right-of-way, and also requires the disclosure of various information relating to all of the participants in the entity which applies to the right-of-way. This section should allow administrative flexibility regarding information required prior to granting a permit. While such requirements may be appropriate with respect to grants for major utility rights-of-way, such as pipelines and power lines, they will be extremely cumbersome for the numerous forest roads rights-of-way the BLM deals with each year. Where there is intermingled Federal and private ownership, it would require that forest landowners disclose all timber harvest and road construction plans on their own lands. This would be extremely impractical since these plans must remain flexible to meet changing conditions, such as harvesting insect or fire-killed timber. At the very least, the disclosure

provisions should not apply to rights-of-way granted over the national resource lands to allow access to adjacent non-Federal lands for the purpose of forest management.

(Attached to my statement are additional specific suggested amendments to Title IV concerning rights-of-way.)

10. Cost-Share Road Program. We strongly recommend that the Subcommittee adopt language similar to that developed in 1964 in the National Forest Roads and Trails Systems Act (Public Law 88-657) which provided the basis for the existing cost-share road program between the Forest Service and non-Federal forest landowners.

The purpose of this program is to foster and encourage the planning and development of a single road system jointly owned, operated and maintained to serve the land management objectives of both the public and private landowners involved. This way the costs of road construction and maintenance are shared, and these costs, as well as the resulting environmental impact, are much reduced over what they would have been had separate road systems been built.

This authority has been instrumental in resolving many problems of road access to and across intermingled forest and private lands. Excellent cooperation has been achieved between the public and private owners. The system is now valued in excess of $100 million and is being expanded at a value of $10 million annually.

The Bureau of Land Management administers a considerable acreage of land involved in intermingled ownership patterns in several Western states, principally Washington, Oregon, California, Idaho, and Montana. We believe the current laws governing access rights to and across intermingled Federal and private lands should be brought up to the level of the authority exercised

by the Secretary of Agriculture for the administration of the National Forest lands. A copy of that Act is appended to my statement.

11. Suggested Amendment No. 26. Proposed Amendment No. 26, introduced by Senator Jackson, represents a significant expansion of the scope of S. 507. The objective of this amendment is to provide for coordinated planning and management of Federal lands and adjacent non-Federal lands. It would apply to all Federal lands, not just those administered by BLM. There is serious question as to whether this amendment, as presently worded, would achieve its objective. Including the amendment in S. 507 will undoubtedly create considerable additional controversy. This proposed amendment contains concepts which are more appropriately addressed in the Federal land use bill (S. 984, "The Land Resource Planning Assistance Act") which is presently before this Subcommittee.

Section 601 of the suggested amendment directs all Federal land managing agencies to consider state, local, and private needs and requirements and to coordinate the land use inventory, planning, and management activities on Federal lands with those activities on state and local lands "to the extent such coordination is not inconsistent with paramount national policies, programs, and interests." Section 601(b) requires that Federal land management agencies publish draft and final statements, and provide for public inputs before enacting any new program, policy, rule or regulation relating to Federal lands. These statements must assess the consistency of the new Federal proposal with existing state and local land use plans. Section 601 would impose a quite proper and very welcome requirement, namely that Federal agencies develop detailed analyses of the effect proposed government policies will have on local communities, including private lands. At present, Federal programs and policies are imposed with little analysis of the kind required by Section 601. It would be

to everyone's benefit if government policies which effect state and local economies were more comprehensively evaluated.

However, the effect of Section 602 of the suggested amendment would be to completely negate the requirements of Section 601. Under Section 602, any state which receives money from the Federal Government to assist in land use planning or management of non-Federal lands would be required to plan the use of non-Federal lands to insure that Federal lands within the state are not "significantly damaged or degraded as a result of inconsistent land use patterns on adjacent non-Federal lands." Left open is the question of PRECISELY what is meant by "significantly damaged or degraded" and equally important, who would make this highly subjective determination. This section effectively requires states to establish buffer zones adjacent to Federal lands which would impose on private and state lands the management decisions made on Federal lands.

Under Section 602, land use on Federal lands is held supreme over land use on adjacent private lands. The effect of Section 602 would be to establish a dangerous precedent. The amendment would give Federal agencies control over private land use. Any land use which an agency does not want to occur could be claimed to result in "significant damage or degradation" to Federal lands. One case in point is the significant rights-of-way owned by the United States upon which interstate highways have been constructed. It is conceivable that Section 602 could require states to dictate land use on adjacent private lands to comply with any scenic criteria or other regulations in effect on the Federally owned right-of-way.

We strongly urge the Subcommittee not to adopt suggested Amendment No. 26.

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IN ADDITION, SECTION 602 WOULD RESULT IN A VEHICLE FOR OBSTRUCTIONIST LITIGATIO INDIVIDUALS OR GROUPS OPPOSED TO A LAND USE PRACTICE ON PRIVATE OR STATE LANDS COULD CLAIM "SIGNIFICANT DAMAGE OR DEGRADATION" TO FEDERAL LANDS AND BRING SUIT AGAINST STATE OR LOCAL GOVERNMENTS FOR NOT CARRYING OUT THE CONGRESSIONAL MANDATE TO PROHIBIT SUCH PRACTICES.

Suggested Amendments to S. 507

"The National Resource Lands Management Act"
May 15, 1975

1. Section 2(c), Definition of "Multiple Use"

On page 3, line 16, delete everything following the semi-colon and beginning with the words, "the use of some land ..." through line 2 on page 4, substitute therefore the following:

> "... 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."

Explanation

The definition of "multiple use" in Section 3(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. Language more nearly approximating the definition in the 1960 Act should be used in place of the current definition in the bill so as to reduce uncertainty and foster uniformity in the interpretation of policy for Federally owned lands. The suggested language will help to achieve this result.

2. Section 2(e), Definition of "Areas of Critical Environmental Concern"

On page 4, line 8 through line 14, delete the definition of "Areas of Critical Environmental Concern."

Delete reference to "areas of critical environmental concern" in other portions of the bill.

Explanation

The concept underlying the phrase "areas of critical environmental concern" in Section 2(e) is not constructive. The implication is a negative one since the focus is directed toward restricting or limiting management practices to "prevent irreparable damage" rather than being positive and encouraging those practices which will achieve desirable objectives, while at the same time protecting all resource values. This section should be deleted.

Rather than being given special legislative status, ecologically sensitive areas requiring special management consideration are best identified in the comprehensive land use planning process required in Section 103 of the bill. It is during this planning process that such sensitive areas are properly identified and appropriate management practices developed to protect resource values.

It is understood that the concept of "areas of critical environmental concern" was inserted in earlier versions of the bill to insure conformance with potential Federal land use legislation. Federal land use legislation has not yet been enacted, and, even if it were in this Congress, it may not contain this concept. Present bills before the Congress dealing with land use contain the term "areas of critical State concern" rather than "areas of critical environmental concern". Because of this, we believe that this definition, and all references to it throughout the bill, are unnecessary and should be deleted.

3. Section 101(2) - Land Reclamation

On page 9, lines 7 and 8, strike the words "an extractive or other" and substitute the words "a mineral extraction or development."

Explanation

Timber harvest activities do not fall within the class of "an extractive or other activity likely to entail significant disturbance or alteration" of the land. The definition of an activity requiring land reclamation should be limited to the extraction of minerals and like activities so that there is no confusion in this regard.

Further, reforestation of harvested areas has always been the responsibility of the landowner. This activity is quite different from reclaiming disturbed or altered land and should remain the responsibility of the administering agency. If it is the Committee's intent to alter this long established relationship between the landowner and the timber purchaser, the Committee should undertake a special review of reforestation practices on Federal lands to assure the best method or combination of methods is adopted for national resource lands.

4. Section 101(3) - Revocation of Permits

On page 9, beginning on line 10, delete the words ~~dashed through~~ and insert those underlined:

> "(3) inserting in permits, licenses, leases, or other authorizations to use, occupy, or develop the national resource lands, provisions authorizing revocation or suspension, after notice and hearing, of such permits, licenses, leases, or other authorizations, upon final administrative finding of a violation on such lands of any regulations issued by the Secretary under any Act applicable to the national resource lands or upon final administrative finding of a violation on such lands of any applicable State or Federal air or water quality ~~standard or implementation plan~~ laws or regulations: PROVIDED, That any such violations must be determined to have occurred as a direct result of use

under the permit, license, lease or other document in question: AND PROVIDED FURTHER, that any such suspension shall be terminated no later than the date upon which the cause of said violation has been rectified: AND PROVIDED FURTHER, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect public health or safety or the environment: AND PROVIDED FURTHER, That, where other applicable law . . ."

Explanation

Section 101(3) would authorize revocation or suspension of any permit, license, lease or other instrument for a violation of any agency regulation promulgated under the Act, or of any state or Federal air or water quality standard or implementation plan. This provision would inject extreme uncertainty into the continuance of Federally granted permits. Presumably, the revision of air and water quality standards after the permit had been granted, would subject the instrument to revocation upon finding of a violation of the new standard.

Permits and similar instruments granted by the government are usually long-term obligations, and often involve a substantial investment by the permittee or lessee. This individual has a right to expect that the conditions under which the permit was granted will remain in effect until it is renewed, or at a minimum, if Federal standards are changed, that he will receive adequate compensation for the burden imposed by the new standard.

Section 101(3) as presently written, would authorize revocation of permits and similar instruments upon the finding of even a minor violation of air and water quality standards. For instance, a power line right-of-way granted to a utility might be put in jeopardy upon finding that some of the emission control devices on motor vehicles owned by the utility were not operating properly. In addition, a violation by the permittee in another region in activities unrelated to the permit could, under the present wording, subject the permit to possible revocation. This is clearly undesirable.

We recommend that the entire Section 101(3) be deleted. However, if this is not possible our amendments proposed above would do three things:

a. They would tie suspensions of permits for violations of regulations issued by the Secretary to those occurring on public lands and suspension for violation of any such regulations for air and water quality laws to violations occurring as a direct result of the implementation of a permit, or other document by the permittee. Obviously, the intent here is to be certain that revocations or suspensions of permits cannot be handed down for violations which occur other than on the permit in question or for activities unrelated to those covered by the permit in question. It is understood that this is the real intent of the committee.

b. The proposed amendments eliminate reference to "air or water quality standards or implementation plan" and insert reference to air or water quality laws or regulations. This will allow, for instance, a State Forest Practices Act which is deemed to be a state's program for the control of pollution from silvicultural activities to prevail under certain circumstances. The current language does not allow for the distinction between land use activity regulation and air or water quality standards. The standards are designed specifically to act as a yardstick against which to measure the effectiveness of land use activity regulation. To our knowledge, there was never any legislative intent to have the standards used as a basis for determining violations. It is our opinion that this amendment does not change the intent. Rather, it represents simply a clarification of a semantics problem.

c. Finally, the amendment would direct the Secretary to suspend rather than revoke the permit, license, or lease, pending correction of the violation. This leaves the government and public protected since the Secretary has the authority to halt the action creating the violation. In addition, under the language we have suggested here, the permittee's long-term investment would be protected, yet he could still be penalized for the violations named in this subsection through suspension of his permit until he finally complies with air and water quality laws and regulations. If the situation was such that the permittee could not, or would not, comply the suspension would be in effect indefinitely and in substance would constitute revocation of the permit.

5. Section 103(d) - Changes in Land Classification

On page 12, delete the entire Subsection 103(d).

Explanation

Section 103(d) would subject permits, leases, and licenses to modification due to changes in land classification. Our objection to this section is similar to that regarding Section 101(3). The holder of a permit has a right to expect that the conditions under which his permit was granted will remain in effect until the established renewal date, or at the very least, that he be adequately compensated for any economic loss resulting from modification of the permit arising from a unilateral revision of the existing land classification by the Secretary. This entire subsection should be deleted.

6. Section 202 - Disposal Criteria

On page 14, line 6, after the word "lands" insert "or interest therein." On page 14, line 22, insert a new Subsection 202(a)(4) as follows:

"(4) Disposal of such tract of national resource lands, or interests therein, under the exchange authority provided in section 213 will serve the public interest."

On page 14, line 25, after "201", insert the words ", the exchange authority of section 213, or..."

Explanation

While giving cursory recognition to land exchanges in Section 207 and 213, Title II does not give the attention to the land exchange program which we believe is needed. Land exchanges are treated only as a method of adding lands to the public domain, but not as an appropriate method of developing more efficient management of existing public ownership. Full authority should be explicitly provided which would allow the exchange of lands or interests free from onerous conditions such as the strict land disposal criteria established under Section 202. BLM administrators should be allowed flexibility needed to exchange lands for purposes advantageous to the public, such as the consolidation of ownership and simplification of land management.

7. Section 208(a) - Conveyance of Mineral Interests

Section 208(a), on page 16, allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership if he finds that there are no mineral values in the land, or that the reservation of the mineral rights in the United States is interfering with the appropriate non-mineral development of the land, and that such development is more a beneficial use of the land than mineral development. A new subsection should be added to this subsection which allows the Secretary to convey mineral interests owned by the United States where the surface is in non-Federal ownership, if he finds that the surface ownership has been conveyed through exchange and that the other party of record will reciprocate with respect to mineral rights on lands he conveyed to the Federal Government.

Section 208(c) requires that mineral interests conveyed pursuant to Section 208 revert to the United States in the event that mineral activities are initiated within twenty years of the issuance of the patent. This subsection should be amended to provide exceptions for mineral interests conveyed pursuant to the exchange authority of Section 213. Otherwise, the language as written would render any mineral interests acquired from the Federal Government pursuant to a land exchange virtually worthless, except to clear title. The result would be that private parties exchanging land with the Federal Government would reciprocate with respect to mineral reservations and neither party would benefit. Such an amendment is very important. Many desirable land exchanges which would be highly advantageous to the United States would be made virtually impossible unless Federal agencies are authorized to convey full fee title with no encumbrance for what may be found later by the new owner.

Section 208(d)(1) allows the Secretary to require applicants for conveyance of mineral interests in Federal lands to pay for the cost of exploratory programs to that end. While this may be appropriate in cases of sales, it is not with respect to land exchanges. This subsection should be amended to allow the Secretary some flexibility with respect to exchanges, or exempt them entirely from this requirement.

8. Section 209 - Covenants on Documents of Conveyance

On page 18, delete the entire Section 209.

Explanation

Section 209 requires the Secretary to attach covenants to any patent or other document of conveyance issued under the bill. This could conceivably encumber the lands conveyed to the point where they are, in fact, public lands with a private owner.

In effect, this section gives the Secretary the latitude of encumbering any lands or interests conveyed under the bill to whatever extent he so desires, regardless of other provisions of the bill. If not deleted, this language could destroy the effectiveness of sales or exchange programs the Secretary may enter into under the bill. At one extreme, if he offers property for sale or exchange with highly restrictive environmental covenants and land use requirements, his program will fail for lack of purchasers. It will also serve to greatly reduce the value of the lands conveyed by the government. On the other hand, if the Secretary offers land with few or no covenants, all such conveyances will be subject to endless lawsuits claiming that he has violated the direction given him by Congress under this Section.

If the lands in question are determined to be suitable for disposal under the limited criteria of Section 202, then the Federal Government should relinquish all rights, title and interest to said lands. Further, in the case of land exchanges, it should be presumed that the total national resource land base will not change significantly, and, thus, there is virtually no need to subject such transactions to the provisions of this Section.

We urge that Section 209 be eliminated. The objective of this section is to insure that lands conveyed by the Federal Government are subject to proper land use and that public interests are protected. Land use plans developed by the states and applicable state air and water quality and other environmental standards will normally insure these objectives are met without necessarily encumbering lands conveyed by the Federal Government.

9. Section 213 - Acquisition of Land

On page 20, line 24, revise the title of this section to read "Acquisition and Exchange of Land."

Explanation

The above title would more appropriately reflect the scope of this section.

10. Section 302 - Reimbursement for Federal Administration Costs

Section 302(b), on page 24, allows the Secretary to require that applicants for any agreement pertaining to the national resource lands reimburse the Federal Government for "extraordinary costs," including the costs of preparation of environmental impact statements and monitoring construction, operation, and maintenance, etc. The broad language in this section is entirely inappropriate. It could result in the establishment of "user fees" to pay for the administration of public programs which have been specifically implemented at the direction of Congress. The requirements that applicants be charged the administrative costs involved in the preparation of environmental impact statements under the National Environmental Policy Act is unprecedented. Those programs which provide public benefits should continue to be paid for by the public.

This subsection should be amended to allow BLM discretion when dealing with the administrative costs of land exchanges, easement exchanges, and cooperative cost-share road agreements. Applicants should not be required to pay BLM's share of administrative costs when such costs are for programs which are mutually beneficial.

11. Section 307 - Enforcement Authority

The enforcement authority provided by Section 307, on page 28, fails to provide for any resolution of violations on an administrative basis. Every violation, whether intentional or unintentional, is delegated to the courts. There should be some provision which allows the Secretary flexibility in gaining restitution for damages resulting from accidental or unintentional timber trespass during forest management operations. The Secretary should be given the authority to settle this type of trespass either by requiring the trespasser to pay fair market value for trees cut on national resource lands or by accepting in exchange trees or logs of like value. Because of intermingled private and Federal lands, coupled with poor boundary markings, unintentional trespass can easily occur. Adjacent private landowners may trespass on government lands while timber sale contractors operating on national resource lands may trespass on private lands. Authority for administrative treatment of such situations should be provided for.

In addition, Section 307(a) should be changed to require conviction of a violation before subjection to penalty.

12. Section 401(b)(1) - Submission of Plans

On page 36, lines 3 through 6, delete the words ~~dashed through~~ and insert the words underlined:

> "(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose ~~any or all~~ those plans, contracts, agreements, or other information ~~or material~~ reasonably related to the use, ..."

Explanation

Section 401(b)(1) requires that applicants for any rights-of-way disclose all plans related to the use of that right-of-way. While such a requirement may be appropriate with respect to some grants for utility rights-of-way, such as pipelines and power lines, it will be extremely cumbersome for the numerous forest road rights-of-way the BLM deals with each year. It would require that forest landowners divulge all timber harvest and road construction plans on their own lands. This would be extremely impractical since these plans must remain flexible to meet changing conditions, such as harvesting insect or fire-killed timber.

The proposed amendment would limit information to disclosure of "those plans, contracts, agreements, or other information, reasonably related to the use ... of the right-of-way ..."

13. Section 401(b)(2) - Disclosure

On page 36, line 14, delete the word "shall" and replace with "may".

Explanation

Section 401(b)(2) involves a mandatory requirement for detailed disclosure by partnerships, corporations, associations and other businesses applying for rights-of-way over public lands. Again, this very cumbersome requirement may not always be appropriate or necessary, particularly with respect to the numerous forest road rights-of-way which are handled by the BLM every year. The Secretary should be given some flexibility here, inasmuch as it is our understanding that this clause is primarily a holdover from the Alaska Pipeline Bill, and was originally intended to discover conflicts of interest among the major oil companies.

14. Section 403(a) - Boundaries of Rights-of-Way

On page 38, line 13, delete the word "practicable" and insert "may be indicated by the proportionate values involved".

Explanation

Section 403(a) directs the Secretaries to specify the boundaries of all rights-of-way over public lands as precisely as "practicable". The term "practicable" has been interpreted by the courts to mean "possible" or "to the extent the existing technology permits." As written, this language leaves the Secretary with no flexibility to weigh the merits of each situation. As written, this language will result in a preponderance of cases of over-engineering with respect to forest roads on public lands. The connotation of the word "practicable" is that the Secretary concerned must require extremely high standards for the engineering of all rights-of-way, whether they involve major public highways or secondary logging spur roads. The language should

be amended to avoid unnecessary engineering, administrative, and compliance costs with respect to the many miles of forest roads constructed under right-of-way agreements on the public lands each year.

15. Section 403(f) - Reimbursement for Administrative Costs

On page 40, line 21, after the word "however" insert the following: "That such costs need not be reimbursed in any situation where there is in existence a cooperative cost-share right-of-way program between the United States and the holder of a right-of-way. And provided further, That rights-of-way may be granted, issued ..."

Explanation

Under Section 403(f), holders of rights-of-way must reimburse the United States for "all reasonable administrative and other costs" the agency has incurred in processing the application and in monitoring construction. Under the cost-share road program, the Forest Service and the private owner share the tasks of road design and construction. These are divided approximately equally between them. Thus, it would be inequitable for holders of rights-of-way under the cost-share program to be required to pay the government for its administrative costs since they are also paying for those costs on their own lands. The best solution is to allow the present arrangement to prevail, i.e., each party will be responsible for the costs individually incurred as long as the total workload performed by each remains approximately equal.

16. Section 409 - Compliance with State Standards

On page 45, line 6, after the word "standards," insert the words: "for similar purposes ..."

Explanation

Section 509 - "State Standards" could potentially result in the requirement that forest road rights-of-way over the public lands be constructed to state highway standards, which would be totally uneconomical, environmentally destructive in many cases, and entirely inappropriate.

To allow the the necessary flexibility in judging the merits of each situation under this provision, the above amendment is offered.

National Forest Products Association
May 15, 1975

National Forest Roads and Trails Systems Act

• *Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538)*

Sec. 1. The Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services. (16 U.S.C. 532)

Sec. 2. 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 (1) over national forest lands and other lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it. (16 U.S.C. 533)

Sec. 3. 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. (16 U.S.C. 534)

Sec. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of national forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agen-

cies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed the purchaser of the national forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate. (16 U.S.C. 535)

Sec. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior. (16 U.S.C. 536)

Sec. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded. (16 U.S.C. 537)

Sec. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the national forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor. (16 U.S.C. 538)

Senator HASKELL. If we have any further questions on the amendments, we will be in touch with you. Thank you.

The next witness is Mr. Robert Riley of the American Institute of Architects.

Mr. Riley, I might make the same suggestion to you that I did with others, if you could summarize your statement it would be particularly helpful.

STATEMENT OF ROBERT B. RILEY, MEMBER, REGIONAL DEVELOPMENT AND NATURAL RESOURCES COMMITTEE OF THE AMERICAN INSTITUTE OF ARCHITECTS; ACCOMPANIED BY JOHN GAILLARD, DIRECTOR OF HOUSING AND URBAN PROGRAMS

Mr. RILEY. My name is Robert Riley, a member of the Regional Development and Natural Resources Committee of the American Institute of Architects. Accompanying me today is John Gaillard, the institute's director of housing and urban programs.

Today, the American Institute of Architects, the national society for the architectural profession, wishes to express its views on the need for sound management and planning of the natural resource lands, with special emphasis on S. 507 and S. 1292, proposals for a National Resource Lands Management Act.

The AIA has developed a policy statement on the National Resource Lands. I request that this be entered in the hearing record as part of our full statement. I will not take your time by reading it now, but would like to summarize, briefly, some of the points we consider most important.

We believe that Congress should clearly affirm Federal intent to keep the bulk of these lands in public ownership, affirming thereby what has in fact been the policy of the last several decades, but not the letter of the existing but ancient legislation. We also feel that such a policy must be supplemented by a process of acquisition, trade, interagency transfer, and disposal aimed at getting land under the management most appropriate to its use.

Once such long-term Federal control has been affirmed, there is immediate need for three steps: (1) clear definition of the goals and policy of BLM land management, including careful distinction between such goals and policies and those more appropriate to other Federal agencies and to the private sector; (2) a comprehensive inventory of the capability and suitability of all Federal and certain relevant private lands in relation to those goals; and (3) a comprehensive land use plan for the public lands to achieve those goals.

When, but not until, those steps have been achieved, the necessary acquisition, transfer, and disposal process should begin. In general, we feel that where there is any doubt as to land use or suitability, land must remain in public ownership; in general, we feel that exchange is preferable to sale. Acquisition, transfer, or disposal must aim at assembling workable and identifiable packages of land and at ending the decades-long "picking over" process which has left the Federal Government with the lands no one wanted, and a crazy quilted, unmanageable intermingling of holdings. Mineral rights should be retained by the public and, since lands would be disposed of only in relation to a long-range land use plan, controls

should insure that land released for a specific purpose be developed only for that purpose. In any case, public land should be disposed of only upon clear demonstration that the larger public interest is better served by private ownership of a particular piece of land.

Policy and plans should clearly establish the priority of public use over private use; the priority of long run, truly sustained yield over short run uses responding to quickened cycles of market changes; and the priority, in general, of multiple-use over single- or dominant-use concepts. Single- or dominant-use management should be used to protect critical or unique values or resources, but not to minimize economic return nor to simplify decision making or management.

The BLM should be given the power to classify lands for specific uses rather than having to rely upon withdrawal, the power of policing all lands under its authority, and the power to institute and enforce controls over lands released to private ownership.

BLM lands should be included under the Wilderness Act. Wilderness establishment and maintenance should be consistent across all Federal lands and subject to the will and scrutiny of Congress, not dependent upon the changing policies and personnel of administrative agencies.

Legislation and management programs should clearly spell out the goal of protecting and promoting overall environmental quality on the public lands. This includes not only the maintenance of physical productivity but the preservation and enhancement of visual, social, historical, and cultural values as well. Control programs should protect and enhance the entire range of socially desirable assets and resources, and not concentrate only on "uniqueness" or "irreplaceable resources."

On the question of mining and mineral extractions, we believe strongly that the Mining Act of 1872 must be repealed and replaced by legislation which recognizes the needs and life of this country in the 20th century.

Senator HASKELL. I believe the administration sent up a bill to change the 1872 law and I think Senator Metcalf has some amendments to that. That is the place to address that question.

Mr. RILEY. We realize that such legislation might best be treated separately from a BLM Organic Act, but we wish to emphasize its importance. We believe that any legislation in this area, however, must aim at three goals. First is clear recognition that mining or energy development is only one land use to be balanced against others on the merits of each proposal and each land unit: automatic priority of mineral or energy development over any other use, whether explicit in law or implied in policy, is unwise and unacceptable. Second, all mineral leasing legislation should provide for strict and specific environmental quality standards, including air quality, water quality, and land use. Lastly, legislation and enforcement should insure that land patented for mining is not used for other purposes, and that where public mineral rights are relinquished, because of conflict with other uses, such rights are not subsequently used for private profit.

Some of these proposals will be opposed on the grounds that they will restrict the production or raise the cost of energy and food, or that they will bankrupt small ranching as a business and a way of life, claims which might seem understandable and persuasive. We believe that there are two compelling answers to most such arguments:

first, that even should these proposals result in small increases of food and energy costs to the public—an argument that at any rate should be examined case by case—the public is now paying such costs anyway, through the gave away of public resources at less than market value. Secondly, that the problem of short-term economic costs or inequities should be solved by other short-term, flexible, and reversible economic measures, including direct subsidies where required, and not by permitting or encouraging the accelerated, irreversible wasting away of our irreplaceable land resources.

We believe that enactment of either S. 507 or S. 1292 would be a much-needed first step in achieving these goals. Both affirm a policy of keeping the bulk of the national resource lands in Federal ownership. They would at last give the Bureau of Land Management the basic statutory powers needed for administering its lands and enforcing its regulations. They would repeal many of the long obsolete laws which now apply to the natural resource lands. They call for a land inventory and land planning effort for use of these lands. They formalize the goals of multiple use and sustained yield; they call for protection of overall environmental quality, including not only irreplaceable physical and biological resources, but scientific, scenic, and historic values; and air and water resources. They require land reclamation as a condition of use; they allow for necessary rights-of-way, but require their consolidation where feasible. They set out mechanisms for sale, acquisition and exchange, with both public safeguards and administrative flexibility.

We consider both S. 507 and S. 1292 to be incomplete in some important respects. While both proposals require identification of potential wilderness areas and require subsequent review of such areas for inclusion under the Wilderness Act of 1964, neither of the bills seems to insure protection of such areas. Many of such lands could have had their irreplaceable characteristics irretrievably damaged before protection is established.

The proposed legislation does little to address the environmental problems caused by the Mining Act of 1872. We believe that repeal of that act and its replacement by modern legislation which calls for environmental controls and reclamation and for balanced review of use priorities instead of an automatic priority for mining, is essential for safeguarding the public lands of this country for future generations. This problem might indeed be best handled by separate legislation, but we wish to emphasize its importance.

We have one other major reservation, one which stems more from the political and environmental context within which any legislation will be enacted than from the specifics of either S. 507 or S. 1292. The national resource lands, as they exist today, are in fact the public lands which have not been set aside for specific uses, or defined as having specific characteristics, which properly place them under the administration of other Federal bodies such as the Forest Service or National Park Service. Both S. 507 and S. 1292 reaffirm the principle of managing these lands for multiple use and sustained long-term yield.

We believe that this philosophy is both wise and necessary, and that it must be maintained in practice as well as in theory. We have some misgivings over what appears to be the dual charge of the Bureau of Land Management—that of encouraging multiple use on the one hand, and developing mineral and energy resources on the

other hand. Our fear is that current demands for the development of energy resources might well override concerns for the long-term preservation of other values. We also feel that in the required inventory of national resource lands, high priority should be given to the identification of those lands of special environmental values which might better be administered by other special-purpose Federal agencies. Such lands should then be transferred to the jurisdiction of the appropriate agencies.

We believe that S. 507 is the more comprehensive of the two bills now before this committee.

Senator HASKELL. If I may interrupt, Mr. Riley, it seems to me that other people are suggesting separating out management for energy purposes, or any kind of developmental purposes, as opposed to other uses. But it seems that it is all the same land. I don't know how you divide it up.

Mr. RILEY. It is the same land, indeed, sir, and if you ask me for solutions and recommendations, I would have a hard time making them. I could see the problem clearly. I would say that one answer to the possibility is a very careful look—I think there are three types of land involved. Land whose capabilities and resources do give it a specific character that now may more strictly belong to other agencies and mineral development lands. I think the BLM holdings should be carefully inventoried for transfer to other special agencies, such as the Forest Service. I don't know the administrative complications of setting out the two categories of land. I think the request, for example, that BLM holdings be subdivided into named units, which I believe has been suggested by some groups, might be a step in that direction.

Senator HASKELL. I see. Fine.

Mr. RILEY. Some of the aspects of 507 which make us prefer it are the power of revocation or suspension of application for use or occupancy. While we are not happy with the wilderness provision in either bill, we prefer those in 507 which sets time limits for both the identification and review for inclusion in the wilderness section. One thing that we find quite objectionable in S. 1292 is the provision that the entire inventory of wilderness areas be limited to those including 50,000 contiguous, roadless acres. I would say cost is certainly a factor in evaluating wilderness lands, but restricting it to areas greater than 80 square miles could in fact lose some precious and irreplaceable land.

I don't need to impress the committee with the need for legislation in this area.

I would like to say in closing that continued recreation pressures and particularly continued pressures for energy development make me think the timing is critical. We surely hope that something can come out of this session of the Congress.

Thank you.

Senator HASKELL. I certainly hope so. Thank you Mr. Riley very much for appearing.

The next witness, Mr. Edwards, submitted his testimony for the record.

[The prepared statements of Mr. Riley and Mr. Edwards follow:]



THE AMERICAN INSTITUTE OF ARCHITECTS

NATURAL RESOURCE LANDS MANAGEMENT ACT

A STATEMENT BY

ROBERT B. RILEY, AIA

MEMBER
REGIONAL DEVELOPMENT AND NATURAL RESOURCES COMMITTEE

THE AMERICAN INSTITUTE OF ARCHITECTS

TO

SUBCOMMITTEE ON ENVIRONMENT AND LAND RESOURCES

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

WASHINGTON, D.C.

March 7, 1975

1735 NEW YORK AVENUE, N.W. • WASHINGTON, D. C. 20006 • (202) 785-7300

Mr. Chairman, I am Robert B. Riley, a member of the Regional Development and Natural Resources Committee of the American Institute of Architects. Accompanying me today is John Gaillard, the Institute's Director of Housing and Urban Programs.

Today, the American Institute of Architects, the national society for the architectural profession, wishes to express its views on the need for sound management and planning of the natural resource lands, with special emphasis on S. 507, the "National Resource Lands Management Act."

PUBLIC DOMAIN POLICY OF THE AMERICAN INSTITUTE OF ARCHITECTS

INTRODUCTION

The Bureau of Land Management (BLM) administers more land than any other private or public body in this country -- a total of over 450 million acres, or over 700 thousand square miles. These holdings make up one-fifth of all the land in the United States and three-fifths of all the land in federal ownership; their area is greater than the states of Texas, California, Montana, and New Mexico combined. The use of these lands and resources is important to architects and to everyone concerned with the quality of the American environment. Parts of these lands are rich in timber, others rich in metallic or non-metallic mineral resources. The sheep raising industry is largely dependent on these lands for grazing, and in some areas of the West, the cattle industry is similarly dependent. Some parts are rich in wildlife. Some BLM land is vital to the watershed system that supplies western cities and irrigation areas: other land, highly susceptible to erosion, annually fills western waters with thousands of tons of sediment, directly affecting public investment in dams and reservoirs. These lands are increasingly being used for land and water-based recreation. In five states, over 25 percent of the land area is under BLM management, with obvious effects on the regional economy. Above all, the BLM lands are the largest remaining uncommitted reservoir of public space available for the uses of generations of Americans yet unborn.

NEED

Despite the obvious importance of these lands, there exist no legally recognizable policies or mechanisms for their use. They are mainly the remnants of the old Public Domain, land which has not been reserved as having specific use or character nor claimed by other federal agencies. They are, in other words, the "left-over" public land. The American Institute of Architects believes that the rising concern of the American public for the quality of the environment, coupled with increasing demands for recreational land and for the development of energy-producing resources, makes the need for clear policies and laws critical. We can not afford to wait any longer.

RECOMMENDATIONS

A. Acquisition and Disposal

While under existing law, the BLM lands are in federal ownership "... pending final disposal", and while pressures for their conversion to private ownership persist, recent federal administrations have not in practice emphasized disposal. Much conservationist opinion favors an outright commitment to permanent ownership of substantially all existing public lands. But the character of the public lands varies greatly, just as society's needs will vary over time. Arguments for blanket permanent retention of each existing acre of federal land and arguments for large-scale disposal both seem emotional or philosophical rather than rational or practical. In place of such rigid positions, acquisition and disposal should be guided by the following principles:

1. Public land should be disposed of only upon clear demonstration that the larger public interest is better served by private ownership of a particular piece of land. This rule should serve both as a general principle for planning and administering the federal land and as a test for specific proposals for disposal or acquisition. The argument that a particular developer cannot achieve some purpose equally well on private land should not be justification for disposal.

2. There is a critical need for a clear statement of the goals and priority uses of federal land ownership and for an inventory and classification of all BLM, other federal, and some relevant private lands in relation to those goals and corresponding land uses implied by them. Policy formulation is the job of the Congress of the United States and not any other private or public body, but the legitimacy of certain historic goals and uses such as wilderness, historic and scenic preservation, recreation, watershed protection and erosion protection must be reaffirmed, while it is possible that some other present uses of BLM lands, like crop-raising and maybe grazing, might be defined as uses

more suitable for private land. Federal lands should be inventoried and classified in terms of their suitability for, or their incompatibility with, a complete range of land uses; private lands critical to achieving public goals should be included. No public lands should be disposed of until this is done. Once such planning and classification has been accomplished, a long term program of acquisition, disposal, or inter-agency transfer where appropriate, should begin. Its goal would be that of getting land into the most appropriate ownership and management, whether private or public, whether lease or sale, with as great an emphasis on federal acquisition of environmentally important areas as on disposal of any other lands. Such a planned, ongoing process would put the question of the disposal or inviolability of the public domain in more rational and comprehensive terms. It is possible that federal ownership of land would be shifted, without significant increase or decrease in the amount. But in any case, acquisition must be made as important and as easy as disposal; the pace of disposal should never be allowed to run ahead of acquisition.

3. Under any plan for acquisition and disposal it must be remembered that the public domain is our last great resource to meet the unpredictable demands of the future, including uses such as new planned communities. A decision to retain land in public ownership can and will be reversed if necessary, but transfer into private hands is likely to be irreversible except at prohibitive cost. Where there is any doubt as to use priority or land suitability, therefore, land should remain in public ownership, and any desirable private uses should be accommodated through leasing rather than through disposal.

4. Disposal by exchange should be preferred to outright sale, and the BLM should have authority to pay or receive money in order to balance desirable exchanges. Disposal should not be for less than fair market value. Open competitive bidding is desirable, but certain powers such as refusal of all offers or considerable discretion in setting terms of sale should be reserved to the government in order to reduce tenure problems and simplify ownership patterns by consolidation, to promote sound conservation of agricultural and grazing land and water rather than only the increase of private profits, and to stop the decades long process of "picking-over" the federal lands, a process which leaves only the worst in public ownership. All money received through disposal should be permanently marked for acquisition. All mineral rights should be reserved to the federal government, qualified by time limits where essential to the private owner's highest use. Lastly, since land would be disposed of only because of its relationship

to a comprehensive plan, then it should, in most cases be subject to federal controls which ensure that it is developed only for specified uses. Land not so used within a specified time should revert to public ownership. Such controls would guard against abuses, but like municipal or county zoning, would always be subject to review as conditions change.

B. Land Use Policy and Planning

An overall policy and sound plans to achieve it should be developed, clearly establishing the priority of public use over private use; the priority of long run, truly sustained yield over short run uses responding to quickened cycles of market changes; and the priority, in general, of multiple-use over single or dominant-use concepts. Single or dominant-use management should be used to protect critical or unique values or resources, but not to minimize economic return nor to simplify decision-making or management.

C. Legal Authority and Responsibilities

The BLM should be given the power to classify lands for specific uses rather than having to rely upon withdrawal, the power of policing all lands under its authority, and the power to institute and enforce controls over lands released to private ownership.

BLM lands should be included under the Wilderness Act. Wilderness establishment and maintenance should be consistent across all federal lands and subject to the will and scrutiny of Congress not dependent upon the changing policies and personnel of administrative agencies.

D. Environmental Management

Legislation and management programs should clearly spell out the goal of protecting and promoting overall environmental quality on the public lands. This includes not only the maintenance of physical productivity but the preservation and enhancement of visual, social, historical, and cultural values as well. Control programs should protect and enhance the entire range of socially desirable assets and resources, and not concentrate only on "uniqueness" or "irreplaceable resources."

E. Grazing Lands and Practices

1. The program of land inventory and classification should distinguish between those lands on which grazing might be the highest and best use, and those lands which are, or could be, grazed, but which are also critical to public goals such as watershed protection of siltation control. For the former lands, the regulations, administration

and pricing levels of the current leasing program should be critically examined to determine whether they adequately protect the public interest and the health of the land, and to determine whether the leasing program should be substantially modified, or whether the public or the land itself might be best served by outright disposal of some of these lands. On the latter lands, the public uses should be considered dominant; these lands should remain in public ownership under any program for the disposal of grazing lands.

2. A more adequately staffed, funded, and enforced program of range control and revegetation is needed, as is expanded research on the relationships between vegetation growth, soil and moisture conditions and a complex variety of grazing practices upon which such a program must be based.

F. Mining/Mineral Extraction

The major needs are for recognition of environmental quality standards in mineral leasing and for the repeal of the Mining Act of 1872. The latter gives away public resources without compensation, encourages the most destructive exploration and exploitation, is a legal and administrative tangle of uncertainty, and is sometimes used in acquiring free public land for entirely different uses. There are not proven benefits to the public, its uncertainties and complications would seem no great help to the mining industry either. Metallic minerals should be available on lease only, as are coal, oil and gas, and oil shale. Overall mineral legislation should promote the following goals:

1. The federal government should have the absolute right to determine when, where, and under what conditions mining shall be permitted on the federal lands. There must be a clearly established right to refuse private acquisition for mining purposes. The automatic priority of mining over any other land use should be abandoned. In particular, National Parks and Monuments and any other land includable under the Antiquities Act, and land already specified as having crucial values for other use, should be rigidly protected from mining development. Mining might indeed be the highest use of certain lands, including in exceptional cases, lands already designated for other use, but such priority should be granted only on the merits of each case and not granted automatically.

2. Mineral leasing legislation should provide for strict and specific environmental quality standards, including air and water quality and land use standards. Large areas which are surface mined should be required to be left in a condition suitable for a previously

approved land use. Costs of meeting environmental standards should be borne by the developer. All development involving loss of public rights should provide compensation for that loss.

3. Where land is patented for mining under existing laws, enforcement should assure that use and not others. Modern, systematic, federal control should be instituted for all records, claims, notification, etc., of land claimed for mining, and loopholes allowing development of common materials under the mining act should be closed.

For decades the public land of the West has been used by private interests with few restrictions and at little cost except to the integrity of the land itself. Such use has sometimes been established by legal rights or the lack of specific regulation; sometimes it has simply been sanctioned by tradition or continued through lack of determination or manpower to control it. Such use has not been confined to copper barons and cattle kings, in some areas it has been an economic mainstay of ordinary people. Some of our proposals will be opposed on the grounds that they will restrict the production or raise the cost of energy and food, or that they will bankrupt small ranching as a business and a way of life, claims which might seem understandable and persuasive. We believe that there are two compelling answers to most such arguments: first, that even should these proposals result in small increases of food and energy costs to the public (an argument that at any rate should be examined case by case) yet the public is now paying such costs anyway, through the give-away of public resources at less than market value. Secondly, that the problem of short-term economic costs or inequities should be solved by other short-term, flexible, and reversible economic measures, including direct subsidies where required, and not be permitting or encouraging the accelerated, irreversible wasting away of our irreplaceable land resources.

We believe that S. 507 is a much-needed first step in achieving these goals. It would at least give the Bureau of Land Management the basic statutory powers needed for administering its lands and enforcing its regulations. It would repeal many of the long obsolete laws which now apply to the natural resource lands. It calls for a land inventory and land planning effort for use of these lands. It formalizes the goals of multiple use and sustained yield; it calls for protection of overall environmental quality, including not only irreplaceable

physical and biological resources, but scientific, scenic, and historic values; and air and water resources. It requires land reclamation as a condition of use; it allows for necessary rights-of-way, but requires their consolidation where feasible. It sets out mechanisms for sale, acquisition, and exchange, with both public safeguards and administrative flexibility.

We consider S. 507 to be incomplete in some important respects. While it requires a review of lands classifiable as wilderness, it does not seem to ensure protection of such areas. It allows 15 years for completion of such a review; by then many such lands could have had their irreplaceable characteristics irretrievably damaged.

The proposed legislation does little to address the environmental problems caused by the Mining Act of 1872. We believe that repeal of that Act and its replacement by modern legislation which calls for environmental controls and reclamation and for balanced review of use priorities instead of an automatic priority for mining, is essential for safeguarding the public lands of this country for future generations. This problem might indeed be best handled by separate legislation, but we wish to emphasize its importance.

I do not have to impress this Committee with the need to enact S. 507, I am sure. In the five years which have passed since the report of the Public Lands Law Review Commission, and since the expiration of the authority under the 1964 Classification and Multiple Use Act, this Committee has three times reported legislation similar to this bill and has two times seen the Senate pass it.

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I should, however, like to emphasize the urgency of action being taken during this session of Congress. The pressures on national resource lands grows year by year. Recreation demands continue to increase, gasoline shortages or not. The current energy crisis can only increase the pressures for indiscriminate extraction of energy-bearing minerals. Even a shift to increased raising of grass-fed beef instead of corn-fed beef might produce critical pressures on some western grasslands which are already near their carrying capacity. We cannot afford to wait any longer.

Thank you for this opportunity to express our comments and concerns.

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Statement of

HOWARD L. EDWARDS
Vice President and Secretary
The Anaconda Company

on behalf of the

AMERICAN MINING CONGRESS

in regard to

S. 507, National Resource Lands Management Act

before the

Subcommittee on Environment and Land Resources
Committee on Interior and Insular Affairs
United States Senate

March 7, 1975

Mr. Chairman and members of the Committee:

I am Howard L. Edwards, Vice President and Secretary of The Anaconda Company from New York City. My appearance before you today on S.507, the proposed organic act for the Bureau of Land Management, is as Chairman of the Public Lands Committee of the American Mining Congress.

The American Mining Congress is a national association of United States companies, large and small, that produce the greater part of our nation's metals, coal, and industrial and agricultural minerals. The member companies operate on public and privately owned lands in all of the fifty states. The American Mining Congress is thus directly concerned with the effects on the minerals industry of this proposed legislation.

The mining industry, or certainly that part represented by our organization, welcomes the recognition accorded by the pending legislation of the need for improved and more efficient use of the 475 million acres of publicly owned lands and their tremendous surface and sub-surface resources that are administered by the Bureau of Land Management, and the additional 300 million acres of federally-owned land, on most of which the mineral ownership is also administered by the Bureau of Land Management. We have tried to follow the comprehensive field hearings on similar legislation held by the House and the Senate in many of the public lands states during the 93rd Congress, and we have testified at the hearings held here in Washington. We wish to thank, commend

and congratulate the committees in both houses for their dedication, industry and fairness in affording so many of our fellow citizens, of so many different shades of opinion, an opportunity to be heard.

Mr. Chairman, before commenting on the bill generally and on the nature of the use of the public lands for mineral development purposes, permit me to comment specifically on Section 104, the section of the bill providing for the recordation of mining claims. The Section would require each unpatented mining claim that has been located under the general mining laws to be recorded by the claimant with the Interior Department within two years after the date of enactment of the bill or within thirty days after the location of a new claim, whichever is later. The Section further provides that any claim not so recorded shall be conclusively presumed to be abandoned and shall be void. The section also provides that any claim that has been recorded pursuant to the act for which the claimant has not made application for a patent within five years from the date of the enactment of this act, or from the date of location of the claim, whichever is later, shall be conclusively presumed to be abandoned and shall be void.

The American Mining Congress supports the concept of requiring the recordation of mining claims, but objects to the inclusion of the impossible requirement that application for patents be filed within five years of the enactment of S.507.

Under the existing system for acquiring ownership rights to minerals on public land, the three principal requisites for initiating valid rights are: first, the marking of the boundaries of the location on the ground, as prescribed by state law; second, the recordation of a notice on the records of the county; and third, the discovery of mineral. The present system does not provide a means for determining from the records, federal, state or county, whether the holders of the claim have abandoned their intent to continue to own and maintain the location. Over the years the most persistent criticism of the general mining law has been directed to the build-up of the mining claims of record in which there is no present interest on the part of the claimants, and no simple mechanism for terminating these claims.

We call mining claim recordation requirements, such as Section 104(a), "stale claims" legislation. Such a provision would have the effect of determining, as a matter of law, that stale claims, not recorded with Interior, are abandoned. The effect of this type of provision would be to eliminate the impediment on title of literally millions of abandoned mining claims. It would remove the principal criticism of the mining laws. Mining law revision is a matter of high legislative priority of this Committee, and with a stale claims bill passed and the principal criticism of the existing laws removed, there will be more time for careful deliberation of mining law revision, and the risk of hasty enactment of ill-conceived measures will be minimized.

It would seem that stale claims legislation should properly be handled as an amendment to the mining laws. S.309, introduced on January 21, would handle the matter in this way. However, the practicalities of the legislative process may dictate that the provision be included in the somewhat unrelated Bureau of Land Management organic act, and, if that is the case, our association has no objection.

We do recommend that the language of S.309 be substituted for the language of Section 104(a). The recordation period in Section 104(a) would then be increased from two years to three years. This is not an unreasonable request. The time frame would be more realistic in permitting communication of the new requirements to the holders of active mining claims. The provisions of S.309 defining what would constitute an acceptable filing are more complete and adequate than the language of Section 104(a).

Mr. Chairman, the patenting requirement of Section 104(b), must be deleted from the bill. First, it would be impossible for applications for patent to be filed within five years for all of the active mining claims in the United States. Before an application can be filed, each claim must be surveyed by registered mineral surveyors, and plats of minerals survey must be prepared by the cadastral engineers of the Bureau of Land Management. Today, with limited activity, there are normal survey delays of two to five years. There simply are not enough mineral surveyors or cadastral engineers, nor could there be, within that time

frame. I would hazard a guess that, even if forces were doubled, the work could not be completed on as many as five percent of active mining claims.

The second reason why the patent requirement is unreasonable is because of the policies of the Interior Department that discourage the patenting of claims. In 1971, eighteen patents for for 1,666 acres and in 1972, nineteen patents for 2,012 acres, were all that were issued under the mining laws. In those two years, the most recent for which I have statistics, the mineral patents covered less than one percent of the lands patented by the Bureau of Land Management during that period. It is extremely difficult to meet the patenting requirements as interperted by the Interior Department and many active mining operations continue on unpatented lands because of the judgments formed that patenting would be impossible. If the patent requirement of Section 104(b) were retained, the effect would be to eliminate any means of acquiring the right to mine on public lands. Existing mining laws would, in effect, be voided. There would be no substitution of any other vehicle or mechanism under which mining rights could be acquired. Exploration and new development on the public lands would be frustrated. The section must be deleted.

Returning to the legislation generally, I would like to emphasize the several characteristics of the unique nature of land use for mining purposes. First, mining can only take place where the minerals exist. There is no luxury of

choice in deciding what lands should be developed for minerals. The opposite, of course, is true and choice exists for most surface uses. Second, in most cases, if minerals exist in the quantity and quality sufficient to permit mining at a profit, then mineral development is usually the highest and best use of the land. This is particularly true in most of the sparsely inhabited public land areas of the West.

Third, while there is frequent objection by environmental and preservationist groups to any disturbance of the land for mining purposes, it must also be recognized that a characteristic of mineral development is that there must be some disturbance of the land and the removal of waste material in order to obtain access. Notwithstanding this feature, the total land disturbed in the entire history of the nation by all types of mining, including coal, oil, gas, stone, sand and gravel, cement rock and metal and non-metallic ores has been less than three-tenths of one percent of the land area of the United States, and one-third of that three-tenths of one percent has been reclaimed by man or restored by nature. Great technological progress has been made so that substantially greater areas of disturbed land are now being reclaimed and will be reclaimed in the future. The area of land used and disturbed for mining is minimal in relation to the contribution made by mineral development to the economy and social fabric of the country. Thus, the fourth and final characteristic I will mention is that a

proportionally small amount of land is actually used in mining operations.

With this background, the mining industry is continually surprised at legislative and regulatory measures that have the effect of limiting or denying the use of land for mineral development. In this respect we are concerned that S.507 will be interpreted and administered in a manner that will further restrict land use for exploration and mineral development.

The principal objective of the bill appears to be set forth in the declaration of policy, which constitutes a Congressional mandate to the Secretary to manage the national resource lands under principles of multiple use and sustained yield in a manner which will, using all practicable means and measures: (i) assure the environmental quality of such lands for present and future generations; (ii) include, but not necessarily be limited to such uses as provision of food and habitat for wild life, fish and domestic animals, minerals and materials production, supplying the products of trees and plants, human occupancy and use, and various forms of outdoor recreation; (iii) include scientific, scenic, historical, archeological, natural, ecological, air and atmospheric, water resource and other public values; (iv) include certain areas in their natural condition; (v) balance for various demands on such lands consistent with national goals; (vi) assure payment of fair market value by

users of such lands; and (vii) provide maximum opportunity for the public to participate in decision making concerning such lands.

There can be no substantive disagreement with the objective of that mandate. The implementation of the declaration of policy, however, is by its very nature complex, challenging, and indeed a hazardous undertaking. A true national resource lands management act must be equitable and it must be balanced, giving positive recognition and encouragement to the multiple beneficial uses of our nation's public lands. In today's climate of environmental concern, it is not surprising that legislation tends to accent protection and neglect production. We all recognize that we cannot wait until another decade slips by before we begin to do a better job of protecting the environment and planning for future land use. We must begin now, but no one is so naive as to think that 475 million acres of national resource lands can be locked in a vault or transformed into a giant playground or wildlife sanctuary. These lands will continue to be used for grazing, timber harvesting, mining, and for other productive purposes. There are millions of Americans whose day-to-day livelihood is primarily or secondarily derived from these economic activities. Thus, a national resource lands management act must recognize the productive capability of the natural resource lands, as well as the importance of adequate environmental protection.

Mr. Chairman, we are all aware of the impending shortage of metals. During this recessionary period, we find that there is an adequate supply or a surplus of many metal commodities. However, there is compelling evidence that most metals will be in increasingly short supply, that our reliance and dependence on foreign sources will increase, and that the degree of stability of our economy will depend more and more on the political decisions of foreign nations as they relate to mineral supplies.

With this background, I therefore urge that we do nothing in the Bureau of Land Management legislation that will make minerals exploration and development on public lands so difficult as to increase still further the danger resulting from dependence on foreign sources. I also urge that we do nothing in this legislation to interfere with the livelihood of those Americans who are dependent upon our minerals industry.

The public lands are not, of course, the only source of minerals, but those 750 million acres are certainly a highly important source. The public land states are the most geologically favorable areas of the nation for mineral exploration. We do not know where all the deposits are on these lands, nor the extent of such deposits. But we do know that minerals are there in large amounts, in great variety. Unquestionably, it is not in the public interest that we enact legislation that would make it difficult, if not impossible, to find and develop these minerals.

Unfortunately, S.507, in its present form, would tend strongly to do just that. The American Mining Congress has adopted a formal resolution, recognizing the need for a basic Bureau of Land Management organic act, one that contributes to the management and better, more efficient uses of all the primary values and resources of the public lands. S.507 is not such a bill.

In my opinion, in the operative sections of the proposed legislation, multiple use itself is pretty much a pious sentiment. Environmental preservation is the thrust of the bill, its primary policy objective, and the principal function of management. The use of public land for mineral development is scarcely mentioned in S.507.

This ignoring of the fact that minerals are an integral part of the public lands and mineral development on them is an essential and is an historic land use, is the more troublesome because only a few years ago this committee considered and favorably reported the bill that became the Mining and Minerals Policy Act, Public Law 91-631. This legislation, as you know, states that it is the continuing policy of the Federal Government in the national interest, to foster and encourage the development of economically sound and stable mining industries. In S.507, several laws are cited and referred to, such as the Taylor Grazing Act. Why the omission of such a pertinent policy statute as Public Law 91-631?

Having dwelt on the philosophy of the bill, or lack of it, as far as the mining industry is concerned, I would like to refer briefly, Mr. Chairman, to several specific areas which need polishing up.

Land Reclamation: Section 101(2) requires land reclamation and performance bonds as a condition of use. It is not clear whether this provision would cover mining under the mining laws, where application for use does not have to be made to the Interior Department. However, land reclamation for mining operations is the subject of a totally separate legislative effort that will likely result in a lengthy and detailed statute. This provision would authorize the Secretary to impose his own land reclamation standards by regulation, without guideline, and very likely in conflict with whatever will result from proposed surface mining legislation.

Revocation and Suspension Authority: Mining claims would not appear to be governed by the requirements of Section 101(3) that relates to permits, licenses, lease or other authorizations. However, we are not aware of a mining operation on public lands that does not require some form of right of way, special land use permit, license or lease in connection with access, egress, utility connection, communications or otherwise. By granting management authority to the Secretary to suspend or revoke such authorizations (Section 101(3)) a mining operation under the mining laws is

exposed to the discretionary authorities of the secretary as much as if the operation were conducted pursuant to a mining lease or permit.

Inventory: Section 102 requires an inventory of all national resource lands and we support this proviso for the purpose of creating a necessary land use management tool. The legislative history of this bill, however, should reflect that the preparation and maintenance of an inventory of mineral values in the vast areas of public lands would be an impossibility. Except for existing operations or other limited areas where mineralization has been defined the minerals are, of course, concealed. Any inventory made pursuant to that section should recognize that it cannot purport to identify the mineral character of the land.

Land Use Plans: We recommend that the legislative history indicate that land use plans required by Section 103 not be a prerequisite to normal ongoing uses of the national resource lands. Otherwise, the lack of land use plans would become tantamount to segregation and withdrawal and this is certainly not intended by the authors of the legislation. The completion of land use plans for all of the national resource land will take many years or, perhaps, decades.

Transfer of Reserved Mineral Interests: The provisions of Section 208 for the conveyance of reserved mineral interests is so restrictive that there will likely be few transfers under the act. The mining industry is not as concerned

with whether the minerals are owned by the federal government or by private parties, as whether the mineral rights are available for exploration and development. Section 208 provides that if any mineral development activities are initiated within 20 years of the issuance of a patent, the mineral interests shall revert to the United States. The likely effect of that provision is that newly acquired mineral interests would be kept off the market for a period of at least 20 years. We doubt that is the result intended by the authors of the legislation.

Land Exchanges: The mining industries have frequently used the medium of land exchanges to acquire lands, usually non-mineral lands, for plant and surface facilities in connection with mining operations. The industry has found that land desired by a federal land management agency that could be offered by an exchange applicant is not always in the same state as the selected lands, and we see no need for the restriction in that land desired by a federal land management agency that could be offered by an exchange applicant is not always in the same state, and we see no need for the restriction in Section 213(c) requiring that offered and selected lands be in the same state. There is precedent for crossing state boundaries such as the exchange authority authorized for the Point Reyes National Seashore in California (43 U.S.C. 459c-2(c)).

Reimbursement of Extraordinary Costs: The authority granted to the Secretary under Section 302(b) to require

payment by applicants of a deposit to cover extraordinary costs with respect to applications has unintended implications. The Interior Department recently promulgated regulations similar to this legislative provision requiring such payments for processing right of way applications (43 CFR 2800, 39 Fed. Reg. 171, Sept. 3, 1974). The result is that the Department can incur exorbitant, extraordinary costs without answering to anyone or without responsibility to any standard, and simply pass on the costs to the applicant. Mr. Chairman, we know of a case now pending in Montana where a right of way applicant has been billed for $247,000 for processing costs to be incurred for a single right of way, including environmental analyses. There is no lid on this open-end provision and no responsibility to any standard.

Payment for Rights of Way: Section 304(b) requires payment for the use of roads across public land. This is in direct contravention to existing law under which operators of mining locations are assured access to their properties and are not required to make such payments (Rights of Mining Claimants to Access Over Public Lands to Their Claims, Solicitor's Opinion M-36584, 66 I.D. 361 (1959)). Requiring the payment of normal maintenance costs for damages resulting from actual use may be a reasonable requirement. However, there is no ceiling on the charges that may be made and, in fact, the legislation authorizes the funds collected to be kept in separate accounts and used for the maintaining

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of other roads under the jurisdiction of the managing agency.

California Desert Management Program: Section 309 provides for the implementation of interim and, eventually, long range programs to manage and protect the California Desert. This vast area has much mineral potential. The legislative history must be crystal clear that the management programs are not intended to create instant wilderness out of the California Desert. In this time of mineral crisis, exploration of such areas should be encouraged and not discouraged.

Rights of Way: Title IV will probably have the most profound impact on the mining industry of any section of S.507. We interpret the proposed language to have the effect of replacing all right of way authority contained in existing public land statutes. At the present time the lands covered by the act are accessible to all citizens for exploration and development. Presently there is a Departmental recognition of the common law doctrine of the implied right of a mining claimant to access. If access to the public lands for these purposes becomes discretionary, instead of a right, there will be serious interference to exploration activity in the United States. Individuals and small mining companies, especially, who do not have the resources or the time to cope with the complicated right of way application procedures will be discouraged.

The reasonable alternative to this type of provision is to continue to guarantee access to the public land, but to provide for reasonable regulation of improvements. For example, a mining claimant would continue to have the right of access. The route of ingress, road construction, sloping drainage and other matters would be the subject of reasonable regulation.

Title IV should not be enacted without a clear understanding of this warning, that denial of the right of access to the public lands for mineral exploration and development will have a discouraging effect on such activity and is inconsistent with the mandate of this body as contained in the Mining and Minerals Policy Act.

Mr. Chairman, I know of a mine in Inyo County, California, called the Santa Rosa Mine, that has been operated successfully for at least fifteen years with a work force of two or three people. The lead, zinc, silver ores produced are rich enough to be shipped directly to a smelter and there is no mill or concentrator on the property. Consider the effect on such an operation if the proprietors were required to submit to the Interior Department for approval a plan of construction, operation and rehabilitation of a right-of-way as required by Section 403(d) and are required to pay the fair market value and are subject to suspension or termination as provided by Section 405 and the many other requirements that will emerge from this bill. The adminis-

trative red tape under this bill is tantamount to effective denial of access. I don't believe we are at a point in history where we want to place this type of burden on small but productive enterprise in this country.

I thank you for the opportunity of being able to comment on this important legislation. Mr. Chairman, and members of the Committee, in closing, I would like to offer to your Committee the services of The American Mining Congress, including the members of our Public Lands Committee, in assisting in the further consideration of this measure. Members of our public lands committee include several of the pre-eminent authorities on public land and natural resources matters in our nation today, and I believe they can make an important contribution.

Thank you.

Senator HASKELL. Our next witness is Mr. Darrell Williams. Mr. Williams, if you could do what the others have done, your full testimony will be entered in the hearing record. If you could summarize it for the benefit of the members, we will appreciate it.

STATEMENT OF DARRELL WILLIAMS, LANDOWNER IN THE STATE OF IDAHO

Mr. WILLIAMS. I will try to be as brief as I can.

Before I begin, I would like to notify the committee that I represent no organization. I represent no group. I am a landholder in the State of Idaho and I am here to express concerns about some of the policies that are in the present BLM regulations and interpretations that they have.

Our country has been a very prosperous country since its inception and we are this type of a Nation because of what we have done, both agriculturally and in the fields of industry. If we limit and restrict industry such as our coal industries, oil, we run into troubles because it takes longer to plan and get the planning done than it does for the actual preparing and marketing of the product.

Agriculture is facing the same problems that other industries faced in the past. Governmental restrictions are being placed on the industry which will impede, if not stop, all growth. Then our Nation will have to import food as well as materials we now import for our needs. We are at the present exporting about 25 percent of our agricultural products. If we were not able to export this food and fiber, we would have a terrible balance of payments.

Idaho is one of the few States which still use the desert land entry laws. The BLM would rescind this law from the books. There are over one-quarter of a million acres filed under the desert land act in Idaho. There are many thousands of acres that the BLM refuses the filings on when they are sent to the office. May I add here some of these filings, the original filings, are as much as 15 to 20 years old and are still pending.

I have had many experiences with the BLM. Some of them date back 20 to 25 years. Some of these are in the areas of adjudicating the stock grazing on the lands. It is nice to see grass swirling in the summer breeze, but I don't relish fighting the fires when it dries up. In 1956 I filed on a piece of ground near where I lived. I don't know how many times I was turned down for either being too rocky or sandy to produce crops. Last year over 1,500 tons of hay were produced from this field and there was an appeal to Washington, D.C.

for a review on my behalf. If I was wrong for appealing, 700 head of cattle would have gone without feed last winter.

In 1973 I ran into another problem. I was to give testimony to a neighbor who was proving up on some desert entry he had had. I was unable to give the testimony at the time scheduled because of extenuating circumstances. I arrived at the office on a Friday at 3:45 p.m. and waited until 4 p.m. before I was told they didn't take testimony after 4 o'clock, but if I was willing to pay overtime to those involved, they would consider it. I left somewhat irritated and returned the following Monday at 8 o'clock. I waited until after 9.30 a.m. before giving my testimony and the entry was turned down for final proving up at that time because the testimony was late.

This caused the person who was proving up on the entry considerable expense and time to him, let alone two trips I made of over 100 miles each to present the information that I had. This is the type of bureaucracy we are having to work with in the area I am from.

These are a few of the experiences that I have had with the BLM. At the present time I am involved with the BLM in another situation in which we attempted to file an entry for 320 acres under my wife's name. They refused to accept the entry because they said the land was under multiple use. We consulted an attorney and had a little better results in that we found the procedures by which they could withdraw the lands from under multiple use, if they were shown to be for some better purpose than the purpose they were presently being used. The testimony goes on and tells us that they still refused to consider anything like this for the people who are attempting to feed this Nation.

The Multiple-Use Act I understand has now expired, which placed all Federal lands under it without any type of a study. Now several years later there must be studies made for the best public interest which doesn't include anything pertaining to agriculture. The fish, birds, and other wild animals are more important than food for man.

I went to a hearing about 1 year ago when this study was made. I forgot to bring the file with me. I left it at home on my desk. It would show this particular study I am referring to. I will forward it to the committee if they so wish. When they were pressed for an answer as to why agriculture was not included, we were told they studied those things which were in the best public interest. At the meeting last spring we were told a study was to be made during fiscal year 1975 in the area we were interested in and please wait

until the study was completed. The request was made that we might have some input into the study and this was assured that night. Last fall I went to the office in Idaho Falls to ask how the study was coming. I was again told I could not in any way file on ground as it was under multiple-use and there was no way for it to be removed. They also claimed they knew nothing about a study. The manager was not in and I requested that he call me. When he did call me I asked him if their attitude was arbitrary and capricious on their part. His reply was if that is the way you want it, that is the way it is.

Since then I have made two contacts with Mr. Mathews, the State Director of BLM in Idaho, and we get about the same information from him.

In discussing with our power company, they tell us even when an entry is allowed, it can take another 2 years to get permission to build lines across the entry ground to install the power for irrigation. If any further restrictions are placed, the people of this Nation, we will be controlled by nothing but bureaucrats. Somewhere the people of this land must make a stand against bureaucracy and this is one place that we must hold the fort.

Another part of the law, sec. 307(c) will give BLM full law enforcement rights, the right to bear arms as a part of their job, make arrests without process or warrant, search without warrant any person or seize without warrant and process. This smells strongly of dictatorship. There is the point which is very applicable here of the cliche, if something looks like a skunk, smells like a skunk and acts like a skunk, you don't call it a rabbit.

I think we must be alarmed at legislation such as this. Part of the law, sec. 404(f) pertains to the issue of right-of-way permits which says a person must pay market value for the right-of-way permits and also pay all costs which the BLM will expend in their behalf, all reasonable administrative costs, inspection of monitoring of such right-of-way. These costs can be so high that the right-of-way would be far beyond the private individual. This law which gives complete control and police powers to the BLM, a sanitation ordinance forced through in our country which gives the right of ingress and egress, and the latest request of the Corps of Engineers to control all waterways, has pushed the citizens of my community farther than they can stand.

[Mr. Williams supplied the following letters:]

Hamer, Idaho 83425
February 24, 1975

Mr. William L. Mathews
Bureau of Land Management
Idaho State Office - Federal Bldg.
P.O. Box 042
Boise, Id. 83724

Dear Mr. Mathews:

Since our conversation on February 12, I have anxiously been waiting for the sub sections pertaining to the multiple use law which we discussed in considerable detail. It is quite important that I obtain this information from your office as soon as is reasonably possible.

As we further discussed at that meeting, I am keeping you advised as to what our intentions are pertaining to the desert land entries, which your office refused to accept, in the Table Butte Area. At the present time our attorney has been instructed to write you a letter pertaining to possible legal actions against the BLM. It is hoped that the people involved do not have to force the issue in the courts, but that decision remains up to you as director for the State of Idaho.

Of further concern to us is the article which appeared in the last issue of The Eastern Idaho Farmer newspaper pertaining to "BLM Releases Impact Statement on Grazing." We discussed grazing and its impact with you on the 12th of February and you did not indicate that you had a study available. We would appreciate all information you have pertaining to this impact statement and its application to the area mentioned above.

As was stated many times during our converstation there is a great need to put additional acres into agricultural production. It is known that there are hundreds of thousands of acres of ground within the State of Idaho which can be used to supply these needed food products. Much of this ground is located in areas which the BLM supervise at the present time. We also find that the BLM in their studies do not included land studies for agricultural uses which should also be classified as being 'in the best public interest' for the production of food for people not only on the farm but also those living in the city. Why is it that the BLM has not in the past included this in their studies? Will it be included in future studies?

Expecting to hear from you by return mail in response to the above questions.

Sincerely,

Darwal T. Williams

cc: Robert R. Lee
Kyle Downs ✓

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
IDAHO STATE OFFICE,
Boise, Idaho, February 28, 1975.

DARRELL T. WILLIAMS,
Hamer, Idaho

DEAR MR. WILLIAMS: Please excuse my delay in responding to your visit on February 12. We have been searching our files and discussing with knowledgeable staff members the question of sub-sections to the Classification and Multiple Use Act. We have been unable to locate anything that resembles what you have described. Enclosed is a copy of the regulations which relate to the Act; perhaps this is what you have in mind. If not, please give us any additional leads you can think of.

As I indicated when we discussed Table Butte, it is our intention to delay reclassification until our management framework plan has been completed and specific tracts have been identified as suitable for agricultural development. We are aware that this policy may prompt legal action; however, opening the land in the absence of the completed land use plan would possibly also generate legal action. We are presently involved in a suit in the Boise area in which our decision to allow a desert entry is being contested in an area where the land was not classified for retention under the Classification and Multiple Use Act but where the management framework plan had not been completed. So we have dissatisfied people on both sides of the question.

You inquired of the nature of the recently announced environmental impact statement on grazing and the application to your area of interest. The impact statement assesses the impact of grazing use on an overall national basis. It is rather voluminous (3 volumes) and is available for review at our District Office in Idaho Falls. I suggest that you review a copy at the District Office and if you feel that a set would be helpful to you, we can supply it. I don't think it's specifically applicable to your area of interest.

Your last question asked why the Bureau does not include studies to determine areas suitable for agricultural production. We do conduct or promote such studies and our management framework plans endeavor to identify lands that are of value primarily for the production of agricultural crops. The studies we finance in this regard relate principally to soil studies; we depend on the State and other agencies such as U.S. Geological Survey to conduct the water studies. During the course of the conduct of public meetings for the development of the management framework plan, individuals interested in agricultural development should participate and help the Bureau identify areas that should be opened for agricultural production.

Enclosed is a copy of our tentative policy and procedures regarding activity under the Carey Act. This may be of help to you.

If we can be of further assistance, please let us know or if you choose, visit with our District Manager (O'Dell Frandsen) at Idaho Falls.

Sincerely yours,

WILLIAM L. MATHEWS,
State Director.

Enclosures.

PART 2460—BUREAU INITIATED CLASSIFICATION SYSTEM

SUBPART 2461—MULTIPLE-USE CLASSIFICATION PROCEDURES

Sec.

2461.0–1 Purpose.
2461.1 Proposed classifications.
2461.2 Classifications.
2461.3 Administrative review.
2461.4 Changing classifications.
2461.5 Segregative effect.

SUBPART 2462—DISPOSAL CLASSIFICATION PROCEDURE—OVER 2,560 ACRES

2462.0–3 Authority.
2462.1 Publication of notice of, and public hearings on, proposed classification.

2462.1 Publications of notice of, and public hearings on, proposed classification.
2462.3 Administrative review.
2462.4 Segregative effect of publication.

Subpart 2461—Multiple-Use Classification Procedures

SOURCE: The provisions of of this Subpart 2461 appear at 35 F.R. 9664, June 13, 1970, unless otherwise noted.

§ 2461.0–1—Purpose.

Formal action to classify land for retention for multiple use management will be governed by the following procedures.

§ 2461.1 Proposed classifications.

(a) Proposed classifications will be clearly set forth on a map by the authorized officer, and on the Land Office records. (1) Notice of proposed classifications involving more than 2,560 acres will be, and those involving 2,560 acres or less may be, published in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected lands. (2) Notice of the proposals will be sent to authorized users, licensees, lessees, and permittees, or their selected representatives, the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area in which the lands are located, the governor of that State, the BLM multiple use advisory board in that State, and the District advisory board and to any other parties indicating interest in such classifications. (3) The notice will indicate where and when the map and Land Office records may be examined. The notice will specify the general location of the lands, the acreage involved, and the extent to which the land is proposed to be segregated from settlement, location, sale, selection, entry, lease, or other form of disposal under the public land laws, including the mining and mineral leasing laws. The notice of proposed classification will specify the period during which comments will be received, which will not be less than 60 days from date of publication of the notice. (4) The authorized officer will hold a public hearing on the proposal if (1) the proposed classification will affect more than 25,000 acres or (2) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ 2461.2 Classifications.

Not less than 60 days after publication of the proposed classification, a classification will be made by the authorized officer, and a notice of classification published in the FEDERAL REGISTER and recorded in the Land Office records and on a map which will be filed in the local BLM District Office. Such map will be available for public inspection.

§ 2461.3 Administrative review.

For a period of 30 days after publication of the classification in the Federal Register, the classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior.

§ 2461.4 Changing classification.

Classifications may be changed, using the procedures specified in this subpart.

§ 2461.5 Segregative effect.

Segregative effect of classifications and proposed classifications:

(a) Publication in the Federal Register of a notice of proposed classification pursuant to §2461.1(a). or of a notice of classification pursuant to §2461.2 will segregate the affected land to the extent indicated in the notice.

(b) The segregative effect af a proposed classification will terminate in one of the following ways:

(1) Classification of the lands within 2 years of publication of the notice of proposed classification in the Federal Register;

(2) Publication in the Federal Register of a notice of termination of the proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification

and Multiple Use Act, or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(c) The segregative effect of a classification for retention will terminate in one of the following ways:

(1) Reclassification of the lands for some form of disposal;

(2) Publication in the Federal Register of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of the classification.

Subpart 2462—Disposal Classification Procedure—Over 2,560 Acres

SOURCE: The provisions of this Subpart 2462 appear at 35 F.R. 9564, June 13, 1970, unless otherwise noted.

§ *2462.0–3 Authority.*

Section 2 of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1412), requires the Secretary of the Interior to take certain actions when he proposes the classification for sale or other disposal under any statute of a tract of land in excess of 2,560 acres.

§ *2462.1 Publication of notice of, and public hearings on, proposed classification.*

The authorized officer shall publish a notice of his proposed classification in the Federal Register and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected land. The notice shall include the legal description of the affected land, the law or laws under which the lands would be disposed of together with such other information as the authorized officer deems pertinent. Copies of the notice will be sent to the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area within which the affected lands are located, the governor of that State and the BLM multiple use advisory board in that State, the land-use planning officer and land-use planning committee, if any, of the county, in which the affected lands are located, the authorized user or users of the lands or their selected representatives, all petitioner-applicants involved, and any other party the authorized officer determines to have an interest in the proper use of the lands. The authorized officer will hold a public hearing on the proposal if (1) the proposed classification will affect more than 25,000 acres or (2) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ *2462.2 Publication of notice of classification.*

After having considered the comments received as the result of publication, the authorized officer may classify the lands any time after the expiration of 60 days following the publication of the proposed classification in the FEDERAL REGISTER. The authorized officer shall publicize the classification in the same manner as the proposed classification was publicized, indicating in the notice the differences, if any, between the proposed classification and the classification.

§ *2462.3 Administrative review.*

For a period of 30 days after publication in the Federal Register of a notice of classification for disposal pursuant to paragraph (c) of this section, the classification shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review. If, 30 days from date of publication, the Secretary has neither on his own motion, on motion of any protestant or the State Director exercised supervisory authority for review, the classification shall become the final order of the Secretary. The exercise of supervisory authority by the Secretary shall automatically vacate the classification and reinstate the proposed classification together with its segregative effect. In this event the final departmental decision shall be issued by the Secretary and published in the Federal Register.

§ *2462.4 Segregative effect of publication.*

(a) Publication in the Federal Register of a notice of proposed classification pursuant to §2462.1 or of a notice of classification pursuant to §2462.2 will segregate the affected land from all forms of disposal under the public land laws, including the mining laws except the form or forms of disposal for which

it is proposed to classify the lands. However, publication will not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

(b) The segregative effect of a proposed classification will terminate in one of the following ways:

(1) Classification of the lands within two years of publication of the notice of proposed classification in the Federal Register.

(2) Publication in the Federal Register of a notice of termination of the proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18), or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(c) The segregative effect of a classification for sale or other disposal will terminate in one of the following ways:

(1) Disposal of the lands;

(2) Publication in the Federal Register of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of 2 years from the date of publication of the proposed classification without disposal of the land and without the notice of proposed continuance as prescribed by the Classification and Multiple Use Act; or

(5) Expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

U.S. Department of the Interior,
Bureau of Land Management,
Idaho State Office,
Boise, Idaho, February 12, 1975.

Carey Act

Policy, Guidelines and Procedures, Bureau of Land Management

The policy of the Federal Government with regard to the conversion of desert public lands to agricultural development, as expressed in the Carey Act, is to aid the public land states in the reclamation, settlement, and cultivation of desert lands in 160-acre tracts by actual settlers, provided the change is in the public interest. However, the Federal Government does not subscribe to the state's view that the state is entitld *as a matter of right* to select any public land it wishes for development under the Carey Act. The Federal Government will operate from the premise that the Secretary of the Interior has broad discretion to classify or refuse to classify particular lands for disposal under the Carey Act. The criteria to be used in determining whether the conversion of National Resource Lands to agricultural development under the Carey Act is in the public interest are as follows:

1. The state must provide reasonable assurance of the feasibility of the project and of continued use of the land as farmland from the standpoint of the physical and economic capabilities of the proposed project.

2. The lands must be developed for agricultural uses in a planned and orderly manner.

3. The land must have been identified in the Bureau's planning system as suitable for agricultural development.

4. When possible, the development plan should include provisions for mitigation of significant losses.

5. Conflicts with existing prior applications can be substantially resolved.

6. The lands must be classified as suitable for entry and development under the Carey Act.

Carey Act Projects Proposals

Proper application of the Carey Act to foster development of public lands in Idaho provides an opportunity for state and Federal governmental agencies to ensure that proper planning and design of the projects are identified as part of the project proposal and are fully implemented. The National objective of encouraging the development of family farms can be enhanced by Carey Act projects since a major criteria is the requirement that residences be established on each 160-acre tract. Various long-term financing alternatives are available to assist the state in constructing a Carey Act Project. Proper review by Federal and state agencies can serve to promote the objectives that the financial assets of projects are sound and that acceptable financial plans are successfully implemented.

As a matter of policy, it is considered that a project involving a number of individuals, as opposed to single individual development more nearly represents the intent of the Carey Act and is the preferred arrangement. The procedures contained in the regulations of 43 CFR 2222.6 (1970 Edition) will be used by the Bureau in processing applications for Carey Act Projects.

Processing of applications for temporary withdrawal may be temporarily suspended up to a maximum time period of three (3) years in specific areas to permit completion of the Bureau of Land Management planning process.

Steps to be followed by parties interested in having State make a permanent Carey Act selection

1. Interested parties should confer with the BLM District Office, which has primary responsibility for management of the public lands, to determine (a) ownership status of the land, (b) the classification of the land by the BLM, (c) the status of the land-use plan being formulated for the area by the BLM, and (d) the extent of existing prior applications.

2. Assuming that suitable land is available and the party has completed all necessary engineering and economic studies, he may request the Director of the Department of Water Resources to request a segregation of the area for a Carey Act Project.

3. The state is responsible for review of the proposed project design to ensure that the project is engineeringly sound, economically and financially feasible. Proposals determined by the state to have engineering and economic feasibility, and which would result in an orderly growth of agricultural land use, will be submitted to BLM with a request to classify the lands as suitable for development under the Carey Act.

4. Requests by the state for permanent segregation of lands must include an analysis of the environmental impact of the project proposal and the proponent's proposal for resolving of conflicts with existing prior applicants. In the event resolution of the conflicts cannot be made, the Carey Act proponents will be requested to adjust their proposal to delete the lands included in prior filed applications. This may require a complete revision of the Carey Act development proposal. After review of the requests and development proposals by the BLM, appropriate action will be taken to classify the land.

5. The application, map and the list of lands classified as suitable for development under the Carey Act will be forwarded to the Director, BLM, for approval. After approval by the Director, the contract in the form prescribed by the regulations will be submitted to the Secretary of the Interior for execution and approval by the President.

Steps to be followed by parties interested in having State make a request for temporary withdrawal

1. Interested parties should confer with the BLM District Office, which has primary responsibility for management of the public lands, to determine (a) ownership status of the land, (b) the classification of the land by the BLM, (c) the status of the land-use plan being formulated for the area by the BLM, and (d) the extent of existing prior applications.

2. The applicant may request the state make a temporary withdrawal of the land for a period not to exceed one (1) year during which time he is to complete and submit a feasibility study of the proposal and request for segregation for review by the Director of the Department of Water Resources.

3. Should the proponent wish to proceed under a temporary withdrawal (after it has been submitted by the state and granted by BLM), all engineering and/or project planning, design costs, and resolution of conflicts with existing prior applicants will be the responsibility of the applicant.

Rate of allowance

The general policies, as previously described, will have an influence on project formulation, the processing of proposals, etc., so as to affect the rate of allowance. To the extent that a proposed project does not conflict with state water resource policy and/or Federal policy, all applicants will be given full consideration. Although it is considered desirable to seek an orderly and even rate of development of new acres per year, it is recognized that new developments may occur in substantial blocks and, therefore, may not comply with a set development rate based on a given level of development each year. The suitability and advisability of large projects or numerous projects developing large quantities of land in any one year will be assessed through an evaluation of the economic and other impacts associated with the projects. The rate of allowance will also be influenced by agency ability to handle the workload with the then existing manpower.

Senator HASKELL. Thank you, Mr. Williams, very much. It is refreshing to hear from a private citizen who represents himself and his neighbors. I appreciate very much your coming here. If you have any further remarks you want to submit for the record, we will keep the hearing record open for everybody for a period of 7 days.

Our next witness is Mr. Carl Landstrom, representing Sportsman's Paradise Homeowners Association.

It is nice to have another former Director of the BLM here.

STATEMENT OF KARL LANDSTROM, ATTORNEY, SPORTSMAN'S PARADISE HOMEOWNERS ASSOCIATION

Mr. LANDSTROM. Thank you, Mr. Chairman.

Senator HASKELL. A letter addressed to me from Mr. Landstrom will be made a part of this hearing record. The staff has identified it. Mr. Landstrom's statements here will be considered as a supplement to that letter.

[The letter referred to above follows:]

KARL S. LANDSTROM,
ATTORNEY AT LAW,
Arlington, Va., February 5, 1975.

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

DEAR SENATOR HASKELL: You and Senator Jackson are to be congratulated on the early re-introduction of the "BLM Organic Act", and I hope that the Committee will take early action on the measure.

As a former Director of the BLM and a former member of PLLRC's Advisory Council, as well as a current-day practitioner in this field of law, I am very much in favor of the general principles that are embodied in your bill, S. 507. However I believe there are a number of instances in which the draftsmanship exhibits errors in law, fact or concept and several instances where the substance ought to be revised significantly. I hope that the Committee will examine each of these recommendations; and I should be glad to work with the staff if any further research is required or to appear before the Subcommittee during the hearings.

1. In your statement at page 1231 of the *Record*, you indicated that this bill would be the first comprehensive statement of goals, policies and authority for BLM lands. This is not exactly so. The first such statement was contained in the Classification and Multiple Use Act of 1964. 43 U.S.C. 1411–1418 (1964).

As a matter of fact, the first section of that Act has never been repealed and remains in effect as of the current date: "It is hereby declared to be the policy of Congress that the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public." This statement was placed in the Act independent of any of the authorizations contained elsewhere in the Act for the establishment of PLLRC. No specific time was specified for the duration of the statement. It is reasonable to conclude that the statement remains effective within the U.S. Code today and will continue to express the policy of the Congress until such time as it is repealed or superseded.

In order to avoid unnecessary confusion and prevent possible conflict between this continuing policy statement and the policy declarations proposed in S. 507, I recommend that a repeal of the first section of the 1964 Act be added to the other repealers in the legislation.

In this same vein, S. 507 should also be amended so as to repeal the following words found in Sec. 1 of the Taylor Act of 1964, as amended: "in order to promote the highest use of the public lands pending its disposal". These words have been variously interpreted from different sources, some going so far as to claim that they express, even as of today, a Congressional policy that all "public domain" shall eventually be conveyed either to the States or to private holders. It would be very desirable to avoid all possible conflict of policy statements and repeal the quoted words.

Undoubtedly there are other existing policy declarations which this new Act should repeal and whose repeal is not provided for in S. 507. If I may help in research on this point. I shall be glad to do so.

2. Sec. 2(b). The definition of "national resource lands" is far too inclusive to provide a workable or understandable definition. Literally the definition goes far beyond the scope originally suggested when this kind of legislation was first requested. That scope was limited to properties which are being managed *in full* by BLM; that is as to all resources both surface and subsurface.

Under S. 507, the definition would extend not only to lands and resources *exclusively* administered through BLM, but to lands and interests in lands administered through BLM partially or in partnership with other bureaus or agencies. For example, inasmuch as BLM administers the subsurface resources of national forest lands, those resources, or the interests in real properties which they represent, would fall within the definition of "national resource lands", so the national forests of the country would consist partly of "national resource lands". The same principle applies to national parks, wildlife refuges, military lands, etc.

The way to remedy this conceptual error is as follows: Before the word "administered" in Sec. 2(b) insert the word "exclusively". (This use, of the term "exclusively administered" has been in effect in BLM and in its statistical publications for many years. The meaning is well established and should require no further elaboration).

Under this proposed amendment, those lands and interests in lands that are administered through BLM, but not exclusively so administered, would continue to fall within the pre-existing category of "public domain" or "acquired lands", which as it should be.

3. Sec. 2(b). I find no exclusion in the definition of the "O&C" and Coos Bay Wagon Road Reconveyed Lands in Oregon. I had understood that such lands were not to be included as "national resource lands". If such is the intention S. 507 does not carry it out. For my own part, I favor inclusion of these lands under the general provisions of the bill. However I find no provisions in the bill which would repeal or adjust existing laws respecting "O&C" and Coss Bay Wagon Road lands in accordance with a new category and statement of policies and procedures. This apparent conflict should be examined.

4. Sec. 2(e) uses the expression "within the national resource lands". This expression seems to be conceptually erroneous inasmuch as nothing in the bill sets up any exterior boundary lines "within" which any lands can be found as such. The bill obviously does not intend to set up boundaries such as exist for national forests, national parks, etc. This "national resource lands" simply will be the *properties*, both surface and subsurface, including easements, rights-of-way, etc., which fall under the definition. Thus it cannot be properly said that "areas" are "within the national resource lands, or even that "national resource lands" comprise "areas".

This should be corrected by replacing "areas within the national resource lands" with "areas in which national resource lands occur".

5. Sec. 202(a). Under this section the only criteria permitting disposal under the sale provisions of the bill are (1) "difficult to manage"; (2) no longer needed for the specific purpose for which acquired; and (3) serve objectives which cannot be achieved on other land and outweigh Federal management objectives. But what about a tract which simply is no longer needed for any Federal purpose? If the tract does not fit under one of these three categories, apparently it will have to be kept as Federal land forever.

I recommend adding a fourth criterion: "such tract of national resource lands or interests in lands is surplus to the requirements of Federal ownership".

6. Sec. 4. This section holds and keeps in effect all of the existing Departmental rules and regulations affecting the properties which will become "national resource lands" until such time as new rules and regulations are promulgated under the provisions of the new Act. This seems to me to be conceptually faulty in that many of the statutes on which the existing rules and regulations depend would be replaced by the Act. Such rules would themselves cease to be applicable by virtue of such repealer unless the intention of Sec. 4 is to delay such repealer until the new rules are placed in effect. Yet, if this latter is intended to be the case, no warning language to such effect has been included in Sec. 503, which merely states that statutes or parts of statutes "are repealed". One way to clear up this apparent inconsistency would be to limit the provisions of Sec. 4 referred to to such of the existing rules and regulations which have been issued under authority of statutes or parts of statutes which, by the bill, are not repealed. If something of this sort is not done, the Congress would be leaving an open invitation for the Secretary to delay issuing new rules and regulations, or for other parties to use various routes so to delay, for the purpose of avoiding the prompt implementation and effectiveness of the new law.

Along this same line, the bill should be amended so as to exempt the Secretary's rule making under the new Act from the provisions of NEPA relating to environmental impact statements. Experience with the Geothermal Steam Act of 1970 was that it took over three years for proceedings under NEPA to implement the Act. I suggest that period of time even longer would be required for issuing rules and regulations under the "Organic Act", unless such exemption from NEPA is provided.

The exemption from NEPA insofar as rule making is concerned is perfectly justified. Compliance with the impact statement requirements is timely enough later when programs or projects within the scope of the new rules and regulations are to be planned or proposed.

Sec. 7. This section requires the Secretary to include in his annual report "a detailed list and description of all transfers of national resource lands out of Federal ownership for the fiscal year just ended." Remembering that the definition of "national resource lands" embraces all interests in lands as well as "land" consisting of all interests as a single "bundle of rights", this requirement, if literally interpreted, would require the submittal of a list of some millions of items each year. Even if strictly interpreted the list would be unduly long and burdensome for reporting to the Congress and publication. Suggested amendment: "The report shall contain a summary of all transfers of lands or interests in lands out of Federal ownership during the fiscal year just ended, and the Secretary shall maintain for public inspection a detailed list of such transfers."

Sec. 8 requires Senate confirmation of the position of Director of BLM. This is my experience and judgment would be a very serious mistake. It is well known that such procedure induces "political" considerations as well as exacted commitments or promises to particular Members of Congress beyond the proper scope of their authority or responsibility. It would tend to downgrade compliance with the justifiable final sentence of the section, which could require that the appointee be well experienced in public land and resources management. The chief criterion for appointment should be the character and professional qualifications of the appointee, and not his or her standing or lack of standing in relation to the legislative branch. The appointee should be able to enter into service without the implied threat of "political" action—pressure from the legislative branch brought upon his personal standing within the

Executive Branch. I can speak on this matter from my own personal experience and I should be glad to supply detailed background information on request.

Sec. 101. This section seems to set up various procedures which are utterly impracticable to follow.

For one thing, the first sentence of the section, if literally or strictly construed along lines now fashionable in environmental lawsuits, would seem to require the Secretary to take no action of any kind, however slight, unless it had first been set out in a "land use plan" prepared under the provisions of Sec. 103 of the bill. Land use plans, even under the provisions of Sec. 103, are likely to be generalize documents which set forth general tendencies rather than detailed items of a day-to-day or item-by-item kind. Hence the sentence should be amended to read:

> The Secretary shall manage the national resource lands and interest in lands in accordance with the policies and procedures of this Act and other applicable laws, and in so doing he shall take into account the contents of any land use plans which he has prepared pursuant to section 103 of this Act except to the extent that other applicable law provides otherwise.

For another thing, the second sentence of the section seems to make it mandatory that the Secretary, in each and every instance, include each of the host of items listed under subsections (1) to (3) of the section. It is obvious to me, but it might not be obvious to an environmental plaintiff or to a court, that the authors of the section intended that the Secretary use his judgment is applying the mandatory procedure concerned only to such of the listed items as are reasonably applicable in each particular instance.

In order to avoid unnecessary confusion and possible litigation, I suggest the second sentence of the section be revised so as to read: "Such management shall include such of the following listed items as are reasonably applicable in each instance as determined in the judgment of the Secretary:"

Sec. 101(b)(ii) continues to reflect what I have pointed out before your Subcommittee at earlier times as an erroneous concept of the scope of State and local governmental land use planning and regulation affecting private land using activities being conducted on the surface or subsurface of lands which are held in the basic title of the United States. There is no legal or logical reason why the State and local governments should not receive data from the Secretary relating to the uses of *Federal lands*, as well as data relating to the uses of *non-Federal lands*. Perhaps this matter could be set right by means of the following amendment:

> Strike out: "for the purpose of planning and regulating the uses of non-Federal lands in the proximity of national resource lands" and insert in lieu thereof: "for the purposes of planning and regulating the uses of non-Federal lands in the proximity of national resource lands and also the uses of national resource lands or interests in lands by private parties under Federal grants, leases, licenses or permits."

Sec. 103(c) raises the interesting legal question whether the land classifications that were made by BLM under provisions of the Classification and Multiple Use Act of 1964, while it was in effect, are still effective within the meaning of this section. In my judgment, each and every one of those classifications, as well as its segregative effect, has ceased to exist, but I understand there is contrary opinion in the Department of the Interior. I believe the Committee should inquire into this matter and know the issues involved before proceeding with the present language of this section.

Sec. 103(d) seems to be ambiguous as to its intent regarding valid existing rights under existing leases, etc. If valid rights are to be protected, as the bill otherwise assures. (Sec. 502), the newly proposed classification could have no effect upon such rights, but only affect the opportunity for the holder thereof to continue a use after such time as his right, in its existing tenure, is ended. Some existing rights run for many years, or, in the case of mineral leases, for example, perennially so long as mineral is produced in paying quantities. There would be little or no point in notifying the holder of a mineral lease that the classification is about to be changed, since nothing in the change would directly affect his use during the term of the lease. However year-to-year users or users at sufferance, such as grazing permittees, of course would be vitally concerned in any adverse change in classification. At least the language of the

section needs to be revised to assure that the proposed change in classification or permitted use has to do with future-issued permits etc., and not with changes in the terms of existing valid rights.

Sec. 103(e) requires the Secretary to submit his review of BLM lands according to provisions of the Wilderness Act, but it is well known that interpretation of those provision in regard to mineral resource inventories has provoked bitter controversy. Here is a chance to spell out what the Congress wants the Secretary to do in this regard. I shall be glad to offer specific language on request.

Sec. 104. This section properly requires re-recordation of existing mining claims, but in my judgment, Mahomet should go to the Mountain rather than vice versa. By this I mean that the re-recordings should take place in the local county records, not in BLM records. For one thing, if the re-recording has to be done in the BLM offices, to satisfy Federal law, this will set up a parallel requirement for simultaneous re-recording in the local records to bring the recording there into line with the new Federal recording. This would involve time-and-space problems and open up the possibility of cheating on the part of rival claimants. Also it would involve the cost and expense of maintaining duplicate sets or mining claim records—county and BLM and raise legal questions in title disputes as to which of the two sets of records is paramount.

> Recommend strike out "shall be recorded by the claimant with the Secretary" and insert in lieu thereof "shall be recorded or re-recorded by the claimant in the local government records in the place provided by State law in accordance with standards promulgated by the Secretary".

This suggestion will continue in effect the basic practice of using the county records as the paramount source of title information and save the cost and expense to the claimants of going the extra distance from the county concerned to the land office, which in some instances, is located in another State or at least at a very long distance. There is no practical or legal reason why the BLM officials cannot use the county records as their source of information and as a basis for enforcing the time limit set forth in the bill.

Sec. 104(b) provides for the automatic termination of a claim if the holder fails to make a patent application within 5 years from date of enactment of the new Act. This is my judgment is an unconstitutional invasion upon valid existing rights. The provision should be limited in its scope only to claims filed or perfected by a valid discovery of minerals after the effective date of the Act.

Sec. 204 makes the invalid assumption that sales under the legislation will be made "for agricultural use". However nothing in the legislation provides any authorization or requirement that the Secretary shall see to it that any of the land sold must be so used. As set forth in Sec. 209, the patents must contain terms, covenants, conditions and reservations as he deems necessary to insure proper land use and protection of the public interest, but it would be a far stretch of the imagination to think that the Secretary would *require* land to be used for any particularly specified use such as agriculture. Much more likely would be a case in which the Secretary would *prohibit* undesirable uses, but allow a choice otherwise to be made. Hence sales will not be made "for" particular uses, even though the inventory data leading up to the sale may indicate that agriculture or some other particular use may well be the use for which the land is chiefly valuable.

Accordingly, strike out "where any such tract is sold for agricultural use," and insert in lieu thereof: "where any such tract which is sold is judged by the Secretary to be chiefly valuable for agriculture,".

Sec. 206 makes an totally infeasible requirement that the Secretary accept or reject a land purchase offer made through competitive bid at his invitation within 30 days. I am able to present to the Committee the facts concerning a current case in which the Department has yet to act finally on a geothermal lease purchase offer which was made over a year ago from this date. The reason a set period of time is infeasible is that third parties may intervene in the matter, as by a "protest", or possibly by an appeal from a prior adverse decision, which may still be pending while the Secretary proceeds with a provisional sale depending upon the outcome of the appeal. (Incidentally the Department's current regulation regarding "protests" is extremely vague and needs to be revised at once).

About the best that can be done here is to ask the Secretary to complete the transaction as soon as possible under the circumstances, and the section should be amended accordingly.

Sec. 208(a) employs the phrase "no mineral values" without defining the phrase. This phrase is similar to the term "valuable mineral" which appears in the 1872 Mining Law, a phrase which has resulted in untold bitter litigation over many years and may still be undergoing re-interpretation in the courts. However the meaning intended by the bill's authors rather obviously is quite different from the 1872 meaning. Undoubtedly the authors had in mind something similarto the terms "prospectively valuable" as that term is currently used by the BLM and the Geological Survey under provisions of existing legislation. If so, I recommend that the term "no present or prospective mineral values" be substituted for "no mineral values".

Sec. 208(c) places a limit of 20 years on the time within which the Government would receive the benefit of later-discovered mineral values in case mineral interests are conveyed. This time is altogether too short. In fact, I recommended no time limit on the basis that the Government will be here for a long time and can wait a very long time for mineral values to appear.

One minor elemen also seems to have been missed in Sec. 208(c), which is that, if the Government does, in fact, recover title to the mineral values within the 20 years, it should be required to compensate back to the private owner at least the amount included in the original purchase price in token of the inclusion of the subsurface title in the deed, and also, in case of a later conveyance under Sec. 208(a), such amounts as were expended by the then private holder under terms of Section 208(d), and it may make sense to require that such amounts be paid with accumulated interest.

Sec. 210 makes the logical blunder of assuming that the *conveyance* of title to public lands might be in conflict with State and local land use plans, programs, zoning and regulations. The conveyance in itself has no effect on land use. It is the activity on the land on the part of the party to which the land was conveyed that has such effect. What the authors clearly had in mind was to provide that the Secretary shall not make conveyances of land which, if used according to is chiefly valuable uses or capabilities under restrictions placed by the Secretary in the deed, would not conform to State or local land use plans, programs, etc. The Section should be revised accordingly.

Incidentally, it would be an impossibility, or at least an improbability, that any private use of conveyed lands could take place or continue for very long in violation of State or local land use zoning regulations or other land use regulations, inasmuch as such regulations are enforceable under the criminal laws of the jurisdiction.

I suggest revision of the first sentence of Sec. 210 to read as follows:

> The Secretary shall not make conveyances of national resource lands or interests in lands which, in his judgment, would likely be used by the private holders thereof in a manner which would conflict with State or local land use plans or programs or would constitute a violation of the State or local zoning laws or other forms of land use regulations, as such plans, programs, laws or regulations are in effect as of the time of the Secretary's determination.

Sec. 212 is a commendable effort, as proposed by the Administration, to allow the Secretary to clear up title disputes under certain kinds of siuations. However the present language of the section, in my judgment, fails to provide adequate statutory standards for the guidance of the Secretary.

The present language gives the Secretary no particular standard for resolving the questions of law or equity involved in the title disputes, other than the Secretary's own discretion. Experience has indicated that such a broad grant of authority without legislative standards works out to the disadvantage of the private claimants who may be involved.

In reference particularly to Sec. 212(a)(3), I recommend amendment to make the paragraph read as follows: "accreted, relicted, or avulsed lands are held under record title of parties other than the United States and the title claim of the United States is found by the Secretary to be reasonably subject to the defenses of equitable estoppel or laches or applicable legal defenses which are advanced by the private claimants under the principles of applicable real property law."

This suggested language, among other things would help to implement in part the recommendation of the PLLRC NO 113.

(For the Committee's information I am currently retained as legislative counsel for the Sportsmans Paradise Homeowners Association and I am registered under the Lobbying Act for the purpose of assisting the Association is obtaining legislative relief in connection with the title dispute involving various Association members known as *U.S.* v. *Iva May Harvey, et al.* Information regarding this title dispute was submitted in testimony before the Subcommittee in 1974.)

Title III of the bill appears to have been intended to grant general management authorizations to the Secretary for the administration of all lands and interests in lands BLM has under its jurisdiction. But it fails to do this in my judgment. The reason for the failure is that the authorizations are uniformly to be granted only as to "national resource lands", which, as I have pointed out above, under the present bill, does not go so far as to embrace lands and interests in lands which are only partially administered by BLM (e.g., subsurface resources in national forests), that is, unless the language of the bill is construed other than literally. "National resource lands", if the terms is to be parallel with "national forest lands" and the like" ought to refer only to lands *exclusively* managed by BLM. The interests in lands managed by BLM which lie in management zones of other agencies, such as in national forests, accordingly are not connoted by "national resource lands". Hence, to limit the management authorizations to "national resource lands" would leave the Secretary without any management authorization for the other lands and interests in lands which BLM partially administers.

Obviously the studies being made, the service charges, the working capital fund, etc. should apply not only to "national resource lands" but also the other lands and interests in lands, notably the subsurface resources of nearly all Federal lands of all kinds, which BLM administers. Accordingly Title III should be amended at a number of places to make this correction. This could be done by referring to the "operations of the Bureau of Land Management" rather than to "national resource lands". See language currently in the bill at Sec. 305(a).

It is particularly necessary to revise Sec. 306 in this same regard. Otherwise the penalty for unauthorized use would not apply to the lands and interests in lands administered by BLM which do not fall in the definition of "national resource lands".

Sec. 401 regarding rights-of-way raises a severe problem also of geographic coverage. The language now refers to "national resource lands" but the right-of-way laws being repealed by the Act are not limited in their applicability to what will become "national resource lands". Instead they consist in many cases of all or nearly all of the "public domain" regardless of which department or bureau may be administering its surface. Hence, as the bill now stands, the repealers would cover much more geographic terriority than the new right-of-way provisions which ostensibly were designed to replace them in full.

One way to overcome this defect might be to provide that the new laws would apply to "national resources lands" and all other public domain for which no other law provides specific authorization for the issuance of rights-of-way. Another way would be to limit the repealers to "national resource lands" and leave the existing right-of-way laws in effect as to other kinds of public domain. (This may be a difficult matter to sort out, but it is better to do it now than allow later confusion and litigation to arise).

Sec. 501(b)(8). As a veteran in dealing with State grants and State indemnity selections and their relationship to the land withdrawal statutes and land classification laws. I raise a question as to the intended meaning of this section. I would suspect that this section if left to remain in the legislation, would result in a new wave of demands on the part of the States to override the Secretary's authority to leave withdrawn land withdrawn (or decline to revoke the withdrawal and revise the land classification as proper to State selection). Inasmuch as Sec. 502 protects all valid existing rights, I see no need, in fact I see harm, in including Sec. 501(b)(8) in the bill, and I recommend it be deleted. Or, if it is to be retained, there ought to be added a further provision, to the effect that nothing in the Act amends, limits, or infringes upon existing laws or regulations and orders affecting the status of public lands with respect

to the filing of applications by States for the satisfaction of outstanding grants.

I have last year advised the Committee that I believe a hiatus may develop after the Act's repeal of many public land laws before the new laws may be placed in operation. This hiatus is apt to occur largely because of unwieldy mechanics under NEPA. The present bill does not address itself to this problem adequately, in my opinion.

Thank you for your consideration of these suggestions.

Sincerely,

KARL S. LANDSTROM.

Mr. LANDSTROM. Today, Mr. Chairman, I am speaking on behalf of clients of mine, an association of homeowners who hold private title to 27 acres of land along the Colorado River on the California side. I explained this problem last year, I think, Mr. Chairman. I will try to be brief.

I refer here in the paper to the Public Land Law Commission's report. I am sure you will recall that Senator Jackson was a member of that Commission and it was my privilege to serve as the Department of the Interior's member of the Advisory Council. I cite here recommendation No. 113, entitled, "Determination of Title Disputes."

In essence, we are asking the committee to amend the BLM Organic Act so as to incorporate the recommendations made by Senator Jackson and the other members of the Commission.

Now, partly as I point out on page 2——

Senator HASKELL. Mr. Landstrom, that is a vote. I better go over and vote and come back.

[Recess.]

Mr. WILLIAMS. Because several votes are scheduled to come up this afternoon on the floor Senator Haskell has asked that Mr. Landstrom submit his statement for the record.

[The prepared statement of Mr. Landstrom follows:]

STATEMENT OF KARL S. LANDSTROM, ATTORNEY FOR THE SPORTSMAN'S PARADISE HOMEOWNERS ASSOCIATION

Mr. Chairman, I am sure you will recall that the Chairman of the Full Committee, Senator Jackson, and the Ranking Minority Member of the Full Committee, Senator Fannin were members of the Public Land Law Review Commission. One of the chapters of the Commission's report, filed in 1970, was titled "Trespass and Disputed Title"; and one of the recommendations within that chapter, No. 113, was stated as follows:

Determination of Title Disputes

Recommendation 113: The doctrine of adverse possession [footnote omitted] should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The defenses of equitable estoppel [footnote omitted] and laches [footnote omitted] should be available in a suit brought by the Government for the purpose of trying title to real property or for ejectment.

In cases where questions of adverse possession, equitable estoppel, and laches do not apply, persons who claim an interest in public land based upon good faith, undisturbed, unauthorized occupancy for a substantial period of time, should be afforded an opportunity to purchase or lease such lands.

In part of its explanation of this recommendation, the report states as follows:

[A]n apparent primary reason for reliance upon the doctrine of sovereign immunity in actions to try title to land claimed by the Government was the lack of manpower in Federal land managing agencies to

make the investigations required to defend the Government's claim on its merits. While this may have been a valid basis for the use of the doctrine as an absolute defense in such actions during the 19th century, these managing agencies now appear to have sufficient manpower to effectively assert any meritorious defense which the Government may have to such a suit * * *

Believing as we do, that it is not an undue interference with the functions of the Government to require it to defend its claim to real property in a proper suit, the Commission finds no valid reason for placing the Government in a more advantageous position in suits brought by it to establish such a claim.

Two years later, in 1972, the Congress passed and the President signed into law Public Law 92–562 which is now Sec. 2409a of Title 28 of Code of Laws. Sec. 2409a has recently been construed by Judge Turrentine, of the U.S. District Court for the Southern District of California, over the objection of the U.S. Attorney's office, as giving the private claimants in a title action brought by the Government the right to raise any legal or equitable defense that may be available to them, under applicable principles of law, except for a defense based on adverse possession. The reason cited by Judge Turrentine for the latter exception is that "adverse possession" is expressly excluded in the applicable statute.

Accordingly, assuming Judge Turrentine's interpretation will stand, Recommendation No. 113 of the PLLRC has already been translated into law to such extent; and the defendants in such cases, including the members of the Association that I represent, will be protected against any of the Government's title claims which cannot withstand all of the usual defenses, except "adverse possession". On this basis, the only element within the PLLRC recommendation which remains to be translated into the law affecting court actions is the one involving "adverse possession".

The Association is not asking this Subcommittee at this time to consider legislation to bring "adverse possession" under jurisdiction of the courts in actions of this kind. Instead the Subcommittee is being asked to bring "adverse possession" as well as all of the other usual legal and equitable defenses into the ambit of administrative determinations which will be made by the Secretary of the Interior.

As I have pointed out earlier to this Subcommittee, opportunity to do just that occurs in the "BLM Organic Act", either in S. 507 or in the Administration bill. The objective can be accomplished, in the case of S. 507, by amending Sec. 212 in the following manner:

At the end of this section, insert a new subsection (d) to read as follows:

(d) In investigating and acting upon matters arising under this section, the Secretary shall give full consideration to and apply in each case any defenses against the Government's claim of title which may be raised by the private claimants and which are ordinaril available to private parties litigant in similar circumstances, including but not limited to the defenses of equitable estoppel and the doctrine of adverse possession.

In this proposed amendment, the Subcommittee is not being asked to pass judgment on the merits of the Government's claim or the claims of the private parties in any particular dispute. What the Subcommittee is being asked to do is to set forth the appropriate rule of law and equity, as recommended by PLLRC, under which the Secretary would proceed to examine the facts and apply such rule in the individual instances. However should the Subcommittee require detailed information regarding the existing unresolved title dispute involving members of the Association, I shall be glad to supply any information that I have. Suffice it to say, for the present, that some of the facts alleged on behalf of the private claimants in this particular dispute suggest that the defenses of estoppel and laches and the doctrine of adverse possession might be applicable.

Mr. Chairman, I am sure you will recall that the Committee last year favorably reported S. 3574 of the 93d Congress, which later become Public Law 93–578. That law directly granted title to certain private claimants on the basis of factual showings involving these same defenses and doctrines However its benefits were limited geographically to a certain area on the Arizona side of the Colorado River. I believe, in fairness and justice, that the private claim-

ants on the California side at Sportmans Paradise, under facts that are substantially similar, should be afforded some kind of equivalent legislative consideration.

There is a bill now pending before the House Committee on the Judiciary, H.R. 2071 by Congressman Charles H. Wilson of California, which if enacted would carry out Recommendation No. 113 within very limited geographic bounds insofar as any court actions may be concerned, and having limited time duration as regards claims or counterclaims raised by any private claimants. This bill, if enacted, would go a long way toward resolving the dispute at Sportsmans Paradise. Whether the bill will or will not be enacted cannot not be said with any assurance.

Meanwhile, this Subcommittee, in the pending "BLM Organic Act", has the opportunity to provide for implementation of Recommendation No. 113, at least within the limited organizational scope of administrative actions to be carried out by the Department of the Interior. If the appropriate section of the bill is enacted as I have recommended, the benefits of such action will redound not only to the members of this Associatian but also to others who may be similarly situated and have equivalent equities based on good faith occupancies without actual or constructive notice of any Governmental claim of title.

May I also suggest one further amendment to clarify the meaning of the same section of the bill regarding the amount of money to be collected by the Secretary in return for issuing a disclaimer of interest. The amendment is as follows:

> In subsection (b), strike out the words "of issuing the disclaimer" and insert in lieu thereof the following words: "of issuing the disclaimer but not including the administrative cost of investigating and deciding whether to issue the disclamer,".

Without an amendment such as this, it would be uncertain whether the Department would charge merely for the cost of conveyancing, or whether a charge would also be made for investigating and adjudicating the application. I believe the reimbursement for the conveyancing cost is all that can be justified.

Thank you, Mr. Chairman, for considering my statement.

Filed, Oct. 15, 1974, Clerk, U.S. District Court, Southern District of California, by Myra Roberson, Deputy.

UNITED STATES DISTRICT COURT; SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 72-277-T

UNITED STATES OF AMERICA, PLAINTIFF

v.

IVA MAY HARVEY, WIDOW, ET AL., DEFENDANTS

ORDER DENYING DEFENDANTS' AND PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

Background

The United States brought an action to eject against approximately 150 defendants who claim ownership to land in a twenty-seven acre subdivision known as "Harvey's Fishing Hole," located on the California side of the Colorado River two miles south of Blythe. The defendants counterclaimed with a suit to quiet title.

All except four of the defendants are the successors in interest of Kindred E. Harvey, now deceased, who in turn claimed ownership through a chain of title originating in a patent deed of 1914.

In 1914 the land in question was located south of the Colorado River in Arizona. The United States owned the northern bank on the California side of the river. Sometime prior to 1935 the course of the river shifted to the south. As a result, the land in question is now north rather than south of the river.

Ownership of the land depends on whether it became part of the northern bank by process of accretion or avulsion. If formed by accretion, it probably

belongs to the United States, who has always owned the northern bank. If formed by avulsion, it more likely belongs to the defendants.

Property directly adjoining Harvey's Fishing Hole and occupying the same bend in the river was the subject of a government condemnation action which commenced in 1960. In *Beaver* v. *United States*, 350 F.2d 4 (9th Cir. 1965), the Ninth Circuit affirmed Judge Kunzel's determination that the adjoining property was formed by process of accretion and belonged to the United States.

Motions

Both the United States and the defendants have moved for summary judgment and the matter came on for hearing on October 7, 1974. Having heard argument and reviewed the extensive memoranda and affidavits submitted by the parties, the court makes the following orders:

1. *Defendants' motion for summary judgment on the basis of the affidavits of Lewis G. Castner, Jack R. Rodges, Iva Mae Harvey and Donald Harvey.* These affidavits support the so-called "cottonwood tree" argument. They indicate that the studies of an arborist and a radiologist show that certain trees located on Harvey's Fishing Hole existed prior to the 1914 patent deed. The inference to be drawn is that these trees would have been eroded away during an accretive process; their survival proves the change in the course of the river was avulsive.

The Court finds the argument intriguing but not conclusive. In direct conflict is the affidavit of John S. Ewan, a hydraulic engineer employed by the United States Department of Interior. He states the river bend was formed by process of accretion. Whether the court should credit the view of the arborist or the hydrologist can be determined only by trial. This motion for summary judgment is denied.

2. *Defendants' motion for summary judgment under the Color of Title Act (43 U.S.C. 1068, et seq.).* Since the court cannot determine whether the land was formed by accretion or avulsion, it cannot determine whether the defendants are entitled to a patent under the Color of Title Act. As indicated in *Beaver v. United States*, 350 F.2d 4, 10 (9th Cir. 1965), the government property on the northern side of the river was withdrawn from entry in 1902 and therefore is not subject to the Color of Title Act. If Harvey's Fishing Hole is part of the government property by virtue of accretion, the Color or Title Act cannot apply to it. It is difficult to see a claim under the Color of Title Act can benefit the defendants, in any event. If there was accretion, they cannot assert the claim; if there was avulsion, they probably own the land without asserting a claim under the Act. This motion for summary judgment is denied.

3. *Defendants' motion for summary judgment on the basis of estoppel.* The defendants assert this theory as a defense to the government's suit to eject and as an affirmative ground in their counterclaim to quiet title.

The defendants argue that, regardless of whether the land was formed by accretion or avulsion, the government is estopped to deny their ownership of the land because they have occupied and improved it in reliance on statements by various government representatives in the Bureau of Land Management, the Army Corps of Engineers, and the United States Attorney's Office. For instance, it is alleged that the U.S. Attorney assured the Harveys in 1963 that the *Beaver* litigation would not affect them, and, inferentially, that the government recognized title in the Harveys. Furthermore, it is alleged that:

> [P]rior to 1967, the right, title and interests of the [Harveys] * * * to the lands involved in the present controversy, were readily and consistently recognized, acknowledged and conceded by representatives of the United States. (Affidavit of Iva Mae Harvey, p.5)

Generally equitable estoppel is not available against the United States. *Utah Light and Power Co. v. United States*, 243 U.S. 389 (1917). But in recent years an exception has developed where (1) the government is acting in its proprietary rather than sovereign capacity, and (2) if its representative has been acting within the scope of its authority. *United States v. Georgia-Pacific*, 421 F.2d 92 (9th Cir. 1970); *Brandt v. Hickel*, 427 F.2d 53 (9th Cir. 1970); *United States v. Lazy FC Ranch*, 481 F.2d 985 (9th Cir. 1973); *Oil-Shale Corporation v. Morton*, 370 F.Supp. 108 (D.C. Colo. 1973). There is no showing that either of these threshold requirements are fulfilled.

However, the court finds that it is unnecessary to meet these threshold requirements in this case because of the enactment of 28 U.S.C. 2409a (Real Property Quiet Title Actions), which provides, in pertinent part:

(a) The United States may be named as a party in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest * * *.

* * * * * * *

(f) Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

* * * * * * *

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

As stated in *Beaver*, *supra*, p. 7, the general rule that equitable estoppel does not apply against the United States does not attain where the United States has consented to be sued in quiet title actions by virtue of § 2409a.

The government contends that the defendants cannot assert § 2409a because by expressly excluding adverse possession, Congress also excluded equitable estoppel. The legislative history on this point is inconclusive. However, the court notes that the two theories, though similar, are distinct; the court concludes that the express exclusion of adverse possession indicates an intent to include all other theories of action, including equitable estoppel to the extent it is available in any suit to quiet title. *Expressio unius est exclusio alterius.*

The defendants may properly assert estoppel in their answer and counterclaim. However, the defendants have not met the burden of showing the absence of any issue as to all the material facts, which, under the applicable principles of substantive law, entitle them to judgment as a matter of law. The substantive law of estoppel has been defined by the Ninth Circuit as follows:

> "Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury. *California State Board of Equalization v. Coast Radio Products*, 9 Cir., 228 F.2d 520, 525." *United States v. Georgia-Pacific*, 421 F.2d 92, 96 (9th Cir. 1970).

This court thinks that there are material issues of fact as to all of these elements, and directs the attention of counsel especially the second and third elements. As to the third, the defendants may have known the fact that their title was controverted because of the existence of the *Beaver* litigation, which affected the property next door. It may well develop, as argued by defendants, that contemporaneous and subsequent representations by government officials had the effect of assuring the defendants that *Beaver* was of no significance. This argument would involve the proof of the second element of estoppel, namely, that the government representatives acted in a way that justified reliance by the defendants. The defendants have not clearly shown what the truth is in this regard. The affidavit of Iva Mae Harvey contains many conclusory statements such as the one quoted above. This kind of information does not help the court determine exactly what was said, by whom, to justify the reliance of the defendants. The alleged assurance from the U.S. Attorney to the Harveys' lawyer that the *Beaver* case would not affect the Harvey land is similarly vague. Even if it is accepted that the U.S. Attorney stated that "their respective rights would not be prejudiced in any way the ultimate decree in the *Beaver* case" (Affidavit of Iva Mae Harvey, p. 12), the meaning of this statement is wholly unclear in the context of the affidavits now before the court. It could mean that the United States would never challenge the Harveys' title, or merely that the *Beaver* decision of itself would not affect the Harveys' title. Furthermore, much of the Iva Mae Harvey affidavit pertaining to the discussions with the U.S. Attorney and other government representatives contains hearsay which is improper under Fed.R.Civ.P. 56(e). The Court has reviewed all the affidavits including those of Beverly Truelove, Ralph Brookings, Neil John, and Donald Harvey, and finds that they do not adequately show that the government induced reliance. This motion for summary judgment is denied.

4. *Defendant's motion for summary judgment on the basis of P.L. 91-505.* This legislation permits certain claimants to Colorado River properties in Riverside County to assert all legal and equitable defenses against the government in ejectment actions. The defendants argue that this law unfairly discriminates against them and that the court should excise certain words from the statute which limit its application to Riverside County, and thereby extend its benefits to all claimants of Colorado River lands. The court denies the motion because striking the relevant language would defeat the legislative intent. A similar bill lacking the restrictive language was previously vetoed by the President; its proponents did not muster the necessary two-thirds vote to override the veto. The defendants cannot expect the court to override the President's veto where Congress has failed to do so.

5. *Government's motion for summary judgment by asserting Beaver as a ground for collateral estoppel.* The U.S. Attorney cites the following standard for collateral estoppel: (1) Was the issue decided in the prior adjudication identical with the one presented here? (2) Was there a judgment on the merits? (3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? (4) Was the party given an opportunity to be heard? *Bernhard v. Bank of America*, 19 Cal.2d 807 (1942); *State of Maryland v. Capitol Airlines, Inc.*, 267 F.Supp. 298,304 (D.Md. 1967).

The third and fourth elements have not been satisfied. Kindred Harvey, the predecessor in interest to all but four of the defendants, was not in privity with any of the defendants in the *Beaver* litigation. Nor was he a party who had the opportunity to be heard. Although named and served in the *Beaver* action, his property was not within the pale of the 11.8 acres condemned in that action. When Harvey filed a belated answer, the U.S. Attorney moved to strike on a number of grounds, one of which was that the Harveys' claims of an interest in adjoining lands was immaterial. Subsequently the Harveys' answer was withdrawn without prejudice by stipulation and order. On the present record, the court can only conclude that, although named in the complaint, the Harveys were not proper defendants to the action, and that the decision in the *Beaver* case cannot now be raised against the Harveys and their successors in interest. This motion for summary judgment is denied.

6. *Government's motion for partial summary judgment on the ground that a claim under §2409a is barred by the twelve year statute of limitations.* Kindred E. Harvey was served with notice of the government's claim in the *Beaver* case on October 14, 1960. The defendants' counterclaims were filed more than twelve years later; therefore the government argues that the defendants should be barred by the twelve year statute of limitation in §2409a(f). However, whether or not the Harveys and other defendants "should have known of the claim of the United States" may be determined, in part, by the alleged representations to the Harveys by government officials as late as 1967. Also, it is not clear that the notice of the condemnation suit involving neighboring property adequately put the Harveys on notice that their own property would be subject to an ejectment action. The government's motion is denied.

Dated: October 11, 1974.

HOWARD B. WINTER,
U.S. District Judge

Copy to: All counsel.

Mr. WILLIAMS. The hearing stands adjourned, subject to the call of the Chair.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

Additional Statements and Communications Received for the Record

JOINT STATEMENT OF THE PUBLIC LANDS COUNCIL,
THE AMERICAN NATIONAL CATTLEMENS' ASS'N.,
AND THE NATIONAL WOOL GROWERS' ASS'N.

on S. 507

Before the Sub-committee on the Environment and Land Resources of the Committee on Interior and Insular Affairs of the United States Senate, March 7, 1975.

My name is Thomas J. Cavanaugh. I reside in Falls Church, Virginia and I am the General Counsel of the Public Lands Council, a voluntary organization of Western livestock operators who hold permits and leases to graze livestock on the public lands. This statement is made on behalf of the American National Cattlemens' Association and the National Wool Growers' Association, as well as the Public Lands Council.

Section 6 of S. 507 provides the Secretary with authority to appoint advisory boards and committees. We have no objection to that provision. We believe, however, that the bill does provide an opportunity to correct a situation about which we are greatly concerned.

Last year the Department determined that the grazing district advisory boards created pursuant to Section 18 of the Taylor Grazing Act, 43 U.S.C. 315o-1, terminated as of January 5, 1975 by operation of the Federal Advisory Committee Act, 86 Stat. 770. The Secretary has apparently decided not to re-charter these boards.

The grazing district advisory boards perform a specialized function. They advise the district managers on the allocation of the forage resource. They advise the Secretary on regulations relating to the administration of the Taylor Act. They also assist the district manager in making his decision on protests filed in connection with forage allocations. In addition, subsequent to the enactment of the Taylor Act, several of the Western state legislatures enacted statutes which provide for the return of money received by the State from federal grazing fee receipts to the district boards for use for range improvements. These state statutes relate specifically to the advisory boards established under Section 18 of the Taylor Act.

We do not oppose the creation of multiple use advisory boards to advise the Secretary generally on the management of the public lands. However, we believe that the allocation of forage is a specialized function and that the advice the Secretary and district managers receive in respect to that function ought to come from those who possess the expertise necessary to properly advise those officials on forage allocation. We believe, therefore, that the grazing district advisory boards created pursuant to Section 18 of the Taylor Act ought to be retained and respectfully suggest an amendment to S. 507 which would exempt those boards from the provisions of Section 14 of the Federal Advisory Committee Act.

Section 101 (3) provides that the Secretary shall insert in permits, licenses, leases and other authorizations to use the national resource lands provisions authorizing revocation or suspension of the authorization upon a final administrative finding of a violation on such lands of any applicable State or Federal air or water quality standard or implementation plan.

We question whether or not the Secretary, or his delegate, are qualified to determine whether a statute or regulation not administered by him, but by some other Federal or State agency, has been violated. We believe that, as a pre-condition to the revocation or suspension of the authorization to use the national resource lands, there ought first to be a finding by a court of competent jurisdiction, or by the Federal or State agency having primary responsibility for the enforcement of the statute or regulations alleged to have been violated, of such a violation.

In this connection, we wish to call the committee's attention to the fact that, in respect to grazing permits and leases, the Secretary has recently proposed regulations which would provide for the cancellation of a lease or permit upon the conviction of a violation of certain laws relating to the conservation and protection of natural resources, including those relating to air and water pollution. (40 F.R. 7454, Feb. 20, 1975)

The bill would leave intact the Secretary's authority to withdraw public lands. This authority can be a useful tool for the protection of public lands which might otherwise be subject to disposal. However, it is an authority which can be abused. For this reason, we believe that reasonable limitations ought to be imposed upon the exercise of the authority. We suggest that withdrawals in excess of 5000 acres be subject to Congressional approval and that any withdrawal be limited in time to not more than ten years after which the Secretary would be required to review the withdrawal and terminate it, unless he determined that justification could be demonstrated for its continuance. In addition, we believe that the segregative effect of an agency request for a withdrawal should be limited to six months. Under existing procedures, an agency may make a request for a withdrawal which immediately segregates the land and the land remains, in effect, in a withdrawan status, even though the Secretary may not act on the request for many months.

In testimony on similar legislative proposals in the previous Congress we indicated that we did not oppose a limited condemnation authority for access to national resource lands. In fairness to the committee and to our membership, we would like to point out that a substantial number of livestock operators do oppose the grant of any blanket authority for condemnation to the Secretary. Many of these operators feel that such an authority could lead to abuses and that, if the authority is required in some areas, it ought to be granted by specific legislation applicable only to the areas where there is a demonstrable need.

We also wish to express our concern about the language in Section 3(b)(vi) which directs the Secretary to assure payment of fair market value by users of national resource lands without defining that term or recognizing that "fair market value" may not always represent the greatest dollar return. We believe that pricing policies for specific commodities ought to be treated separately.

In commenting on similar proposals in the preceeding Congress we expressed concern about the broad discretionary authority which such proposals would confer upon the Secretary. And, although S. 507 is, in many respects, superior to those earlier proposals, our concern remains.

We do not view this proposed legislation as, in any way, requiring immediate approval. Today, the Bureau of Land Management has at its disposal the same management tools it has had for a number of years, among which are the Taylor Grazing Act and the Mineral Leasing Act of 1920. Only in one area do we see any real need for supplying the Secretary with additional authority and that is in the enforcement area. We can agree that, in some instances, additional enforcement authority is required for the protection of the national resource lands.

Other than the grant of additional enforcement authority, the principle function of this bill would be to give legislative sanction to a number of activities already engaged in by the Bureau of Land Management for which there is no present statutory authority.

Section 103, for example, directs the Secretary to develop land use plans for national resource lands, while the fact is that the Bureau of Land Management has been engaged in such planning for some time without such statutory authorization.

Section 6 provides for the creation of advisory boards and committees. Without such statutory authority, but, perhaps in anticipation of the enactment of this bill, the Secretary recently published proposed rule making for the creation of just such advisory boards as would be authorized under Section 6.

Only recently an administrative law judge declared invalid a policy of the Bureau which would deny the renewal of a ten year grazing permit, even though pledged as security for a bona fide loan, unless the permittee had entered into a bureau approved management plan.

We suggest that, rather than granting the Secretary and Bureau of Land Management additional broad discretionary authority the Congress should review the present management activities of the Bureau with a view toward defining those areas in which a real need for additional authority can be demonstrated and limiting those activities for which no such need is demonstrated.

STATEMENT OF LOUIS S. CLAPPER ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION PRESENTED BEFORE THE ENVIRONMENT AND LAND RESOURCES SUBCOMMITTEE, SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

March 7, 1975

Mr. Chairman, I am Louis S. Clapper, Conservation Director of the National Wildlife Federation, which has its national headquarters at 1412 16th Street, N.W., here in Washington, D. C.

The Federation 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. When combined with associate members and other supporters of the National Wildlife Federation, these number an estimated 3 1/2 million persons.

We welcome this invitation to give the Committee our technical advice, opinion, and recommendations.

As he introduced S.507, Sen. Floyd K. Haskell (Colo.) set out for the Senate an eloquent, comprehensive, and persuasive argument for the establishment of an organic act for the Bureau of Land Management within the Department of the Interior. We are highly hopeful that 1975 may be the year that the Congress will rectify long-standing shortcomings by finally approving a proposal containing the basic features in S.507. Senator Henry M. Jackson (Wash.) has exerted outstanding leadership in guiding predecessor bills through the Senate on

two other occasions, the last by a 71 to 1 vote, and we hope that this will encounter equally good "smooth sailing."

There is little question that the program to manage the so-called "public domain" has been the orphan of the Federal Government. The Forest Service was established by an organic act in 1897 and the National Park Service in 1916. The National Wildlife Refuge System was established by a series of significant acts in 1929, 1934, and 1966. Only the public lands, which the Federal Government tried to give away, have had a patchwork pattern of inadequate management under conditions of too few with too little for far too long a time. We think it is essential that this condition be rectified, and are pleased that the Declaration of Policy in S.507 recognizes the values of these properties, sets out that they shall (with exceptions) be retained in Federal ownership, and managed under principles of sound, long-term management.

Some of us here today recall the major contributions that the Outdoor Recreation Resources Review Commission made toward preservation of parks and recreation areas and open spaces and to sound land management. We also recall the stresses and strains which were developed during deliberations of the Public Land Law Review Commission.

53-644 O - 75 - 26

Back in 1966, when the PLLRC had begun its work, our organization addressed several issues and made these key recommendations:

--That the bulk of these lands be retained in Federal ownership under direction of a single agency, with in-holdings eliminated by exchange or purpose;

--That 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;

--That lands being retained in permanent Federal ownership be managed under sound principles of multiple use duly authorized by law;

--That the allowable cut of timber must be based on a conservative estimate of sustained yield;

--That grazing fees on public lands should be based on the prevailing rate for rental of private lands in the same areas, with funds so derived being used for proper resource management;

--That suitable authority and funds must be provided for the development of wildlife habitat and all outdoor recreational potentials on public lands;

--That the 1872 Mining Law should be repealed and replaced with a mineral leasing system which would allow proper management of the surface; and

--That several obsolete laws, such as the Homestead Act and Desert Entry Act, be repealed.

Many of these recommendations are incorporated, all or in part in S.507.

We have these specific comments about S.507:

Section 2 (page 3, line 22) - in the definition of "multiple use" (c), we see no valid reason for use of the modifying word "permanent" as to impairment of the productivity of the land. "Permanent impairment" is difficult to define or describe. Much more damage to an improperly managed or protected tract could occur before a practice is proven to involve impairment of a permanent nature. We recommend that this word be removed both here and in the following subsection, (d), on "sustained yield", page 4, line 6.

Section 5, page 6, provides for public participation in the formulation of standards and criteria for the preparation and execution of plans and programs for management of the national resource lands. We are in agreement with this provision, believing the public should have ample opportunity to participate in the management of public lands.

Section 6, page 7, provides for advisory boards and committees. We are highly dubious about the value of advisory groups, particularly the one-sided grazing advisory boards. However, if this section is retained, we like the requirement

that the membership of such boards and committees shall be representative of a cross section of groups interested in the management of the national resource lands and the various types of use and enjoyment of such lands. To this we would recommend that this phrase be added,"without domination by any."

We strongly support the provisions of Section 8, which state that the position of Director, BLM, will be filled by one having a "broad background and experience in public land and natural resource management" and, further, that the President's appointment will be made with the advice and consent of the Senate. In our judgment, that is a progressive step, one long needed.

In Title I, "General Management Authority", the Secretary is given basic direction to prepare permits, licenses, leases, or other instruments regulating the use, occupancy, or development of national resource lands. In subsection (1) there is a proviso saying that nothing in this Act "shall be construed as authorizing the Secretary to require any Federal permit to hunt or fish on the national resource lands." We certainly have no intent that the Federal Government should impose a requirement for new permits to hunt or fish. Yet, we assume this would not affect the Migratory Bird Hunting Stamp, popularly known as the "Duck Stamp", which already is required for hunting on these properties. In 1973, when

Thomas L. Kimball and Boyd Rasmussen testified before this Committee, they recommended a section in the predecessor bill saying that "nothing in this Act shall be construed to limit or restrict the power and authority of the State to regulate the public taking of fish and wildlife and to enforce the state fish and game laws on the National Resource lands." We still think this should be the basic premise for wildlife management on these properties.

We agree with the provision in Section 101(2) which requires land reclamation, with a performance bond, as a condition of use of land for extractive activities.

Section 102(a) requires a continuing inventory of natural resource lands and their values. We recommend a revision to include "study for possible inclusion in the following national systems: parks, wildlife refuges, wild and scenic rivers, wildernesses, trails, etc." ~~In fact~~, we ~~suggest~~ that ~~this section on wilderness review be more specific, directing~~ the President ~~to~~ would recommend within 15 years suitable areas to the Congress for inclusion in the Wilderness System under the procedures presently being followed on national park, forest, and wildlife refuge lands.

Section 103 provides for land use plans, with which we are in agreement. Section 103(d) provides for a 60-day notice to lease or permit holders when a change is proposed in land

classification or use. This also should include public notices and hearings for sizeable tracts.

We agree on the abandonment of mining claims when not recorded for more than two years or carried to patent within five years, as provided by Section 104.

We have reservations about any sales of lands under modified or non-competitive bidding procedures. However, if this procedure is followed, we would recommend the following modification in Section 205 to make the sentence beginning at line 15 on page 15 read: "However, where the Secretary determines it necessary to assure proper land management for protection of environmental values, he is authorized to sell national resource lands with modified competitive bidding or without competitive bidding."

In our opinion, one of the most important provisions in the bill is Section 307, beginning on page 28, which outlines enforcement authority. We believe it is essential that BLM employees be authorized to enforce the Secretary's rules and regulations, cooperating to the fullest extent possible with other state and local agencies, as provided by Section 308.

Our organization feels it is necessary that the California Desert Area be protected and we agree with the principles set out in Section 309. In 1971, we adopted a resolution on this critical and fragile area, recommending that it be given special protection. (Copy attached.)

Title IV, dealing with rights-of-way, is essentially the same as previously approved by the Senate and we have no additional comments on it at this time.

Title V relates to construction of law, preservation of valid existing rights, and repeal of laws. We have no comments on this section at this time.

To conclude, Mr. Chairman, we long have felt that the enactment of an organic act for the Bureau of Land Management shoud have top priority and are exceedingly pleased and gratified that this Committee again is taking the lead in securing Congressional approval. We most certainly hope that the House soon will follow suit.

Thank you again for the opportunity of appearing here today.

National Wildlife Federation
35th Annual Meeting, Portland, Oregon, Mar 4-7, 1971

Resolution No. 19

CALIFORNIA DESERT RESOLUTION

WHEREAS, the California Desert contains a variety of national assets such as rare and endangered wildlife, unique vegetation, minerals, historical and archeological treasures, clear air, and matchless scenery, uniquely located next to a significant population; and

WHEREAS, the California Desert is now threatened by air pollution, solid waste disposal, scars on the land surface through uncontrolled recreational and commercial use, accidental destruction, wanton vandalism and other threats to the environment; and

WHEREAS, these desert resources are in urgent need of immediate action for protection, management and orderly development, together with the development of a long-range plan and program providing for wise use of these resources; and

WHEREAS, the U.S. Bureau of Land Management has prepared a thorough report urging certain immediate critical management measures, a complete inventory and study of the California desert and its resources, and a comprehensive plan and program for the development, use and protection of the California Desert; and

WHEREAS, that need is also recognized by the United States Forest Service, the National Park Service, the State of California Resources Agency, the Southern California Association of Governments, and numerous conservation organizations, and these agencies and organizations have pledged to work together to help save the California Desert;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual convention assembled March 4, 1971, at Portland, Oregon, respectfully urges the President of the United States to seek legislation embodying the recommendations of the Bureau of Land Management for the portection of the California Desert, and appropriate the funds necessary to complete the California Desert Study and related management program to protect these resources and

BE IT FURTHER RESOLVED that the Federation transmit copies of this resolution to the President of the United States and the Secretary of the Interior

FRIENDS OF THE EARTH

620 C STREET, S.E., WASHINGTON, D. C. 20003

(202) 543-4313

DAVID BROWER, *President*

TESTIMONY OF KASS GREEN

FRIENDS OF THE EARTH

BEFORE THE SENATE ENVIRONMENT
AND LAND RESOURCES SUBCOMMITTEE

March 7, 1975

I am Kass Green representing Friends of the Earth, a national organization dedicated to the preservation and rational use of the ecosphere. Our Washington Office is located at 620 C Street, S.E.

Friends of the Earth commends the current effort by this committee to develop legislation to conserve and properly manage our 450 million acres of public domain lands. These lands have for too long been neglected and subsequently have suffered the abuses that come with inadequate management. S.507 has many provisions which could lead to more intelligent and rational use of our natural resource lands. However, there are some aspects of this bill that we feel are in need of improvement, the following are our comments on specific sections of S.507:

Section 2:

Line 22, item (c). We suggest the removal of the word "permanent". We believe that more than permanent impairment of the productivity of the land and the quality of the environment should be prevented. Substantial damage can be done to an area before it becomes permanent.

Line 6, item (d). The word "permanent" should again be removed for the above reasons.

Section 6:

We suggest the addition of language that insures local, regional, and national representation on the advisory boards and committees. Because decisions dealing with these lands affect many sectors of our society, there should be representation by a good cross-section of our society.

Section 102:

Line 11, item (a). We suggest the substitution of "(esthetic and ecological values)" in the place of "(including outdoor recreation and scenic values)". This would broaden the context of this important insert.

Section 202.

Line 18, item (3). We suggest the deletion of the words "will serve objectives which" and suggest that "is required for the orderly growth and development of existing communities and if this purpose" be substituted for them. This would more clearly define for what purposes the natural resource lands may be sold. We feel that this is important to avoid massive sales of natural resource lands for general, undefined purposes.

One of the most important provisions in the bill which needs strengthening is the one which deals with wilderness. We feel that a review is needed of all roadless areas of 5,000 contiguous acres or more for inclusion in the National Wilderness Preservation System. One-half of these areas should be reviewed within 5 years with the remaining half reviewed within 10 years. We feel that this time restraint will be much more effective than the 15 years provided by the bill. We also believe that the existing 7 BLM primitive areas should be placed into the National Wilderness Preservation System by means of this act. Furthermore, the roadless areas under review should be protected from any change in present management until they have been completely studied. We are afraid that if during the period of review, management of these lands is changed, that some of them will be lost forever as virgin lands.

We oppose eminent domain condemnation in section 213. All too often government agencies have misused eminent domain leading to vast environmental degradation. The Army Corps of Engineers, Bureau of Reclamation, Federal Power Commission, and Federal Highway Commission have given us numerous examples of disasters that could not have occurred without eminent domain condemnation. Although the eminent domain provision in this bill is restricted to access roads into national resource lands, I cannot help but visualize a network of roads forced upon private owners. We would much rather see easements granted on

existing roads as a method to gain access to natural resource lands.

I am very pleased to see the section in the bill that refers to the California Desert Area. The California Desert contains many unique and delicate resources that require special attention. However, there exist many other desert areas in the natural resource lands which have resources as unique and as delicate as the California lands. We suggest that the bill include an additional section that provides for a study of all desert areas within the national resource lands. This study should include:

(1) A description (including maps) of each desert area on the public lands.

(2) An analysis of the present condition of the total ecosystem of each such desert area.

(3) A projection of the suitable uses which each desert area could accept without damaging the total ecosystem.

(4) An estimate of the natural resources contained in desert areas.

(5) A projection of the kinds of use demands which were likely to be placed upon each desert area; and

(6) Recommendations as to needed administrative or legislative action which is necessary to insure that Federal management of the desert areas is adequate to fully protect and develop each desert area.

We would also like to emphasize that a major purpose of this bill should be to promote rural stability and well-being by helping to stablize the production of livestock. Approximately 30,000 families (24,000 actual leases) are dependent on BLM leases. These leases are important to the western economy and social structure. We would like to,therefore, see language in this bill which favors family farms in sales and leases of natural resource lands. The family farm is

the basis of the western social structure. This structure is slowly being eroded by agri-business's recent aquisitions and conglomeration of family farms. Both the Homestead Act and the Taylor Grazing Act emphasize family sized farms and we would like to see you take their precedent by adding language that favors family farms in both leases and sales.

While we recognize that enforcement authority is required, we cannot endorse with a good conscience all of the provisions of this bill that deal with enforcement. We are especially concerned with sub-section (i) of section 307 which gives the Secretary power to designate any employee to carry firearms. We feel that this is an unnecessary provision that could easily be left out without significant reduction of the authority needed to effectively manage the natural resource lands.

This brings me to a further point concerning the Bureau of Land Management. The BLM has shown us all too often their bias towards the non-renewable resources and against renewable resources. Their lack of ORV control, their nonchalance towards overgrazing and their proposal of transportation corridors through Alaska more than emphasize their inequity in management. We are, therefore, very wary of giving the BLM, as it exists now, an excess of power and authority. Perhaps some stronger language emphasizing the multiple use concept could be added to the bill. In addition we would like to see the language in Section 5 on public participation strengthened to include comments on the planning and management of the natural resource lands, participation in the formulation of plans and management programs, and hearings on any application for a permit, license, lease for, or change in, classification of public interest lands for any purpose. The public could,therefore, more carefully monitor the actions of the BLM.

A final suggestion towards changing the BLM would be to revise the

Bureau's personnel manual, making the decision making process more clearly defined. There would be, of course, an emphasis on multiple use and sustained yield.

I would like to thank the Committee for my opportunity to testify.

WILDLIFE MANAGEMENT INSTITUTE

Dedicated to Wildlife Restoration
WIRE BUILDING, WASHINGTON, D. C. 20005

Statement of Daniel A. Poole
before the
Subcommittee on Environment and Land Resources
of the
Senate Committee on Interior and Insular Affairs
on S. 507
May 15, 1975

Mr. Chairman:

I am Daniel A. Poole, president of the Wildlife Management Institute. The Institute is one of the older national conservation organizations. Its program has been devoted to restoration and improved management of renewable natural resources for more than 60 years.

The true importance of S. 507 will not be reflected in this hearing. Values of national resource lands are not as well-known to the general public as those on national parks, forests, and wildlife refuges. That lack of public awareness plus deteriorating conditions on much of the more than 450 million acres attests to the lack of guidance, support, and stature of the Bureau of Land Management. Such circumstances are ample justification for swift enactment of a strong Organic Act for BLM. We are pleased to join other conservationists in endorsing S. 507. It surely will be the most significant public lands legislation before this Congress.

The Institute long has been concerned about the tremendous waste of national resource land values. Opportunities to improve the lands' contribution to local and national welfare have been continually overlooked and lost. Now, consequently, the situation is worsening. Today, there is widespread deterioration of those resources, reminicent of the early 1900's.

In order to improve public values of national resource lands, we first must stop their degradation. And at present BLM does not have the authority, direction, funding, or manpower to do it. BLM readily admits the situation is bad and getting worse. With respect to one resource value, range, adequate documentation is

provided in a recent report prepared for the Senate Committee on Appropriations.

That report stated that 83 percent of BLM's 162.9 million acres of rangeland is in less than good condition. Valuable forage plants have been overgrazed and replaced by less palatable vegetation. Erosion is occurring. Both livestock and wildlife production have been reduced greatly. And the trend on much of that land is toward further degradation. Almost 26 million acres are in a declining condition. About 105 million more acres are in a static or indefinite category. They need improvement.

Wildlife habitat on national resource lands outside Alaska shares a similar predicament. Of 111 million acres of big game habitat, 52 million acres are in "unsatisfactory" condition. About 38 percent of 128 million acres of small game habitat also is unsatisfactory. More than 37 percent of 645,000 acres of waterfowl habitat is in a deteriorated condition. And, 32.5 percent of big game acres and 30.3 percent of small game acres are continuing to decline at present.

There are 33 wildlife species occurring on national resource lands that are classified as endangered. BLM states that "public land management at the existing level may not insure the survival of these endangered species." That conflicts directly with mandates of the Endangered Species Act of 1973. For the committee's information, we have attached to this statement a summary outline of BLM's wildlife program. A second and most useful reference document is the 1975 BLM report on the "Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values in Nevada."

Stream, lake, rangeland, and forest management as well as energy and mineral development control are all below publicly acceptable standards on BLM administered land. Such conditions are little more than a national tragedy, especially now, when the resources provided by those lands are needed so urgently.

The knowledge to correct those ills and others such as inadequate law enforcement authority and inadequate recreation-use management is available. But there must be a commitment by Congress and the Administration to provide the authorities,

direction and investment capital to do the job. Enactment of a good BLM Organic Act is a first big step.

We are pleased to note and support provisions in S. 507 for wilderness designations on BLM lands. There are a number of outstanding national resource land areas that deserve wilderness status consideration.

Fortunately, Mr. Chairman, the people are becoming aware of their stake in public lands. More each year are demanding that their interest in these properties be maintained and enhanced. This committee deserves much commendation for devising and favorably reporting an acceptable BLM Organic Act during the last Congress. We urge that swift and favorable action be given this matter again.

53-644 O - 75 - 27

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB [illegible] 1975

In Reply Refer To:
6500 (360)
28171

Dear Dr. Poole:

In response to your letter of December 27, 1974, wherein you transmitted the Forest Service's accelerated program for fish and wildlife habitat improvement, I wish to thank you for that information. We in the Department of the Interior have analyzed our wildlife habitat program for the Bureau of Land Management (BLM), and have identified a similar program. Under present inflationary and budgetary restraints, we welcome any and all support to improve our management ability.

Therefore, enclosed are the BLM's Wildlife Program Missions, Challenges, and Funding Levels that will be required before the BLM can meet wildlife habitat needs on national resource lands.

If you have any further questions relating to the BLM's wildlife habitat program, please feel free to contact Mr. John Crawford, Chief - Division of Wildlife, telephone number 343-6188.

Sincerely yours,

[illegible] Secretary of the Interior

Dr. Daniel A. Poole
President, Wildlife
Management Institute
709 Wire Building
1000 Vermont Avenue
Washington, D.C. 20005

Enclosure

THE
BLM's WILDLIFE PROGRAM
MISSIONS, CHALLENGES, AND FUNDING LEVELS

I. Existing Program

A. Goals: The Bureau of Land Management's (BLM) Wildlife Program is designed to enhance, maintain, and protect aquatic and terrestrial wildlife habitat on 451 million acres of national resource lands (NRL). The principal wildlife program objectives are to 1) maintain a diversity of wildlife species on lands administered by the BLM, 2) ensure that the welfare and habitat requirements of wildlife are considered in other land-use and management plans administered by the BLM, and 3) protect and enhance critical habitat areas for threatened or endangered species.

B. Methods: The primary means by which these objectives are achieved are 1) development and implementation of Wildlife Habitat Management Plans (WHMP's), 160 of which currently await implementation, and 2) providing technical assistance to and reviewing programs of other BLM Divisions. In addition, the BLM cooperatively administers four National Game Ranges and is responsible for many unique natural areas where wildlife unquestionably adds quality to the outdoor experiences of millions of visitors annually, and income and jobs to those who provide goods and services to outdoor enthusiasts.

C. Wildlife Resources: The NRL sustain 369 million acres of big game habitat; 386 million acres of small game habitat; 30 million acres of waterfowl habitat; 5 million acres of lakes and reservoirs, and 259 thousand miles of fishing streams. A substantial amount of the habitat is found in the lower 48 States, and here much of the habitat is not producing at potential (Table 1) or is declining to a condition that is unsuitable for wildlife originally inhabiting it (Table 2).

Table 1. Condition of Wildlife Habitat on BLM Lands (Excluding Alaska)

Habitat Type	Total	Satisfactory	Unsatisfactory	
Big Game (Acres)	111 million	59 million	52 million	(47%)
Small Game (Acres)	128 million	79 million	49 million	(38%)
Waterfowl (Acres)	645 thousand	405 thousand	240 thousand	(37%)
Lakes & Reservoirs (Acres)	565 thousand	480 thousand	85 thousand	(15%)
Streams (Miles)	16 thousand	9 thousand	7 thousand	(44%)

Table 2. Trends in Habitat Condition on BLM Lands (Excluding Alaska)

Habitat	Unsatisfactory Condition	
	1968 (Percent)	1973 (Percent)
Big Game	38	47
Small Game	21	38
Waterfowl	14	37
Streams	30	44

The BLM's contribution to the State economy in 12 Western States, by gross hunting and fishing receipts, is about $14.6 million. Some counties (Elko, Nevada, for instance), would be depressed without the sportsman's dollar. Fishing is also an important input into some local economies. In Alaska, commercial and recreational fisheries are among the top industries. The resource base for a large segment of that industry is salmon which spawn and spend the most critical portion of their life cycle on NRL streams and lakes.

Management of fish and wildlife on NRL is a joint effort between BLM and State Game and Fish Agencies. Responsibilities have been formalized with most of the Western States by Memoranda of Understanding. The BLM is responsible for the habitat, and the State agencies are responsible for the fish and wildlife.

The BLM's basic legislative authority for managing aquatic and terrestrial wildlife habitat is contained in 10 separate Acts. Some of these are the Taylor Grazing Act of 1934 (48 Stat. 1269; 43 U.S.C. 315, as amended); Classification and Multiple Use Act of 1964 (78 Stat. 986; 43 U.S.C. 1411); Endangered Species Act of 1973 (P.L. 93-205); Public Land Administration Act (74 Stat. 500; 43 U.S.C. 1361); National Environmental Policy Act of 1969 (83 Stat. 852); Fish and Wildlife Coordination Act (82 Stat. 563), and the Sikes Act of 1974.

Funds allocated for the 1974 Fiscal Year for the BLM Wildlife Program totaled $3.4 million or about 1 percent of the total BLM resource management program. Staffing included 69 field management biologists, 59 of which were wildlife and 10 fisheries. The 1975 Fiscal Year budget is $4.5 million and the average area of responsibility per professional biologist is 7 million acres.

II. Today's Mandates

Recent legislation amplifies the BLM's responsibility and role in preserving and managing an optimum diversity of wildlife habitat in concert with other uses to meet public needs for aesthetic, cultural, recreational, scientific, and economic benefits. This legislation includes the following:

A. The Sikes Act Extension for Wildlife (P.L. 93-452) directs the BLM to plan, develop, maintain, and coordinate comprehensive conservation and rehabilitation programs for fish and wildlife in consultation with State Fish and Game Agencies. Implementation of the Act will achieve three objectives: 1) expansion of direct habitat improvement work on NRL for wildlife, 2) increased coordination of efforts by the BLM, State Fish and Game Agencies, and other Federal agencies, and 3) more effective regulation of public use. Implementation of the Act may also generate more jobs and increased incomes to local communities from hunting and fishing revenues.

B. The Endangered Species Act of 1973 (P.L. 93-205) directs the BLM to ensure that threatened or endangered species and their critical habitats are not jeopardized by Bureau actions. The period 1975 Fiscal Year - 1980 Fiscal Year will be the most challenging period in the development of sound multiple-use policies regarding endangered species and their habitats.

III. Tomorrow's Accomplishments

A. Minimizing the Effects of Energy Development on Wildlife Habitat. Energy self-sufficiency in the United States will necessitate many trade offs between two important natural resources -- fossil fuels and wildlife. To the extent that this Nation's thrust toward energy self-sufficiency will modify or destroy wildlife habitat, the public will be demanding equally extensive land rehabilitation programs as one type of mitigating measure. It is imperative that energy developments -- from exploration to leasing to extraction to land rehabilitation -- be tempered with discretion when key wildlife habitats are involved, particularly critical habitats for threatened or endangered species. One of the mitigating measures may be to have positive management programs ready for implementation or already implemented outside of adverse energy development areas. Such programs are either in planning stages or can be developed as needed during the late 1970's using the Wildlife Program's major planning tool, the IMP. Particular attention must be paid to the development of Alaska's energy and mineral resources where millions of miles of streams and acres of land and lakes provide unique and economically important fish and wildlife habitats.

B. Providing for Increasing Demands on Wildlife for Recreational Use. Recreation involving wildlife has both consumptive (hunting and fishing) and nonconsumptive (hiking, photography, bird watching, etc.) aspects. The importance of the intangible values of fish and wildlife is even greater as illustrated by the fact that only 20 percent of 41½ million recreation visitor days on BLM lands in 1973 involved hunting and fishing. Such activities are certain to increase during the late 1970's with a corresponding increase in the need for wildlife considerations in recreation planning and regulation. The controlled use of off-road vehicles is a case in point. The developing controversy between sportsmen and strict preservationists may involve the BLM during the next decade, with greater demand for nonhunting areas and even temporary spring or winter closures of critical wildlife habitat to public access. Many of the people-management problems related to wildlife are solvable during the next 5 years through widespread implementation by the BLM of the Sikes Act and other present and future legislated authorities.

C. Maintenance of Wildlife Habitats While Increasing Red Meat and Timber Production. Worldwide demands for foodstuffs and timber are continually increasing. Production on NRL must increase accordingly. Cattle and sheep production cannot grow if current grazing practices continue into the 1980's. Today's deterioration of range conditions will be the limiting factor on tomorrow's red meat production. In the process, considerable wildlife habitat will be destroyed to no effective sustained-yield goal. The challenge is managing NRL -- pastures and forests -- to promote diversity in vegetative structure and self renewal to enhance wildlife habitat and to allow efficient red meat and timber production during the 1980's and beyond. One key aspect of this is maintenance of water tables and related riparian habitats which will by necessity become a high priority program.

D. Institute a Vigorous Public Awareness Program to 1) inform all Americans of the values and importance of the NRL to the Nation's wildlife resource; 2) to objectively report on our wildlife assets as well as our problems; 3) to equate wildlife values produced to their role in our national economy, as well as their cultural, recreational, and esthetic benefits; 4) to accurately report our accomplishments in habitat improvement and management, and 5) to bolster the BLM's image through frequent systematic publication in the media.

E. Implement the 1973 Endangered Species Act by 1) restructuring Bureau policy, guidance, Manuals, regulations, and permits to incorporate the mandate of the Act (" ... all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."); 2) inventorying the NRL to determine the occurrence of endangered or threatened species and to delineate their critical habitats; 3) determining limiting factors to populations of endangered or threatened species occurring on the NRL, and 4) developing HMP's which will effectively preserve, protect, and manage wildlife habitat. The HMP's will be consistent with and complementary to broad national recovery plans for threatened or endangered species, thereby we will not only protect endangered species but improve their habitat and status to the degree that many species will be delisted.

F. Implement the Sikes Act by the following actions: 1) develop procedures and regulations for implementation (FY 75); 2) delegate necessary authority to the field (FY 75); 3) develop statewide comprehensive plans; 4) implement pilot programs by a) amend existing or complete new Memorandums of Understanding; b) select specific sites for implementation which will meet quality standards such as Colorado's Piceance Basin, New Mexico's Big Hatchet Mountains, and Idaho's Birds of Prey Natural Area; c) develop or update HMP's for each site in consultation with the States; d) develop a model for regulation of public use, and e) aggressively pursuing funding and manpower increases needed at all appropriate levels to implement the Act, and 5) continue the implementation schedule for the Act in all States (FY 77 on).

G. Strive for Balance Between BLM's Wildlife Program and Other Resource Programs. The Bureau's Wildlife Program can provide the use-oriented Divisions adequate technical assistance in meeting increased recreation, energy, and red meat production needs only if wildlife is considered on an equitable basis with these other valuable resources. The dominance of one program over all others in terms of both internal budget support and production goals, as may occur in the energy consciousness of the coming decade, will not lead toward multiple-use sustained-yield goals. Balance is a paramount need.

IV. Program Implementation

A. Complete inventories and analysis on 225 million acres of wildlife habitat within the 11 Western States and Alaska. This will determine the range and habitat requirements of the most important wildlife species in a standard measure to assure that the common habitat requirements of the majority of wildlife are recognized and given priority consideration in land-use decisionmaking.

B. Provide wildlife expertise to other BLM activities to insure that wildlife values are considered and provided for in program development and implementation. Other programs include Range Management, Timber, Energy and Minerals, Watershed, Lands, and Recreation.

C. Comply with the mandates of the Sikes and Endangered Species Acts by developing and implementing 500 Wildlife Habitat Management Plans on 50 million acres to:

1. Improve 44 million acres of big game habitat currently in unsatisfactory condition.

2. Improve 38 million acres of small game habitat currently in unsatisfactory condition.

3. Improve 200,000 acres of waterfowl habitat currently in unsatisfactory condition.

4. Enhance the aquatic carrying capacity and quality of 5,500 miles of streams and 72,000 surface acres of lakes and reservoirs currently in unsatisfactory condition.

5. Protect 33 species of endangered wildlife currently found on the NRL.

6. Intensely manage wildlife habitat on 50 million acres to provide an ecological diversity of game and nongame wildlife to thrive within a quality environment.

V. Funding Levels

A. Existing. Current manpower (69 field biologists) and program investment for wildlife habitat management on the NRL are at a custodial level. Effort is directed at only the most urgent needs. At this level of management it is extremely difficult to sustain a wildlife habitat management program responsive to wildlife needs and public demands.

B. Intermediate. An increase to $22.5 million invested annually in the Bureau's habitat management program will: provide stabilization for unsatisfactory or declining habitats; insure proper protection, enhancement and intensive management for habitats of threatened or endangered species; increase wildlife input into other resource programs which could adversely impact wildlife habitats; and begin to properly manage some of the more important wildlife habitats existing on the NRL.

C. Optimum. Within the present state of the science for wildlife habitat management an optimum program would cost $45 million annually. At this level all of the objectives of the program will be met and the Bureau's wildlife habitat management program will be an equal partner in multiple-use management on the NRL.

Southern California Edison Company

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ALAN M. NEDRY
SPECIAL COUNSEL

TELEPHONE
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FEB 7

February 5, 1975

The Honorable Henry M. Jackson, Chairman
Senate Committee on Interior & Insular Affairs
3106 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

In the last Session of Congress, the Senate Interior Committee considered and the Senate ultimately passed S.424, the National Resource Lands Management Act. S.507, which you have co-sponsored, is very similar. It has been indicated that the Senate Interior Committee will act quickly to consider this much-needed legislation which would establish a public land policy for the development and enhancement of the public lands administered by the Bureau of Land Management (BLM).

An issue which was not dealt with in S.424, nor in the new bill S.507, has to do with the question as to whether public officials who manage BLM lands or any other Federal lands, such as the National forests or parks, should be permitted to grant electrical transmission rights-of-way which provide different limits of liability for public power companies and municipal power companies than that liability imposed upon a privately-owned electric company. For example, under the present statutes (16 USC Section 522 and 16 USC Section 523), the Secretary of Agriculture and the head of the Forest Service are authorized to grant rights-of-way under general regulations to any citizen, association, or corporation of the United States. It is important to note that these authorizing statutes do not make a distinction between publicly owned and privately owned corporations. However, because of the lack of legislative criteria, it has become the policy of the Department of Agriculture and the Forest Service to include in contracts for rights-of-way across public lands a standard of absolute liability for private power companies, as contrasted with a showing of negligence for municipal or publicly owned companies. The justification for this different treatment, i.e., that such agencies cannot lawfully provide such indemnity, is simply inaccurate. We believe that this administrative practice unjustifiably discriminates against the privately owned power companies and their customers.

Moreover, the privately owned utility does not have a choice of accepting or rejecting a contract with a provision for unlimited liability. It must either accept such a right-of-way condition or not traverse the public lands. Consequently, the inability to not cross the public lands may limit its ability to furnish the electricity which its State franchise requires that it supply to consumers on demand. As a private power company must pay for Government costs in

cases such as fighting forest fires caused by Acts of God, notwithstanding such Act of God and being without fault, an anomaly results in that customers of privately produced electricity would be required to pay more than customers of municipal companies because of the difference in liability exposure and the need to pay costs as an insurer rather than being based on negligence.

In the recently introduced S.507, this subject is partially dealt with and is limited to those lands under the BLM. Section 403 (g) of S.507 legislation provides that the Secretary shall promulgate regulations specifying the extent to which holders of rights-of-way shall be liable to the United States for damage or injury incurred by the United States in connection with such rights-of-way. This provision also states that such regulations shall specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages or claims arising in connection with the rights-of-way. Subsections 403 (h) and (i) deal with the furnishing of a bond or other security and satisfaction as to the financial capability of the holder or a right-of-way to meet such obligations. However, this legislative proposal would appear to permit a continuance of the present administrative practice of discriminating as to the nature and extent of liability as between publicly owned power companies and the privately owned power companies. We would respectfully suggest that this section needs immediate attention and clarification.

One suggested form of clarification would be to provide in S.507, in Section 403 (g) or elsewhere, that the regulations should be nondiscriminatory as between publicly owned and privately owned power companies. A second alternative would be to include a provision of the type found in P.L. 93-153 (the Trans-Alaska Pipeline Authorization Act.) You will recall that under this Public Law, Section 28 of the Mineral Leasing Act of 1920, as amended, (30 USC 185) was amended to provide a variety of criteria and conditions for the issuance of rights-of-way. Your attention is specifically directed to that portion of P.L. 93-153 which added a Section 28 (x) (4) which reads as follows:

> "Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence."

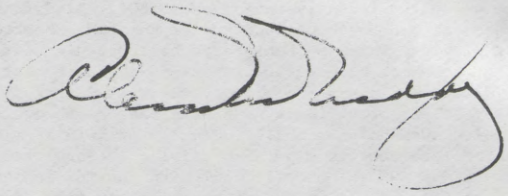
Therefore, the approach in P.L. 93-153 would appear to be a viable compromise. A limitation of "x" dollars could be imposed upon all permittees for liability without fault and any liability in excess of such amount could be determined by ordinary rules of negligence.

We respectfully suggest that this alternative approach be considered during your deliberations in the 94th Congress on the legislative proposal which will come before the Senate Committee on Interior and Insular Affairs dealing with BLM public lands policy provisions.

SCE

We would be pleased to provide further background information or any other data which may be of assistance in considering this suggestion.

Very truly yours,



AMN/gp

Southern Pacific Company

1620 Eye Street • Suite 615 • Washington, D.C. 20006 • (202) 293-1523

WILLIAM R. DENTON
VICE PRESIDENT

March 19, 1975

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

Dear Senator Jackson:

Because Southern Pacific Land Company has substantial areas of privately owned land adjacent to national resource land, we have studied S. 507 (National Resource Lands Management Act) carefully. Southern Pacific Transportation Company has also studied it from the standpoint of its interest in transportation rights-of-way, and we have suggestions for short amendments which we think are constructive in each area.

First, Section 213 (Acquisition of Land) provides for exchange authority in the Secretary. This is a very useful and desirable provision. I am sure that often management of national resource land is rendered difficult because of impractical boundaries with private land, and I know our management of private land is often complicated by contiguous national resource land. The exchange concept is the best method we know of to rationalize the areas under management, and we highly favor the concept.

In our view, Section 213(c) would be improved if the exchange procedure were more strongly emphasized and, therefore, we suggest that the following language be added to Section 213(c):

> The Secretary shall recognize that in certain national resource lands, an alternate land ownership pattern exists where non-federal lands are intermingled with national resource lands. In order to facilitate the management of the national resource lands, the Secretary, through the Bureau of Land Management, shall pursue a land adjustment program expeditiously.

We also suggest the foregoing amendment with respect to S. 71 which deals with the California Desert. The objective of this bill is found substantially in Section 309 of S. 507.

Second, S. 507 also provides for Advisory Committees in Section 309(f) and in Section 6. It is important that the cross-section of groups included in the membership of Advisory Boards and Committees include representatives of owners of private lands adjacent to national resource lands. I have no language to suggest for amending Section 6 because the Section may already be broad enough to encompass representation of private land owners. Do you

consider that it is that broad as presently worded? If you do, then we would suggest a statement to that effect be made in the report.

Third, Title IV (Authority to Grant Rights-of-Way) is of some concern to Southern Pacific Transportation Company in that it calls for rights-of-way to be granted across national resource lands by the Secretary for fair market value (Section 403(f)). While we can understand the logic of that position, it is important that the Secretary have sufficient flexibility to grant railroads equivalent rights to those they have today in connection with changes in alignment of existing railroads. Line changes most frequently occur either to improve the efficiency of railroad operations or to accommodate a third party such as in construction of highways. Line changes of this nature, in effect, amount to an exchange of property whereby some existing right-of-way is relinquished and the railroad facilities are relocated upon the new right-of-way. This is a recurring situation which should be encouraged rather than obstructed by the provisions of any new legislation. To permit this type of exchange, we suggest that the following language be added to Section 408 on page 44 of S. 507.

> Notwithstanding anything to the contrary in this title, the Secretary is authorized to grant a right-of-way, without charge, for a railroad and appurtenant communication facilities through and upon national resource lands for the purpose of a change of alignment of an existing railroad. The interest in, the width of, and the conditions affecting the right-of-way shall be the same as in the case of the original grant by Congress of the right-of-way for the portion of the railroad to be realigned; provided, the portion of the right-of-way occupying national resource lands no longer required for maintenance and operation of the railroad shall be relinquished to the United States; provided further, a map shall be filed with and for approval by the Secretary by the railroad proposing to make the change of alignment, showing thereon the location and width of the right-of-way through national resource lands required for the change of alignment and the portion of the existing right-of-way occupying national resource land to be relinquished in connection with the change of alignment.

We would be pleased to discuss the suggested amendment with you or your staff at any time.

Sincerely,

William R. Denton

copies to:
Hon. Paul J. Fannin
Hon. James A. McClure
Hon. Alan Cranston
Hon. John V. Tunney
Mr. Steven P. Quarles

Southern California Edison Company

1801 K STREET, N.W., SUITE 1041

WASHINGTON, D.C. 20006

ALAN M. NEDRY
SPECIAL COUNSEL

TELEPHONE
202-298-7050

March 4, 1975

The Honorable Floyd K. Haskell, Chairman
Subcommittee on Environment & Land Resources
Senate Interior & Insular Affairs Committee
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Haskell:

The Senate Interior & Insular Affairs Subcommittee on Environment has scheduled hearings for Friday, March 7th on S. 507 the "National Resource Lands Management Act". We understand the Committee will complete action on the bill in the near future and we favor such expeditious action on this much-needed legislation.

Southern California Edison Company is an electric utility company providing service to eight million people in Central and Southern California, including service to hospitals, farms, defense installations, industry, food processing, transportation, fire, water, sewage and other essential services, covering an area of 50,000 square miles. As a major supplier of electrical energy to a great portion of the Southern part of the State of California, we have some concern over Section 309 of S. 507 providing for the establishment of the California Desert Conservation Area.

As recently as 1969, Edison used up to 80% gas as fuel for its generating plants and consumed less than 10 million barrels of fuel oil per year. Since that time, however, Edison's oil consumption has risen dramatically due to the curtailment of gas and we expect to import over 53 million barrels of low-sulfur oil in 1975, with further increases expected in coming years. In order to reduce the reliance of this country and the Edison Company on imported oil, the Administration's energy program calls for increased development of the Nation's coal resources and nuclear power. Edison supports the development of these resources and is presently planning to build coal and nuclear generating stations, both within and outside the boundaries of California. The Desert Area, as proposed, will encompass a large part of Southeastern California covering approximately 12 million acres and it will be necessary for the Edison Company to traverse this area in order to transmit power from generating plants to our customers.

We recognize the intent of Section 309 to protect this area from environmental abuses, especially from recreational vehicles and other recreational use. Also, to allow the management of the desert area under a program which shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including rights-of-way and mineral development and the maintenance of environmental quality. We believe it is the

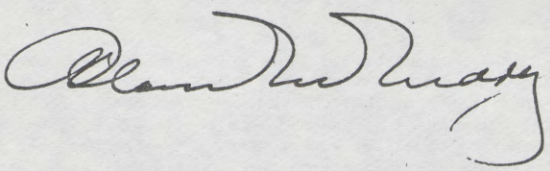
SCE

intent of this Section to have the California Desert Area considered as a part of the national resource lands to be managed by the Secretary of Interior according to the other provisions in the Act, particularly those provisions relating to the issuance of rights-of-way so as to insure that power can be economically transmitted to our load centers from remote generating stations either in operation or proposed. The present language of the legislation is somewhat ambiguous in this regard; accordingly, we would submit the following amendment to replace Section 309 (b):

> "(b) It is the purpose of this Section to provide for the immediate and future protection, development and management of the California Desert Area as national resource lands within the framework of a balanced program of multiple use, sustained yield and the maintenance of environmental quality as provided for in this Act."

We believe this amendment clarifies the intent of the legislation. Thank you for your consideration and if we can provide any additional information, please contact us.

Very truly yours,



AMN/gp

NATIONAL RIFLE ASSOCIATION OF AMERICA
INCORPORATED 1871
1600 RHODE ISLAND AVENUE
WASHINGTON, D.C. 20036

OFFICE OF THE
PRESIDENT

March 6, 1975

Honorable Floyd K. Haskell
Chairman, Subcommittee on Environment
Committee on Interior and Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I noticed with interest that the Subcommittee on Environment of the Senate Interior Committee has scheduled hearings for March 7 on S. 507, by Senator Floyd Haskell, to provide for the management, protection and development of the natural resource lands (BLM Organic Act).

The National Rifle Association of America testified last year in support of the BLM Organic Act in the House (H. R. 5441). This year's bill, S. 507, manifests similar principles and approaches.

On behalf of the National Rifle Association of America, I should like to state our general support of the purpose and substance of S. 507. In commending the general thrust and overall nature of this proposed legislation, I should like to point out some of its more desirable features; periodic and systematic inventories of the national resource lands and their resources; public participation; lands under the Bureau of Land Management subject to review and inclusion of land use plans; recordation of mining claims; authority for right-of-way; and repeal of certain laws.

With every good wish, I am

Sincerely,

C. R. Gutermuth
President

CRG/mk

MAR 11 1975

American Farm Bureau Federation

WASHINGTON OFFICE
425 13TH STREET, N.W.
WASHINGTON, D.C. 20004
AREA CODE 202 - 638 - 6315

CABLE ADDRESS: AMFARMBUR

March 10, 1975

Honorable Floyd K. Haskell, Chairman
Subcommittee on Environment and Land Resources
Committee on Interior and Insular Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the more than two million Farm Bureau member families in 49 states and Puerto Rico, we take this opportunity to express our views with regard to S.507, the "National Resource Lands Management Act."

The elected voting delegates of the member State Farm Bureaus adopted the following policy on Federal Lands at our most recent annual meeting held in New Orleans in January.

> "We favor the multiple use of federal lands. Management of federal lands should recognize that definable land areas have dominant use capability which should be recognized within the concept of multiple use.
>
> "We favor retention of the Desert Entry Act.
>
> "The federal government should transfer federal land needed for local and state purposes to the appropriate public agencies.
>
> "More efficient machinery for the exchange or purchase of parcels of public land for private land, and vice versa, needs to be set up so that public land and private land areas can be properly blocked up. If these parcels are offered for sale, the owners of contiguous lands should have the preferential right to buy at the appraised agricultural value before such lands are offered at public auction.
>
> "The status of the citizen advisory boards to the Bureau of Land Management and the Forest Service should be maintained and procedures revised to provide an effective input for land users.
>
> "Research and actual practice by the BLM, Forest Service, and state agencies have demonstrated that the removal of nonproductive brush, debris, and slash from range lands by controlled burning, spraying, or chaining is an economical method of range clearing when used with appropriate follow-up practices to increase the forage available to

livestock and wildlife. We urge that federal agencies be provided adequate funds to carry out these practices.

"We favor cooperative relationships between the user and appropriate federal agency on all aspects of good range management and improvement, including the use of public and private funds.

"Government agencies should manage and control wild horses and burros, following the same guidelines that have been set up for domestic livestock so as to prevent overgrazing and damage to watersheds.

"We recommend that the government agencies responsible for wild horses observe the following considerations:

(a) Domestic livestock grazing permits should not be reduced or eliminated as a result of these horses being on the public lands.
(b) Numbers should be controlled so as not to deteriorate the range.
(c) A means of regulating numbers of these animals must be worked out.

"We recommend a review and reevaluation of the present ten-year grazing fee schedule.

"Congress should establish guidelines essential to contractual agreements for the use of public lands for grazing which would provide, among other conditions:

(a) An adequate and reasonable term of years.
(b) Opportunity for personal capital investment in range improvements and operation facilities.
(c) Conditions relative to multiple use including hunting, fishing, and recreation.
(d) An appeal procedure.
(e) An equitable fee structure including the capital investment in a permit as a factor in annual operating costs.
(f) Severance damages.
(g) Trespass regulations.
(h) That the permittee shall be granted an equitable share of the increased grazing capability which accrues from improved range management.
(i) The price of marketable livestock and costs of doing business should be included in the grazing fee formula.

"We believe that permittees on federal lands should be compensated for economic losses experienced when grazing permits are reduced or terminated to serve another public interest.

"We endorse a 'rule of reason' approach in the use of environmental impact statements.

"We favor legislation requiring that each state receive 90 percent of the mineral royalties from federal lands within the state as provided in the act admitting Alaska to the Union.

"We favor legislation requiring that each state receive 90 percent of the mineral royalties from adjoining federal tidelands."

We respectfully request that this letter be made a part of the record of the hearing held by your subcommittee on March 7 with regard to S.507.

Sincerely,

John Datt

John C. Datt
Director, Congressional Relations

Wyoming FARM BUREAU FEDERATION
"Wyoming's Largest Independent Agricultural Organization"
State Office
406 So. 21st
Laramie, Wyoming 82070
P. O. Box 1348
Phone 745-4835

May 9, 1975

The Honorable Floyd Haskell, Chairman
Subcommittee on Environment and Land Resources
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Wyoming Farm Bureau Federation, we take this opportunity to express our views concerning S. 507, the "National Resource Lands Management Act."

As a member of the American Farm Bureau Federation, the WFBF wants to endorse the policy statements made by the AFBF in its March 10, 1975 letter to you. In addition, we want to reinforce that statement with the following pertinent WFBF policies on this subject:

> "Farm Bureau has historically favored multiple use of the federal lands.
>
> "Because of anticipated food and fiber shortages, we urge that forage production and utilization on federal lands and ranges be considered of prime importance as the multiple use principle of public land utilization.
>
> "We believe that a simplified procedure should be available to encourage private development of lands to the end that they become privately owned so they would broaden the tax base. We favor retention of the Desert Land Act as an instrument to facilitate the movement of federal land into private ownership.
>
> "We favor amending the law dealing with the sale of isolated tracts. . . to allow and provide for the following: (1) That any person who holds a public land grazing permit on which sale proceedings are started shall have first priority to purchase ALL said isolated tract; and (2) that any tract of 1,520 acres or less adjoining deeded or leased land controlled by a permittee shall qualify as an isolated tract."

The Bureau of Land Management has custody of a substantial portion of Wyoming's land area. The BLM's planning efforts affect private landowners, the state and the other federal land custodians.

Farm Bureau has for some time recognized that the present management system, by administrative decisions rather than Congressional action, is undesirable. A properly balanced and workable Organic Act is needed.

Policy decisions with regard to National Resource Lands must be closely coordinated with state and local planning and must be developed under

the "rule of reason" with a balanced economic, environmental and social viewpoint.

Now let's examine some specific sections on which the WFBF wishes to make some observations, comments, recommendations or questions:

Section 6. Advisory Boards and Committees. What will be the criteria used to determine composition of the advisory boards and committees? Does "cross section of groups interested in management of the national resource lands" mean just one each of the following: "education, state government, local government, range livestock, oil and gas, recreation, wildlife and environmental protection?"

It must be recognized that agriculture has been an integral part of Natural Resource Land management in the past and must continue to be in the future. Some of the nation's most capable land managers and conservationists are in the private sector, and particularly in agriculture. We think it's important to emphasize that the users having the greatest stake in Natural Resource Lands administered by the BLM are the livestock operators.

From BLM and Forest Service experience, we believe the principle of advisory boards has been proved to be a sound approach for public participation as well as a valuable aid to federal land administrators. We, therefore, strongly recommend that there be authorization for range management advisory boards at the national, state, regional and local levels. Authority for these boards must be written into the law.

Since there is an obvious conflict between having strictly multiple use boards and range management boards--perhaps consideration should be given to establishing two separate ones. One could be for domestic livestock and wildlife with a second for the total multiple use. Livestock and wildlife representatives from the range management board could serve in positions on the multiple use board, too. We recognize that coordination would be essential for the dual board concept to work.

Section 101 (3). We wonder if due process under the law might be jeopardized by giving the Secretary such dictatorial powers.

Section 103 (a). We question giving the Secretary such discretionary powers in dealing with land use planning coordination with the state and local governments. What would be "feasible and proper"? This leaves that decision to one person's opinion. We think this is too much power. This should be modified to require the Secretary to coordinate any Natural Resource Land planning policies with state and local governments as well as other affected federal agencies.

Section 203. Sales at Fair Market Value. What criteria will be used to determine what is "Fair Market Value"? Will it be the prices received at forced sales in adjacent or nearby lands? Speculative prices in the area? We think this bill should spell out a sound economic formula for determining what is fair market value.

Section 204. Size of Tracts. What is "no larger than necessary to support a family-sized farm"? How is this determined? At what level

is such a decision made? At one time, 160 acres, then 640 acres, were considered adequate for a family-size farm. But today, with increased production costs and new technology--we wonder what criteria will be used to determine that size.

Section 208. Conveyance of Reserved Mineral Interests (b). How do you know what interest is being conveyed? How is that determined until the minerals below the surface are quantified? Doesn't the extent of value have to be determined first? This needs clarification.

Section 208 (d). How does this affect deep drilling. Is a person tied to a contract or does he lose the interest fee paid?

Section 211. Authority to Issue and Correct Documents of Conveyance. Does this give the Secretary retroactive power to make corrections and assess these lands at a different value? If so, we believe this would be a breach of contract. Such a practice would be dangerous. The Secretary should not be given such discretionary powers, which might be used to the detriment of others involved in such transactions.

Section 213. Acquisition of Land. (a). We vigorously object to giving the Secretary powers of eminent domain to acquire land for enlarging Natural Resource Lands. This should be eliminated from this legislation.

Section 307. Enforcement Authority (c). Giving police powers to Department of Interior personnel may cause conflicts with local, county and state laws. In addition,we don't think it's sound policy to give such powers to the Department.

Section 503. Repeal of Laws Relating to Disposal of National Resource Lands. Since this section apparently would repeal the Desert Entry Act, we must express our strong opposition to such a repeal. We favor retention of the act and a simplification of its procedures. We are not opposed to repealing obsolete and unworkable land disposal laws. However, we are vigorously opposed to repeal of disposal laws such as the Desert Land Entry Act and "Isolated Tract" Act, until legislation is provided to assure constructive opportunity for the movement of some federal lands into non-federal ownership. We don't even like the concept of a 10-year phase out of the Desert Entry Act.

In conclusion, this bill, S. 507, is broad in its scope. It gives too much power to the Secretary of Interior especially in the making of rules and regulations. Such discretionary powers may result in indiscriminate rules and regulations being promulgated. This could easily cause agriculture many problems in its use of the Natural Resource Lands. Adverse impact on agriculture could subsequently result in detrimental effects to our state's future economic base. Unless this legislative proposal is drastically amended to eliminate the numerous problems cited previously in this statement, the Wyoming Farm Bureau Federation must oppose its passage. Poorly developed legislation will only tend to further confuse and complicate the issues of Natural Resource Land management under jurisdiction of the BLM.

Thank you for the opportunity to express our views on this important piece of legislation.

Sincerely,

James Whaley,

James Whaley, Chairman
Natural Resources Committee
Wyoming Farm Bureau Federation

JW:bk

cc: Senator McGee
Senator Hansen
Congressman Roncalio
Leonard Johnson, AFBF
John Datt, AFBF
WFBF State Board
WFBF Natural Resources Committee
Pete Illoway, Wyo. Dept. Agriculture

J. VARD CHATBURN
HOME ADDRESS
ALBION IDAHO 83311

(3)

COMMITTEES
CHAIRMAN – STATE AFFAIRS
VICE CHAIRMAN – RESOURCES AND CONSERVATION

House of Representatives
State of Idaho

March 10, 1975

The Honorable James A. McClure
Senator, State of Idaho
Room 2106, Dirksen Building
Washington, D. C. 20510

Dear Senator McClure:

Enclosed herewith is a petition signed by the members of the Idaho Legislature supporting your position in the retention of the Desert Land Law insofar as pending Organic Bureau of Land Management legislation is concerned. We also urge that no change be made in the State of Idaho entitlement and privileges under the Federal Carey Act.

There is no need for me to go into any detail because you are, I am sure, more familiar with this than I; but, thinking that these signatures may be of assistance, we are sending them to you.

Very truly yours,

J. Vard Chatburn

J. VARD CHATBURN

JVC/am

Enclosure

March 6, 1975

WE, THE UNDERSIGNED IDAHO LEGISLATORS, strongly urge SENATOR CHURCH, SENATOR MC CLURE, REPRESENTATIVE SYMMS, and REPRESENTATIVE HANSEN to aggressively defend the retention of the Desert Land Law insofar as pending Organic Bureau of Land Management legislation is concerned. We also urge that no change be made in the State of Idaho entitlement and privileges under the Federal Carey Act.

J. Vard Chatburn
C. W. Neider
William Abbott
James Abbott
Ernest A. Hale
Walter Little
John F. Geardon
George Danielson
John O. Sessions
Herbert S. Fitz
Dale R. Branson
Thomas Snyder
Peggy Bunting
E. V. McHan
Jim L. Kraus
Steve Antone
Dan D. Emery
M. J. Clements
Wayne E. T. Stitts
Laurence Jackson
A. Wirthlin
Israel Meyer
Carroll W. Dean
Gary E. Inlanger
Clifford Scoresby
Hyden R. Holmes
B. E. Lewis
J. D. "Butch" Otter

March 6, 1975

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Ralph Olmstead
Patricia L. McDermott
Joe N. Wagner
Karl E. Koch
Jim Ingels
Marvin Davidson
Morgan Munger
P. A. Wenche
John H. Brooks
Don Maynard
C. Wendell Miller
Lester Alemm
Rudy Andersen
Norma Dobler
Kurt L. Hanson
Dorothy L. Reynolds
Beth Fitzwater
T. M. Stivers
Perry Swisher
Kathleen W. Gurnsey
Elaine Kearnes
Alan F. Larsen
Edward Bin
Emery E. Hedlund
Roy E. Brackett
Beverly B. Bistlin
Lyman G. Winchester
Dorothy H. McCann

March 6, 1975

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Ralph J. Gines

Ronald V. Harlow

F. Melvin Hammond

Harold W. Reid

Carl P. Braun

Jack Kennemick

Gary J. Ingram

L. Albert Johnson

Doyle C. Miner

Angus Condie

Ralph M. Wheeler

April 30, 1974

AIRMAIL

Department of Interior
Bureau of Land Management (Desert Land Entries)
Washington, D.C. 20013

Dear Sir:

I am representing a group of farmers in Southeastern Idaho who are interested in determining what needs to be done to have an adjustment considered on the multiple use land mostly lying in Jefferson County, Idaho. Reading from Title 43, Section 1414 (United States Code Annotated) (b), it provides that "multiples use means the management of the 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".

I am not able to determine from the Code what needs to be done to have the Secretary consider making adjustments to conform to changing needs and conditions. We feel that we can present evidence that indicates that some of the changing needs and conditions are such that some of this ground should be opened up for Desert Land Entries.

Would you please send me any information that you have that indicates the way that this can be presented so that the Secretary will consider proposed adjustment of this multiple use designation.

I have talked to the regional Bureau of Land Management manager at Idaho Falls, and he does indicate that there is a study in the offing, but we would like to have this matter considered in the near future.

Your consideration as requested would certainly be appreciated.

Sincerely yours,

YOUNG & GEORGE

H. Reynold George

HRG/drr

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB NO 4--R0968

Serial Number

DESERT LAND ENTRY APPLICATION

1. Name *(first, middle initial, and last)*: Ila B. Williams

Address *(street and number, city and State)*: Hamer, Idaho

hereby applies to enter, under the Desert Land Act for the purpose of reclaiming the lands by permanent irrigation and cultivation within 4 years of allowance of this application, the public lands described as follows:

TOWNSHIP	RANGE	MERIDIAN	SECTION	SUBDIVISION
7	34	E.B.M.	12	E 1/2

State of Idaho — containing a total of 320 acres

2. Enclose filing fee of $15 plus advance payment $ 80.00 , Total $ 95.00

3a. Are you 21 years of age or older? X Yes No

b. Of what State are you a bona fide resident? Idaho

c. What is your business or occupation? -----

d. Citizenship: Are you XX native born naturalized?

Naturalization: Date -------- in the Court of ------ in *(city and State)*

Have you filed a Declaration of Intention to become a citizen of the United States? Yes No *(If "yes," attach full details)* -------

e. Are you X married single male female *(if female, see instruction no. 3e)*

f. Are you an employee, the spouse, or an agent of an employee of the Department of the Interior? Yes X No

4. Have you read the instructions attached to this form? X Yes No

5a. Have you made any other application under the Desert Land Act? Yes X No *(If "yes," give Land Office and serial number)*

b. Have you ever received by assignment any lands under the Desert Land Act? Yes X No *(If "yes," give Land Office and serial number)*

c. Have you entered, acquired title, or are you now claiming under entries under any of the nonmineral public land laws since August 30, 1890? *(If so, state total number of acres)* No

6a. Have you made a personal on-the-ground examination of every legal subdivision of the above described land? X Yes No

b. Are the lands essentially nonmineral? X Yes No

IN REPLY REFER TO

2410
[952]

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Idaho State Office
Room 398, Federal Building
550 W. Fort Street
P. O. Box 042
Boise, ID 83724

MAR 21 1974

Ila B. Williams
Hamer, ID 83425

Dear Mrs. Williams:

The petition-application you filed on March 18, 1974 under the Desert Land Laws [43 U.S.C., Chapter 9] for 320 acres in Sections 12, Township 7 North, Range 34 East, B.M. Idaho, cannot be accepted or considered because the involved lands are classified for multiple use management as part of the Jefferson and Madison County Multiple Use Area, I-3663. This classification segregated or closed the lands from application or entry under the Desert Land Laws.

This classification will be reviewed by our Idaho Falls District Manager to determine if it is still proper. If the lands are re-classified, they will be made available to the public on an equal opportunity basis. We will inform you of the results of this review.

In accordance with classification and the Department's regulations, your petition-application and payments are hereby returned.

Sincerely yours,

Rose Gastell

Rose Gastell
Chief, Branch of Records