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ADMINISTRATION OF THE FEDERAL RECLAMATION PROGRAM

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DOCUMENTS

HEARING

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BEFORE THE

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COMMITTEE ON

ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S.J. RES. 93

JOINT RESOLUTION RELATING TO THE EXCESS LAND PROVI-
SIONS AND RESIDENCY REQUIREMENTS OF THE FEDERAL
RECLAMATION LAWS, AS AMENDED AND SUPPLEMENTED.

S.J. RES. 96

JOINT RESOLUTION TO POSTPONE UNTIL DECEMBER 31, 1978,
THE EFFECTIVE DATE OF THE FINAL REGULATIONS DEVEL-
OPED PURSUANT TO THE PROPOSED REGULATIONS PUB-
LISHED IN THE FEDERAL REGISTER DATED AUGUST 25, 1977
(43 C.F.R. 426), RELATING TO FEDERAL RECLAMATION LAW,
AND FOR OTHER PURPOSES

NOVEMBER 10, 1977

Publication No. 95-84



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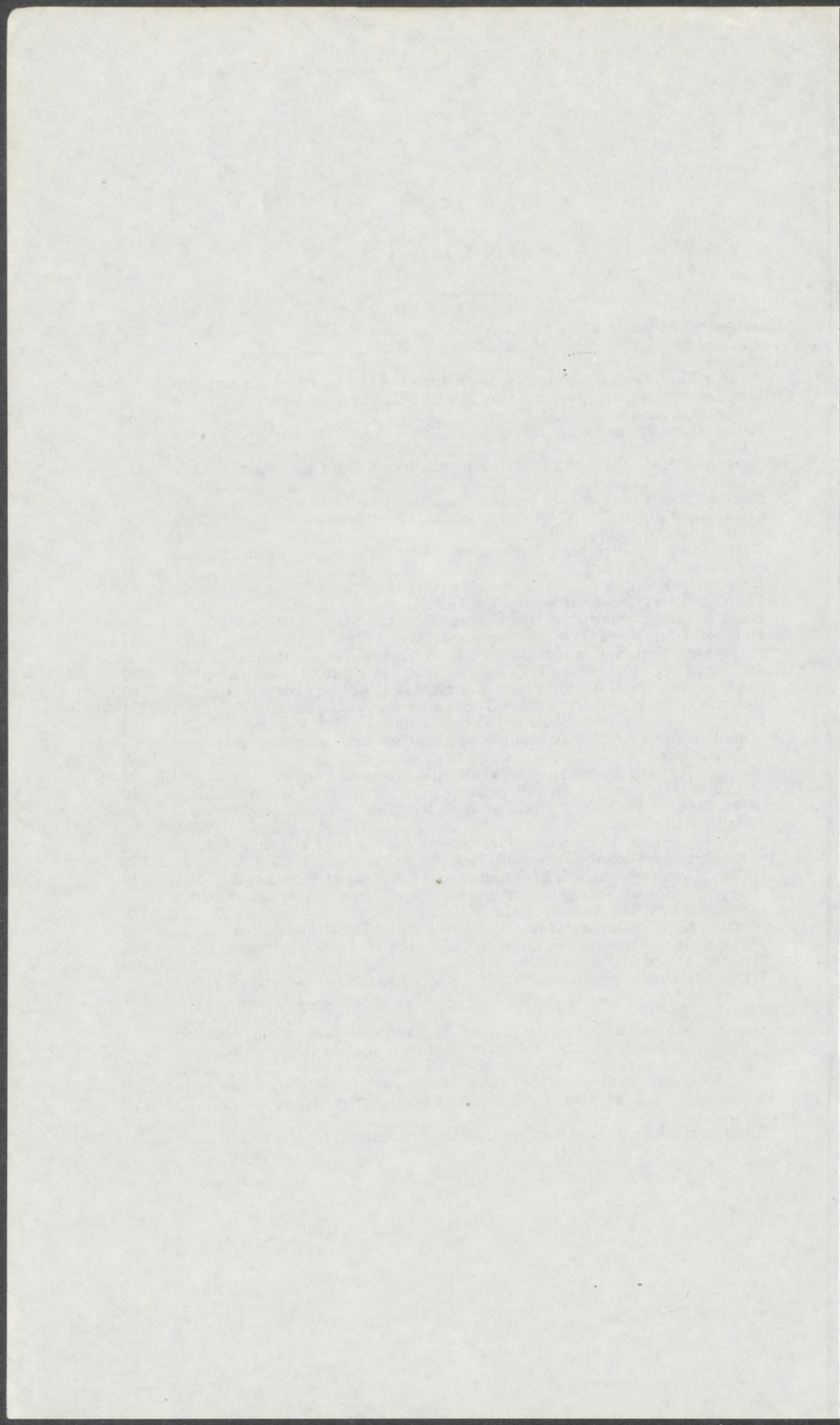
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ADMINISTRATION OF THE FEDERAL RECLAMATION PROGRAM

THURSDAY, NOVEMBER 10, 1977

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. Frank Church, presiding.

Present: Senators Church, Metcalf, Hansen, Hatfield, McClure, and Domenici.

Also present: Russell R. Brown, professional staff member.

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

Senator CHURCH. The hearing will please come to order.

We are here today to discuss Senate Joint Resolutions 93 and 96, introduced by Senators Domenici and Cranston, respectively. Both of these resolutions relate to the Department of the Interior's proposed regulations on acreage limitation provisions of the Federal reclamation law.

We are familiar with the long controversy which led to the introduction of these two resolutions, and I won't attempt a recapitulation.

I would, however, like to offer a few general comments before we begin.

First of all, I think we must proceed with the realization that the reason we are here today is not because of action by the courts or by the Department of the Interior. Congress passed the Reclamation Act of 1902, and despite repeated calls to bring that act up to date, Congress has failed to do so. It was only a matter of time before this issue had to come to a head. The President has stated politely that the law needs to be changed, and I think most of us would agree.

I doubt, though, whether such a consensus could be achieved over how the law should be changed, at least not instantly.

This is a matter of great complexity and will require extensive hearings and considerable deliberation. The complexity and controversial character of the question is the fundamental reason that Congress has deferred action these many years. The Congress is ready to assume its responsibility, I now believe, to resolve this controversy, but it will require some time.

While we endeavor to reach an equitable result, the purpose of these resolutions is to maintain a status quo while the delibera-

tions go forward. Hopefully, these hearings will be of some assistance in determining the best means to do just that.

Before Congress can even address the issues inherent in a review of the 1902 act, a thorough analysis of the status of reclamation's 10 million acres is a prerequisite, although not the only one. An effort to quantify the acreage required to maintain a viable farm operation and a review of reclamation's goals in light of today's needs should also be undertaken. Secretaries Andrus and Bergland have indicated that they are in the process of acquiring such data and I trust that their work can be completed in short order.

Such efforts are imperative if the Congress is to deal with these issues in a responsible fashion. I believe this to be matter of considerable importance and I hope that we can proceed expeditiously. Without prompt action by the Congress, the uncertainties of the current situation which are now causing considerable problems for western agricultural producers will continue. We'll hear today that many banks have refused to extend credit to farmers in the West as a result of these uncertainties. The credit crunch facing our farmers is severe enough without compounding the problem through protracted congressional deliberations.

In short, I strongly urge the administration to present the Congress with an inventory of reclamation lands and their recommendations on how to deal with the relevant issues as rapidly as feasible.

But for now, we are presented with the task of determining the best way to give Congress the breathing room necessary to deal with this matter which, in itself, offers some controversy.

I will insert a statement by Senator Jackson and copies of the two resolutions before us for hearings this morning. I would like to announce that following the testimony this morning the record will remain open for 10 days allowing any other interested party to submit testimony in writing for inclusion in the record of these hearings.

[The prepared statement of Senator Jackson and the texts of Senate Joint Resolutions 93 and 96 follow:]

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

As a cosponsor of S.J. Res. 93 and as chairman of the Senate Committee on Energy and Natural Resources, I would like to take a moment to offer a brief summarization of the problems facing this committee as I see them.

As a Senator from a reclamation State, I am concerned that we may lose sight of what really needs to be done. There is no doubt in my mind, and I am sure of the minds of the committee members and the witnesses that we will hear today, of the need for changes in the administration of our Nation's reclamation program. There is no question, based upon the testimony received by this committee during field hearings and here in Washington, that there is a need to address the basic question of what is the intent of Congress in regard to administration of the reclamation program.

We have before the committee two Senate resolutions arising in great part from the administration's proposed rules and regulations for the disposal of excess lands on Federal reclamation projects. However, I would contend that the question before the committee today is not the merits of either resolution but whether or not the

Congress intends to address the need for changes in reclamation law. Crucial to this is whether we will have the time to constructively face the problems before us or if we will allow the administration, or ourselves, to be stampeded into precipitous action; perhaps ending up with a program that is worse than what we have now.

We are dealing with a 75-year old program administered by a catch-as-catch-can collection of solicitors opinions, which seem to vary from administration to administration, a variety of court decisions, and all in the absence of clear congressional direction. It is my belief that the Congress, and the administration, must step back and take a long look at just what exactly is going on—on the 10 million acres of reclamation lands. There are questions which must be asked and answers provided, before the Congress can determine the effects of amending reclamation law.

I am gravely concerned that in the rush to correct the abuses found in the reclamation program or in our desire to reaffirm or redefine the reclamation program—we may lose sight of the needs of the farmers on the ground.

I would urge that both the administration and the Congress take the time to address the need for basic changes in reclamation law. And I would urge that whatever we do now, we do nothing that would jeopardize the position of the family farmer. We face difficult decisions, but uppermost in our minds should be the continued service of the reclamation program to the West and to the Nation.

95TH CONGRESS
1ST SESSION

S. J. RES. 93

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 1977

Mr. DOMENICI (for himself, Mr. JACKSON, Mr. McCLURE, Mr. HAYAKAWA, Mr. YOUNG, Mr. BENTSEN, Mr. BARTLETT, Mr. STEVENS, Mr. PACKWOOD, Mr. HATFIELD, Mr. WALLOP, Mr. TOWER, Mr. HATCH, Mr. GARN, Mr. LAXALT, Mr. SCHMITT, Mr. MAGNUSON, Mr. HANSEN, and Mr. DeCONCINI) introduced the following joint resolution; which was read twice and referred to the Committee on Energy and Natural Resources

JOINT RESOLUTION

Relating to the excess land provisions and residency requirements of the Federal reclamation laws, as amended and supplemented.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 That, notwithstanding any other provision of law, the Secre-
4 tary of the Interior, during the twelve-month period follow-
5 ing the date the adoption of this joint resolution shall not
6 withhold water deliveries from any beneficiary of a Federal
7 reclamation project for the purpose of enforcing the acreage
8 limitation provisions or residency requirements of the Fed-
9 eral reclamation laws, as amended and supplemented.

1 SEC. 2. During the twelve-month period following the
2 date of this joint resolution, neither the Secretary of the
3 Interior nor the Attorney General shall, by his own motion,
4 initiate any legal or administrative proceeding intended to
5 require the sale or other disposition of privately owned lands
6 within Federal reclamation projects for the purpose of achiev-
7 ing conformity with the acreage limitation provisions or resi-
8 dency requirements of such reclamation laws.

9 SEC. 3. During the twelve-month period following the
10 date of this joint resolution, the Secretary of the Interior shall
11 not approve the sale of excess lands, unless during such
12 twelve-month period, final regulations developed pursuant to
13 the publication of proposed regulations announced in the Fed-
14 eral Register, dated August 25, 1977 (43 CFR 426), relat-
15 ing to excess land provisions of such reclamation laws, be-
16 come effective. Owners of excess land whose recordable
17 contracts expire during the period specified in this section
18 shall be given an additional six months after the end of such
19 period to dispose of such lands.

20 SEC. 4. Nothing in this joint resolution shall be con-
21 strued to amend, repeal, or extend the effect of the existing
22 provisions of such reclamation laws except as provided
23 herein or to affect any pending litigation or legal decision
24 except to defer Federal action as provided herein.

95TH CONGRESS
1ST SESSION

S. J. RES. 96

IN THE SENATE OF THE UNITED STATES

OCTOBER 31 (legislative day, OCTOBER 29), 1977

Mr. CRANSTON (for himself, Mr. ABOUREZK, Mr. CANSON, Mr. CHURCH, Mr. HASKELL, Mr. HAYAKAWA, Mr. METCALF, Mr. NELSON, and Mr. WALLOP) introduced the following joint resolution; which was read twice and referred to the Committee on Energy and Natural Resources

JOINT RESOLUTION

To postpone until December 31, 1978, the effective date of the final regulations developed pursuant to the proposed regulations published in the Federal Register dated August 25, 1977 (43 C.F.R. 426), relating to Federal reclamation law, and for other purposes.

Whereas one of the original purposes of Federal reclamation law, as amended and supplemented, is to promote family farming and such purpose is still valid; and

Whereas the construction of Federal reclamation projects and the delivery of water from such projects involves a considerable expenditure of tax dollars; and

Whereas the Secretary of the Interior has proposed regulations in the Federal Register dated August 25, 1977 (43 C.F.R. 426), relating to the acreage limitation provisions of Federal reclamation law; and

Whereas the Secretary of the Interior is holding hearings and receiving comments prior to the preparation of final regulations concerning the acreage limitation provisions of Federal reclamation law; and

Whereas the publication of the proposed regulations has generated considerable public confusion and concern and has raised important, far-reaching issues; and

Whereas the Congress is responsible for oversight and review of the operation and enforcement of Federal reclamation law:
Now, therefore, be it

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 That, notwithstanding any other provision of law, no final
4 regulations developed pursuant to the proposed regulations
5 published in the Federal Register dated August 25, 1977
6 (43 C.F.R. 426), shall become effective prior to Decem-
7 ber 31, 1978.

8 SEC. 2. During the period which begins on the date of
9 enactment and ends on December 31, 1978, the Secretary
10 of the Interior may approve any sale or transfer of excess
11 lands or any subsequent sale or transfer of such lands in any
12 irrigation district subject to Federal reclamation laws, as
13 amended and supplemented, except in Westlands Water
14 District in California, only if the Secretary finds that such
15 sale or transfer is in compliance with the proposed regula-
16 tions announced in the Federal Register dated August 25,

1 1977 (43 C.F.R. 426) : *Provided, however,* That the pro-
2 vision of the proposed regulations requiring that excess lands
3 be disposed of by lottery to be conducted by the Secretary of
4 the Interior shall not apply. If final regulations developed
5 pursuant to said proposed regulations are promulgated prior
6 to December 31, 1978, all sales or transfers of land must
7 comply with such final regulations.

8 SEC. 3. The time period specified in existing recordable
9 contracts shall not be affected by this joint resolution: *Pro-*
10 *vided, however,* That the time period of any existing record-
11 able contract which expires during the period from the date
12 of enactment of this resolution to December 31, 1978, shall
13 be extended an additional six months from December 31,
14 1978.

15 SEC. 4. Nothing in this joint resolution shall be construed
16 to amend, repeal, or extend the effect of existing provisions
17 of reclamation law or to affect any pending litigation or
18 legal decision.

Senator CHURCH. Now, our ranking Republican member, Senator Hansen, is with us this morning, and I wonder Senator Hansen if you would like to make a few opening remarks before we proceed with the witnesses.

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

Senator HANSEN. Thank you, Mr. Chairman. I would indeed, but in the interest of time I will forgo that. I would ask unanimous consent that my prepared statement be included in the record. I want to say that I am pleased to note the presence of the Secretary of the Interior here. I think the fact that he proposes to talk is sound. I would hope that the hearings around the country under sponsorship of the Department will provide other interested people an opportunity to explain their positions and their concerns and with that I will forgo any further statement now in order that we may hear from our distinguished witnesses.

[The prepared statement of Senator Hansen follows:]

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

Mr. Chairman, I congratulate Senator Jackson for the speed with which he cleared the way in order that these hearings—upon a matter having serious implications throughout the Mountain West—could be held. It is imperative that the Congress act quickly on the legislation before us today in order that we might have the time and opportunity to deliberate wisely on the matter of the Reclamation Act of 1902. Much has changed since the Congress last conducted a careful review of the thrust of our Federal reclamation program—over 51 years ago.

Now, in the face of proposed rules of questionable impact and uncertain application, the Congress must act to set aside the implementation of these rules and move directly to a complete review of the 1902 Act.

I am greatly concerned with the materials published by the Bureau of Reclamation on August 25. There seems to me to be an absence of a base of information concerning the leasing and ownership pattern of reclamation lands throughout the Rocky Mountain West sufficient to permit the Bureau to conclude that the adoption of the proposed rules will achieve its stated objective. I would submit that, given the dearth of the most basic and fundamental information on this matter, the Bureau of Reclamation has no way of knowing the impact of these rules upon legitimate family farms. These rules, if adopted as proposed, could well kill family farms throughout the Mountain West and doom to poverty thousands of hardworking farmers, changing the face of American agriculture.

I, for one, do not agree with the simple statement contained within the proposed rule that these regulations "will not significantly affect the quality of the human environment." I fear there will be a significant impact, one which could well be devastating. I will not discuss in detail the proposed rule; that I shall do at one of the hearings now scheduled by the Bureau of Reclamation.

Suffice it to say, I have grave concerns and doubts with regard to these regulations and I feel it is imperative that a moratorium be adopted in order to allow Congress the time it needs to act on this entire question.

It is once again a pleasure to see Secretary Andrus before the Energy and Natural Resources Committee, particularly given his recent statements to the Western Coalition that the Administration will have legislative proposals for a revision of the 1902 Act. I am most pleased with this recent development.

While President Carter had earlier stated his belief that the Reclamation Act of 1902 was in need of revision, the signals which I had received were that no legislative recommendations would be delivered to the Congress. From subsequent statements by other members of the Administration, I understood this to be the case. Thus I am greatly pleased by what I see as the Administration's new approach. I look forward to receiving the Department's recommendations and working with them to update and strengthen our nation's reclamation law.

I wish also to thank my very good friend and esteemed colleague, Senator Domenici, who has led the way with this legislation now before us. His hard work and effective leadership has allowed us to address this question as expeditiously as we have.

Senator CHURCH. Thank you very much, Senator Hansen.
Senator McClure.

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

Senator McCLURE. Mr. Chairman, just very briefly, because there is a very long witness list, and it is very important that we get to them, but I am going to be called away from time to time this morning because I am on the water conference, and we are about to wrap that conference up, I hope, and they are meeting downstairs right now. So at critical moments, at least I will be there, and cannot stay here for all of this. Let me just say as a cosponsor of one of these resolutions and as a cosponsor of any number of attempts in the past to modify the basic law, I am dedicated to trying to achieve that consensus that you spoke of, Mr. Chairman, in whatever form the amendment to the law may take. But I think we must start this with the recognition that there is a consensus now in the Congress that the law should be amended.

The Secretary has indicated that in public statements it is up to the Congress to change it if, as a matter of fact, it needs changing, and the President has indicated his support for changes in the law.

So, our problem is not whether or not it should be changed, the question is how. Now, I recognize there are problems with the moratorium, that there are some decisions that need to be made, and there are people who desire to make decisions within the next year, but as to the extent that it is practical to do so, I would hope that we can find a way of avoiding the consequences of overzealous administration of this law and administration beyond what is required by court order while the Congress now finally comes to grips with the issue and tries to sort out what kind of solutions we want.

I think there is that middle ground that will permit us to meet the requirements of the court order, to permit us to take those actions which individuals find necessary or desirable to make during the period of time that Congress is dealing with this without paralyzing the administrative mechanisms, but still without making more change than is necessary while the Congress tries to find out what the ultimate long-term solution will be.

The 160-acre limitation is an anachronism of 75 years ago. You do not get into farming any longer with 40 acres, and a mule, and a walking plow. And it takes much, much more than that to stay in this business today, and that law was passed at a time when agriculture was quite different from the practice of agriculture today.

Without going into details of what I think might be done any further with that, Mr. Chairman, and with the apologies that I have already made about the necessity of being gone from time to time this morning, I will reserve any other statement until later.

Senator HANSEN. Mr. Chairman, if I may be further recognized, let me observe that Senator Hatfield and I, among others, are cosponsors with Senator Domenici of Senate Joint Resolution 93. I know Senator Hatfield is tied up, as Senator McClure and I, with other ongoing commitments at this time. I am a member of both conference committees dealing with some energy problems; one conference started at 10 and the other at 10:15, and I won't be able to stay here all morning.

I did want, however, to take this occasion to note that Senator Hatfield will be trying his best to come by here later on this

morning, and just in the outside eventuality that he may not make it, let me express for him his keen interest in this legislation and his eagerness to examine further in detail on the ground what the problems are in order that we can update and amend an antiquated law that I think clearly is out of focus in today's world.

Thank you, Mr. Chairman.

Senator CHURCH. Thank you very much, Senator Hansen.

Senator Domenici has followed me from a hearing of the Committee on Aging, and he must return to preside at that hearing while I preside at this. So I would like to recognize him at this time.

**STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR
FROM THE STATE OF NEW MEXICO**

Senator DOMENICI. Thank you very much, Mr. Chairman.

I have a detailed statement that I would like to make a part of the record.

I also have a report from New Mexico State University that the clerk has that I would ask be made part of the record.

I open with this because to my knowledge this is the first study, indepth, of a region in terms of whether or not a 160-acre farm is economically viable. New Mexico State University has taken one major irrigation district in my State, and analyzed every possible crop rotation pattern and studied the economics, and has concluded that in that particular district in arid New Mexico, you could, under no circumstances, make a living on 160 acres, and I think it is relevant to the discussion and would ask that it be made part of the record.

I would say, Mr. Chairman, the university has a commitment to do one on 320, and then to do one on 640, and they will have those available as they proceed through the economics. Now, having said that, I would like very much to make this point.

Certainly, having discussed this issue with the Secretary on a number of occasions, I understand the situation he finds himself in. But I think we in the Senate and the Congress find ourselves in a very peculiar situation also. I say this because the litigation and the regulations that are flowing from that litigation basically come from issues and circumstances in the State of California, very different, might I say, Mr. Chairman, from the situation in 16 other States, and certainly significantly different than those in the State of New Mexico.

For instance, we have six districts, and the total acreage in all six of these is 260,000 acres. I understand we have some farms in California that approach that size.

In terms of owners, in my State that represents, recorded owners in numbers about 4,692. If the late December 1976 examination by the Bureau is still relevant under the new regulation, we would be speaking of an excess in one district of only 4 percent. In another, 1 percent; in another, 6.2 percent. But the problems are so diverse that we have 4,692 people tremendously concerned. For instance, we have a farmer in one of these by the name of Lujan, and he has 363.66 acres and that he is farming for three families. However, we do not know what three families mean in terms of the new regulations. We do not know whether it really means that one husband

and one wife can use 320 or what about the other two brothers, and their wives, who farm 363.6 as a family unit. Must all three brothers and spouses literally reside on this 363 acres? I do not know, and they do not know, and they are worried.

We have a wonderful family farm called the Nakayama farm, 597.15, two families, two brothers and they have three children. According to our information, the children are part of the farm. Do they count in acreage assimilation or must they split this farm up? Must all members of this family have homes on this farm?

Likewise, we have another district, Mr. Chairman, that has 71,000 acres for which, if their books are correct, they paid all of the reclamation costs in 1962. There is nothing left due and owing. On the other hand, if you read the new regulations, we do not know if they are going to be automatically exempt or not. We do not know whether they should be. It is something we ought to certainly look at.

We have two districts that the record would reflect the primary reason for the project was to provide water for Mexico, but the reclamation vehicle was used to authorize the project. We have been supplying Mexico with water at their expense of 60,000 acre-feet a year as part of the overall cost. How do we treat them?

Now, I want the Senators to know that all of these still fit within the general statistics I gave you at the offset. A very, very small percentage of that, very small average size farm, and all would be within that economic study. This shows that certainly 160 acres would not work in New Mexico in 1977.

Now, there are many others, for instance, we have one with 16 family members, as equity owners in a family corporation.

Now, we do not know whether these family members are going to fit the lineage definitions that are included. If you gave them each 160 acres, they could continue to have a corporate farm; that particular farm employs more people in that county than any other industry, produces more pecans than any one single farm in the United States from what I understand. What are they going to have to do?

This and many other reasons prompted me to say we, as a Congress, ought to hold in abeyance the impact of any regulations until we have looked at this whole law. I in no way intend to vitiate that law. My proposal is a moratorium joined in by many Senators saying, "Leave everything alone for a year while we look at it." Obviously if we do not modernize the law to the satisfaction of the Congress and the President, the moratorium would be off, and we could proceed with regulations. But, it appears to me there are so many diverse facts that the Congress of the United States should have some time to look at its updating, its modernization, and to establish some kind of policy that makes good commonsense.

Now, I repeat in closing that California will present its case today, and I understand it to some extent, but each of the Western States have such different problems from California that I do not believe we ought to proceed with regulations that are prompted by court decisions which, in turn, are prompted by the California fact pattern, and it would be far better to wait a reasonable period of time, see what we want to do to do equity to a national policy, to our taxpayers who have allegedly subsidized some of these proj-

ects—and I do not see how we can do it without some kind of a moratorium.

I thank the chairman for giving me an opportunity to speak. [The prepared statement of Senator Domenici and the staff report of the New Mexico State University follow:]

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr. Chairman, I appreciate very much your efforts and those of the Committee and staff to act so quickly on resolutions relating to the excess land provisions of Federal Reclamation Law. This hearing is very timely and even though the Senate and, this Committee in particular, are so involved in conference meetings, the importance of the issues we will address today entirely justifies taking the time now to initiate the legislative process toward modernization of existing reclamation law.

One of the legislative measures to be considered today is S.J. Res. 93, a resolution I introduced on October 19 with a number of cosponsors. When I introduced S.J. Res. 93, I submitted a statement explaining why I felt such legislation was required by circumstances affecting lands irrigated by water from Federal reclamation projects. I request, Mr. Chairman, that my introductory statement for S.J. Res. 93 be made a part of the Record of these proceedings at some appropriate point.

In that statement I explained that I was extremely concerned about regulations under development through formal rulemaking procedures by the Bureau of Reclamation that could affect adversely legitimate interests of users of water from Federal reclamation projects. These proposed regulations are a direct outgrowth of a Federal court decision ordering the Bureau to initiate rule-making for the sale of excess lands in the Westlands Water District in California. Although the court order applied only to the Westlands Water District, the proposed regulations are to be applied to all reclamation projects in the 17 Western States, including my own State of New Mexico where there are six such projects.

My concern was generated by communications from New Mexicans associated with these projects who pointed out to me several basic facts justifying legislative review of existing law before final regulations become effective.

First, Mr. Chairman, the existing law governing excess land treatment is a 1902 law which has not been modified to any substantial extent since 1926. So, we have, as the basis for judicial decisions and administrative action, a law which was enacted 75 years ago and last modified over 50 years ago. It was not difficult for me to agree with my New Mexico constituents that a law which deals with an industry which has changed so much in 75 years and which has such broad application ought to be reviewed by the Congress before its rigid enforcement brings irreparable harm to people who in good faith had relied on previous interpretations.

Second, the situation in New Mexico is much different than in the Westlands District where the impetus for this rigid enforcement thrust originated. Others will speak to the situation in that District and in other project areas in California, but the Committee should know that information obtained from the Bureau confirms my constituents claim of totally different use and farming patterns in New Mexico, patterns that have developed with the concurrence and assistance of the Bureau. As I previously mentioned, there are six project areas in New Mexico; the Carlsbad Project, the Middle Rio Grande Project, the Tucumcari Project, the Vermejo Project, and the Fort Sumner Project. These six projects supply irrigation water to a total of approximately 260,500 acres. Of this 260,500 acres only about 8,500 acres could be considered excess under prevailing interpretations of the excess land provisions. However, under the proposed regulations, about 71,000 acres in one of the New Mexico irrigation districts would become subject to the acreage limitations resulting in forced sale of land in order to continue to receive project water for nonexcess lands. In this particular case, landowners in the Irrigation District entered into recordable contracts with the U.S. Government in 1952 whereby the Government was given power of attorney to sell any excess lands existing after 10 years unless construction costs has been fully paid by that time. These contracts were entered into at the government's insistence and upon the express representation that the execution of the contracts complied with all Reclamation requirements as to excess acreage. By January 1962, all construction costs had been fully paid, one of the few Reclamation projects where full payment has already been accomplished, and in this case, within 10 years as opposed to the normal 40 year pay out period. Until the proposed regulations, everyone involved had believed that the project was exempt from the literal requirements of the acreage limitations of the 1902 law.

It should be pointed out that this is a district which, regardless of the contracted situation I have just described, is in substantial compliance with acreage limitations. According to current landowners' records maintained by the irrigation district, there are only 9,137 acres held in excess ownership out of a total of 90,640, giving allowance of 320 acres for husband-wife family units. Therefore, only about 10 percent of the project lands could be classified as excess. Of these holdings in excess of 320 acres, the acreage ranges from a 326 acre farm owned and operated by a husband and wife to a 3,634 acre farm held by virtue of a lineal family relationship involving 16 family members.

The situation is pretty much the same throughout the six districts in New Mexico, so that only about 3 to 4 percent of the project lands are now considered excess. The point here is that use and ownership patterns in project areas in New Mexico have been in almost total compliance with existing interpretations of excess land provisions of reclamation law. My constituents are understandably concerned that changing those interpretations will adversely affect many of them who in good faith have relied on previous official acts of the government approving the legitimacy and legality of their operations.

So, Mr. Chairman, while I am convinced that the intent of the 1902 Reclamation Law has been substantially complied with in my State, I can understand why my constituents are alarmed about the new direction taken by the proposed regulations and I feel that the Congress is obligated to review the basic law, to focus on the national policy issues involved and to amend the law as such review dictates before any landowners are forced to sell any land or before water is cut off by implementation of the proposed regulations.

That is the object of my resolution—to maintain the status quo without detriment to anyone's legitimate interests, while preventing any unfair gain or advantage, until the Congress has had an adequate opportunity to consider the major policy issues involved and the many complex questions that these 70 years have generated.

The major policy issue, Mr. Chairman, is whether the promotion of small family farm units ought to remain the primary objective of Federal reclamation law. Are conditions now such that an overriding purpose must be included in the law governing reclamation activities? I think the answer will be in the affirmative, but I feel also that much more flexibility is required to accommodate intervening actions and present day agricultural realities. Let me list just a few of these thorny questions:

What are we to do about previous decisions and interpretations by the Federal government such as the one I described earlier which caused landowners to believe they were in total compliance with the law? It is not a sufficient response in my opinion to say that the government cannot be bound by its actions which were contrary to law. While the Executive Branch may have very little latitude to set the matter right, there are no such limitations on the Legislative Branch. Accordingly, I feel it is a Congressional duty to take action to protect the interests of honest American farmers who have relied on their government but now find themselves in trouble because of that reliance.

What are we to do about the basic size of the family farm? Are we to stick our heads in the sand and ignore the fact that in only a very few specialty situations is the average family able to live on 160 or even 320 acres? Are we to continue to avoid facing up to the fact that 160 acres in one project area is not the productive equivalent of 160 acres in another area? In this regard, Mr. Chairman, I have received a report from the Department of Agricultural Economics and Agricultural Business of New Mexico State University which I ask be reprinted at an appropriate point in the hearing record. This report evaluates the operation of a 160 acre farm in the Mesilla Valley in southern New Mexico, using a variety of feasible cropping patterns and concludes that there is insufficient profit to be obtained from a 160 acre farm in that area. I do not offer this report as an exhaustive study of the question, but merely to highlight equivalency as one of those matters we must deal with in the legislative review of reclamation law.

What are we to do about multiple ownership resulting from family relationship? What of the 3,600 acre farm that is owned by 16 members of the same family? Is that not as acceptable a way to promote the "family farm" as dividing the 3,600 acres into smaller units and requiring separate operation? What about another situation in the same district where a 481 acre farm is owned by a widower, his son, his daughter, a grandson, the grandson's wife, and three great grandchildren? Isn't that a family arrangement sufficiently acceptable to be within the law? It appears to me it ought to be and maybe it is, even under the proposed regulations, but my people are afraid their water will be shut off by these new regulations until they come within rigid adherence to 160 acres a person or 320 acres for husband and wife.

What about leasing? Should leasing be banned under any circumstances? What about having to live right on the land? Should residency be required to receive water or can an older person who needs to live away from his land be able to lease it while continuing to own it. As I read the proposed regulations and from what my constituents tell me of their proposed enforcement, these are questions that are generating legitimate fears.

What about the difference in treatment by the Congress as to different projects areas regarding the application of acreage limitations? Is it fair that many projects have been statutorily exempted from such requirements while the rest must comply? That doesn't seem fair or reasonable to me and I think we owe it to those adversely affected to justify that discriminatory treatment. It won't be pleasant or easy and we may find some embarrassing reasons on which exemptions were founded, but those prospects do not relieve the Congress of its obligation.

In summary, Mr. Chairman, let me just very briefly restate my position: My concern is that continuation of the existing law and its rigid enforcement will unfairly and adversely affect many farmers who have attempted to comply with the law. I know this to be the case in my own State as I have previously described.

The Executive Branch has little latitude in affecting basic national policies embodied in existing law, that being the prerogative and, indeed, the responsibility of the Congress. Now is the time to discharge that responsibility before innocent people are hurt by enforcement of a 70 year old law, unmodified by 50 years. In that review, we must examine and take action in regard to at least these issues: (1) the basic acreage limitation; (2) the questions of productive equivalency; (3) residency requirements; (4) leasing of project lands; (5) multiple ownership by family members; (6) previous attempts to comply and government acceptance of such attempts, i.e., prepayment of all construction costs within an unusually short period of time; and (7) dissimilar treatment of various projects by the Congress.

I realize this is a difficult and tedious course I am recommending, but I feel our obligation is clear and to do any less would be to shirk that obligation. As a member of the Committee and the Subcommittee of jurisdiction, I will participate vigorously in the activity I am now urging.

Thank you.

By MR. DOMENICI (for himself, Mr. JACKSON, Mr. MAGNUSON, Mr. HANSEN, Mr. MCCLURE, Mr. HAYAKAWA, Mr. YOUNG, Mr. BENTSEN, Mr. BARTLETT, Mr. STEVENS, Mr. PACKWOOD, Mr. HATFIELD, Mr. WALLOP, Mr. TOWER, Mr. HATCH, Mr. GARN, Mr. LAXALT, and Mr. SCHMITT):

S.J. Res. 93. A joint resolution relating to the excess land provisions and residency requirements of the Federal reclamation laws, as amended and supplemented; to the Committee on Energy and Natural Resources.

MR. DOMENICI. Mr. President, I send to the desk a joint resolution relating to excess land provisions and residency requirements of Federal reclamation laws. I am pleased to be joined in the introduction of this joint resolution by Senators Jackson, McClure, Hayakawa, Young, Bentsen, Bartlett, Stevens, Packwood, Hatfield, Wallop, Tower, Hatch, Garn, Schmitt, Laxalt, Magnuson, and Hansen.

On August 25, 1977, the Secretary of the Interior published in the Federal Register, proposed regulations to establish policies and procedures for the implementation of the Federal laws that define Bureau of Reclamation projects. This is a subject about which there has been a great deal of misinformation and controversy, particularly in recent years, and the proposed regulations have sparked even further controversy and concern.

These proposed regulations are an attempt to achieve what Secretary Andrus understands to have been the primary purpose of Federal reclamation programs—to place small farmers on land served by water from reclamation projects. There is no doubt that reclamation laws have that objective, but the basic law has not been fundamentally altered since 1902, when agricultural and economic conditions were far different than they are today.

President Carter has recognized this reality and he and many other leaders have expressed support for legislative modification to accommodate present-day realities. The President, in fact, has indicated that the administration will prepare and send to the Congress his recommendations for modernization of the statutory framework of reclamation law.

In addition, Mr. President, there are numerous legislative proposals pending in both Houses intended to deal with some or all of the many complex issues involved. It is fair to say that nearly everyone agrees that the Congress must conduct a thorough and thoughtful review of existing law and modify as required to make the most effective use of our Nation's precious water and land resources. We simply

cannot continue to rely on laws intended for times and circumstances far different than exist today.

Such a review and modification process will take a good deal of time, possibly up to a year. There are people and businesses with legitimate interests who are understandably concerned that their interests will be adversely and irrevocably affected by administrative action before the Congress completes its review and modification of the basic law. The proposed regulations mentioned above are cited as a concrete example of this possibility.

Under these circumstances, I am introducing this Senate joint resolution designed to maintain the status quo during the period of 1 year following its adoption, giving the Congress that time to act. This will assure that legitimate private interests are maintained and protected while insuring that valid public purposes are also served while the legislative review is being conducted.

This joint resolution is rather simple. It merely provides for a 1-year moratorium on the termination of water deliveries from reclamation projects or forced sale of excess lands due to questions relating to either the excess land provisions of residency requirements of existing reclamation laws.

The joint resolution further requires that voluntary sales of excess land be likewise suspended for either 1 year or until the regulations now under development have become effective. This particular provision is intended to insure that no present owner of excess land could receive any unforeseen gain or unfair profit from this resolution. This is fully in keeping with the primary objective of the joint resolution—to maintain the status quo without adversely affecting any valid public or private interests and without giving unfair advantage to anyone, while providing time for legislative review of all the proposals, including President Carter's.

Mr. President, for those who are concerned about court action, let me say that, to the best of my knowledge and my belief, this joint resolution is fully consistent with all relevant judicial decisions. The Federal district court decision which generated the present rulemaking procedures by the Bureau of Reclamation, for example, does not require that water deliveries be terminated or excess lands disposed of by any specific date.

In summary, then, Mr. President, let me state again what we intend by this joint resolution and what we do not intend. We intend to prohibit for the period of 1 year, termination of water deliveries from Federal reclamation projects on account of either the acreage limitation provisions or residency requirements of Federal reclamation law. We intend to prohibit for the period of 1 year, forced sale of excess lands served by Federal reclamation projects on account of either the acreage limitation provisions or residency requirements of Federal reclamation law. We intend to suspend voluntary sale of excess lands for either 1 year or until the effective date of the final regulations now under development by the Department of the Interior. We intend to essentially maintain the status quo so that no one is given any unfair advantage by enactment of the joint resolution.

We do not intend to give any excess landowners or nonresident owners any advantage or benefit not existing under current laws and regulations. We do not intend to permanently change the basic laws nor relieve the Congress of its duty to review those laws in a timely fashion. We do not intend to commit the Congress or any Member to a particular position on the major policy and procedural issues involved. We do not intend to exempt any project area, irrigation district, or any group or individual from application of Federal reclamation law.

Mr. President, it is my hope that we can quickly pass this joint resolution or any similar legislative measure which would achieve the same purpose. I urge my colleagues to give their support, recognizing that it is an honest and genuine attempt to create an atmosphere in which a comprehensive review and responsible modification of existing law can proceed.

COLLEGE OF AGRICULTURE AND HOME ECONOMICS

DEPARTMENT OF AGRICULTURAL ECONOMICS
AND AGRICULTURAL BUSINESS
Box 3169/Las Cruces, New Mexico 88003
Telephone (505) 646-3215



November 3, 1977

Senator Pete Domenici
New Senate Office Building
Washington, D.C. 20510

Dear Senator Domenici:

To assist in the evaluation of the 160-acre limitation proposal, we have prepared a study of a hypothetical 160-acre farm in the Mesilla Valley. We have attempted to budget this farm using realistic assumptions as to prices and practices for the enterprise combinations illustrated.

To be fully clear on the economics of size, we need to develop budgets for 320, 480, and 640 acre farms. That will take some time to do and is not possible in the near future. It should be understood that it is not proper to merely double, triple or quadruple the 160-acre budget to estimate the larger sizes.

Obviously a 160-acre farm if operated as budgeted is not a profitable farm. I hope the report is useful to you in your efforts to legislate a change in the 1902 law.

Sincerely,

George R. Dawson

George R. Dawson
Head of Department

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enclosure



COSTS, RETURNS, AND PROFITABILITY
OF 160-ACRE SIZE FARMS FOR
SELECTED CROPPING PLANS IN THE
ELEPHANT BUTTE IRRIGATION DISTRICT
OF NEW MEXICO

Departmental Staff Report No. 3

Copies of this report can be obtained by
writing to the Department of Agricultural Economics
and Agricultural Business, New Mexico State University,
Box 3169, Las Cruces, New Mexico 88003

COSTS, RETURNS, AND PROFITABILITY OF 160-ACRE SIZE FARMS
FOR SELECTED CROPPING PLANS IN THE ELEPHANT BUTTE IRRIGATION DISTRICT
OF NEW MEXICO

by

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The ideas and views presented in this article represent the views of the authors and do not necessarily represent the official views of the Department of Agricultural Economics and Agricultural Business, the New Mexico Agricultural Experiment Station, or New Mexico State University. Comments relating to this article should be addressed directly to the authors.

October 1977

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COSTS, RETURNS, AND PROFITABILITY OF 160-ACRE SIZE FARMS
FOR SELECTED CROPPING PLANS IN THE ELEPHANT BUTTE IRRIGATION DISTRICT
OF NEW MEXICO

INTRODUCTION

The purpose of this report is to provide information on the costs, returns, and profitability of 160-acre sized farms located in the Elephant Butte Irrigation District (EBID) producing selected combinations of alfalfa, cotton, barley, chile, and lettuce. Many other crops are grown in the district, but these are among the principle crops grown and were selected as representative of the types of cropping practices in the district (4). This report is planned as the first in a series on economics of alternative size farms in New Mexico. Research on cost and returns for 320- and 640-acre size farms is currently underway and reports will be published in the near future.

Interest in the relationship between farm size and profitability has increased recently with the proposed enforcement of the 1902 Law restricting size of farms receiving water from Bureau of Reclamation Irrigation Projects. These reports are intended for broader use than partial assessment of the possible impacts from enforcing the 1902 Law. These reports should provide useful information for individuals owning or considering investing in farm properties and for institutions financing agriculture in the district.

The basic evaluation procedure was to prepare cost and return budgets for a 160-acre farm assuming three different cropping plans. Cultural practices, equipment requirements and production cost estimates were derived from previous farm production cost and return studies; published reports on costs and accomplishment rates of farm machinery and equipment; and telephone and personal interviews with farmers, and managers of farm supply, marketing, and processing firms in the EBID (1,3,5).

The Elephant Butte Irrigation District is located in the Rio Grande River basin in southcentral New Mexico. The district consists of approximately 90,000 acres which receive water stored in Elephant Butte and

Caballo reservoirs. The irrigated lands begin above Hatch and follow the river basin extending to near El Paso, Texas.

LIMITATIONS

Information in this report was budgeted for a hypothetical 160-acre farm. The information is believed to be representative of a farm in the EBID producing the specified crops in the same acreages with the assumed component of equipment. The farm would also have to obtain the yields and prices specified. Differences in costs, yields, and prices received for any particular farm are expected to occur and result in substantial variation in profitability from the reported figures. Farms producing significantly different cropping plans are also expected to obtain profits different from those reported here.

Most 160-acre farms do not provide full year-round employment for an operator and possibly one or more working family members. Many farm families have one or more individuals working full or part-time off the farm. Hence, the budgeted information is not totally descriptive of family income.

CROPPING PLANS

Three cropping plans were developed for the assumed 160-acre farm (Table 1). Cropping plan I represents a farmer primarily interested in growing cotton and alfalfa with barley as a rotation crop. The cropping plan was budgeted to represent a farm under conditions of relatively certain markets and requiring an average level of management capabilities. Cropping plan II is similar to I except chile is added, thereby, increasing expected profits but also requiring greater total management expertise because of the greater number of crops.

Cropping plan III was budgeted to represent a farmer primarily interested in growing vegetable crops and cotton with alfalfa and barley in the rotation for agronomic reasons. Cropping plan III has higher profit potential but requires greater management ability. The three types of cropping plans were chosen to represent a range of crops typically produced

Table 1. Assumed cropping plans for three types of hypothetical farms in the Elephant Butte Irrigation District, New Mexico.

Cropping Plan	Crop	Acres	Percent of Harvested Acreage ^a
I	Cotton	56	40
	Alfalfa	56	40
	Barley	28	20
II	Cotton	57	40
	Alfalfa	35	25
	Barley	31	22
	Chile	17	13
III	Cotton	42	30
	Alfalfa	14	10
	Barley	14	10
	Chile	35	25 ^b
	Fall lettuce	35	25 ^b

^aHarvested acres represent about 87 percent of total acres with the remaining acres in ditches, roads, turnrows, and other improvements.

^bIt was assumed that the lettuce acreage would be grown under a \$300/acre contract in order to reduce risks associated with price changes. The contract price has been rising steadily in the past three years and reflects approximately one-half the grower's expenses excluding harvest. The grower would have the \$300 available to him during the season to pay expenses. The grower and the contractor would then each pay one-half of the harvest expense and each would receive one-half of the gross receipts from sale of the crop.

in the EBID. Historically, chile and lettuce have been more profitable over a period of years than alfalfa, barley, and cotton. Chile is usually contracted to a processing company. At the present time, there are many farmers in the district willing to produce chile under contract. Hence, contracts for chile in the acreage desired are not always available. Lettuce prices vary substantially from year to year and within the season causing lettuce growing to be a high risk venture. Typically growers experience several unprofitable years to every highly profitable year. Growers in the EBID have both a spring and a fall lettuce season. Historically, fall lettuce has been a better profit crop than spring lettuce. A common practice is to share the risks of lettuce production by contracting with an individual or company to pay a fee roughly equal to one-half of the growing expenses for a one-half interest in the crop. The contracting party also pays for one-half of the harvesting expenses.

YIELDS AND PRICES

Projected yields for cotton, alfalfa, and barley were based on average yields (rounded) for Dona Ana County for the 1972-75 period (Table 2). Yields for chile and lettuce and prices for all budgeted crops were estimated through a collective judgement process involving six members of the faculty of the Department of Agricultural Economics, New Mexico State University. The intent was to arrive at a conservative estimation of prices and yields that might occur in the near future assuming an average level of management.

Average yields and prices of lettuce are very difficult to estimate. Yields depend upon the amount cut which depends upon the price. When prices are high (\$7.00/carton and above) as many as 800 cartons may be cut per acre. When prices are below \$3.00 per carton, very little, if any, is cut. A yield of 450 cartons and a price of \$3.75/carton were selected as representatives of weighted average price-yield relationships over a period of years.

Table 2. Schedule of estimated yields and prices by crops used in developing cost and return budgets for the hypothetical 160-acre farms in the EBID.

Crop	Yield/Acre	Price/Unit ^b
Cotton lint	600 lbs. ^a	\$.54/lb.
Cotton seed	1000 lbs. ^a	.04/lb.
Alfalfa	5.25 tons ^a	48/ton
Barley	1.5 tons ^a	65/ton
Chile (Green basis)	8 tons ^b	120/ton ^c
Lettuce (Fall)	450 carton ^b	3.75/ton ^c

^a Average of yields for Dona Ana County, 1972-75, rounded.

^b Estimated by a collective judgement process by Tom S. Clevenger, Bobby Creel, William D. Gorman, Robert R. Lansford, Dennis F. Landrum, and Neil Patrick.

^c Estimation of an average price for vegetable crops is difficult due to large price fluctuations.

MACHINERY AND EQUIPMENT INVESTMENT AND DEPRECIATION

The group of equipment used for developing the farm budget for cropping plan I was assumed to cost \$57,762 when purchased new during the 1971-73 period (Table 3).

The equipment investment cost was \$60,792 and \$56,762 for cropping plan II and III respectively. The differences in the investment in equipment were due to assuming custom baling of alfalfa for cropping plan III and no need for a vegetable planter in cropping plan I. It is not likely that a farmer with 160 acres would have all new equipment as of 1977. The equipment was assumed to be five years old on the average with most items from one-third to one-half depreciated (assuming a straight-line method over a 10 to 15 year useful life depending upon the particular piece of equipment). The 1971-73 base period was used to simulate an investment and depreciation situation where some equipment would be almost new and other items may be 10 to 15 years old. The annual depreciation in machinery, equipment, and pick-up truck amounted to \$5,932.30, \$6,205.00 and \$5,842.30 for cropping plans I, II, and III respectively. The same group of equipment would require an investment of over \$75,000 if purchased new at 1977 prices.

The complement of equipment used in developing the budgets did not include a grain combine, cotton picker, cotton trailers, or truck for hauling grain, hay, and chile. It was assumed that these activities would be performed on a custom contract basis. These services are available on a custom rate basis in the EBID.

MACHINERY AND EQUIPMENT OPERATING EXPENSES

Operating expenses for machinery and equipment included costs for fuel, lubricants, repairs, and maintenance. These expenses were estimated using a standard formula basis as described in Appendix A.

Table 3. Schedule of type of equipment, cost, and annual depreciation for hypothetical 160-acre farms, Elephant Butte Irrigation District, New Mexico.^a

Item	Size	Estimated Original Investment ^b dollars	Esti- mated life years	Annual Depre- ciation ^c dollars
Tractor	60 H.P.	9,220	10	829.80
Tractor	80 H.P.	12,170	12	1,095.50
Milo and cotton planter	4-row	2,430	10	219.70
Precision vegetable planter with bedshaper	4-row	3,030	10	272.70
Drill	12'	1,962	12	147.16
Disc	12'	2,200	10	165.00
Cultivator	4-row	1,400	10	126.00
Sidedress attachment	4-row	280	10	25.20
Lister	4-row	1,350	10	131.50
Plow	3-14"	2,400	12	180.00
Land plane	8' x 30'	3,800	10	342.00
Harrow	4-row	430	15	25.80
Float	12' x 36'	1,270	15	76.20
Shredder	2-row	1,020	10	91.80
Boarder Disc	N/A	700	12	60.83
Tractor mount sprayer	4-row	1,100	10	99.00
PTO Swather	12'	3,000	10	270.00
Hay Rake	12'	1,000	12	75.00
Baler	2-wire	4,030	10	362.70
Pick-up	1/2T	6,000	4	1,250.00
Miscellaneous tools	N/A	2,000	5	360.00
Cropping Plan I		57,762		5,932.30
Total - Cropping Plan II		60,792		6,205.00
Cropping Plan III		56,762		5,842.30

^aFor cropping plan II all equipment listed is used. For cropping plan I the precision vegetable planter is deleted since no vegetables are included in the plan. For cropping plan III the baler is deleted because of the reduced alfalfa acreage.

^bBased on the prices of new equipment for the 1971-73 period excluding the pick-up estimated cost which is based on current cost.

^c
$$\frac{\text{Estimated cost} - 10\% \text{ salvage value}}{\text{Estimated life}}$$

PURCHASED INPUTS

The actual application rates and types of farm chemicals used varies considerably among farmers in the EBID. Officials at Agricultural Products Company of Mesquite (a major supplier in the EBID) were asked to provide average or typical rates based on their historical sales records. This information along with typical custom harvest rates provided the basis for estimating the purchased input expenses and are itemized in Appendix B.

The costs of purchased inputs including seed, fertilizers, chemicals, labor contracting, custom harvesting, and cotton ginning were based on typical utilization rates in the EBID and on 1977 prices (Table 4). Costs of total purchased inputs ranged from \$46.10 per acre for barley to over \$1,336 per acre for fall lettuce. The two largest expense items were \$923 per acre for lettuce harvest and \$240 per acre for harvesting chile.

IRRIGATION WATER QUANTITIES AND COSTS

Farms in the Elephant Butte Irrigation District typically receive part of the annual irrigation water requirement via canals from the Elephant Butte Irrigation District. However, the annual allocation is usually not sufficient to produce a normal array of crops. Supplemental water pumped from shallow wells is required.

The annual irrigation water application requirements vary from approximately 15 acre-inches for barley to 72 acre-inches for alfalfa (Table 5). The annual cost for receiving water from the Elephant Butte Irrigation District was \$13.80 per acre in the 1977 season. Annual cash pumping cost for a 160-acre farm was estimated to range from \$785 for cropping plan I, with the larger percentage of acres planted to alfalfa, to only \$175 for cropping plan III, consisting of greater acreages of vegetables requiring less water (Table 6). The actual pumping costs for each cropping plan would vary from year to year depending upon the quantity of water received from the Irrigation District.

Table 4. Purchased inputs and custom operations and harvest costs per acre by crop, Elephant Butte Irrigation District, New Mexico, 1977.

Crop	Activity	Dollar/Acre
Cotton	Seed	7.00
	Fertilizer	27.50
	Herbicide	10.00
	Insecticide	7.50
	Harvest ^a	67.20
	Ginning	43.50
Alfalfa	Seed	37.50
	Fertilizer	22.50
	Baling wire	12.50
	Custom baling	42.00
Barley	Seed	6.05
	Fertilizer	9.00
	Herbicide	5.50
	Insecticide	6.00
	Harvest ^a	13.50
Chile	Seed	31.50
	Fertilizer	30.00
	Herbicide	24.00
	Insecticide	12.50
	Hand hoe ^a	75.00
	Harvest ^a	240.00
Fall lettuce	Seed	18.00
	Fertilizer	79.20
	Herbicide	6.00
	Insecticide	150.00
	Thinning and hoeing	160.00
	Harvest ^a	923.00

^aIncludes delivery to processor or storage facilities.

Source: Appendix B

Table 5. Annual irrigation water requirements for selected crops in the Elephant Butte Irrigation District, New Mexico.

Crop	Irrigation Requirement ^a acre inches per year
Cotton	42
Alfalfa	72
Barley	15
Chile	49
Fall lettuce	18 ^b

^aBased on crop need calculations and a 44 percent average irrigation efficiency, rounded.

^bThe irrigation requirement for fall lettuce was adjusted upward approximately eight acre inches since this crop must have frequent early irrigations and it is physically impossible with flood irrigation for these first four irrigations to be less than three acre-inches although crop need is only about one acre-inch per irrigation.

Source: (2)

Table 6. Estimated annual irrigation water requirements and cash expenses for pumping water for selected cropping plans on 160-acre farms in the Elephant Butte Irrigation District, New Mexico.

Cropping Plans ^a	Total Irrigation Water Needed acre-feet	Water Received from Elephant Butte Irrigation District acre-feet ^b	Amount Pumped acre-feet	Estimated Annual Cash Pumping Expenses dollars ^c
I	563	406	157	785
II	515	406	109	545
III	441	406	35	175

^aCrops and respective acreages are specified in Table 2.

^bEstimated average of water delivered to farms in the Elephant Butte Irrigation District, 1973-1975, at 2.54 acre-feet and assuming water was provided to the full 160 acres even though planted acres was 13 percent less.

^cBased on \$5.00 per acre-foot of water pumped for fuel, oil, maintenance, and repair.

LABOR AND MANAGEMENT EXPENSES

It was assumed that most of the labor needs would be provided by the farm owner/operator and family. Activities requiring large quantities of labor such as harvesting chile and lettuce and hoeing chile would be obtained by purchasing these services from a labor contractor. The cost of these services were included in the purchase input expenses. However, most owner/operators of 160-acre size farms find it necessary to hire some part-time labor particularly to assist with irrigation. Annual hired labor expense was estimated to range from \$1,000 for cropping plan I, \$1,500 for cropping plan II, and \$3,000 for cropping plan III.

A cost for owner/operator labor and management or family labor was not included as a direct expense in the budgets. It was assumed that a family would need at least \$10,000 annually for living expense. A \$10,000 annual withdrawal was used as an estimate of the value of labor and

management provided by the owner/operator and family. Expenses for social security taxes, fuel, utilities, insurance, repair and maintenance for a farm home were not included in the budgets and were assumed to come out of the \$10,000 withdrawal.

OPERATING CAPITAL REQUIREMENTS AND INTEREST

Operating capital requirements were estimated at \$17,496, \$20,035, and \$21,875 for cropping plans I, II, and III, respectively. An interest expense for borrowed operating capital was not included as a direct item in the budgets because of wide differences in the amount of borrowed funds typically used by farmers. An opportunity cost of borrowed funds for operating expenses based on a simple annual interest rate of nine percent was included as an imputed expense in the profitability analysis section.

The imputed interest expense was estimated by assuming a nine percent annual rate for 12 months on 50 percent of the total annual cash operating expenses excluding harvest costs.

INVESTMENT IN LAND, BUILDINGS, AND IMPROVEMENTS

The value of agricultural land including improvements in the Elephant Butte Irrigation District ranges from approximately \$1,500 per acre in the northern part to over \$3,000 per acre in the central and southern areas with urban development potential. For purposes of this analysis, the agricultural value of the land and improvements was estimated at \$1,500 per acre.

PROFITABILITY ANALYSIS

Annual Net Return to Owner/Operator Labor, Land, Capital and Management

The annual net return to owner/operator labor, land, capital, and management for the hypothetical 160-acre farm growing cotton, alfalfa, and barley (cropping plan I) was estimated at \$3,893 (Table 7). The return increased to \$8,713 under cropping plan II where alfalfa acreage was decreased, barley acreage was increased slightly, cotton acreage remained about the same, and 17 acres of chile were added (Table 8). Returns further increased to \$18,365 for cropping plan III as acreages of cotton, barley, and alfalfa were reduced, the acreage of chile was increased from 17 to 35, and 35 acres of lettuce were added (Table 9).

Annual Net Return to Land and Capital

To arrive at an annual net return to land and capital a payment of \$10,000 was made to owner/operator labor and management for all living expenses including utilities, housing, and income and social security, and taxes. This is an arbitrary method but the intent was to estimate the amount of dollars that could be available for payments for land, capital, equipment, and operating loans after a withdrawal of funds for family living expenses. Actual funds required for living expenses may exceed or be less than \$10,000 depending upon the particular family situation.

After allowing for this payment in lieu of a return to operator labor and management, the residual returns to land and capital were estimated at (\$6,107), (\$1,287) and \$8,365 for cropping plans I, II, and III respectively (Table 10). The negative values for cropping plans I and II indicate their cropping pattern do not generate sufficient revenues to provide payments to labor and management under the costs, prices, and yield assumption used in the budgets. Cropping plan I returns an estimated (1.94 percent) return to land and capital. The estimated annual percentage returns to land and capital investment for cropping plan II is also negative. Cropping plan III creates sufficient revenues relative to production expenses and a family

Table 7. Budgeted costs and returns for a hypothetical 160-acre farm producing alfalfa, cotton, and barley cropping plan I in the Elephant Butte Irrigation District, New Mexico.

Cropping pattern:

<u>Cropping plan I</u>	<u>Acreage</u>
Cotton	56
Alfalfa	56
Barley	28
Land in farmstead, ditches, roads, turnrows	<u>20</u>
Total	160

Revenue from crops:

Cotton lint 33,600 lbs. @ \$.54/lb.	\$18,144	
Cotton seed 56,000 lbs. @ \$.04/lb.	2,240	
Alfalfa 294 tons @ \$48/T	14,112	
Barley 42 tons @ \$65/T	<u>2,730</u>	
Total		\$37,226

Expenses:

Fertilizer, herbicide, insecticide, seed, and wire	\$ 6,127	
Custom operations and harvests	6,577	
Equipment and irrigation fuel, oil, lubricants, repairs and maintenance	5,475	
Irrigation district water charge	2,208	
Depreciation equipment and pick-up	5,932	
Depreciation wells, pumps, motors, and gearheads	1,250	
Depreciation ditches and building	1,325	
Repair and maintenance of ditches, roads, and buildings	560	
Insurance on equipment, pick-up, and general farm	484	
Utilities	360	
Office expenses (telephone and supplies)	240	
Legal and accounting fees	400	
Taxes on land, building, and equipment	1,195	
Hired labor	1,000	
Miscellaneous expense	<u>200</u>	
Total		<u>33,333</u>
Net return to owner/operator labor, land, capital, and management		<u>\$ 3,893^a</u>

^aThis figure is based on no debt payments on land or equipment and that no operating capital is borrowed. Also, there has been no allowance for income to the owner/operator at this point.

Table 8. Budgeted costs and returns for a hypothetical 160-acre farm producing alfalfa, cotton, barley, and chile cropping plan II in the Elephant Butte Irrigation District, New Mexico.

Cropping pattern:

<u>Cropping plan II</u>	<u>Acreage</u>
Cotton	57
Alfalfa	35
Barley	31
Chile	17
Land in farmstead, ditches, roads, turnrows	20
Total	160

Revenue from crops:

Cotton lint 34,200 lbs. @ \$.54/lb.	\$18,488	
Cotton seed 57,000 lbs. @ \$.04/lb.	2,280	
Alfalfa 184 tons @ \$48/T	8,832	
Barley 47 tons @ \$65/T	3,055	
Chile 136 tons @ \$120/T	16,320	
Total		\$48,975

Expenses:

Fertilizer, herbicide, insecticide, seed, and wire	\$ 6,924	
Custom operations and harvests	12,069	
Equipment and irrigation fuel, oil, lubricants, repairs and maintenance	5,315	
Irrigation district water charge	2,208	
Depreciation equipment and pick-up	6,205	
Depreciation wells, pumps, motors, and gearheads	1,250	
Depreciation ditches and building	1,325	
Repair and maintenance of ditches, roads, and building	560	
Insurance on equipment, pick-up, and general farm	494	
Utilities	360	
Office expenses (telephone and supplies)	240	
Legal and accounting fees	400	
Taxes on land, building, and equipment	1,212	
Hired labor	1,500	
Miscellaneous expense	200	
Total		40,262

Net return to owner/operator labor, land, capital, and management \$ 8,713^a

^aThis figure is based on no debt payments on land or equipment and that no operating capital is borrowed. Also, there has been no allowance for income to the owner/operator at this point.

Table 9. Budgeted costs and returns for a hypothetical 160-acre farm producing alfalfa, cotton, barley, chile, and lettuce cropping plan III in the Elephant Butte Irrigation District, New Mexico.

<u>Cropping pattern:</u>	
<u>Cropping plan III</u>	<u>Acres</u>
Cotton	42
Alfalfa	14
Barley	14
Chile	35
Fall lettuce	35
Land in farmstead, ditches, roads, turnrows	20
Total	160
<u>Revenue from crops:</u>	
Cotton lint 25,200 lbs. @ \$.54/lb.	\$13,608
Cotton seed 42,000 lbs. @ \$.04/lb.	1,680
Alfalfa 74 tons @ \$48/T	3,552
Barley 21 tons @ \$65/T	1,365
Chile 28 tons @ \$120/T	33,600
Fall lettuce ^a 7,875 cartons @ \$3.75/carton	29,531
Total	\$83,336
<u>Expenses:</u>	
Fertilizer, herbicide, insecticide, and seed	\$15,054
Custom operations and harvests	38,203
Equipment and irrigation fuel, oil, lubricants, repairs and maintenance	5,008
Irrigation district water charge	2,208
Depreciation equipment and pick-up	5,842
Depreciation wells, pumps, motors, and gearheads	1,250
Depreciation ditches and building	1,325
Repair and maintenance of ditches, roads, and building	560
Insurance on equipment, pick-up, and general farm	481
Utilities	360
Office expenses (telephone and supplies)	240
Legal and accounting fees	550
Taxes on land, building, and equipment	1,190
Hired labor	3,000
Miscellaneous expense	200
Total	75,471
Less: Fall lettuce ^a 35 acres @ \$300/acre	10,500
Total	64,971
Net return to owner/operator labor, land, capital, and management	\$18,365 ^b

^aIt was assumed that the lettuce acreage would be grown under a \$300/acre contract in order to reduce risks associated with price changes. The contract price has been rising steadily in the past three years and reflects approximately one-half the grower's expenses excluding harvest. The grower would have the \$300 available to him during the season to pay expenses. The grower and the contractor would then each pay one-half of the harvest expense and each would receive one-half of the gross receipts from sale of the crop.

^bThis figure is based on no debt payment on land or equipment and that no operating capital is borrowed. Also, there has been no allowance for income to the owner/operator at this point.

Table 10. Selected measures of estimated annual returns for three cropping plans for a hypothetical 160-acre farm in the Elephant Butte Irrigation District of New Mexico.

Measure of Annual Return	Cropping Plan					
	I		II		III	
	\$	%	\$	%	\$	%
1. Net return to owner/operator labor, land, capital, and management ^a	3,893	NA	8,713	NA	18,365	NA
Less: Payment for owner/operator labor and management ^b	10,000	-	10,000	-	10,000	-
2. Net return to land and capital	(6,107) ^c	(1.94)	(1,287)	(.40)	8,365	2.63
Less: Payment for operating capital ^d	787	-	902	-	984	-
3. Net return to land and fixed capital	(6,894)	(2.32)	(2,189)	(.73)	7,381	2.49
Less: Payment for fixed capital ^e	5,199	-	5,466	-	5,109	-
4. Net return to land ^f	(12,093)	(5.04)	(7,655)	(3.19)	2,272	.95

^aSee Tables 8, 9, and 10.

^bA minimum return of \$10,000 is assumed to allow for housing, food, clothing, insurance, taxes, and other normal living expenses.

^cParenthesis indicate negative values.

^dThe payment assumes a nine percent return on total operating capital, less harvest and ginning charges, used for six months.

^eThe payment assumes a nine percent return on fixed capital valued at \$57,762 for I, \$60,792 for II, and \$56,762 for III.

^fTotal land value is \$240,000.

living withdrawal to return an estimated 2.63 percent annually to land and capital. These values approximate a return to total assets for the farming operation assuming no crop inventories.

Net Return to Land and Fixed Capital

Annual net return to land and fixed capital (capital other than that used for operating) was estimated by subtracting a 9 percent interest payment for operating capital needs from the return to land and total capital. The estimated dollar returns to the investment in land and fixed capital were (\$6,894), (\$2,189), and \$7,381 for cropping plans I, II, and III respectively. These represent annual percentage returns (2.32), (.73), and 2.49 for I, II, and III respectively. Plan III is the only cropping alternative with a positive value return to the investment in land and fixed capital assets.

Net Return to Land

Annual net return to land was computed by subtracting a nine percent annual payment for fixed capital other than land from the annual return to land and fixed capital. The estimated residual payment available for a return to capital invested in land was \$2,272 annually or .95 percent with land valued at \$1,500 per acre. This indicates that the returns generated under plan III will allow a \$10,000 payment to labor and management, a nine percent payment to operating capital, a nine percent payment for fixed capital assets other than land and would result in a return to land slightly less than one percent annually. Cropping plans I and II do not provide for any residual payments to the land investment.

COMMENTS

If the estimated net returns in Table 10 are reasonably close estimates of the profit potential for 160 acre farms in the EBID, it appears evident that 160 acre farms, with budgeted yields and prices are not very profitable. Cropping plan III, consisting of 50 percent of the total acres in chile and fall lettuce, was the only cropping plan budgeted that created sufficient returns to allow a \$10,000 annual withdrawal for

family living expenses and have a residual revenue available for capital payments (\$8,365 annually).

Farmers using cropping plans I and II would have to receive above average yields and higher prices and/or reduce expenses below those budgeted in order to have a profitable operation. Cropping plan III, under the yield and price conditions budgeted, will not generate sufficient funds to allow an individual to purchase a 160-acre farm on credit and pay for it out of farm income. However, it does appear possible from the information developed that if an individual could obtain above average yields and prices, he could manage loan commitments on at least part of the capital necessary to own and operate a 160-acre farm if he followed a cropping plan similar to III. Further analysis using various yield and price assumptions at various debt to equity ratios could be useful. Other cropping programs that include larger acreages of vegetable crops might also increase the expected profitability of 160-acre farms.

Cropping plan III is not a feasible plan for all farms in the EBID without a considerable expansion of market outlets for chile and lettuce. If every farmer in the valley planted 25 percent of his total acres in chile and the same amount in fall lettuce; total chile production would increase 300 percent and fall lettuce 700 percent over current levels. Although it is unlikely that all farmers would follow such a cropping program, it does illustrate that chile and fall lettuce production cannot be expanded significantly without a change in marketing conditions.

Another point worth noting is that depreciation totaling approximately \$8,500 has been charged as an expense in all three income statements. It is common in agriculture for the owner/operator to use these funds generated by depreciation for debt payments and living expenses, particularly in periods of low prices for farm products. Typically purchases of capital items are made in years when prices are high and yields are good rather than from a systematic re-investment of depreciation dollars.

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APPENDIX A

ESTIMATING MACHINERY AND EQUIPMENT OPERATING EXPENSES

Parts of the attached worksheet were used in estimating operating expenses for machinery and equipment other than irrigation, miscellaneous tools, and pick-up. This form was adapted from Stevens, Delwin M. and Douglas E. Agee, Using Farm Machinery Efficiently, Bulletin 482R, Agricultural Experiment Station, University of Wyoming, Laramie, September 1977. Only those blanks marked with an X were computed and used in this report. The table referred to in the worksheet is from the above mentioned bulletin and is also attached. In addition to the values found in this table, it was also necessary to estimate some values based on information given in this table and a general knowledge of farm machinery.

Worksheet: Costs of owning and operating farm power units and machinery.

Basic Information:

Machine X ; size X ; New cost X ; Annual use =
 hours, acres or miles (circle one); Estimated life X years; Trade-in
 value X ; Interest rate ; Average value X .

Ownership (fixed) Costs

1. Depreciation: $\frac{\text{X}}{\text{new cost}}$ minus $\frac{\text{X}}{\text{trade-in value}}$ $\div$ $\frac{\text{X}}{\text{years use}}$ \$ X
2. Interest: $\frac{\text{new cost}}{\text{new cost}}$ plus $\frac{\text{trade-in value}}{\text{trade-in value}}$ $\div$ 2 times interest.....
3. Taxes: Average value X x 1%..... X
4. Insurance: Average value X x .6%..... X
5. Housing: Average value X x 1.0%..... X
- Total ownership cost of machine for year..... \$ X
- Average fixed cost per: hour, acre, mile (circle one)..... \$

Operating (variable costs)

1. Fuel: X gal./hr. x \$ X /gal. x X hrs. (annual use)... \$ X
2. Engine oil: X gal./year x \$ X /gal.
 Use .0250 to .0750 gal./hr..... X
3. Other lubricants: Annual charge is .4% of new cost..... X
4. Repairs: (overhaul, parts, tires, plugs, plowshares, etc.)
 \$ X new cost x X % (Table 11)..... X
5. Service labor: hr. @ \$ /hr. Use 3% annual
 machine use hours.....
- Total operating costs for the year..... \$ X
- Average operating cost per: hour, acre, mile (circle one).... \$

TOTAL ANNUAL OWNERSHIP AND OPERATING COSTS..... \$

Combined cost of tractor, labor, and machine

Average annual machine cost per: hour, acre, mile..... \$
 Labor cost per: hour, acre, mile.....
 Tractor costs per: hour, acre.....
 Total man, machine, and tractor costs per: hour, acre, mile... \$

Table 11. Suggested values to use in calculating annual repair costs for various farm machines.

Machine	Annual repairs as percent of initial cost of machine
Tractor	3.5
Milo and cotton planter	2.0
Precision vegetable planter with bedshaper	3.0
Drill	1.5
Disc	3.5
Cultivator	3.5
Side-dress attachment	3.5
Lister	5.0
Plow	7.0
Landplane	2.5
Harrow	1.0
Float	1.5
Shredder	3.5
Boarder disc	3.5
Tractor mounted sprayer	5.0
PTO swather	3.5
Hay rake	3.0
Baler	3.0

Source: The Cost of Using Farm Machinery, Kansas State College Engineering Experimental Station Bulletin 74.

APPENDIX B

Quantities and Prices Used for Estimating Purchased Input Expenses

<u>Crop</u>	<u>Purchased Input</u>	<u>Dollars per Acre</u>
Cotton	Seed ^a	
	25 lbs. of seed/acre at a cost of \$.28/lb.	7.00
	Fertilizer ^a	
	Typical range	
	18-46-0 80-100 lbs./acre	
	urea 160-200 lbs.acre	
	Amount budgeted	
	100 lbs. of 18-46-0 @ \$200/ton (applied) and 180 lbs. of urea @ \$195/ton (applied)	27.50
	Herbicide ^a	
	Typical range	
	Tolban 1½-2 pints/acre	
	Amount budgeted	
	Tolban @ 2 pints/acre @ \$30.00/gallon and \$2.50/acre for application	10.00
	Insecticide ^a	
	Typical range	
	Temik 3-4 lbs./acre	
	Amount budgeted	
	Temik @ 3.75 lbs./acre @ \$2.00/lb.	7.50
	Harvest ^b	
	Typical range	
	Pick and haul \$.03-.04/lb. of field run cotton	
	Amount budgeted	
	Pick and haul @ \$.04/lb. and estimated field run weight/acre @ 600 lbs. lint + 1000 lbs. seed + 80 lbs. trash	67.20
	Ginning ^b	
	\$2.20/cwt. of field run cotton for 1,680 lbs. + \$6.50/bale for wrapping and tying	43.50

<u>Crop</u>	<u>Purchased Input</u>	<u>Dollars per Acre</u>
Alfalfa	Seed ^a	
	25 lbs. of seed/acre at a cost of \$1.50/lb.	37.50
	Fertilizer ^a	
	Typical range	
	0-46-0 200-300 lbs./acre	
	Amount budgeted	
	280 lbs. of 0-46-0 @ \$160/ton (applied)	22.50
	Baling wire ^b	
	One box will tie approximately 12 tons of hay	
	Amount budgeted	
Barley	One-half box @ \$25.00/box	12.50
	Custom baling ^b	
	\$8.00/ton for baling only based on approximately .30/bale and 75 lb. bales. This price includes cost of the wire.	42.00
	Seed ^a	
	110 lbs. of seed/acre at a cost of \$.055/lb.	6.05
	Fertilizer ^a	
	Typical range	
	Urea 80-100 lbs./acre	
	Amount budgeted	
	90 lbs. of urea @ \$195/ton (applied)	9.00
	Herbicide ^a	
	Ronnox @ 2 pints/acre @ \$18.00/gallon	5.50
	Insecticide ^a	
	Typical range	
	Material (applied) \$5.50-6.00/acre	
	Amount budgeted	
	One application @ \$6.00/acre	6.00

<u>Crop</u>	<u>Purchased Input</u>	<u>Dollars per Acre</u>
Chile	Harvest ^b	
	\$8.00/acre + (.08/bu. x 62.5/bu.) + (.10/mile hauled x 5 miles)	13.50
	Seed ^a	
	3.5 lbs. of seed/acre at a cost of \$9.00./lb.	31.50
	Fertilizer ^a	
	Typical range 18-46-0 250-325 lbs./acre	
	Amount budgeted 300 lbs. of 18-46-0 @ \$200/ton (applied)	30.00
	Herbicide ^a	
	Prefar @ 1.5 gallons/acre @ \$16.00/ gallon	24.00
	Insecticide ^a	
Lettuce	Material costing \$5.00/acre/application done twice one application custom applied for an additional \$2.50/acre	12.50
	Hand Hoeing ^a	
	\$25.00/acre per hoeing done three times	75.00
	Harvest ^a	
	1½ cents/lb. of green chile	240.00
	Seed ^a	
	¾ of one lb. of seed/acre at a cost of \$24.00/lb.	18.00
	Fertilizer ^a	
	Typical ranges 18-46-0 350-400 lbs./acre urea 250-350 lbs./acre Nitrogen solution 35-45 lbs. of nitrogen equivalents	
	Amount budgeted 400 lbs. of 18-46-0 @ \$200/ton (applied), 300 lbs. of urea @ \$195/ ton, and 40 lbs. of nitrogen equivalent as nitrogen solution @ \$.25/lb. of nitrogen equivalent	79.20

<u>Crop</u>	<u>Purchased Input</u>	<u>Dollars per Acre</u>
	Herbicide ^a	
	Typical range	
	Balan 5-6 pints/acre	
	Amount budgeted	
	Balan @ 5.5 pints/acre @ \$8.75/ gallon	6.00
	Insecticide ^a	
	Material costing \$15.00/acre (applied) for each application and repeated 10 times	150.00
	Thinning and Hoeing ^a	
	Thinning @ \$100.00/acre and hoeing @ \$30.00/acre/hoeing and done twice	160.00
	Harvest ^a	
	Typical range	
	\$1.95-2.15/carton	
	Amount budgeted	
	\$2.05/carton for cutting, boxes, packing, hauling, and cooling	923.00

^a Agricultural Products Company of Mesquite, New Mexico.

^b Various departmental reports, files, and telephone calls to farmers and suppliers.

Senator CHURCH. Thank you very much, Senator Domenici.

I see our good friend, Senator Nelson, who is on our agenda this morning as the first witness. We welcome you, Senator.

**STATEMENT OF HON. GAYLORD NELSON, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator NELSON. Mr. Chairman, members of the committee, I know you have a long list of witnesses to be heard. My statement is only about 3 or 4 minutes.

Mr. Chairman, as a former member of the committee, I conducted the hearings on the issues involved here 13 years ago, and then on three occasions since then, either as a member of the committee or jointly in the Small Business Committee, and this committee, we have conducted hearings on three additional occasions since 1964, the last one, hearings in Fresno, Calif., in 1975. Out of these hearings and the experience and information we gathered from it, I introduced a bill along with Senator Haskell, Senator Metcalf, and Senator Abourezk, which proposes a reform of the reclamation law. That bill, the Reclamation Lands Family Farm Act, is now before this committee, and Senator Jackson has stated that the Subcommittee on Public Lands would hold hearings on that proposal along with, I assume, several others sometime in January.

I mention this history because, as cosponsor of the Cranston resolution I believe that regulation of the excess land sales and reclamation projects should be reviewed by the Congress. While I believe that the proposed regulations are, in fact, a major step forward in correcting abuses that have occurred in the reclamation projects, the real solutions can only come through legislation and effective reform of reclamation law requires two things. First: That there be an acreage equivalency in the law which is in the proposal that was introduced by four of us and is before this committee, so that farmers in all States can be treated equitably within the limits of a realistic acreage limitation. And, second: That only people who actually farm the land be entitled to the benefits of the program. It seems to me the Federal Government must no longer provide large sums of money in subsidies to nonfarming investors. Regulations cannot accomplish the first of these goals and can only partially accomplish the second. Comprehensive review of the reclamation law is long overdue. Nonetheless, I would agree that in the midst of all the confusion created by the court decision and the regulations, it would be sensible to provide a 1-year moratorium on changes in the implementation of the law so that Congress can act in a responsible and careful manner.

I most strongly urge, however, that we take action this year. I also urge that the moratorium on the regulations not extend into a moratorium of the reclamation law as I would interpret the Domenici resolution to do.

In other words, I believe that resolution would suspend the law for a year or rather than suspend the implementation of the regulations which the Cranston resolution would do.

If Congress concern is with the proposed regulations, then Congress should delay only those regulations. It should not temporarily repeal the most substantial provisions of the reclamation law. In the meantime, I applaud the administration's stated intention to

make proposals to Congress to reform the law, and I urge them to work closely with all of those who are proposing changes in the reclamation law. I believe that this bill, the one that we introduce, can provide the basis for a new and productive era in reclamation policy.

Thank you very much.

Senator CHURCH. Thank you very much, Senator.

I would like to say before you leave the room that I agree fully with you that acreage equivalency needs to be written into law. I have a bill directed toward that particular issue. I know that that is one of several provisions contained in your bill, but there is no doubt in my mind that this is long overdue, and it would be one important feature of the updated reclamation law that would still preserve the concept of the family farm.

Senator Hansen, do you have any questions you would like ask?

Senator HANSEN. No; I do not have, thank you, Mr. Chairman. I appreciate our colleague being here.

Senator CHURCH. Thank you very much, Senator Nelson.

Senators Hatfield and Hayakawa have asked that their statements be included in the record, and without objection it is so ordered.

[The prepared statements of Senators Hatfield and Hayakawa follow:]

STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON

Mr. Chairman, I am pleased to have the opportunity this morning to discuss federal irrigation projects and their impacts on Western agriculture. For several years, many people have been suggesting that changes may be needed in the laws which govern these projects, but it has taken action by the Department of the Interior to focus national attention on the guiding principles for reclamation law. By proposing and publishing new regulations, Interior officials have stirred an issue which has been resting relatively quietly for the past three quarters of a century.

First, let me explain that the heart of the issue—the development and management of stored water—is central to life in much of the West. In fact, reclamation law plays a part in the management of over 9 million acres in 17 western states. Moreover, agriculture is the leading industry in many of these same states. Taken as a whole, the region leads most nations in the production of food for domestic consumption and export.

Commonsense dictates that changes in this productive capacity should be carefully considered. In addition, the complexity of federal water policy argues forcefully for judicious evaluation of our efforts to change the rules for reclamation law.

Our national water policy has its shape from the full range of statutes, regulations, congressional committee reports, executive orders and department memoranda. Before embarking on a new course, I believe it is imperative that we understand both the substance of this existing law as well as the full impact of any changes we may bring on. This process takes time, so I am particularly pleased to be a cosponsor of a resolution which would give Congress full opportunity for a comprehensive review.

Our review of federal reclamation law should recognize several clear principles. The 1902 Reclamation Act includes clear directives to spread the benefits of subsidized irrigation to a maximum number of people and to promote the family farm as a desirable way of life. Ours is a government committed to shared benefits and the promises of this first reclamation law should be kept. But strict and inflexible definitions of these goals deny the variabilities of climate and soil. Unyielding implementation of the first directives for reclamation projects can work real hardships for farm families.

Congress has not taken a comprehensive look at major reclamation law since the 1926 Omnibus Adjustment Act, so we are probably long overdue for such an exercise. If strict enforcement of the existing law will mean reduced productivity and increased costs for consumers, outmoded portions of the law must be modified.

Productive farms are especially important when far too many people are poorly fed. If we do not move to assure continued production from agricultural lands, those farmers who are up in arms over the current regulation proposals will be joined by many others.

Congress, has, from time to time, recognized the need to depart from the 160 acre limitation and has provided the authorization on a project-by-project basis. A degree of flexibility for acreages eligible for project water has been included to reflect varied soil conditions and growing seasons. Senator Church has proposed an extension of this so-called Class I equivalency concept and I was pleased to join with him as a cosponsor of the bill. Senator Packwood recently introduced legislation to give Congressional sanction to a list of contracts agreed to by irrigation districts and the Bureau of Reclamation. These contracts relieve the districts of the 160 acre limitation, once they have made full payment for the cost of constructing the project. Since this contract language is now threatened by interpretations made by Interior officials, Senator Packwood's bill would correct the situation through special Congressional action.

Both of these approaches have a great deal of merit and I am pleased to support them. Nevertheless, as the committee gathers additional information and comments on this bill, we may find that perfecting language will be necessary. However the bills may be improved, the proposals should serve as a focus for comment on federal reclamation law. If Congress has adequate time to act, these bills will serve as our departure points for a thorough review of water policy for the arid lands of the West. That time is necessary seems obvious and I again want to express my support for measures which will allow us to take this responsibility seriously.

Mr. Chairman, I am anticipating keen interest in our actions on the part of the Administration and those concerned about Western agriculture. In its review of comments on new regulations, the Administration needs to work in harmony with people throughout the West who will be affected by these changes. For our part, I hope we go beyond the reams of statistics to look at the real conditions on family farms and ranches in the western United States. Because of the complexity of the situation, commonsense argues that we move carefully, and without hasty deadlines, in our study.

STATEMENT OF HON. S. I. HAYAKAWA, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am more strongly convinced than ever, as more testimony comes to my attention and as I further study the regulations proposed to the 1902 Reclamation Law by Interior Secretary Andrus, that it is the duty of the Congress to study this law. We must amend it in a manner which will make it more appropriate to sound farming practices of 1977 and in a way which will be more practical in the future.

The President has stated over and over that the law should be amended. The Secretary of the Interior has stated that the law should be amended. In a recent meeting of the Western States Coalition I felt that the consensus was that the law should be amended. I do not believe it is possible for Congress to intelligently act to amend this law with a deadline of March 1, 1978, as prescribed by the Secretary of the Interior.

California does have a great stake in the promulgation of these regulations, but, as importantly, the effect these regulations will have on the other Western States is of equal concern to me. I also feel that even though the 1902 Law was specifically addressed to the Western States for the development of our arid lands, these regulations can be applied to any Army Corps of Engineer projects, levy districts, navigable waters, etc. Through the enforcement of the 1902 Reclamation Law, these regulations could and very well may affect the total national water policy.

I ask again that we of the Congress demand the time necessary to fully explore the 1902 Reclamation Law and amend it with full understanding of the consequences of the action we might take.

Senator CHURCH. Congressman Burgener, please.

STATEMENT OF HON. CLAIR W. BURGNER, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Congressman BURGNER. Thank you, Mr. Chairman and members of the committee. I deeply appreciate your hearings, particu-

larly when your body is not in session, and you have very many other things to do.

I represent Imperial County, Calif., in its entirety. I need not tell the members of this committee exactly where it is, but for the record at the moment I will. I want to say that I support fully the idea of a moratorium or some such time-buying device. I do not appear in support of any particular resolution, but merely the idea of giving the Congress time to sort this out and act in a manner that hopefully will be in the best interest possible.

Now, I confess to some emotional involvement, and I will try my best to subordinate that and to be factual and rational, and that is a pretty big order for a Member of the House. Let me describe this unique valley, Mr. Chairman.

Senator CHURCH. You might confine it to the House.

Congressman BURGNER. Well, I felt I had better, Mr. Chairman.

It borders the Republic of Mexico on the south, the State of Arizona on the east, San Diego County on the east. It is a unique valley. It is below sea level. It has an unusual climate. It is California desert, and has 4,000 hours of sunshine per year. It has no rain almost, at least we hope it does not. We do not need rain there. It interferes with everything we do. It rains 2 to 4 inches a year with the exception of rare tropical storms which cause great havoc. It is nearly half a million acres, and it is the fifth most productive county in America with over a half a billion dollars a year in crop; 93 percent of the farms are family-owned and operated, as nearly as I can tell. I have been over the plat maps and looked at who owns them, whether they are family corporations and so on; but in terms of being publicly held outside, as near as I can tell, about 7 percent.

Now, since 1900, the farmers out there have been operating and watering with water from the Colorado River. It used to come through what was known as the Alamo Canal which went through the Republic of Mexico, turned around northward and then by gravity headed north and west from the river entering into the Salton Sea, which was created around the turn of the century when the Colorado River broke out of its banks.

All of the systems were privately paid for by the farmers. In 1928 the Boulder Canyon project was authorized with the dam and the so-called all-American canal, with the idea being that it would be better to have the canal entirely within the confines of the United States of America, the all-American canal was built. And Senator Hiram Johnson and one of my predecessors, Congressman Phil Sling, worked very diligently in the Congress to assure the valley residents that they would not be involved with the 160-acre limitation.

There was even a vote of the people held out there. It went through the courts and so on, and the valley was assured and so they agreed and cooperated, and they are paying back for this all-American canal, which cost about \$25 million. They are paying back without interest, and they have paid back about half of that money by now. In a very famous letter from Secretary of the Interior Lyman Wilbur written on February 23, 1933, the following agreement was transmitted to Imperial Irrigation District: "These lands already having a vested right and are entitled to have such

vested right recognized without acreage limitation." His stand was reaffirmed in subsequent Department reviews in 1937, 1941, 1946, 1950, and 1952.

Now, based on this, the farmers in that valley, many of whom are now third generation, invested hundreds of thousands, perhaps millions of dollars in vast systems. The water that comes out of the Colorado River is salty, as we know, and we spent hundreds of millions of dollars trying to clean it up before it eventually ends up in Mexico. So, underneath all that land is a vast system of drain tile several feet under the surface, and that drains and the water goes through and the minerals and salts go through and they eventually find their way north to the Salton Sea.

Now, based on all of this history, and assurances and promises—I am not a lawyer, I do not know if they are legally binding, but I would believe them, indeed I would, Mr. Chairman, and members, if I were a farmer in that area. They did believe them, and have faith, and they invested their work and their money based on that reasonable belief.

Now, on August 18, 1977, comes along a three-judge panel of the Ninth Circuit Appeals and says the 160-acreage limitation does indeed apply to Imperial County. This was in response to a suit brought by a local citizen who did not agree with the farmers. Then comes the proposed regulations from the Secretary of the Interior who appears here with us today.

We maintain that those regulations go far beyond even what we consider a very unfair court order.

Now, I want to submit to you gentlemen that there is strong support in the House to buy time, and I submit for the record a letter that Congressman Krebs and I drafted and sent to the President a couple of weeks ago which asks for a moratorium. It does not say which one or how it should be drafted. It commits no one to a position, but we have this signed by 74 Members of the House of Representatives, 39 Democrats and 35 Republicans, so there is strong support in the House.

[The letter to President Carter follows:]

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HARRY COMPTON
ADMINISTRATIVE ASSISTANT

Congress of the United States
House of Representatives

CLAIR W. BURGNER
430 DISTRICT, CALIFORNIA

October 13, 1977

DISTRICT OFFICES:
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SAN DIEGO, CALIFORNIA 92188
202 E STREET
SUITE D
BRAWLEY, CALIFORNIA 92227
MAXINE GREEN
DISTRICT REPRESENTATIVE

The Honorable Jimmy Carter
The President of The United States
The White House
Washington, D. C. 20500

Dear Mr. President:

Many Members of Congress are deeply concerned about the possible impact on western agriculture of the recently proposed regulations regarding enforcement of the 1902 Reclamation Act by the Department of the Interior.

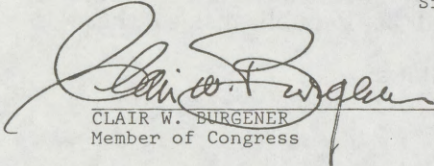
Your own recent public statements on this issue indicate you believe it to be a matter of major importance and have accelerated public awareness of the matter.

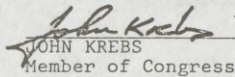
We are informed that the House Committee of appropriate jurisdiction will hold public hearings on this subject in western states as soon as practical after the current Congressional session is adjourned.

In view of these developments, we urge that a moratorium on the implementation of the final regulations be imposed until economic and environmental reports have been prepared.

We look forward to working in concert with your Administration toward a solution to this highly significant problem.

Sincerely,


CLAIR W. BURGNER
Member of Congress


JOHN KREBS
Member of Congress

Shirley N. Pettis
Shirley N. Pettis, M.C.

Carlos J. Moorhead
Carlos J. Moorhead, M.C.

John J. McFall
John J. McFall, M.C.

Robert J. Lagomarsino
Robert J. Lagomarsino, M.C.

Lionel Van Deerlin
Lionel Van Deerlin, M.C.

Dan Marriott
Dan Marriott, M.C.

Robert E. Badham
Robert E. Badham, N.C.

James Abdnor
James Abdnor, M.C.

Keith G. Sebelius
Keith G. Sebelius, M.C.

Charles E. Wiggins
Charles E. Wiggins, M.C.

William L. Armstrong
William L. Armstrong, M.C.

George E. Brown, Jr.
George E. Brown, Jr., M.C.

John J. Rhodes
John J. Rhodes, M.C.

Jerry M. Patterson
Jerry M. Patterson, M.C.

John H. Rousselot
John H. Rousselot, M.C.

Steven D. Symms
Steven D. Symms, M.C.

Gunn McKay
Gunn McKay, M.C.

Virginia Smith
Virginia Smith, M.C.

Jim Lloyd
Jim Lloyd, M.C.

Larry Winn, Jr.
Larry Winn, Jr., M.C.

Mark Andrews
Mark Andrews, M.C.

Eldon Radd
Eldon Radd, M.C.

Pat Schroeder
Patricia Schroeder, M.C.

Frank E. Evans
Frank E. Evans, M.C.

James P. Johnson
James P. Johnson, M.C.

Harold T. Johnson
Harold T. Johnson, M.C.

B. P. Sisk
B. P. Sisk, M.C.

Thomas S. Foley
Thomas S. Foley, M.C.

Glenn M. Anderson
Glenn M. Anderson, M.C.

Manuel Lujan, Jr.
Manuel Lujan, Jr., M.C.

Don H. Clausen
Don H. Clausen, M.C.

Paul N. McCloskey, Jr.
Paul N. McCloskey, Jr., M.C.

Teno Roncalio
Teno Roncalio, M.C.

Del Clawson
Del Clawson, M.C.

Joe Skubitz
Joe Skubitz, M.C.

Max Baucus
Max Baucus, M.C.

Leon D. Panetta
Leon D. Panetta, M.C.

Dan Glickman
Dan Glickman, M.C.

William M. Ketchum
William M. Ketchum, M.C.

W. H. Page
W. H. Page, M.C.

Al Willman
Al Willman, M.C.

Barry M. Goldwater, Jr.
Barry M. Goldwater, Jr., M.C.

Bob Stump
Bob Stump, M.C.

Bob Wilson
Bob Wilson, M.C.

Mickey Edwards
Mickey Edwards, M.C.

George Hansen
George Hansen, M.C.

Robert K. Dornan
Robert K. Dornan, M.C.

Joel Pritchard
Joel Pritchard, M.C.

George H. Mahon
George H. Mahon, M.C.

Ron Marlenee
Ron Marlenee, M.C.

Wes Watkins
Wes Watkins, M.C.

Richard C. White
Richard C. White, M.C.

James M. Collins
James M. Collins, M.C.

Harold Runnels
Harold Runnels, M.C.

Larry Pressler
Larry Pressler, M.C.

John J. Cavanaugh
John J. Cavanaugh, M.C.

John E. Cunningham
John E. Cunningham, M.C.

Melvin Pride
Melvin Pride, M.C.

Tom Steed
Tom Steed, M.C.

Leo J. Ryan
Leo J. Ryan, M.C.

Jack Hightower
Jack Hightower, M.C.

Mark W. Hannaford
Mark W. Hannaford, M.C.

Charles Wilson
Charles Wilson, M.C.

Jim Santini
Jim Santini, M.C.

Ted Risenhoover
Ted Risenhoover, M.C.

Norm Dicks
Norman D. Dicks, M.C.

Norman Y. Mineta
Norman Y. Mineta, M.C.

Les AuCoin
Les AuCoin, M.C.

Robert L. Leggett
Robert L. Leggett, M.C.

Mike McCormack
Mike McCormack, M.C.

Robert Duncan - Oregon
Robert Duncan, M.C.

Congressman BURGNER. Now, finally, Mr. Chairman, since time is limited, let me just say this. I have met twice personally with the President, and I got the following response: He said I am a family farmer. I own, I think he said, 3,000 acres, and I recognize large acreage is often necessary in certain crops and climates, and so on, to be economic. So I am sympathetic, said the President. But, he quickly added, I must obey the law. Well, we all understand that, and so that is why we are here today to talk about the law. Let me tell you just in conclusion what is happening in Imperial County. It is nothing short of panic, Mr. Chairman. They had a little rally with 6 days' notice out there a few weeks ago; 11,000 people appeared. They had to hold it in the county fairgrounds. They had another one in San Diego and another one in Los Angeles; 11,000 people gathered. In my political tenure, and I have been in public office nearly 20 years, I have never seen such a rally.

A farmer, whom I have the privilege to represent, went to his banker a couple of weeks ago to borrow money as they all must, and as we all must in business, and he submitted his financial statement to the banker. He wanted to borrow money and had his land valued at \$1,500 an acre, which is exactly what it had been selling for in the past year—land like his. The banker looked over the statement, took out a pen, and drew a line through the \$1,500, and wrote \$750. And the farmer said, what are you doing? And he said, well, based on the new regulations, that is what we think it is worth. The farmer said, I owe more than that on the land, and the banker said, I am sorry.

Another case, and this is typical of hundreds, again. There is a business out there in that valley that puts in drain tile, irrigation ditches, concrete-lined ditches, gates, valves, sprinklers, et cetera. They employ 122 people, and they have an annual payroll of \$1,860,000. I got a letter from them 3 years ago. Instead of having 122 employees he has now laid off 75 percent, 90 people have lost their jobs, and he said if he does not get relief of some kind by Christmas the business will be closed.

Finally, it is not enough we get the tobacco bud worm coming in for the cotton and we have got low farm prices, but the farmers out there have always said the land will bring us back. We may not make it this year, but the land will bring us back. Mr. Chairman, the land won't bring us back if somebody else owns it.

I say finally that if this goes through, I predict the emergence of something new in America: the agricultural slump. Marginal land will not be farmed. Acreage will go down. The cost to the consumer will go up, and America's best interest will not be served.

Thank you, Mr. Chairman.

Senator CHURCH. I can understand the difficulty of the problem, and the intensity of the feelings in your district given the circumstances, and we appreciate your testimony.

Senator Hansen, do you have a question?

Senator HANSEN. I have no questions.

Thank you very much, Congressman.

Congressman BURGNER. Thank you very much, gentlemen, for the time.

[The prepared statement of Congressman Burgener follows:]

STATEMENT OF HON. CLAIR W. BURGNER, A U.S. REPRESENTATIVE FROM THE
STATE OF CALIFORNIA

Is there a crisis in Imperial County? I have received hundreds of letters since that traumatic decision was handed down by a 3-judge panel of the Ninth Circuit Court of Appeals on August 18, 1977. Many were typical of the problems created by that decision.

A farmer in Imperial County recently made his heretofore routine visit to his banker to borrow money. Like most all businesses, this farmer needed money to operate—to buy seed, fertilizer, insecticide, to level land, install drain tile, irrigation systems, etc. On his personal financial statement, under "assets" he listed his land at \$1,500 per acre, which is what comparable land had been selling for during the past year. The banker examined the statement carefully, took out his pen, drew a line through the \$1,500 figure and wrote "\$750." The farmer exploded—"but I owe that much per acre on the land." "I'm sorry" responded the banker, "but since the recent court ruling on the 160-acre limitation, that's all we think it's worth."

Another businessman from the Valley wrote to me a couple of weeks ago about his problem. He has a medium size agribusiness which employs 122 people. He installs concrete-lined ditches, water systems, tile drainage materials, gates, valves, etc. The annual payroll for these 122 people is approximately \$1,860,600.00. He told me that because of the court order in August, by November 15 he will have terminated 90 people—a 75-percent reduction in work force. If no relief is forthcoming from the Federal Government, he will have to shut down entirely.

As the member of the House of Representatives representing Imperial County, I would naturally be expected to do my level best to protect the legitimate economic interests of the overwhelming majority of the 80,000 people who live there. And indeed I will, to the best of my ability. But this matter goes far beyond one's normal duty and inclination to respond and represent. I feel a deep personal sense of bewilderment at the action of the Federal Court and subsequent proposals by the Department of the Interior. I have never felt so strongly that there is a basic moral issue here between a government and its citizens. In short, the mechanism and majesty of a large and powerful Federal Government has broken its promises and commitments to a sizeable number of its constituents. Beyond all that is the broad, general public interest, the best interests of which should be paramount with us all. I am convinced that if this plan is actually carried to its currently proposed conclusion, everyone will lose: The farmer, the farm worker, the consumer who buys the food and fibre, local, state, and Federal tax collecting governments, the environment—and the economy. I predict the emergence of something new in America, the agricultural slump.

Why these strong statements and dire predictions of doom? Let's take a quick look at just a portion of the proposed regulations and see. Let me also add that the Secretary of the Interior has gone far beyond what the court ruled in his proposed new regulations.

One of the new regulations demands that the owner of "excess lands" (those over 160 acres by one owner whose land receives water from a Reclamation project) dispose of such land within 5 years. If that were not enough—there is a requirement that the land be sold "at a price approved by the Bureau of Reclamation" and that the buyer will be selected "by lottery, from a group of prospective purchasers whom the Bureau determines are eligible."

Another proposed regulation says the owner of the land must live within 50 miles of the land. What would this do to retired farmers who choose to retire elsewhere and have leased their land to younger farmers?

There are more regulations, but I believe these two establish the point rather adequately. Now to the basics: Why should Imperial County not be obliged to live up to the 1902 Reclamation Act—and indeed—even to these proposed new regulations? There are sound and equitable reasons. First, a few quick facts about Imperial Valley in 1977 and then a bit of history.

Imperial County is the fifth most productive agricultural county in America with annual crop valued in excess of one-half a billion dollars. The average farm in Imperial County is somewhere between 700 and 1,000 acres. Some 93 percent of the farms are family owned and operated. I don't know if a 160-acre farm made economic sense in 1902. But I do know that it does not make sense today in Imperial County. If the Federal Government's target in all this is the large corporate absentee owner—Imperial County is obviously the wrong target.

Now for the promises made and about to be broken: Imperial Valley farmers have been farming and improving the land and using Colorado River water since the turn of the century. They were there, at work, investing their own money, long before the Boulder Canyon project was authorized in 1928 and the Hoover Dam construct-

ed in the mid-1930's. Based on this long history of being there first, based on not being able to farm solely because of the Bureau project, they have been exempted these many years from the 160-acre limitation. In a now-famous letter written to the Imperial Irrigation District by the Secretary of the Interior Ray Lyman Wilbur on February 23, 1933 is the following quote: "these lands, already having a vested right, are entitled to have such vested right recognized without acreage limitation." His stand was reaffirmed in subsequent departmental reviews in 1937, 1941, 1946, 1950 and 1952. Based on these guarantees accepted in good faith, the farmers over all these years invested heavily in equipment, irrigation systems, etc. all designed to operate large and economical acreage.

So there we have it—a firm commitment by government—a broken commitment by a high court of that government—and a department of that same government going far beyond the severity of the court.

What are we doing about it? Many things—to mention a few of the main ones. The people of Imperial County have formed a large citizens' committee called "Citizens for Government Fairness", and are conducting a massive and effective public education campaign. In Congress we are doing things. On October 20 I delivered to the White House a letter asking for a moratorium on these regulations while economic and environmental studies can be made. I prepared the letter with the valuable assistance of Congressman John Krebs (D-Fresno). We have had the letter co-signed by 73 Members of the House of Representatives: 38 Democrats and 35 Republicans. All of these Members of Congress come from the 17 Western States which are the states in which the Bureau of Reclamation operates. Legislation calling for similar moratoriums has been introduced in both Senate and House.

In conclusion, I am personally convinced that we will win this battle in the end. We will win because the enormity of losing simply cannot be tolerated. We will win because we are right. We will prevail because it is in the best interests of all Americans that we do so. The alternative is totally unacceptable. The alternative is higher cost for food and fibre for the consumer. It means lost jobs, lost capital, and reduced productivity. It may well mean the emergence of the new "agricultural slum." I'm confident that fairness and common sense will finally prevail and that this government will encourage, not limit, its citizens.

Senator CHURCH. Our next witness is the Honorable Cecil D. Andrus, Secretary of the Interior.

Mr. Secretary, do you wish to be accompanied by any of your people? Please feel free to ask them to come to the table.

STATEMENT OF HON. CECIL D. ANDRUS, SECRETARY, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LEO KRULITZ, SOLICITOR; AND GUY MARTIN, ASSISTANT SECRETARY, LAND AND WATER

Secretary ANDRUS. Mr. Chairman, members of the committee, I have with me today our solicitor, Mr. Krulitz; Assistant Secretary for Land and Water, Mr. Martin. If we get to the question and answers, and I cannot answer you, Mr. Chairman, I will not hesitate to call upon them, and I would hope they would be recognized for that purpose.

Senator CHURCH. Very well.

Secretary ANDRUS. Mr. Chairman, my statement has been submitted to the committee. It is 17 pages in length. It is double-spaced if that helps, but it is condensed to, I think, a factual, concise document. I would, if I might, give, for the record, one sentence that should be at the bottom of page 16, otherwise I would ask that that be submitted for the record.

Senator CHURCH. The statement as modified by the addendum will be included at this point in the record.

Mr. Secretary, if you care to highlight the statement in your own words, would you please do so.

Secretary ANDRUS. Mr. Chairman, with that I recognize the time burden, and I will attempt to cut the statement in half for time,

ut there has been a great deal of misinformation surrounding this rea of concern, and I think, at least I hope, that I can clarify some f that today.

So, with your permission I will condense it, but it will take me a ttle time to go through.

Senator CHURCH. Take whatever time you feel you need.

Secretary ANDRUS. Thank you very much, Mr. Chairman, and I o not have to tell you my decision to publish the proposed regula- ons to implement the acreage regulations provisions of the Recla- ation Act of 1902 has generated intensive debate in Washington nd throughout the land.

This issue touches a sensitive nerve. It could have profound plications on the ownership, and possibly the operation, of feder- ly subsidized farmland in 17 Western States. It is not, however, a ew issue, Mr. Chairman. Political, economic, and legal debates ave been waged on this issue for years, and my decision has mply brought the issue to a head.

I think you, Mr. Chairman, and Senator Hansen, and others ave made comments here this morning already pointing out that erhaps this will bring a resolution. We hope you are right.

The proposed regulations were published in response to a court der in the case of *National Land for People v. The Bureau of eclamation*, and others. In that case, the Department was found iolation of the Administrative Procedure Act, not the Reclama- on Act but the Administrative Procedure Act, because it had ver published comprehensive regulations to implement the 1902 t.

I must add, however, that the regulations were also issued be- use I felt they were essential to carrying out the basic purposes the act and to accomplish uniform administration consistent ith the law as the Congress passed it. In other words, a court- dered action, but one that I support as a policy matter.

Congress originally authorized the Reclamation Act and has con- ued to recognize that. Not simply as a program to irrigate arid nds in the West, or for the general benefit of agriculture, rather e basic goal of the Reclamation Act is to create family-size farms areas that are irrigated by Federal projects as the first Commis- sioner of Reclamation, Commissioner Newhall stated at that time, d I will quote if I might:

The object of the Reclamation Act is not so much to irrigate lands as it is to make mes. It is not to irrigate the lands which now belong to big corporations or small es, but it is to bring about a condition whereby the land shall be put in the hands the small owner whereby a man with a family can get enough land to support it family.

Well, the President of the United States and I support those als. I believe the vast majority of the American public and the ngress also support those goals. Given the substantial Federal bsidies involved in reclamation projects, it is not unreasonable to ure that the benefits are widely distributed. This view has been pported by the past Congress and the courts. The Supreme Court, xample, Mr. Chairman, has stated that these goals were, and I ote from the decision in the *Ivanhoe Irrigation District v. Cracken*.

Reasonable classification to limit the amount of project water available to each individual in order that benefits may be distributed in accordance with the greatest good to the greatest number of individuals.

The court added that the acreage limitation provisions insure that enormous expenditures will not go in disproportionate share to a few individuals with large landholdings, and it prevents the use of the Federal Reclamation Service for speculative purposes. In short, the Supreme Court has concluded that acreage limitations provisions as a ceiling imposed equally upon all participants on the Federal subsidy that is being discovered.

The Reclamation Act has been on the books for 75 years, Mr. Chairman, and the reclamation program has made substantial contributions to the economic and social development of the West. However, because the law has not been strictly enforced, 160-acre parcels have been lumped together in sales to absentee owners and sales or leases to farm management syndicates. The family farmers whom the law was designed to benefit sometimes can be found in the corporate board rooms of Los Angeles or New York, in the Caribbean tax havens or farming out of the 40th floor of an office building or a lawyer's or doctor's office.

Now, this is not, Mr. Chairman, what the Congress had in mind when it authorized the Reclamation Act in 1902, and I do not believe that that is what it wants the program to be today. But I would admit to you there is a great disparity between that and what has been mentioned here today.

Our proposed regulations would correct several of the Bureau of Reclamation's current procedures which have resulted in abuses, and I would like to highlight just a few of these problems for you.

The existing procedures do not enforce the residency provision of the law, and it is in the law allowing absentee ownership which counters efforts to promote the family farms. It allows farming to be an investor activity rather than a residential one as was originally intended. The existing procedures do not place adequate limitations on leasing allowing large farm operations rather than small family farms. As a result, the issue of control of a large number of acreage has become as important as the issue of ownership itself.

The existing procedures do not control the sale price of land after it is sold into a nonexcess status. Thus, it fails to control speculation and profiteering, even though the large profits therefrom are based on federally subsidized water. The existing procedures allow individuals to hold 160 acres in more than one district or project thereby working against the goal established by Congress of making the benefits of the project available to the many instead of the few.

I feel an important obligation to correct these problems to insure that resident family farmers receive the benefits of federally subsidized projects.

I stress that while these subsidies are substantial, they are often overlooked and taken for granted. For example, the Bureau of Reclamation has estimated present value of the subsidy in the Westlands water district is \$800 million, or more than \$1,500 per acre. One corporate landowner today holds more than 100,000 acres in that district.

Without limitations of landownership, the subsidy accruing to the land now owned by the corporations over the life of the project would exceed \$150 million.

Another example is the Garrison diversion project in North Dakota. The Federal investment, and irrigation facilities, for 140-acre farm will cost \$1,450,000, that is the Federal investment, if the project is completed as it has been authorized. Of that amount, the farmer will repay only \$50,000, and the remainder will be paid at no interest by power consumers.

If such subsidies are warranted as part of a program with identifiable goals Congress should so decide, but we do not believe that the current program is designed with that in mind, Mr. Chairman. The proposed regulations published last August are designed to put each recipient of the benefits of federally subsidized projects on equal footing.

Mr. Chairman, I would like to explain what those regulations do, but also, Mr. Chairman, what they do not do. Again, because of the misinformation that surrounds this, I recognize it as being normal as you do, apprehension and fear on the parts of some of the people, the fear of the unknown. But maybe we can put some of that to rest.

The proposed regulations would apply only to lands receiving Federal project water under the reclamation law in 17 Western States. They would not apply to States outside of the West, nor would they apply to privately irrigated lands in the 17 Western States. As always, those living within a project who do not choose to receive Federal project water would not have to comply with the regulations. I think that is important, and permit me to repeat it. Those living within a project who do not choose to receive Federal project water would not have to comply with the regulations. The regulations would not lead to confiscation of any private property. The only enforcement authority available is to withhold project water and even then not to do so immediately but through a fair process over time.

The proposed regulations provide flexibility to account for changes in the economics of farm operations. They would not limit each family farm to 160 acres. Indeed, there is no limit on the amount of land a family farm might contain. A husband and wife with two children could own 640 acres and lease an additional 640 acres of nonexcess land. Larger families could own and lease even more acreage.

The proposed regulations would require residency on or in the neighborhood of land receiving project water. This provision was included because we believe that it is required by law, Mr. Chairman. I should like to add, however, that the proposed regulations are flexible and allow the family farmers to live within 50 miles of their property.

Now, with reference to moratorium regulations, Mr. Chairman, that we have heard discussed here this morning. The proposed regulations and intent of the Reclamation Act have been misunderstood by many people over the past few months. Some have claimed that regulations would lead to confiscation of private lands, that people would be told where they could or could not live,

or that farms would be limited to 160-acre plots, none of which is true.

The two resolutions have been introduced, and are being considered by this committee to postpone for 1 year implementation of the proposed regulations. The resolutions were drafted in response to complaints generated partially in response to misunderstandings about the proposed regulations, and what they would and would not do.

I want the committee to know, Mr. Chairman, that the administration is strongly opposed to enactment of these resolutions at this time, and permit me to explain.

I can sympathize with the desire to consider the impact of these regulations in an atmosphere of calm, rational deliberation. Unfortunately, these resolutions would not provide that atmosphere. Indeed, they would only intensify the misunderstanding, unreasonably delay the implementation of equitable regulations, and create more confusion. The most difficult problems are presented by Senate Joint Resolution 93. It would prohibit the Secretary from approving any excess land sales for an additional year, and thus lengthen the period of uncertainty excess landowners face today.

And I think, Senator Nelson, if I may digress, pointed this out in his presentation initially before this committee.

In addition, the economic disruption from uncertainty over land sales and inability to obtain adequate credit would continue for an additional year, and that is a problem as has been pointed out by a Member of Congress at this meeting.

The present legal confusion surrounding land ownership would be increased. Mr. Chairman, what we need is to create a stable climate where landowners understand how much land they can own or lease and how this can be accomplished. This stability should be created as soon as possible, and the best way to provide this stability is to implement equitable regulations, and if you notice, I have used that term twice, at the very earliest possible time.

To delay another year does nothing but lengthen the hardships, raise false hopes and create legal and administrative confusion. In almost every case I know of, Congress would insist on regulations rather than informal administrative practice. In addition, by imposing a moratorium we are delaying action to correct the abuses which do exist in the present procedures. A moratorium, Mr. Chairman, would allow subsidized Federal water to continue to serve nonresident investment farmers. It would continue the pattern of speculation on land prices based on subsidized water. It would allow unrestrained leasing to make family farming no more than an illusion.

Senate Joint Resolution 93 would effectively repeal the entire Reclamation Act for 1 year. The resolution would prohibit the Department from withholding water deliveries from any beneficiary of a Federal reclamation project for the purpose of enforcing the acreage limitation provisions or residency requirements of the Federal reclamation laws.

In other words, Mr. Chairman, the Department could not deny a request for project water from an excess landowner who has not signed the report or contract. Senate Joint Resolution 93 could lead

to many transfers of excess lands without Secretarial approval during this interim period. Mr. Chairman, if Senate Joint Resolution 93 were enacted, it would unreasonably hold up approval for land sales which reportable contracts have, in fact, been entered into.

It would unreasonably delay estate settlements and other necessary legal transfers. It would permit transfers to circumvent acreage limitation provisions, the later correction of which would create a legal and administrative nightmare, and it would result in court suits, we think, which would further delay implementation of the act.

Now, Senate Joint Resolution 96 is much less sweeping, but it also creates problems. It would lead to a substantial additional delay in excess land transfer in the Westlands district because it prohibits the Department from approving any transfer in the Westlands until December 31 of the calendar year 1978.

Even if final regulations are replaced, and enforced elsewhere, it also allows transfer of areas outside of the West land if such transfers are consistent with the proposed regulations. This will lead to substantial pressure to approve transfers immediately, divert our attention from preparing final regulations and possibly limit our flexibility in deciding what should be done in those final regulations.

So both resolutions could lead to another legal problem.

I would have to point out, Mr. Chairman, that Senate Joint Resolution 96 is, in our opinion, better than Senate Joint Resolution 93. We would prefer that neither be enacted at this time. And let me now move on to the proposed action that may help to alleviate this.

I recognize that there is a deep concern in the Congress over the impact of the proposed regulations, the statements of your committee members here this morning demonstrated that. I want you to know that the President and I share the concern, and we do not intend to take precipitous action which would unreasonably disrupt people who live and farm in the reclamation projects. I continue to believe that family farms are essential to the strength of our Nation. I do not believe family farming is an obsolete economic enterprise. Indeed, studies show family farms yielded greater long-term economic and social benefits than huge corporate farms or absentee owned enterprises.

This administration strongly believes that the Federal subsidies now provided through the reclamation programs should be available to legitimate family farmers, but not to large corporations, absentee owners and investors holding the land purely for speculation.

While conditions of family farming may have changed in some areas since the reclamation law was passed in 1902, the Congress has not seen fit to change the law. We are willing to cooperate with the Congress to reappraise the law. Various actions and inquiries are now underway to assess the changes in the law that may be necessary in the future. These include the President's water policy review, the work of the task force, which was created by the Congress to investigate the Western Irrigation District, and

13 hearings that are presently being held throughout the West on the proposed excess lands regulation.

I recognize the concern about the draft regulations, and I want to repeat today I will take no action to promulgate final excess lands regulations prior to at least March of 1978. In addition, I will carefully review the comments on the regulations to insure that we develop a system which will provide those in violation of the regulations, a fair period in which to dispose of excess lands should they be required to do so. Where changes are necessary in the proposed regulations, I will not hesitate to make them. I will also utilize the period between the closing date of the proposed regulations which is November 23, and the first of March, to assess public comment on the broader issue of amendments to the present reclamation law.

Those have been mentioned here this morning, and to consult with you and the other Members of Congress on these matters. Action on the regulations and decision on possible amendments should be coordinated, Mr. Chairman, and we hope that we will be able to work with your committee to do this.

To address the problem of misunderstanding of the purpose and effect of the proposed regulations, I intend to issue very shortly fact sheets which explain the proposed regulations.

I also intend to ask and, in fact, have asked the Secretary of Agriculture for his opinion and recommendation regarding not only the recommendations but the role of the acreage limitations and other facets of the reclamation laws in the context of modern agriculture. This cooperative interest should be completed by mid-February, and that will speak directly to the magic number of acres, I hope.

On the closely related matter of residency, I understand that certain hardships might exist under the proposed regulations even though the law was enacted to foster family farming. We remain open on this issue during the review period, particularly in the cases of the elderly or retired farmer. I have already asked the Solicitor to advise me if the law exists in hardship cases, and if the law needs to be changed to correct the problem. Again, I will not hesitate to propose the legislation, but I will submit to you, there is a difference between a retired farmer who might want to move off the land and perhaps exceed the 50 miles and a corporate board room on Wall Street, Los Angeles, Amsterdam, or the Caribbean.

Finally, Mr. Chairman, I would like to comment on the problems of the Imperial Irrigation Ditch. The Imperial Valley situation, which to some extent is being perceived as representative of all areas subject to excess land requirements, is, in fact, quite unique. The issue of whether the district is or is not subject to acreage limitation has been controversial for a half a century. It is still before the courts and until that matter is settled, I will not apply the new regulations to that district. In fact, the legal issue in the case is whether the Congress meant to apply the acreage limitations to the district. Until that issue is settled, it would be premature to apply these regulations, even if the regulations are found by the courts to apply to the district, the district will be provided an additional year to sign excess land, disposal of contracts, and

then 5 years to actually dispose of the land before the water will be withheld.

I also intend to explore whether there are additional areas where reliance on nonapplicability is at issue.

Let me summarize: The President and I believe that the law should be enforced as written and believe that family farms remain a viable objective of federally funded water programs. We remain open to changes in the regulations and the Reclamation Act, and will propose these changes only after the basic fairness is considered. And let me clarify that, Mr. Chairman, by pointing out when I say as written, after Congress has had the opportunity to take a look at the recommendations we will make. Already our hearings are showing us that the equivalency factor which I have personally supported for years, and you have supported, and I think other members of your committee have supported, has to be land at the initial acreage, the magic number, the growing seasons, all of those things, but we firmly believe that the concept that was put into the 1902 act by the Congress at that time, comments of a former President when he signed it, are as applicable today as they were then.

Maybe some of the rules and regulations were changed, but the concept of creating a family farm for the benefit of the people who live there and rear their families is just as strong.

I will be happy to respond to any questions you might have, Mr. Chairman.

Senator CHURCH. First of all, Mr. Secretary, I commend you for your statement. You covered a lot of ground in a limited time, and I would like to say at the outset that I am fully in accord with you and with the administration that the Bureau of Reclamation was established for the purpose of bringing water to arid and semiarid land in order that it might be settled and in order that it might provide a basis for family farms throughout the West. I cannot fault that purpose today. In fact, it seems to me, looking back over history, that it was our great good fortune not to have gone the way of so many other countries in permitting our land to be owned in enormous tracts by very wealthy people, whether they are individuals or corporations.

This is the plague of so many nations where the disparity between wealth and poverty is so obvious. And where land reform has become a revolutionary issue.

Now I hope having developed such an enlightened policy we are not going to abandon it and move in the other direction.

At the same time, I agree with your statement that we must be sure that whatever acreage limitation is imposed on federally subsidized land is realistic in the light of modern farming. We must revise the law sensibly, responsibly, with the assistance of experts who can advise us as to the appropriate limitation under modern conditions, and with the help and cooperation of your Department which you have pledged.

And we must get on with that task since this issue has come to a head.

As I understand your testimony, with respect to the Imperial Valley problem, you see no need for either of these moratorium resolutions inasmuch as this question is still before the courts. You

have no intention, in any event, of enforcing the proposed regulations, until such time as the matter has been finally settled in the courts, is that correct?

Secretary ANDRUS. That is correct, Mr. Chairman.

Senator CHURCH. Is this question on appeal?

Secretary ANDRUS. Mr. Chairman, it is my understanding and I will defer to the Solicitor on this, but it is my understanding that they are attempting to get to the Supreme Court.

Of course, the other alternative to these people is congressional action. That really is the question, did Congress perceive that project to be under the limitation of the 1902 act or did it not, and Congress could resolve it themselves, or else it could go, in my estimation, to the Supreme Court.

I think it would go to the full ninth circuit. Can I check that with the Solicitor?

Senator CHURCH. Yes, please.

Secretary ANDRUS. Yes; I was correct.

Their next step is a petition to go before the full ninth circuit court, and we can only assume what would be taken after that. But as I stated in my testimony, Mr. Chairman, that would have to be resolved before we would move, and then if, in fact, the court did find them to be under the act on acreage limitation, then there would be an additional year for recordable contracts and 5 more years for implementation which, in my opinion, would give adequate opportunity for an attempt, at least, at legislative resolution of the problem.

Senator CHURCH. Well, the hardship in the *Imperial Valley* case is, of course, that the inequity that is there stems from the fact that the Federal Government itself over a long period of years treated that land as though it were not subject to 160-acre limitation, and then this court decision coming only recently has forced these people who have so long relied on the Government's own representation to face the subdivision of their farms. That is a question, I think, that Congress does need to review and certainly the courts need to reexamine in the process of appeal.

Tell me, Mr. Secretary, what happens, under the reclamation law, as it is now written, when the construction costs at the dams or canals have been fully paid? Does the 160-acre limitation automatically terminate at that point?

Secretary ANDRUS. No, sir.

Senator CHURCH. Or is there a uniform result applicable to all projects, or does it vary depending upon the project and the contract in each case?

Secretary ANDRUS. Mr. Chairman, it varies with the contracts, but frankly, we are faced with this problem because some of those contracts were not approved by Congress, and once more, we find ourselves faced with whether that contract was approved by the Congress and if it was not, then is it binding?

We have got some that are presently in that posture, but our conversation here, I think, Mr. Chairman, also has to recognize that the Reclamation Act of 1902 is not generally violated. The Reclamation Act of 1902 is one of the champions that created the West. We are about 12 million acres in reclamation out there, and they are not all in excess. The majority of those are doing what you

in the Congress wanted it to do. It is making it possible for the farmers to raise their children and make a living. It is not all in excess. I just want to remind Congress that it varies from area to area, and elevation to elevation, and growing seasons, and everything else, but it is a pretty good act, and it should not be thrown out.

Senator CHURCH. I agree with that.

In the process of revising the act, should we also take into account the treatment that should be given to the acreage limitation once the Federal subsidy, the Federal investment, has been repaid?

Secretary ANDRUS. Mr. Chairman, let me point out that again it varies from contract to contract. Many times the Federal investment is never repaid, and that is why we recognize that in fact it is a subsidy. Nobody quarrels with that if it accrues to the family farmer. That subsidy, which is basically interest free on the total amount of the payoff, means that some costs of the project are basically not repaid.

Let me check with counsel here to make sure that I am not leading you astray on every project.

Assistant Secretary Martin reminds me of a point that is very important, Mr. Chairman. I introduce Secretary Martin and Solicitor Krulitz. I know that many of the costs are not repaid by the farmers, they are repaid as I mentioned before by the power generation and costs that are paid by the consumers. So it does vary, Mr. Chairman, from project to project.

Now the Chairman's question, of course, what happens at the end of repayment if they still come under the purview of the act unless they have a contract approved by the Congress, but do they have such a contract?

Mr. KRULITZ. I think, and Secretary Martin can correct me if I am wrong, I think there were a number of instances, Mr. Chairman, I think totally 23—don't hold me to the number—but a fair number of situations where the full costs had been repaid. Those contracts were specifically ratified by the Congress, and to that extent in those instances, then, Congress really, in effect, changed the basic law. But right now, under the *Tulare Lake* case, it is not possible for irrigators to get out from under the excess land requirements simply by paying back the cost of the project allocated to irrigation. Obviously, that does not return the subsidy.

Secretary ANDRUS. Mr. Chairman, I should point out that the Senator from New Mexico referred to one of these by name that does exist today, the Elephant Butte area, where in the Senator's district there is a project that is paid out and it has not been relieved of the burden of the acreage limitations and he referred to it in his testimony this morning.

Mr. KRULITZ. Mr. Secretary, let me add one other point. There is a provision under a former Solicitor's opinion that once the obligation is fully repaid, if the Secretary of the Interior finds that a general pattern of family farming has occurred, then the Secretary does have the authority to exempt that district from that time after as the acreage limitations.

Senator CHURCH. Well, it seems to me as the answer unfolds that this is a matter that the Congress should consider in connection

with the provision of the reclamation laws so that an appropriate treatment and a uniform treatment is given to reclamation projects.

I do not know exactly what that policy should be, but I think we should work together in eliminating this particular ambiguity and the unequal result that now exists wherein some cases Congress has, in effect, discharged the projects of further acreage limitation once the Federal investment had been repaid. And in other cases where the Secretary may exercise a discretion to do so.

Secretary ANDRUS. I would prefer that that was done legislatively rather than discretionarily, if I had my option, Mr. Chairman.

Senator CHURCH. I would think that that would be the soundest way to approach this particular aspect of the problem.

Senator Metcalf, do you have questions?

Senator METCALF. I want to join the Chairman in complimenting you on an excellent statement, Mr. Secretary.

The Subcommittee on Public Land and Resources that Senator Hansen and I chair has been working on a revision of reclamation law. We have had hearings here in Washington and in Montana, and Wyoming, and during the recess, if there ever is one, we hope to have hearings in California and in Washington and Oregon, on proposed changes of the reclamation law.

By coincidence this morning, Mr. Secretary, I walked up to the Capitol on New Jersey Avenue with Mrs. Clair Engle. I told her that we were holding a hearing on this today, and she reminded me that when I was a freshman Congressman she was on the staff of the House Interior Committee. During that time she went out to Montana and held a hearing on Clark Canyon Dam, which is the upstream dam on the Missouri. One of the questions raised was the need for the 160-acre class 1 equivalency for that high area, so that we could get contracts for greater amounts of land.

That was one of the first of those departures from the arbitrary 160-acre figure. The committee has held, from time to time, that there is not any magic in the 160-acre limit and we have departed from it giving recognition to local conditions and have provided more than 160 acres for certain areas.

Our subcommittee has also before it now a bill that the Oregon Senators have introduced that would have an impact upon the question that Senator Church asked, which is what happens after the payment is made? There is a whole list of Washington and Oregon projects that have been paid off. We will schedule that bill for hearing early next year and ask for your suggestions on it.

Now, Mr. Secretary, you pointed out that some of these projects were highly subsidized. I wonder if you would elaborate on that and tell us some of the subsidies that are involved that we give to these people that come in and get water for their 160 acres. You gave one example.

Secretary ANDRUS. Mr. Chairman and Senator, first with reference to your comments about the early hearings in Montana, once again you have a prime example in Montana, and in my home State, and others where you have land of 3,000 to 4,000 feet above sea level, Senator Hansen has it in his State also, where your frost-free days may be 110 or 95. You get one crop of barley off of it, and

I submit to you that that is a great deal different than 160 acres somewhere else.

But with reference to the types of subsidies, would you like a specific instance, or how it accrues?

Senator METCALF. Well, you know we know about them, and that production of hydroelectric power may pay off a good deal of the cost of a project. You also have interest-free payment contracts and so forth. Would you tell me how large some of the subsidies are per acre?

Secretary ANDRUS. Yes.

Mr. Chairman and Senators, I can give you several examples where they will run depending on the project from \$1,000 to \$2,000 per acre.

I would ask Secretary Martin, if we have any that fall outside of those, particularly on the high side.

Senator METCALF. What would be the largest?

Mr. MARTIN. I cannot give you a figure, Senator, because there is not, as far as I know, a comprehensive list that sets out those subsidies. We are looking into that in the Task Force on Westlands, and we are finding it a very difficult matter to calculate. We will give you—we can give you a good number there, but there has been no attempt on a project-by-project basis to calculate that subsidy. We hope we will come up with a model in the San Luis study that will allow us to do it in more projects.

If I might say it, one of the things that is often lost in the discussion of subsidies is that while we all realize that subsidies are throughout our system, and Congress votes them where it is wise to do so, so long as they are honestly depicted at the time, they are voted for a good purpose. In this area, what often gets confused is that the subsidies do not go in certain respects to the general good of either agriculture or the Nation, even though they may in some respects be realized by the region or the Nation or agriculture, they go to specific individuals and to specific acres of land.

So the question here is if they go to individuals who own that land, ought we not then to have enforcement of the provisions that Congress originally set out?

Senator METCALF. I think we are all agreed, and the chairman agreed with you, that President Theodore Roosevelt and everyone since has said that we are going to subsidize small landowners in order to settle the West. But in order to build these huge dams, we are going to put power facilities there, and the consumer of electricity would help to pay for it. And the taxpayers of America would help to pay for it. I do not know whether we have come to the end, Mr. Chairman, of our reclamation program or not. I hope that the administration will change some of its attitudes toward some of our reclamation projects, but I do believe that if we substantially change the reclamation law and permit huge corporations and special individuals to take advantage of these substantial subsidies it will be the end of reclamation as we know it, because the taxpayers and people of America are not going to put up with the idea of having their moneys paid to a handful of individuals.

And so, we have to be very careful, it seems to me, and both Senator Hansen and I are working in our respective States on a

revision of the law. Today we are talking about these resolutions for a moratorium.

Mr. Secretary, up on the Milk River in Montana, we have a serious problem. The Bureau of Reclamation served notice on landowners that they were going to enforce the regulations. I held a hearing up there in northern Montana. If one of these resolutions is not passed, can I assure people on the Milk River that they will continue to receive water?

Senator Hansen, where did we hold a hearing in Wyoming?

Senator HANSEN. In Riverton.

Senator METCALF. Yes, in Riverton.

The people in Riverton were equally concerned. Can we give them the same assurance that even though one of these resolutions does not pass the Congress will have an opportunity to consider legislation sometime next year and that they will not have their water shut off?

Secretary ANDRUS. Senator, let me respond by saying that I cannot say to anybody that I am not going to enforce the law, because we are, but I can give them the assurances that you are seeking in this regard that we have not shut off any water in the middle of any growing season for a crop, and we do not intend to do it. We will not have our regulations finalized probably until the first of March or thereafter. Those letters do go out under existing law on an annual basis. But you give them the assurance that nobody in this administration is going up there and shut off the water to a crop that exists in this calendar year, that growing season.

But we have got to resolve it first.

Senator METCALF. Well, I am not going to take a lot of time this morning.

Senator Hansen and I have talked about this. He is the ranking member of my subcommittee. We have planned a series of hearings. You are planning a series of hearings. Early next year I hope that we will get before us some of the bills and resolve some of these questions.

Mr. Secretary, I completely agree with you in your attempt to protect the family farmer, and of course, the reclamation law. It may well be that 160 acres is not a magic number. I know it is not a magic number, especially in the high altitudes and in areas with short growing seasons. But I think we would be much safer inasmuch as this has not been enforced over the years in having some sort of a moratorium that would help you in saying, "Well, I would go ahead and enforce the law, but up there on Capitol Hill they told me to keep my cottonpicking hands off of it." I think it would help you in your efforts after all these years of failure of enforcement to wait a few more months and have a realistic approach. Maybe a basic change in the whole legislation is needed, which I assure you I am going to try to work toward now that the strip mining bill is out of the way.

Secretary ANDRUS. Senator, may I respond to one point?

Senator METCALF. Sure, that is what I wanted you to do.

Secretary ANDRUS. In that regard, it certainly is your prerogative, and I would just urge that we do not, in an attempt to resolve something, create a problem that has been discussed here this

morning with operators being unable to get financing for crops, or the mass movement of leasing or sales certificates that could take place if, in fact, you withdraw the 1902 act for 1 year.

Keep those things in mind is what I ask, and I think in fairness I have to also point out that the large owners for the most part that I referred to, certainly one example that I have used in the West-lands, are cooperative with us on recordable contracts and considerations for disposal of that property down the line.

Where the problem would come in is, if, in fact, we do not enforce the 1902 act and they do not dispose of the property, and that subsidy accrues to them, and then the sale comes, we would be in that problem area.

I just urge you to look closely at those Senate joint resolutions prior to enactment.

Senator METCALF. I think it should be kept in mind by everyone that is here, and everyone that reads this record that if Congress does change the 160-acre limitation, many provisions of the law are going to remain the same. There will be strict enforcement down at your department of any new acreage limitation in accordance with the provisions of the act. So, a change in the law is not going to automatically mean that these big operators are going to continue to survive because of lack of enforcement.

A woman testified in Great Falls that she had over 1,000 acres. She said that her lawyers told her maybe her cat could count as one of the owners eligible for water delivery. She said she would not put the cat in until she put everything else in. And that farm, no matter what happens, is going to be affected, and they are not going to get water delivery on some locations.

Well, inasmuch as we have a long witness list, and you were talking about the moratorium, I merely want to say that we are going to investigate and inquire and I hope get some legislation in the next session of Congress on this whole complex and difficult problem. I assure you that Senator Hansen and I will try to work it out with you and your staff just as soon as the next session convenes.

Senator Hansen.

Senator HANSEN. As a matter of fact, Mr. Secretary, let me say that the concerns and the interest you have expressed really articulate very well my apprehensions and concerns and interests in these matters. I think basically I would have to say that there seems to be a disposition on the part of people, oftentimes, when a situation arises that seems to call out for redress or change that would take the attitude that we should do something, and we should do it quickly, even if it is wrong, and I would hope that we do not do that.

I compliment you, Mr. Chairman, on having held hearings and I compliment you, Mr. Secretary, on your expressed desire to afford people throughout the country an opportunity to speak for themselves as, indeed, they will be able to do.

My concern, basically, stems from the March 1 deadline you have expressed. I know in your statement on page 16, I guess, you speak about the matter of residency, and you recognize that there may indeed be situations which will make it impossible for an owner to live on land. And I know, having come from the West as I do that

that is a fact, that there are people who grow older that simply cannot stand the rigors of the place upon which they have lived, and farmed for many years, and they have to go someplace else.

I am concerned, too, about our taking precipitant action that we may regret. I am on the Finance Committee and it is because of an ongoing hearing over there on energy that I do appreciate an opportunity to precede Senator McClure who has a very keen interest, as does Senator Hatfield, on this entire subject.

We changed some tax laws 2 years ago, and when we got down to the effective dates, we had $4\frac{1}{2}$ pages of effective dates.

I think it is fair to say that not one person on the Ways and Means Committee or on the Finance Committee under whose jurisdiction that piece of legislation fell could have told anyone what 90 percent of those effective dates applied to, because there was no reference as to specific subject matter.

Well, let me illustrate what happens when we move too quickly sometimes.

I have some rancher friends in Wyoming. The husband has diabetes, and he finally has to have a leg amputated, and because ranching and farming have not been all that profitable, as you know since you are—Mr. Secretary, since you are from Idaho, they went to their accountants and they went to their tax lawyer, and they got the best advice they could get as to what they should do. They were toying with several alternatives. One: Should they sell the farm? Two: Should they try to enter into a longtime lease agreement when they had an opportunity to do that? They looked at some other options and, based upon the law at that time, they determined that their best out was to sell the place, and they sold it. That was before we passed and made retroactive some changes in the tax laws, and it saddens me to have to say that unwittingly I was a participant in an act that changed the law so that these people having gotten the best advice they could found out they were subject to an extra \$31,000 tax on that land sale, which was not in the law at the time they made the decision.

Now, I would hope very much that if we have been living under a law, and I do not doubt at all but what it needs to be changed, but if it has been the law since 1902, and people have established certain practices, and we have done things, I do not see that we are going to do irreparable damage between March 1 of next year and a later date. You say, on page 16, that you will not hesitate to propose legislation if changes do need to be made.

My point is that proposing legislation and waiting for Congress to enact legislation can entail a timelag that I am certain in many cases you would not endorse. So, I just think it makes sense to hold off until we can complete the hearing record to see what the situation is to take into account the recommendations made by Senator Nelson that he says two things he thought ought to be included in any reorganization or reformative reclamation law. One was acre equivalency. I could not agree more. In the part of Wyoming where I live, Mr. Secretary, you know we have 50 frost-free days per year, 50. Obviously, we can raise some crops, we can raise hay, but aside from that, we cannot raise very much else. It happens that we do not have any land that comes under the reclamation laws, so my interest is academic insofar as where I live

is concerned. But I just think the chances of doing far more damage or being far more upsetting to all people in imposing some regulations now greatly exceed the problems that you have correctly envisaged might result from taking no action.

I look at it the other way from the way you do, and I would certainly recommend that we hold off and see how people will be affected by the changes that have been recommended to give people an opportunity to express themselves, and I think if we do this it has to be in the best interest of all America.

The real danger in my mind would be in moving quickly and then, having done some damage, trying to go back and undo that damage. I do not think that we are going to greatly exacerbate problems for anyone by continuing on as we have until you, your Department and the Congress, can have an opportunity to hear from the people who are going to be affected, and then given that additional information and feel for the people and concern for their problems, have a chance in an orderly fashion to mark up a bill.

And, as a consequence, let me conclude by saying that I would hope that serious consideration will be given to these two resolutions. I think probably some compromise between the two may be indicated. But, in any event, I would certainly urge that you might consider the advantages of giving the people more time so that they could be heard.

I know from what little exposure I have had with people where the law was passed, and an opportunity is afforded people by publication in the Federal Register of a 60-day opportunity to make comment, that oftentimes I have gotten letters, I suspect Senator Church has, from people about the 59th day, saying what is this that I am told is in the Federal Register, and this letter probably comes to our offices after the expiration of the time.

So, recognizing that fact, I would hope that one of these resolutions or the other could be enacted in the law, and we would proceed in a more orderly, leisurely fashion to give people a chance to speak. That was not a question.

If you have a comment, I would certainly welcome it.

Secretary ANDRUS. I do have a comment, Mr. Chairman, if I might respond.

Pointing out your concern about the retroactive laws, I have some of that same problem, just a personal situation. These proposed regulations would apply to the new sales. I want to check with the Solicitor to make sure that is correct. There is discussion about what the residency situation should be, but these regulations are for new sales. It would not be retroactive.

Correct me if I am wrong—

Senator HANSEN. But just on that point, if I could make this observation. Do you not anticipate that what you are talking about, the concerns and the need for an update in laws that you talked about may, indeed, bring about some sales that otherwise might not occur? When you speak of new sales, you are talking about what?

Secretary ANDRUS. Senator, what I am referring to are—there are recordable contracts and there is excess land out there that there has been no agreement made for sale to somebody else for that excess. Now, those are what the regulations would apply to. In

the past, some of the same situations have taken place. Where the recordable contracts have been entered into and the sales have subsequently been made, it would not apply. It is not retroactive in that regard.

Let me point out if I might, Senator, some of those concerns were ours in August, we went with proposed regulations, and we gave a 90-day comment period. We have 13 field hearings scheduled, Klamath Falls, Sacramento, and Billings have been completed, and in Billings we have one other. Going then to March 1, that is about 7½ months from the time we got into it.

Also, the Congress will have returned in January, and we will be consulting with you, and as somebody pointed out in testimony previous to me this morning, the President has indicated that there undoubtedly will be recommendations coming forth from us for amendments to the act. Whoever it was testified pointing out that President Carter's farm is, I think he said, 3,000 acres, I do not know how many, but I have checked and I have found there is no federally subsidized water going onto that property. That is putting it into a little different category. But we won't know until we complete these hearings, Senator, what the recommendations will be.

Senator HANSEN. You will not know prior to the completion—

Secretary ANDRUS. No, sir. I do not sit before you with a preconceived list of recommendations that we will make for amendments to the 1902 act. But I am confident that we will.

Already in the mail we have had, as of the 3d of November, 5,128 pieces of mail on this subject matter from that and the three hearings already held. We can already see a thread of commonality as concern the people that will probably have to be spoken to legislatively, and we will not hesitate, as I said, to make those recommendations.

Senator HANSEN. You know, Mr. Secretary, you and I have both served as Governors of our respective States, and I think we could agree that the average person on that does not exhibit an awareness of the legislative process or the executive process oftentimes as quickly as we might hope would be the case.

In the first place, most people are too busy tending the store or working the farm to find out what is going on, and despite the fact that we do take steps and you have been especially diligent in this respect in seeing that people are informed, I think the fact is that lots of times it just takes a long time for information to permeate into the land, and for people to know what is happening.

You mentioned the Riverton hearings. I would have to say there, I know that probably fully 95 percent of the participants at that hearing would not have testified had they been required to go to Billings, Montana, or Denver, Colo., or Salt Lake City. So, recognizing this fact, it persuades me that we do need more time as would be afforded under either of these resolutions before the Congress to give people a chance to be heard in order that we can have the best information available and possibly to use as the basis for drafting legislation.

Thank you, Mr. Chairman. I have taken more time, but I do appreciate your being here.

Senator CHURCH. Senator McClure?

Senator McCCLURE. Mr. Chairman, let me start out with a very easy one. What is the rest of that sentence on the bottom of page 12? It is chopped off in midsentence, and I would like to know what it was that you were saying to us.

Secretary ANDRUS. Was that my articulation, Senator, or was that the Xerox machine?

Senator McCCLURE. I am sure I do not know, it is just left hanging in midair.

Senator CHURCH. Well, the Secretary did complete that, and that is provided as an addendum to the record.

Secretary ANDRUS. I think 16 was the one I had added the addendum to the record. You are referring to page 12, Senator?

Senator McCCLURE. Yes, sir.

Secretary ANDRUS. All right. If you look at the top of page 13, and right at the very top is that sentence continued on your copy.

Senator McCCLURE. Mine starts out with a new sentence on the top of page 13.

Secretary ANDRUS. Well, permit me to read it.

In other words, Mr. Chairman, the Department could not deny a request for project water from an excess landowner who has not signed a recordable contract.

Senator McCCLURE. That is the language that is missing in my copy of your statement. I thank you very much. I assumed that is probably what it was with reference to, but I wanted to make certain.

Secretary ANDRUS. Some of those copies on the top of page 13, it is the very first line. If it was trimmed off, I regret it.

Senator McCCLURE. Thank you.

Mr. Secretary, I am concerned first of all that this hearing was not directed toward the solution to the problem in terms of what will be the final legislation or what will be the final changes. The hearing is directed primarily to the resolutions that call for a moratorium of part or all of the enforcement activities. You have stated both here this morning and at previous times that you are opposed to any moratorium, at least at this time. You have suggested that by March 1 you will be ready to promulgate final regulations on or about March 1, and that shortly after that then the Congress should act. Congress does not act that rapidly, unfortunately. It takes us a little while. You are going to take from now until March 1 to accumulate evidence. The Congress is going to have to have a little while to accumulate evidence, hold hearings, consider alternatives, and try to draft compromises, both in the House and in the Senate. After the House has taken action, and the Senate has taken action, we have to conform those two actions in a compromise between the two Houses, and send that to the President, and see whether the President agrees. The President may agree or disagree, and send it back to us with suggestions and we have to consider that suggestion.

All of that is a time-consuming process, and it is not something that we can do in a 30- or 60-day period.

If, as a matter of fact, we are going to deal with this complex question in any depth at all, I would suggest that the 1 year is not an unreasonable period of time.

Now, you have suggested that Senate Joint Resolution 93 is deficient for a couple of reasons. First of all, that it denies you

enforcement authority, and second, that it denies the possibility for the approval of excess land sales.

Could we not separate those questions so that excess land sales could go forward at the same time removing the enforcement authority for a period of 1 year while Congress tries to sort out the alternatives?

Secretary ANDRUS. Mr. Chairman and Senator, yes you could do that. I question, frankly, whether it is needed with the attitude of Interior, and I recognize what you mentioned about time delays.

Senator, it would be my intent to bring our proposed regulations prior to March 1 back to the members of this committee and the committee in the other House for their perusal prior to going in, but—to once again see if we cannot work it out as long as we are moving toward a solution, I legally can continue and be happy to work with you. But I am learning in my short time back here that sometimes legislation does not continually move forward for other reasons in good faith, and I can recall the Outer Continental Shelf Lands Act amendments and some other things in that regard.

So, barring some situation like that, Interior will work with the Congress as much as we can to keep this moving, and bring it to resolution. Keep in mind we have a Federal judge or two out there saying what I will do also.

Senator McCLURE. I understand that, and I assure you that this Senator and I think all of us here want to work with you and the Department in trying to find a way to resolve the issues. The most comfortable thing for us to do would be to just say it's up to you, go ahead with the regulations, we won't touch it. Then you are responsible for everybody that is unhappy, and we can just point our finger at you and say he did it.

Secretary ANDRUS. I have had that happen, Senator.

Senator McCLURE. Well, there is a temptation around here to do it again. You are an inviting target, and besides that, it insulates us from criticism.

Well, I am not going to share that temptation because I think we have a responsibility too. But I am absolutely certain that this issue, as complex as it is in both the acreage limitation and the residency requirements, is not going to yield itself quickly to solution in the legislative halls. I think you and I know the President has indicated that changes in the law are indicated and that there are going to have to be some changes in the law.

Perhaps the only thing about your statement this morning that disturbs me is the conclusion on the last page that says, "This administration believes the law should be enforced as written." I think that must be put in the context that you have a duty to enforce the law as written, but you believe the law as written ought to be changed.

Secretary ANDRUS. Senator, you were out of the room when I delivered that part of the text, and for the very reason that you pointed out, I digressed from the text and pointed out that as written after we had finished our work with the Congress, because it probably won't end up 160 acres, Senator, but whatever it ends up, then it is our duty and obligation to uphold that law, enforce it, and we will.

Senator McCCLURE. Then we should read that in the context of the law as finally written after we get around to amending it?

Secretary ANDRUS. Yes, sir. I mentioned that, and I think the record, the original will show it.

Senator McCCLURE. I thank you for that clarification, because that concerned me, and because it will be complex. It also implies that we will change the law before it is enforced as written and we need a little time to do that.

I am aware that you need to be able to approve excess land sales. In the cases where you are involved in the court and the court has directed you to develop regulations for the disposal of excess lands, I suspect you may have to go forward. But certainly you should be permitted to go forward where the landowner desires to go forward in a State litigation or in transfers of land, and you can agree upon what should be done.

My concern with saying we will wait until the regulations are promulgated and Congress deals with the law, before we interrupt the enforcement proceedings, is that for some significant group of people we may change the rules and enforcement of the law as it is now written that would be unjust to those people who would be relieved of that burden by the change in the law, but they just happen to have gotten proceeded against before Congress made the change.

It seems to me an equity should be some way of interrupting that chain until Congress has determined what the final solution should be.

Secretary ANDRUS. Mr. Chairman and Senator, I suppose if you could give me a timetable as to when Congress would act I could give you a timetable as to how we could, and I think both of us want to get from point A to point B, cooperatively. But I would point out if you impose a moratorium, Senator, you have, in effect, stopped us from stopping the abuses, and I think we all recognize that there are, in fact, abuses in this regard, but besides, I think the confusion that will be in the finance communities would be substantial if, in fact, we do go for a moratorium.

Senator McCCLURE. It depends upon which one of the problems you think is more important. The problem of moving against the ones who are obviously not only in violation of current law, but in the opinion, at least of those who will enforce the law, will be in violation of whatever amendments are likely to be enacted into law, or the confusion and distress that is caused to those people who may be in that narrower band that are in violation of current law, but might be relieved of that violation by the amendment of the law, whether it be in the acreage limitation or in the residency requirement.

And, as I read what you have said, and hear what you tell us, and I was at the meeting at the White House when the President made the statement to us, the law must be amended. He has said, in interviews since that time, that there will be some relief. I think it is predictable that there will be some relief from the strict application of the 1902 act under the final enactments of the Congress, and we ought to, at least for that group of people, provide them the relief of a moratorium while Congress determines what will be done. Remembering, too, as I must, that the court order

under which you are operating, to which you are responding, deals only with regulations on the disposal of excess lands.

The regulations, as published in the proposed regulations, as published in the Federal Register, go far beyond the narrow requirements of that particular lawsuit. Now it may anticipate other lawsuits, certainly anticipate other problems, but it would not be quite fair to say that all that is being done is required by that particular decree.

Secretary ANDRUS. I would have to concur with that. Not being a lawyer I practice it quite regularly, but I keep the Solicitor close at hand so I may call upon him.

However, let me point out that what you say is true. By the same token, the residency provision is in the 1902 act. The act was amended in 1926, and since that time the rule has not been enforced, but it is there and, yes, sir, we see other litigation coming down the pipe.

Mr. Solicitor, do you have a comment in that regard?

Mr. KRULITZ. Yes, Mr. Chairman and Senator, the regulations that were promulgated are, I think almost, with perhaps one exception, their application is limited to approvals of the Secretary of excess land sales. The rules require that any new purchaser who is buying excess land from a seller must agree to live on the land. They do not impose the residency requirement across the board on existing people. It is only new people coming in.

Now, they do point out that the Department feels residency is required under the act, and we are working on regulations that would carry it further. The limitations on multiple ownership arrangements only apply to new transactions. Where it begins to rub is in the definition of what is excess land itself, and then I think in those areas we begin to get a little overlap.

Senator MCCLURE. I only recite that because the current dilemma is not totally in response to that lawsuit. It is something that has been developing for a long while, and will require a larger solution.

Let me shift for just a moment to one of those other problems, and that is what happens to the limitation of both residency and acreage when the project has paid out? There are a whole variety of different ways that we have treated that in the past. There are dozens of different statutes on this subject, project by project in some instances. A listing of that would indicate the tremendous diversity of the way in which Congress has treated that problem.

We, and the Department at one point, made the assumption that the Department could grant immunity from those provisions after payout and contracts were signed with the districts embodying that principal. Now, the Department is backing up on that and sending letters out saying we do not care about the provision of the contract you signed in good faith with the Government, we are going to change that contract, and we are going to provide in this contract that you are not relieved.

In Idaho there are four projects that are paid out in which the proviso was not sanctioned by Congress. There are three projects in Idaho that are paid out in which the proviso was sanctioned by Congress. There are over 50 projects in Idaho that have payout provisions that have not yet been paid that were not sanctioned by

the Congress, but they have that proviso in it, and they are already getting letters from the Department saying we are going to amend your contract to delete that proviso.

That is not something we are going to solve this morning, but is an example of the reason why many of us are in favor of finding some relief from that kind of a threatened change in contracts. A relief is needed while Congress looks at this complex question and determines what the ultimate policy should be.

I think you would agree that you cannot meet all of these problems simply by regulations. Some of the problems have grown so complex over the years that a change of the law is necessary.

Secretary ANDRUS. Mr. Chairman and Senator, we discussed the same subject matter a little earlier, but just let me repeat what I said then.

I would prefer that it would be in the law that discretion not be on the Secretary. I think it would be much clearer for this Secretary and those that might come after him. I am not familiar with the letter that you referred to, Senator, I would have to take a look at, obviously, the projects that you referred to.

Senator McCCLURE. Well, I am assuming that if it happens in Idaho it is going to begin to happen in other States, too.

Secretary ANDRUS. I won't take the time of the chairman now to do it, but Senator, at your convenience, I think I know what those letters are. Those are the letters that go out annually, are they not, that say that you were in excess?

Senator McCCLURE. These are letters that advise the contracting entity, the project board of directors, that the contracts that contain those provisos will be amended to delete that provision. These are not routine annual letters, these are bolts out of the blue.

Mr. KRULITZ. Yes, Senator, I am sure those letters have gone out as a result of the *Tulare Lake* decision, which has held that even though the principal is repaid, the burdens of the excess land or acreage limitations are not relieved. I am sure that that was in response to that court case.

Senator McCCLURE. That is right. Even though these people were not parties to that court case, and have never had their day in court. They feel somewhat aggrieved, and more than somewhat threatened by the imposition of a change in their contract that has never been questioned with them up until this date.

That, again, is an example of the kind of thing we have to address ourselves to.

Mr. Chairman, I know that I have got a number of questions that I won't have time to ask, but let me just confine it to two or three others.

Senator CHURCH. You can ask them all, Senator, if you would agree to preside over the balance of the hearing.

Senator McCCLURE. Mr. Secretary, on September 27 a letter was addressed to you by 16 of us suggesting that an environmental impact statement should be filed on this major Federal action. To date we have not received a reply to that letter.

Secretary ANDRUS. Mr. Chairman, and Senator, I regret that you have not.

Senator McCCLURE. You may have deposited it in the mail?

Secretary ANDRUS. I have to make the observation that I have enough problems down there in that mailroom, and I would suspect it has not gone out. I will find out why, but with reference to the impact statement question that you asked, the Department has made the determination that we feel that an environmental impact statement is not necessary in that regard in that there is no significant change to the land.

It does not contemplate any projects being constructed. It does not create a change in the environment. It does make a change in those people that might be tilling that soil, but that would not have environmental impact.

Senator McCLURE. Mr. Secretary, without belaboring the point, I have for several years been trying to get this committee to adopt a definition of the term "environment," because although we use it in statutes and we use it in dialog and discussion, and it has been used with regulations, we still have no definition, but I am amazed by a position that says that this action won't significantly affect the quality of the human environment.

Over 10 million acres of western farming are under reclamation law and may be affected by these regulations. About one-quarter of our agricultural production in the West is, or may be, affected by changes in regulations, not just individuals but community patterns may be changed, or certainly may be affected by what happens as a result of the enforcement of the regulations as promulgated. It just seems to me that that is something that might significantly affect the quality of the human environment. When you look at the preamble of the Environmental Policy Act, it says that economic and social factors must be considered along with the changes in the physical environment.

We sometimes focus entirely upon the physical environment, the natural or the already induced changes as being the only environment that can be changed.

Secretary ANDRUS. Senator, we have asked the Bureau of Reclamation to do an environmental assessment to determine, in fact, whether we have to do a more indepth environmental impact statement. But the feeling of the Department when we put forth the proposed rules, and they are just proposed rules, was that we did not, but we are doing the assessment, and I will find out where your letter of September 27 is, hopefully this afternoon, because we have correspondence on this same subject matter to other people back in about the same date of your letter.

Senator McCLURE. Well, I might just mention, because competition does us a great deal of good, every once in a while when I am out in Idaho, somebody will say that I wrote you, and Senator Church at the same time, and he has answered and you have not answered yet. That spurs me on.

I will just say that we wrote to Secretary Bergland on the same date, and he has already answered.

Secretary ANDRUS. Mr. Chairman, and Senator, I would say that it is a point well made, but I would also share with you that I received a letter from my boss just yesterday saying that some of the mail is not being answered in a timely fashion, and correct it immediately, and yours will be the first one I touch today.

Senator McCLURE. Thank you, Mr. Secretary.

Secretary ANDRUS. Your point has been made, Senator. I thank you.

Senator McCLURE. One final point. I also, about 1 month ago, called the Department and asked that Idaho be included on the list for the hearings within Idaho, and I got no affirmative response to that phone call. About 1 week ago, I wrote a letter requesting the same thing, because Idaho certainly is one of the major reclamation States, and the possibility of it being affected by what has happened to a great segment of our economy and a great number of our people can be very great. I would hope you would find it possible to schedule one of the hearings in Idaho so that our people will have the chance to participate directly.

Secretary ANDRUS. Mr. Chairman, and Senator, if I were to put a hearing in Boise, Idaho, with all of the requests that I get for all of the other areas, I would be in deep, serious trouble, Senator.

Senator McCLURE. Well, I get the impression in your colloquy with the Senator from Wyoming that there will be a hearing in Wyoming because he requested it. I would hate to think that you give the Senator from Wyoming more consideration than you do the Senator from Idaho.

Secretary ANDRUS. This water is attempting to get deeper.

Mr. Chairman, let me point out very candidly—

Senator CHURCH. Up until now you still have your head above it.

Secretary ANDRUS. They say a motion for adjournment is always in order.

But let me point out that we have tried to cover the Western States. We just did not have the personnel at the time, and the fact that you sit on this committee and the senior Senator sits on this committee, and I come from that State—and we have had a lot of requests we have tried to locate them around in Salt Lake, River-ton, Yakima, and other areas.

Senator McCLURE. It is a long way from Caldwell to Salt Lake or Yakima.

Secretary ANDRUS. Yes, sir. I will consider your request, and you will be advised by mail.

Senator CHURCH. Let me just say that in connection with revision of the reclamation law, I am sure it would be altogether appropriate for this committee, to hold hearings whatever the decision of the Department. Senator McClure and I can find the time in the future for that purpose, so the people in Idaho will not be overlooked for the purpose of considering revisions.

Senator McCLURE. I was going to say whether the Department holds hearings or not, there will be hearings there.

Senator CHURCH. Senator Hatfield?

Senator HATFIELD. First, I want to thank you, Mr. Secretary, for holding a hearing in Oregon. As you know, we had 2,000 people appearing at the Klamath Falls hearing on Tuesday to indicate to you the interest that they have in this matter.

Mr. Chairman, in light of the time factor, I would ask that my opening statement be placed in sequence to my colleagues on the committee, and that my questions—that I may be permitted to submit my questions to the Secretary which he may respond to in writing, and I would ask that the hearing record may be kept open for 2 weeks.

Senator CHURCH. I previously announced that the hearing record would be kept open for 10 days. If that is adequate—

Senator HATFIELD. That is adequate.

Senator CHURCH. Very well.

Senator HATFIELD. And I want to thank the Secretary for his appearance here this morning. I read his testimony and found him to be a very responsive person to our inquiries and the needs of the West, and I am sure he will be on this matter, but I do have a number of questions that I will submit to the Secretary in writing.

Senator CHURCH. I want to thank the Senator very much for his suggestion, and the Chair is happy to accommodate him.

We do have a number of other witnesses, and because it is already approaching 20 minutes past noon, I have set aside my luncheon plans and some appointments that I had for later on this afternoon. I think we will just continue the hearing so that those who have come will have a chance to testify, but I will need to impose some time limitation on other witnesses, and hope that they can summarize their testimony so that we can hear all of those witnesses who have come long distances to be here.

Mr. Secretary, I thank you very much for your testimony, and we will strive to work closely with you in order that we can get this problem resolved. We have been with this much too long.

Secretary ANDRUS. Thank you.

[The prepared statement of Secretary Andrus follows:]

STATEMENT OF HON. CECIL D. ANDRUS, SECRETARY, DEPARTMENT OF THE INTERIOR

Introduction

Mr. Chairman, Members of the Committee, I appreciate this opportunity to present the Administration's views on S.J. Resolutions 93 and 96 which would place a moratorium on implementing acreage limitation regulations recently proposed by the Department.

Mr. Chairman, I don't have to tell you my decision to publish proposed regulations to implement the acreage limitation provisions of the Reclamation Act of 1902 has generated intensive debate. This issue touches a sensitive nerve. It could have profound implications on the ownership and possibly the operation of federally-subsidized farm land in the seventeen Western states. It is not, however, a new issue. Political, economic and legal debates have been waged on this issue for years and my decision has simply brought the issue to a head.

The proposed regulations were published in response to a court order in the case of *National Land for People v. Bureau of Reclamation, et al.* In that case, the Department was found in violation of the Administrative Procedure Act because it had never published comprehensive regulations to implement the acreage limitations of the 1902 Act. I must add, however, that the regulations were also issued because I felt they were essential to carrying out the basic purposes of the Act, and to accomplish uniform administration consistent with the law as Congress passed it. It was, in order words, a court-ordered action, but one I support as a policy matter.

Purpose of Reclamation Act

After many years of lax enforcement and with the debate over publication of the draft regulations, the basic social purposes of the Reclamation Act have been obscured. I don't believe we should lose sight of those goals.

Congress originally authorized the Reclamation Act, and has continued to recognize it, not simply as a program to irrigate arid lands in the West or for the general benefit of agriculture; rather, the basic goal of the Reclamation Act is to create family-sized farms in areas irrigated by Federal projects. As the first Commissioner of Reclamation, F. H. Newhall, observed seventy-five years ago:

"The object of the Reclamation Act is not so much to irrigate land as to make homes . . . It is not to irrigate the lands which now belong to big corporations or to small ones . . . But it is to bring about a condition whereby that land shall be put in the hands of the small owner, whereby a man with a family can get enough land to support that family."

It is also a basic goal to secure the wide distribution of the substantial subsidies involved in reclamation projects and to limit private speculative gains resulting from these projects. The intent is to make lands available to as many family farmers as possible. The Congress enacted the acreage limitation provision and other measures to assure redistribution of small tracts of land at non-speculative prices, and that lands would be sold at prices excluding project benefits.

The Administration supports these goals. I believe the vast majority of the American public and the Congress also support these goals. Given the substantial Federal subsidies involved in reclamation projects, it is not unreasonable to insure that the benefits are widely distributed. This view has been supported in the past by the Congress and the Courts. The Supreme Court, for example, has stated that these goals were a "... reasonable classification to limit the amount of project water available to each individual in order that benefits may be distributed in accordance with the greatest good to the greatest number of individuals." (*Ivanhoe Irrigation District v. McCracken*, 357 U.S. 297). The Court added that the acreage limitation provisions insure that "... enormous expenditures will not go in disproportionate share to a few individuals with large land holdings" and it "prevents the use of the federal reclamation service for speculative purposes." In short, the Supreme Court has concluded that acreage limitation provisions act as a "ceiling, imposed equally upon all participants, on the federal subsidy that is being bestowed." (*Ibid*).

Present procedures

The Reclamation Act has been on the books for seventy-five years. The Reclamation program has made substantial contributions to the economic and social development of the West.

But we should not overlook the fact that the residency and acreage limitations provisions of the Reclamation Act have not been enforced vigorously. I'm not here to blame the Bureau of Reclamation or past Administrations. It is my view, however, that past enforcement has not been consistent with the original purposes of the Act as this Administration and many others see it.

The Department's basic responsibility and objective is to enforce the law as written. I intend to fulfill that requirement. I should like to add that had the law been strictly enforced in the past, many more opportunities would have been afforded genuine family farmers throughout the West.

However, because the law has not been strictly enforced 160-acre parcels have been lumped together in sales to absentee owners and sales or leases to farm management syndicates. The "family farmers" whom the law was designed to benefit, sometimes can be found in the corporate board room of Los Angeles or New York, in Caribbean tax havens, or "farming" out of the 40th floor of an office building or a lawyer's or doctor's office. That isn't what Congress had in mind when it authorized the Reclamation program and I don't believe that is what it wants the program to be today.

Committees of both Houses of Congress have held several hearings in the past few years at which much testimony critical of the Department's enforcement practices was taken. The Department has prepared reports to Congress pinpointing some problems. The General Accounting Office has issued a series of reports highly critical of certain enforcement policies. Several recent court decisions have underscored the need for firmer enforcement.

This Committee and the Congress most recently recognized the problem when it established a task force to investigate the largest irrigation project, the San Luis Unit of the Central Valley Project (P.L. 95-46). While this task force's report is not final, the preliminary draft suggests substantial problems may exist with the enforcement of certain provisions of the Reclamation Act.

Our proposed regulations would correct several of the Bureau of Reclamation's current procedures which have resulted in abuses. I would like to highlight these problems for you:

The existing procedures do not enforce the residency provisions of the law, allowing absentee ownership which counters efforts to promote family farms. It allows farming to be an "investor" activity rather than a residential one as intended.

The existing procedures do not place adequate limitations on leasing, allowing large farm operations rather than small family farms. As a result, the issue of "control" of large number of acreage has become as important as the issue of ownership itself.

The existing procedures permit multiple-ownerships which promote absentee and investor ownership.

The existing procedures do not control the sale price of land after it is sold into non-excess status, thus failing to control speculation and profiteering, even though the large profits therefrom are based on federally subsidized water.

The existing procedures allow individuals to hold 160 acres in more than one District or Project thereby working against the goal of making the benefits of projects available to many, rather than a few.

I feel an important obligation to correct these problems to insure that resident family farmers receive the benefits of federally-subsidized projects. I stress that while these subsidies are substantial, they are often overlooked or taken for granted. For example, the Bureau of Reclamation has estimated the present value of the subsidy in the Westlands Water District (San Luis Unit, Central Valley Project) is \$800 million or more than \$1,500 per acre. One corporate land owner today holds more than 100,000 acres in the District. Without limitations on land ownership, the subsidy accruing to the land now owned by the corporation over the life of the project would exceed \$150 million. Another example is the Garrison Diversion Project, North Dakota. The Federal investment in irrigation facilities for one 640-acre farm will cost \$1,450,000 if the project is completed as authorized. Of this amount, the farmer will repay only \$50,000 and the remainder will be paid at no interest by power consumers. If such subsidies are warranted as part of a program with identifiable goals, Congress should so decide (and has often done so), but we do not believe the current program was designed with that in mind.

Proposed regulations

The proposed regulations published last August are designed to put each recipient of the benefits of federally-subsidized projects on an equal footing. Mr. Chairman, I would like to explain what these regulations do and what they do not do.

The proposed regulations would apply *only* to lands receiving federal project water under the Reclamation law in 17 Western States. They would not apply to States outside the West, nor would they apply to privately irrigated lands in the 17 Western States. As always, those living within a project who do not choose to receive federal-project water would not have to comply with the regulations. The regulations would not lead to the confiscation of any private property. The only enforcement authority available is to withhold project water, and even then, not to do so immediately but through a fair process over time.

The regulations were drafted as uniform guidelines to apply to all projects. The present procedures are not uniform and vary from region to region and project to project. The proposed regulations are not aimed at penalizing any specific district, project or group.

The proposed regulations provide flexibility to account for changes in the economics of farm operations. They would not limit each family farm to 160 acres. Indeed, there is no limit on the amount of land a family farm might contain. A husband and wife with two children could own 640 acres and lease an additional 640 acres of non-excess land. Larger families could own and lease even more acreage. Some would question whether it is even right to permit the size of the farm to be directly related to the size of a family.

The proposed regulations would require residency on, or in the neighborhood of, land receiving project water. This provision was included because we believe it is required by law. This requirement will apply to all new recordable contracts and new projects. In addition, I have directed the Solicitor to prepare proposed regulations for applying residency requirements to all present projects which receive water. I have also asked the Solicitor to review my authority to deal with hardship cases caused by enforcing residency. I should like to add, however, that the proposed regulations are flexible and allow family farmers to live within 50 miles of their property.

Multiple ownership have been approved, in the past, if a loose family relationship existed among all members of "where the effect of the multiple ownership was to break up large landholdings." This ambiguous criterion is difficult to enforce and has led to abuses and weakening of the law's effect. The proposed regulations allow multiple ownership only where a lineal family relationship exists among all members. In addition any prospective owner or beneficiary under any multiple ownership arrangement must qualify as an eligible non-excess owner. The intent of this provision is clear: it was drafted to limit the benefits of project water to family farming operations. As noted earlier, this is a clear goal of the Act and one which the courts and Congress have endorsed.

The proposed regulations require the Secretary to approve the price of land sales and resales from 10 years after the initial sale. After 10 years and until one-half the construction charges are paid, sales would be monitored to prevent unreasonable gains from any resales. The present procedures require the Secretary to control only the price of the first sale. The reason for this new provision is also clear: to prevent speculation and profiteering.

I should also add that the House Interior Committee has recognized the need for such control by its decision last week to report legislation requiring the Secretary to control subsequent land sales for 15 years (H.R. 3420). My Solicitor has told me we have such authority in existing law, but we do not oppose the clarification contained in the House Committee bill.

Currently, there are few controls on leasing. This has led to the creation of large farming operations of thousands of acres in some districts. We believe this is contradictory to the intent and purposes of the Reclamation Act. The proposed regulations would prohibit leasebacks and, in addition, allow each individual land owner to lease up to 160 acres of non-excess project land. This provision was designed to insure that project benefits are widely distributed and to promote family farms.

In the past, a landowner was entitled to receive water for up to 160 acres in more than one district or project. Under the proposed regulations, an individual would be limited to only one acreage allotment in all Reclamation projects.

Finally, Mr. Chairman, the proposed regulations would revise the procedures for sales of excess lands to prevent such abuses as sales which leave the original owner in control after supposedly relinquishing control, and thus retaining the economic benefit of federal water for his excess lands. The proposed regulations will require the purchaser to be chosen by lottery or some other impartial means from those who qualify and express an interest in purchasing land. A preference will be given, however, to those in a direct family relationship with the seller. This provision will not lead to a large land raffle. Rather, it will insure that control of excess land is actually relinquished and that more family farmers receive the benefits of projects.

Moratorium legislation

Mr. Chairman, the proposed regulations and the intent of the Reclamation Act have been misunderstood by many people over the past few months. Some have claimed the regulations would lead to confiscation of private lands, that people would be told where they could and could not live, or that farms would be limited to 160 acre plots—none of which is true.

Two resolutions have been introduced and are being considered by this Committee to postpone for one year implementation of the proposed regulations. The resolutions were drafted in response to complaints generated partially in response to misunderstandings about the proposed regulations what they would and would not do. I want the Committee to know the Administration is strongly opposed to enacting these resolutions at this time.

I can sympathize with the desire to consider the impact of these regulations in an atmosphere of calm, rational deliberation. Unfortunately, these resolutions would not provide that atmosphere. Indeed, they would only intensify misunderstanding, unreasonably delay the implementation of equitable regulations, and create more confusion.

The most difficult problems are presented by S.J. Res. 93. It would prohibit the Secretary from approving any excess land sales for an additional year and thus lengthen the period of uncertainty excess land owners face. In addition, the economic disruption from uncertainty over land sales and inability to obtain adequate credit would continue for an additional year. Finally, the present legal confusion surrounding land ownership would be increased.

Mr. Chairman, what we need is to create a stable climate where land owners understand how much land they can own or lease and how this can be accomplished. This stability should be created as soon as possible and the best way to provide this stability is to implement equitable regulations at the earliest possible time. To delay another year does nothing but lengthen the hardships, raise false hopes, and create legal and administrative confusion. In almost every case I know of, Congress would insist on regulations rather than informal administrative practices.

In addition, by imposing a moratorium, we are delaying action to correct the abuses which exist in the present procedures. A moratorium would: 1. Allow subsidized federal water to continue to serve non-resident investor-farmers; 2. Continue the pattern of speculation on land prices based on subsidized water; 3. Allow unrestrained leasing to make family farming no more than an illusion.

S.J. Res. 93 would effectively repeal the entire Reclamation Act for one year. The resolution would prohibit the Department from withholding "water deliveries from any beneficiary of a Federal Reclamation Project for the purpose of enforcing the acreage limitation provisions or residency requirements of the Federal reclamation laws." In other words, Mr. Chairman, the Department could not deny a request for project water from an excess land owner who hasn't signed a recordable contract.

S.J. Res. 93 could lead to many transfers of excess lands without Secretarial approval during this interim period. If the Department is prohibited from implementing the new regulations, as outlined in S.J. Res. 93, the Secretary would be prohibited from shutting off water to those taking by these unapproved transfers. After the moratorium expires, we would have to sort through such transfers and determine which should be approved and which should be rescinded. Expectations created and legal arrangements made which are in violation of the new regulations will be very difficult to correct once a moratorium is lifted.

Mr. Chairman, if S.J. Res. 93 were enacted, it would: 1. Unreasonably hold up approval for land sales for which recordable contracts have been entered into; 2. Unreasonably delay estate settlements and other necessary legal transfers; 3. Permit transfers to circumvent acreage limitation provisions the later correction of which could be a legal and administrative nightmare; and 4. Result in court suits which would further delay implementing the Reclamation Act.

S.J. Res. 96 is much less sweeping but also creates problems. It would lead to a substantial additional delay in excess land transfers in the Westlands District, because it prohibits the Department from approving any transfers in Westlands until December 31, 1978, even if final regulations are in place, and enforced elsewhere. It also allows transfers of excess land in areas outside of Westlands if such transfers are consistent with the proposed regulations. This will lead to substantial pressures to approve transfers immediately, divert our attention from preparing final regulations, and possibly limit our flexibility in deciding what should be in those final regulations.

Both resolutions could lead to another legal problem. I should like to point out that we are currently under a court order to initiate rulemaking proceedings "forthwith" and to implement those regulations. It is important to note that the court found the Department in violation of the Administrative Procedure Act and not the Reclamation Act. It also found current policies and procedures for approving excess land sales invalid. If we are prohibited from implementing regulations authorized by law as directed by the courts without the law forming the basis for the court's order being directly affected then we could find ourselves in a difficult administrative position—having to resolve an apparent conflict between Congress and the courts.

Proposed action

I recognize there is a deep concern in the Congress over the impact of the proposed regulations. I want you to know that I share that concern and I do not intend to take precipitous action which would unreasonably disrupt people who live and farm in Reclamation projects.

I continue to believe that family farms are essential to the strength of our Nation. I do not believe family farming is an obsolete economic enterprise. Indeed, studies show family farms yield greater long-term economic and social benefits than huge corporate farms or absentee-owned enterprises. This Administration strongly believes that the Federal subsidies now provided through the Reclamation programs should be available to legitimate family farmers, but not to large corporations, absentee owners and investors holding land purely for speculation.

While conditions of family farming may have changed in some areas since the Reclamation law was passed in 1902, Congress has not seen fit to change the law. I am willing to cooperate with the Congress to reappraise the law. Various actions and inquiries are now underway to assess the changes in the law that may be necessary in the future. These include the President's water policy review, the work of the Task Force established by Congress to investigate the Westlands Irrigation District, and 13 hearings throughout the West on the proposed excess lands regulations.

I recognize the concern about the draft regulations and want to repeat today I will take no action to promulgate final excess lands regulation prior to at least March 1, 1978. In addition, I will carefully review comments on the regulations to ensure that we develop a system which will provide those in violation of the regulations a fair period in which to dispose of excess lands, should they be required to do so. Where changes are necessary in the proposed regulations, I will not hesitate to make them.

I will also utilize the period between the closing date of comment on the proposed regulations (November 23) and the first of March to assess public comment on the broader issue of amendments to the present Reclamation law, and consult with you and other members of Congress on these matters. Action on the regulations and decisions on possible amendments should be coordinated.

To address the problem of misunderstanding of the purpose and effect of the proposed regulations, I intend to issue very shortly fact sheets which explain the

proposed regulations. I also intend to ask the Secretary of Agriculture for his opinion and recommendations regarding not only the regulations, but the role of acreage limitations and other facets of Reclamation law in the context of modern agriculture. This cooperative venture should be completed by mid-February.

On the closely-related matter of residency, I understand that certain hardships might exist under the proposed regulations even though the law was enacted to foster family farming. I remain open on this issue during the review period, particularly in the case of retired elderly farmers. I have already asked the Solicitor to advise me whether flexibility exists in the law to deal with hardship cases. If the law needs to be changed to correct this problem, I will not hesitate to propose legislation.

Finally, Mr. Chairman, I would like to comment on the problems in the Imperial Irrigation District. The Imperial Valley situation, which is to some extent, being perceived as representative of all areas subject to excess land requirements, is, in fact, quite unique. The issue of whether the District is or is not subject to acreage limitation has been controversial for a half century. It is still before the courts and until the matter is settled, I will not apply the new regulations to the District. In fact, the legal issue in that case is whether the Congress meant to apply acreage limitations to the District. Until that issue is settled, it would be premature to apply the regulations. Even if the regulations are found to apply by the courts, the District will be provided an additional year to sign excess lands disposal contracts, and five years to actually dispose of land before water will be withheld.

I also intend to explore whether there are additional areas where reliance on nonapplicability is at issue.

Conclusion

To summarize this Administration believes the law should be enforced as written, and believes family farms remain a viable objective of federally funded water programs. I remain open to changes in the regulations and the Reclamation Act and will propose those changes only after basic fairness is considered.

Again, Mr. Chairman, I want to thank you for providing me with the opportunity to testify this morning. I would be happy to answer any questions you might have.

Senator CHURCH. Our next witness is Mr. John C. Datt, director of the Washington office of the American Farm Bureau Federation.

Mr. Datt, Senator McClure has been kind enough to suggest to me that he will preside while I try to make a luncheon appointment with a group of people who are here as delegates to an aging conference held by my Aging Committee.

I will be back in about half an hour. I apologize for having to leave at this time, but this way we can keep the hearings moving without having to recess.

Mr. DATT. I understand.

STATEMENT OF JOHN C. DATT, DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION

Mr. DATT. I am John Datt, director of the Washington office for the American Farm Bureau Federation. I have a relatively short statement. I will even shorten it down in the interest of time.

We are pleased to have this opportunity to express the views of the Farm Bureau members, which is not only concerning those people served by reclamation projects, but ultimately affects all Americans who are dependent upon agricultural production.

While this has been viewed in the minds of many people as a western project or a problem in the western area, that it has implications all across the American agriculture in terms of the ultimate public policy decision. The Farm Bureau is the largest general farm organization in the United States with a membership of over 2.46 million families in the United States and Puerto Rico. It is a voluntary organization representing farmers and ranchers in virtually every agricultural commercial basis in this country.

Let me say that our organization is affected by this particular issue more than any other private organization in this country.

We cite here the farm policies—I will skip that and come down to the later part of the statement.

The American economy, as well as any other country's, is dependent upon the productive capability. Water is a critical factor if agriculture is to maintain its outstanding record of food and production. Farmers and ranchers are therefore vitally interested in and are the Nation's foremost supporters of wise and careful use of water resources.

We are equally concerned that administration of those Federal projects which provide water for agricultural and other beneficial uses, affecting all citizens, be judicious.

The Bureau of Reclamation is proposing to issue new reclamation rules and regulations which would change the rules of the game while the game is in progress. The result is that many landowners and lessees who have relied on reclamation law and Bureau of Reclamation policy in making significant economic decisions are now finding substantial investments, as well as their very livelihood, threatened by these proposed rules and regulations.

The Bureau has gone far beyond the requirements of the court order and has, in fact, gone beyond the scope of the present law. In effect, the Bureau has taken it upon itself to legislate reclamation laws, rather than to administer such laws.

We recognize the Bureau's obligation to enforce the law and to comply with the court order. However, we vigorously object to the Bureau's infringing on the legislative process and expanding on the court order through its rulemaking procedures. A letter detailing our views on the proposed regulations has been filed with the Commissioner of the Bureau of Reclamation, and I would submit that for inclusion in the record.

We feel the Bureau has gone beyond what the court ordered on the residency question, the leasing question, the disposition of excess land and three or four other areas.

We commend this committee for holding this hearing and urge you to file a favorable report on S.J. Resolution 93, a joint resolution to postpone the effective date of the Bureau's proposed rules and regulations.

We are prepared to recommend substantive amendments to the Reclamation Act of 1902 when this committee holds hearings on such legislation.

Let me say in terms of the discussion we had here with Secretary Andrus, let me make a couple of points.

One: That in terms of the family farm, the family farm of 1902 and the family farm of 1977 are quite different, and what constituted a family farm then and what constitutes a family farm now, one has to take into serious consideration, and it involves, as you indicated earlier, Senator, it involves different States in a different manner. Idaho one way and New Mexico as the Senator indicated, hits it a little different. I have not seen any issue that has caused the folks in the West to become so aroused as this particular issue.

One final point, the Secretary of the Interior repeatedly refers to the question of the subsidy involved, and as a result of the subsidy being involved therefore, that is, if we have a policy, a public policy

of acreage limitations and so on, and so forth, I think the Congress has to take a serious look at that argument which we do not particularly accept. Because, if you really look at this argument, there are a number of other areas where there are subsidies involved, flood control programs, drought disaster, ACP, Farmers Home Administration, Soil Conservation Service, some fees as a subsidy, watershed projects. You can go the whole range of subsidies and if you say that anytime there is a subsidy that, that is, there is going to be a Federal acreage limitation, then we are starting down a whole new road.

The comment was made that the President of the United States did not have any subsidized water on his 3,000-or-so acres, but he is involved with a Government program involving peanuts where there are loans and other programs which some people then view as subsidy involved.

I am simply saying that the subsidy argument followed through its end point means that you end up with acreage limitations and other limitations on a whole wide range of public policy areas.

So, therefore, simply to say because there is a subsidy involved, here as related to water, we are going to do thus and so, that is a public policy matter, we had better make sure we are starting down a whole other road as it relates in agriculture and in non-agriculture, and we hope that in the interest of the Congress taking a look at this that something like Resolution 93 will be adopted before you recess this fall.

Thank you very much.

Senator McCURE [presiding]. Thank you for your statement. I have only this question. You have indicated support for Senate Joint Resolution 93. Do you see a problem in that resolution dealing with the voluntary disposal of excess lands or approval of contracts for sale of excess lands where those sales are voluntary during any such period of moratorium?

Mr. DATT. We do not. We do not see that particular problem. We think that they should continue to as long as it is a voluntary sale, that they could continue to do that under Senate Joint Resolution 93, but there may be a problem, we do not see it. If it is necessary to clarify that issue, we would support clarification of it where somebody is saying that there ought to be a moratorium or some timetaking to deal with this issue, rather than simply running off to the races without knowing which way the horses are going.

Senator McCURE. All right. Thank you very much, Mr. Datt.

Mr. DATT. Thank you very much, Senator.

[The prepared statement of Mr. Datt follows:]

STATEMENT OF JOHN C. DATT, DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION

We are pleased to have this opportunity to express the views of Farm Bureau members concerning this topic which is not only vital to those people served by reclamation projects but also ultimately affects all Americans who are dependent upon agricultural production.

Farm Bureau is the largest general farm organization in the United States with a membership of over 2.6 million families in 49 states and Puerto Rico. It is a voluntary, nongovernmental organization, representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

Farm Bureau policies are developed through study, discussion, and decision by majority vote at community, county, state, and national meetings. These comments are based on the following policies adopted by the voting delegates of the member State Farm Bureaus at the 1977 annual meeting of the American Farm Bureau Federation:

"The technology of modern agriculture has made the 160-acre limitation impractical and uneconomic. We support legislation to remove the 160-acre limitation. We oppose surcharges on water from state or federal projects used on land in excess of 160 acres in a single ownership.

"Governmental agencies should not purchase excess lands with the intent of reselling them. We recommend that in the future there be no land acquisition management provisions included in water development projects."

The American economy, as well as that of other countries, is dependent on the ability of the American farmer to maintain his productive capabilities. Water is a critical factor if agriculture is to maintain its outstanding record of food and fiber production. Farmers and ranchers are, therefore, vitally interested in, and are the nation's foremost supporters of, wise and careful use of water resources.

We are equally concerned that administration of those federal projects which provide water for agricultural and other beneficial uses, affecting all citizens, be judicious.

The Bureau of Reclamation is proposing to issue new Reclamation Rules and Regulations which would "change the rules of the game" while the game is in progress. The result is that many landowners and lessees who have relied on Reclamation Law and Bureau of Reclamation policy in making significant economic decisions are now finding substantial investments, as well as their very livelihood, threatened by these proposed rules and regulations.

The Bureau has gone far beyond the requirements of the court order and has, in fact, gone beyond the scope of the present law. In effect, the Bureau has taken it upon itself to legislate Reclamation Laws, rather than to administer such laws.

We recognize the Bureau's obligation to enforce the law and to comply with the court order. However, we vigorously object to the Bureau's infringing on the legislative process and expanding on the court order through its rule-making procedures. A letter detailing our views on the proposed regulations has been filed with the Commissioner of the Bureau of Reclamation.

We commend this Committee for holding this hearing and urge you to file a favorable report on S.J. Res. 93, a joint resolution to postpone the effective date of the Bureau's proposed Rules and Regulations.

We are prepared to recommend substantive amendments to the Reclamation Act of 1902 when this Committee holds hearings on such legislation.

We thank you for this opportunity to present the news of farmers and ranchers on this important issue.

Senator McCURE. Our next witness is Mr. David Weiman.

Mr. Weiman, I have your entire statement. It will be placed in the record. You are at liberty to summarize, extemporize, or do whatever you will, but I would suggest in view of the length of the statement, you not undertake to read the entire statement.

Mr. WEIMAN. Senator, I do not, and I do ask that it be put in the record in full.

Senator McCURE. It will be.

Mr. WEIMAN. Before I start my statement, I have been asked to submit two statements, and I would like to do that at this time, one is in behalf of California Rural Assistance, California, and the other is on behalf of Migrant Legal Action here in Washington, D.C.

Senator McCURE. Those statements will be made a part of the record.

[The statements of the California Rural Legal Assistance and the Migrant Legal Action Program, Inc., follow:]

STATEMENT OF CRAIG H. SCOTT, ATTORNEY AT LAW, CALIFORNIA RURAL LEGAL ASSISTANCE

Dear Senator Jackson, we are unable to appear in person at the above-referenced hearings because of prior commitments. Instead, we would appreciate having this letter made a part of the hearing record. California Rural Legal Assistance (CRLA) represents the rural poor, including skilled farmworkers, throughout the State's major agricultural regions. Individual farmworkers and grass-roots self-help organizations have a vital interest in these bills as they affect enforcement of the requirements of federal reclamation law. Unfortunately, we have not yet received a copy of Senator Cranston's bill (S.J. Res. 96), so we are unable to comment on the specifics of that bill. Most of our comments are, however, related to major policy concerns and would apply with equal force to either bill.

1. *There Is No Need for a Moratorium*

The Interior Secretary, responding to a court order, has issued regulations which would govern sales of excess lands in federal reclamation programs. These will be the first such regulations, notwithstanding the fact that reclamation law has been on the books since 1902. Imposing delay at this point will permit this absence of a regulatory scheme to continue for another year with all the attendant abuses of the federal subsidy which have focused attention on the reclamation program in recent years. A delay will also, of course, conflict directly with the court's order.

Moreover, since the regulations call for a five-year disposal period for excess lands under recordable contracts (43 C.F.R. § 426.5(b)), and since there will inevitably be a good deal of administrative start-up time, most if not all landowning interests will not be affected within the next year anyway. Specific assurances along these lines were given the Imperial Irrigation District by Interior Solicitor Krulitz and Senator Cranston.

2. *Stripping the Interior Secretary of All Enforcement Power Endangers the Entire Reclamation Program*

There is considerable danger in stripping the Secretary of all enforcement powers as is done in S.J. Res. 93 (and also in a House version, H.R. 9707). The Secretary's only real enforcement power is his authority to withhold water deliveries. If that power is suspended, then the Secretary cannot even act to prevent what would be violations of existing law and policy. If violators are permitted to receive water during this moratorium, at the end of the moratorium they will assert that no enforcement can now take place because of "vested rights." The potential for manipulation is such that at the end of a year there would probably be little land left subject to regulation. If Congress intends to repeal the acreage limitation, it owes a duty to the public to do so directly and forthrightly and not in *de facto* fashion under the guise of a moratorium.

3. *If There Is To Be a Moratorium, Then the Status Quo Must Be Preserved*

Section 3 of S.J. Res. 93 does not go far enough in protecting the status quo. For example, the regulations govern "subsequent sales" of land previously sold from excess into nonexcess status. Section 3 only suspends sale approval of excess lands. The moratorium would create an incentive for widespread speculative sales of nonexcess lands during its term, rendering the subsequent sale regulations largely meaningless. Section 3 also permits sale approval if the proposed regulations become effective. Presumably, the intent is that only sales which comply with the regulations could be approved, but that is not what the section says.

It would indeed be a shame if hasty legislative action were to eviscerate the excess-lands provisions of reclamation law. In our view, the potential for such *de facto* repeal is contained in these bills, and particularly in S.J. Res. 93.

STATEMENT OF JOHN JOHNSON AND BURTON FRETZ, MIGRANT LEGAL ACTION PROGRAM, INC.

Mr. Chairman and Members of the Committee, the Migrant Legal Action Program appreciates this opportunity to submit testimony to the Senate Committee on Energy and Natural Resources, and to comment on Senate Joint Resolution 93.

The remarks which follow are premised on these observations: It's time to get the Southern Pacific Railroad off welfare; it's time for Congress to demonstrate a real concern to get family farmers back onto the land; there is absolutely no need for congressional haste in this matter.

Action on the acreage limitations at the end of a session, with inadequate time to consider the issues involved, would create confusion rather than clarity. It will be much better to let the Bureau of Reclamation proceed with its hearings, develop a

full record, and build some expertise to aid this Committee's deliberations. Anything else would waste valuable time, as the Bureau's proposed regulations would have no effect for five to ten years.

The Migrant Legal Action Program is a national back-up center which provides assistance to attorneys on complex farmworker cases. As such, we are familiar with the numerous difficulties that plague farmworkers. Because further delay in implementing the provisions of the Reclamation Act of 1902 would serve no purpose and would be seriously adverse to the interests of the many farmworkers who want to "settle out" of the migrant stream and use their own labor in their own fields for their own families, we oppose this Joint Resolution.

Our opposition is premised upon a recognition of the many positive advantages of the Bureau of Reclamation's proposed regulations:

The acreage limitation is an employment measure which would help the working poor.

The availability of good, price-regulated land would be a boon to those skilled farmworkers who, like our clients, possess experience, energy and initiative, but who have neither the money nor the connections to buy into the monopolistic network of those who presently enjoy the immense subsidy provided by federal reclamation projects. Will the Senate delay or deny to the working poor the means to become self-supporting, tax-paying citizens?

The acreage limitation would prevent large corporations and agribusiness from pocketing a federal subsidy.

Now, one of the largest landowners in California's Imperial Valley is the Southern Pacific Railroad. In fact, 70 percent of the Imperial Irrigation District in recent years has been held by absentee owners. These absentee owners frequently employ undocumented workers to farm their large estates, thus contributing to the impoverishment of the Valley's farmworkers and family farmers by such unfair competition.

Thus, what began in 1902 as a law to help the needy, encourage family farming, and prevent monopoly and speculation, has been ignored and twisted into a private relief act for large corporations. Congress, in 1902, refused to expend public funds for the benefit of the rich and powerful, preferring instead to protect the poor and powerless, the "little men", the genuine family farmers, and that policy judgement was affirmed by later Congresses. Will the 95th Congress, with the bitter legacy of the political scandals of recent years, now break faith with the wisdom of its predecessors by bending to the whims of the big landholders? Or will it wisely decide that 75 years is time enough to have countenanced evasion of its law?

The acreage limitations would have a minimal effect on genuine family farmers now receiving project water.

The regulations proposed by Secretary Andrus are hardly Draconian. Under them each eligible person would be permitted to own 160 acres and to lease 160 additional acres. A husband and wife could thus farm 640 acres of some of the world's most productive farmland, and each of their children would be eligible for 320 additional acres. These present occupants would, in fact, benefit from the regulations because they could lease or purchase additional acres at a price below that which now prevails. Therefore, it is obvious that the argument that these regulations would displace genuine family farmers is a specious argument, one put forth by corporate agribusiness, and, being false, one which need not trouble this Committee.

Finally, the most obvious argument against Senate Joint Resolution 93 is that 75 years of non-enforcement of the acreage limitations provisions is long enough. The administrative hearings should be permitted to go forward now. The justifications which once upheld the Act of 1902 are equally valid today. Monopoly, absentee ownership, and speculation continue as unabated plagues on family farmers. Large corporations and agribusiness still seek unjust enrichment at the expense of taxpayers. Modern agricultural methods no more demand huge spreads than did earlier methods: A 1974 study by the Department of Agriculture found that the optimum efficient size for a California farm is from 200 to 400 acres, the amount contemplated by Secretary Andrus' regulations. No further delay, no further debate, no further study is needed. Bona fide problems can be dealt with as they arise. The need now is to enforce the law.

STATEMENT OF DAVID M. WEIMAN, WASHINGTON, D.C.

Mr. WEIMAN. Senator, there has been a great flurry of activity. There has been great concern echoed about the excess land laws

and about sweeping impacts to the West, to the rural countryside, to the farming communities.

In many ways, some of these charges have been very wild, very misleading, and very, very inaccurate.

First of all, I think that one of the useful things to do this morning would be to put into context how much of the West would be affected by the proposed rules and regulations.

In the 17 Western States there are 698 million acres of farmland. The Bureau of Reclamation only operates in the 17 Western States.

The Bureau of Reclamation actually operates fewer than 11 million of those acres. And of that only 1 million acres, a little more or less than 10 percent of the Bureau's lands, are considered to be excess.

Senator McCCLURE. Could I interrupt at that point?

What is the source of your figure in regard to how much is considered to be excess?

Mr. WEIMAN. USDA agricultural statistics, 1973.

Senator McCCLURE. Thank you.

Mr. WEIMAN. So, to put it in another context, approximately 1 million out of 70 million acres is at issue.

Now, like many people, I, as a public citizen, have reviewed many of the comments that have come into the Department, and many of the accusations simply defy logic, they defy any consistency or understanding with the proposed regulations.

Of the 5,000 comments more than half of them relate to the Imperial Valley, and those do not discuss the regulations, they discuss the law. They do not think it should apply. Now the court has rejected that, but that is a separate matter.

And of the 2,500 comments that remain, I would submit to this committee that a majority of those comments reflect no understanding of the reclamation law, reflect no understanding of the proposed rules and regulations.

Now, perhaps the best way to explain the confusion and the misinformation is to draw from an ad that appeared in the Washington Post. It says I cannot believe this is happening to us. It is a picture of a family from the Imperial Valley, Mr. Larry Gilbert and his wife, Cassie, and his four children. I would like to read just a couple of sentences:

Just a few weeks ago the Government told us they are going to take away our land. I know it sounds crazy. I still can't believe it myself, but the Government told us they are going to force us to sell the land we own in excess of 160 acres or they will cut off the water.

Well, first of all, as Secretary Andrus mentioned this morning, the matter of Imperial Valley is not resolved in the courts. There has been a decision. That decision is on appeal to the ninth circuit, and if it is denied there will be an appeal to the Supreme Court, and even after that happens, one of the lower courts has to provide an order. No such order has been entered, and it is likely to be some time before that order will be entered.

Senator McCCLURE. I refer back to the Gilbert case because your statement indicates that—

Mr. WEIMAN. I was just going to get into that.

Senator McCCLURE. All right, go ahead.

Mr. WEIMAN. The same thing applied to the *Tulare Lake* situation, which is another place in California where we have had recent litigation, and in spite of the fact the Supreme Court has denied it, new issues have been raised in the lower courts and again there is no court order.

So two of the areas where the greatest impact would take place is not yet finished. In the record of correspondence it says once we have a final determination they will have a year to administratively comply, and then be subject to the proposed regulations, which I think in great part reads the objections stated by the committee.

Now, coming back to this ad, first of all, I do not think the Department of the Interior anywhere in its regulations has talked about taking or seizing or confiscating farmland anywhere. Secondly, according to the rules and regulations, Mr. Larry Gilbert and his family would be unaffected by these rules and regulations.

According to the Citizens for Government Fairness, I called them yesterday and I said how much land does Mr. Gilbert own, and they said 160 acres; and then said how much does he farm, and they said 800 acres. He leases 460.

If you notice in the picture, he has four children, and he and his wife. They would be entitled under the regulations to own up to 900 acres.

Senator McCLURE. That is the point I wanted to raise, because I do not read the regulations that way at all.

Mr. WEIMAN. The regulation is based on per person, not per farm.

Senator McCLURE. But that does not include small children as pictured in that ad.

Mr. WEIMAN. In section 426.4 under definitions, family relationships are persons in direct lineal descendant relationship, natural or adopted, and their spouses.

Senator, I would submit to you that one of the great problems with these regulations is that people have not read them.

Senator McCLURE. Well, I would suspect that if they were attempted to be applied in the manner you are now suggesting there would be a great outcry that small minor children were entitled to 160-acre ownership and 160-acre lease rights, there would indeed be a nationwide fuss about that.

Mr. WEIMAN. Senator, under the existing procedures, put aside the proposed regulations, that is precisely how the Bureau has operated. If I am not mistaken, in at least one instance, an unborn child had 160 acres also, but that was for less than 9 months or for less than a year.

In any event, under the proposed regulations adults and their children may own land. That is consistent with their earlier procedures.

I would submit to you, and I agree with you there needs to be some sort of a cap, but under the proposed regulations this family would be entitled to own 960 and lease 960, or an aggregate of 1,920 acres. That is more than double what they are farming today, and yet they have come into the living rooms of probably millions of people throughout America and Time Magazine, the L.A. Times, and Washington Post, and said something terrible is going to happen.

It is not going to happen.

Senator McCLURE. Does the present law provide for a limitation on leased land?

Mr. WEIMAN. The present reclamation law does not speak directly to a limitation on leasing, but I would submit to you that by the imposition of a residency requirement in the 1902 act, Congress spoke to whether or not they wanted tenancy in reclamation projects, and I think the legislative history is clear that they did not. They did not have to speak to leasing, they disposed of that.

Senator McCLURE. Then you are suggesting that the leasing provision is not within the current law?

Mr. WEIMAN. I think it is well within the current law. Because it is not stated in direct fashion—

Senator McCLURE. You mean that if the law is silent on the question of leasing, the Secretary is at liberty to impose whichever regulation he may desire with regard to leasing?

Mr. WEIMAN. Senator, there are two kinds of statutes that are written. Some are very conceptual in nature, and I think many of our present land laws reflect that, and then the other is something that Ralph Nader provides, where it is this thick and everything is spelled out in detail.

The Secretary may make rules and regulations as necessary to carry out the purposes of this act. And one of the reasons this litigation has come about is that it never occurred—for 75 years we have gone about with a hodgepodge of solicitors' opinions, memos, and even unwritten policy, and it is those things that have caused the problems in places like the Westlands.

I think here is a good illustration of the point you are just making. In the ad it says, well, the old 1902 act has nothing to do with our land or our contract. Well, the fact is, when the 160-acre law and the words "160-acre" are not expressly mentioned in the Boulder Canyon Project Act, however, the language in there says this project is pursuant to the reclamation laws.

Well, the reclamation laws include the 160-acre law, and the residency requirement. They did not have to restate it, and coming back to the point on leasing, that by imposing residency they did not have to reach the issue or state anything. They dispensed with that point, and so it is well within the administrative latitude of the Secretary.

Now, I would like just to further illustrate the confusion.

With some amusement and at the same time a little trepidation, I read one letter the Department received where this outraged farmer was extremely upset at this crazy law. He lived in Missouri. The reclamation program does not extend to Missouri.

Senator McCLURE. Some of the interpretations being urged upon the Federal Government says that any Federal project dealing with the availability of Federal water would be covered to blanket in small watersheds and Corps of Engineers, and so forth.

Mr. WEIMAN. Well, such proposals would require an act of Congress, and—

Senator McCLURE. Well, it is well within the intent of the act.

Mr. WEIMAN. But the act is limited to the 17 Western States. That is the geographical boundary of the Bureau of Reclamation, so again here is a situation that does not expressly say that New

Jersey is excluded, but it does not have to because it defines the boundaries as the 17 Western States, and it does that, I believe, in the statute—

Senator McCLURE. I would invite your attention, and perhaps you would like to respond to it later, the fact that there are others who disagree with you on that very vehemently and in the mid-1940's and 1950's a number of Corps of Engineers projects were converted to reclamation projects, and the 160-acre limitation applied simply by the Executive order of the transfer of jurisdiction.

Mr. WEIMAN. I am aware of that, Senator, and those projects particularly exist in California. I am not familiar with other parts of the West. I am familiar with California.

Senator McCLURE. It is not exclusively California.

Mr. WEIMAN. I do not feel qualified to speak to the point.

I would like to speak briefly to the Domenici resolution, and the Cranston resolution.

In the Domenici resolution particularly there is the thought within many Members in response to these resolutions that what we are trying to do is create a pause, a delay, so that Congress can look over the Department's shoulders, they can talk to each other, the public can be involved. This is not bad.

That a resolution imposing a moratorium is needed is not necessary to achieve that. But, putting that aside, one of my concerns is that, in effect, section 1 of the Domenici resolution suspends the reclamation laws for a year.

Now, while section 2 and section 3 prohibit sales for the purpose of requiring—

Senator McCLURE. Excuse me.

You say section 1 suspends reclamation law. Now, as I read the language, it says the Secretary shall not withhold water deliveries from any beneficiary for the purpose of enforcing the acreage limitations, or residency requirements.

Mr. WEIMAN. Of the Federal reclamation laws.

Senator McCLURE. That is not suspending the entire reclamation law, is it?

Mr. WEIMAN. Well, I would submit to you that if you suspend the Secretary's police power and that gets into the point of the later sections, price approval is needed for the receipt of water—

Senator McCLURE. Then, in order to try to understand what you are saying, you did not intend that to be a legal statement, but a statement of your understanding of the effect.

Mr. WEIMAN. That is true. I believe it could be a de facto appeal, and setting in motion some chaos that I do not believe is intended.

I have talked to many staff people, and Members themselves, and I do not perceive this, but I think there is a terrible risk here of setting in motion some things that could cause some very serious problems.

Now, if sales are not permitted, what happens if landowner A sells to landowner B? Let's assume landowner A has excess. The Secretary cannot touch that land. He has got to deliver water because section 1 says so. What if landowners decide that we ought to start swapping like crazy? The Secretary is powerless to act by this resolution. He must deliver water, and that is one side of the ledger.

On the other side, where there have been situations where there are illegal deliveries or there have been some problems as we have had in California, the Secretary will be powerless to act.

And let me give you one example. Section 46 says that there will be continuing price supervision of the excess land which now has become nonexcess land. Excess land A, the seller sells it to a nonexcess landowner, but there is to be continuing price supervision. Now that is very clear language in section 46 of the act.

The Bureau has ignored that provision for years. They have never enforced it. There is no pretense of enforcing that. They have simply ignored it.

Now, what we have had happen in Westlands is, for example, a group of people or an individual sold a lot of land, and 11 days later the 12 buyers resold the land and on top of a \$900,000 sale cleared an additional \$322,000.

Now, the reclamation laws do not intend for people to capitalize, personally at Federal investment, but that is what is happening in part, not all of the sales. It has been relatively few, but one of the interesting things, Senator Nelson this morning made references to his hearings in California. One of the persons appearing was a young man named Craig Grossfema. Mr. Grossfema told the story about how he was just so delighted to be able to purchase that farmland, and he wanted it for the long-term security of his family. It is in the hearing records, published by this committee. Right now he is involved, I believe, in closing a sale of that very land he bought for more than twice what he paid for it.

So it is not just that speculator and wheeler-dealer. It is not just the foreign investor, and it is not just the large corporation, but there are some people out there who have decided they can capitalize on this great Federal investment, and to put that Federal investment in some kind of context with reference to subsidies this morning, I would submit to you that the \$800 million estimated for Westlands is short by a considerable sum, and a number of comments have already come in on the Bureau's assessment of that figure, and numerous errors have been determined, and I think it will be increased over the next several weeks as the task force concludes its work.

But, regardless of the figures, there will be almost \$1 billion in congressional outlays to build Westlands for a distribution system, and the main project features some which is repaid.

There will be in my estimation \$1 to \$2 billion in Federal subsidies in the life of the project under what they call the present value method in determining subsidies. Right now we have something like \$350 million coming out of the ground.

All of that is going to 219 farm operators. Now, I would submit that is an awful lot of money for a very few individuals. I would also submit to you that the subsidy structure is such that the excess landowners will benefit from those subsidies far greater than the future landowners will. They are heavily skewed to the front end of the project.

Now, some of the land sales in Westlands have become famous in a sort of way. We have had situations where a Japanese investment conglomerate financed and became a part owner in a 10,000-

acre unit. It is all legitimate under the 160-acre law, the way they previously enforced those rules.

Now, I think in response to situations like that, the Department has recognized its wrongdoing, and is attempting to correct those things so that the subsidies are distributed equitably and that is reasonable. I do not think they should be that concentrated, and that it is an outrage that they have been.

Senator, I welcome this committee and the interest in the House committee in looking at the reclamation laws. I truly do. I have been a critic of the Bureau for a long time. I have written extensively, and appeared at many hearings. I think there are many regional variances, 160 acres in Montana, in Senator Metcalf's Milk River project, is not the same as 160 acres in Westlands, Imperial Valley, and Tolary Lake. Those things need to be addressed. I welcome the committee's willingness and desire to address them.

My concern is that these kinds of ads have set off a tidal wave of an emotional response that is simply reacting to a phantom issue of misinformation.

Let us first correct the record. Let us first define a problem so that when you speak to the Secretary and the public comes in and the water users come in, we are all talking about the same thing, and I would submit to you that today that has not happened, and that is clearly reflected in the comments that have been submitted to the Department. It is clearly reflected in some of the things I have been told that have happened at some of the field hearings about the perception of some of these sections. I think the Department should be faulted for not taking a more aggressive posture in explaining these to the water users, but at the same time, I also note that there is a whole series of newspaper clippings where the Bureau personnel are "outsandbagging" the Department, and they are quoted in the press as saying we have got to fight these things.

That does not help the situation either, Senator, and I would hope these things do get straightened out. There are also instances where an individual in the Imperial Valley is threatened with loss of his job for refusing to sign a petition. They said we will drive you out of the valley, and I have submitted that letter. The citizen happened to be a Federal employee, and felt he should not participate in partisan types of issues. He did not want to participate, and they said we are going to drive you out of the valley if you do not sign this thing.

That is outrageous, and that should not happen in America, and I cannot believe this is happening in the Imperial Valley.

Senator McCURE. Thank you very much.

Mr. WEIMAN. Thank you, Senator. It is a pleasure to appear before the committee again.

[The prepared statement of Mr. Weiman follows:]

STATEMENT OF DAVID M. WEIMAN, WASHINGTON, D.C.

Mr. Chairman and Members of the committee, during the past several years I have been actively involved in researching and writing on issues regarding federal reclamation policy and particularly the excess land law policy. Presently, I am concluding a study on this matter. I appreciate the opportunity to appear here today to comment on the two senate resolutions which would, if either is enacted, delay

the implementation of the proposed rules and regulations for the administration of the excess land laws. The views expressed here today are my own.

Before these resolutions are even discussed, it might be useful to attempt to place the effect and impact of these proposed regulations in an understandable context. There are charges—wild charges—about the impact of these regulations. Some say that western agriculture will be badly disrupted. Consumers will pay considerably higher food costs. Still others insist there will be an upheaval of the rural countryside. Before too much credence is placed on these charges, consider a few facts.

Today, there are 698 million acres of farmland in the 17 western states served by the Bureau of Reclamation. But, all projects combined only serve slightly less than 11 million acres. A majority of these project lands and the farm families who farm them are already in compliance with the reclamation laws. Only a fraction of the Bureau's project lands are considered excess. It's about 1 million acres or less than 10 percent of the project lands. Or, approximately 1 million acres out of almost 700 million are the subject of the discussion in this committee today.

WHY FORMAL RULES FOR RECLAMATION?

In 1974, articles appeared in the Fresno Bee indicating that a contract—new contract—was being negotiated between the Westlands Water District and the Bureau of Reclamation. According to the two-part series, the parties agreed to insert language into the contract changing the excess land laws.

As a result of this disclosure, people began reviewing the sales of excess lands in that water district. Instead of fulfilling the dream and the promise of the reclamation program—creating opportunities for family farmers—virtually the opposite was occurring. While some enormous operations in the district [particularly Giffen and Anderson-Clayton] were selling out, there was little evidence that the goals of the reclamation program were being achieved. Subsequent to those sales, there has been considerable scrutiny of the Bureau's conduct and role in administering the excess land program. Critical reports have come from the General Accounting Office [several times], the congressionally-mandated review of the San Luis Unit [Westlands] pursuant to Public Law 95-46, the Nelson-Haskell hearings, as well as numerous citizens. Additionally, the U.S. Attorney brought one particular transaction to a Federal Grand Jury in Fresno. Subsequently, the first criminal conviction was rendered pursuant to the Federal Reclamation Laws.

A group of individuals seeking to purchase land in Westlands had a difficult time understanding precisely what the Bureau's rules for excess land sales were. To better understand the rules and so that they would be in a position to purchase the excess lands, they asked the Department of the Interior to promulgate rules and regulations pursuant to the Administrative Procedures Act [APA]. During the first 75 years of existence, the Bureau of Reclamation chose to operate their excess lands program pursuant to a loose-knit collection of memoranda and Solicitor's Opinions. Letters and unpublished opinions were included in the collection. Over the years, the administration of this program was nothing more than a patch-work collection of usually-consistent rulings and policy. To illustrate how uncertain some policies were, I quote from a letter to the National Farmers Union from the Regional Solicitor in Sacramento:

"This has been the policy [approvals of leases for a period of five years with a five-year option] of the Regional Solicitor . . . and . . . the Bureau of Reclamation for the past five years *or so*. *It is not* in the form of a *written* policy nor is it contained in a Solicitor's Opinion . . . (emphasis added).

The Department rejected the request to prepare rules—formal rules—stating that they were unnecessary. A suit was filed and, in August of 1976, the Federal District Court in the District of Columbia ordered the Bureau of Reclamation to prepare rules and regulations pursuant to the APA.

In August of this year, the Department announced "proposed rules." Public comments on these proposals will continue until later this month.

Also in August, the Ninth Circuit Court of Appeals ruled, after more than three years, on two pending reclamation cases. The Court determined that the 160-acre law applied in the Imperial Valley. In the other case, the Court ruled that the plaintiffs lacked standing to bring suit. The "residency" case was therefore dismissed on a procedural ruling.

It is the collective impact of the Court ruling and the announcement of the proposed rules and regulations that has created political chaos and confusion.

The landowners in the Imperial Valley are vehemently opposed to the excess land laws and have launched a large campaign against them. It is the clash between that campaign and the general response to the regulations that is the "point of confusion." The Imperial landowners don't believe the law should apply to them and they

want a legislative exemption from the law. Or, putting it another way, the landowners and operators of the Imperial Valley have a federal subsidy in water they don't pay for and they aren't particularly sharing that subsidy.

Since the Department announced the proposed rules, they have been receiving comments about them. Most have been from Imperial regarding their legal case. Disregarding those comments, a majority of the remaining comments represent a greatly misinformed group of persons. Many letters express utter outrage over the prospect that Cecil Andrus and Keith Higginson will be charging through the rural countryside "seizing" and "confiscating" farmlands. But, as the members of this committee know, such is simply not the case. However, the perception that the Department will turn off the federal spigot and run folks off the land has, in fact, "created" the need for these resolutions.

If, as alleged, the Bureau of Reclamation was proposing to swoop through the countryside "taking" and "seizing" farmlands, then this Committee and the entire Congress would be well advised to act swiftly. But, they are not.

The point is that much of the public reaction has been predicated on a phantom issue—misinformation. The water users, at least in part, are greatly misinformed. Some who have comments in opposition to the proposed are probably unaffected by the regulations, but simply do not realize it.

MISINFORMATION—EXHIBIT "A"

Perhaps "exhibit A" of misinformation is one Imperial Valley family—the Larry Gilberts. Larry, his wife Cassie, and their four children are presently appearing in the homes of millions of Americans because they are pictured in a full page ad appearing in major newspapers and magazines in California and Washington. These ads, costing thousands and thousands of dollars, tell a tragic story. According to the text in the ad, the Gilberts recently learned that the Bureau of Reclamation was going to "take" their land. They also learned that they would have to "sell any land we own in excess of 160 acres." However, after checking with the Citizens for Government Fairness, it became obvious that Larry Gilbert and his family would not lose a single acre under the proposed rules. Yet, in spite of that, Mr. Gilbert and his family remain thunderstruck over something that will not happen.

The Bureau will not "take" his land. Nor will the Bureau compel him to sell any land he owns in excess of 160 acres. In fact, according to the Citizens Committee, Larry Gilbert and his immediate family do not own more than 160 acres. They do, however, lease the remainder of the 800 acre unit they farm. Larry Gilbert, and each of his family members, under the proposed rules and regulations, can own and lease 320 acres. Larry, his wife and their lineal descendants are permitted to own 960 acres and lease 960 acres. Or, altogether, Mr. Gilbert and his family are permitted to farm as much as 1,920 acres, more than double the size of their present operation.

Perhaps the ad would be more realistic if pictured were the chairmen of Southern Pacific, Tenneco, and Irvine. At least the public would know and understand who had the most to gain from this "confusion!"

THE NEED FOR CONGRESS TO ACT

Coupled with the misinformation is a growing sense of urgency among some members of Congress. Rather than confronting the misinformation, it appears to be simpler to postpone it. Rather than correcting the misinformation, a legislative band-aid is promoted.

There is no need for Congress to act. The Committee and the Congress do not waive or give up any opportunity. The right to oversight and review is clearly retained. Delaying the regulations for a year will only add to the "air of uncertainty" which surrounds this matter. Moreover when people pause long enough to read and understand these regulations, they will realize that they are not as restrictive or punitive as they have been characterized to be. Personally, I believe the regulations are too permissive and need tightening up in several places and my comments on the regulations will reflect that.

Moreover, imposition of the moratorium will undoubtedly cause complex legal problems for the Department since they are under a Court order to "forthwith" make rules and regulations. Additionally, there are landowners in Westlands, including Southern Pacific who have announced their intentions to sell their excess lands. A delay of this magnitude is unfair and unjustified.

And, the proposed regulations contain a very important provision. Over the years, the Department and the Bureau have ignored the clear direction of § 46 of the Omnibus Adjustment Act which mandates continuing price supervision of excess land sales. One "farmer" appearing at the Nelson-Haskell hearings in California

said, "I am a farmer, and I feel now that with my ownership in land in Westlands, I have some security for the future." At this very time, the land purchased from Mr. Giffen is being resold. Purchased for less than \$750, the land is presently being transferred for more than \$1,500. It is obvious that even some "farmers" would prefer to be speculators.

At least one "farmer" owns land in Westlands, Tulare Lake, and the Central Arizona Project. Clearly, he is assisting the program's goal of "widely" distributing the benefits of reclamation.

These and other matters need to be corrected immediately. Failure to act promptly will allow others to "cash in" on the federal investment. That isn't the idea behind the reclamation program.

Without question, a majority of the excess lands in the reclamation program are in California. In addition to the Westlands Water District, where most of the project lands are either eligible or under recordable contract, the two areas to have a widespread impact will be the Imperial Valley and the Tulare Lake Basin. The latter two have been the focus of lengthy litigation. However, contrary to popular opinion, neither case has been concluded and no court order has been filed.

Moreover, the Department recently wrote Senator Cranston indicating that if the law is upheld and the litigation is concluded, then the Department would permit the landowners a year to administratively "gear up" and pursuant to the proposed regulations, another five years to divest themselves of their excess lands. I would expect that the Department will treat the Tulare Lake landowners in a similar fashion.

And, the landowners in Westlands who signed ten-year recordable contracts will not have to divest in five years. The contracts will be honored as written even though the Department has the clear authority to insist on a change.

That is not to suggest that this program will be without effect. Clearly, it will. However, the impact will occur over a considerable period of time.

THE DOMENICI RESOLUTION

What has been described as a one-year moratorium in the Congressional Record and in various discussions, is considerably more. In fact, it is possible under this legislation that, with the Secretary's police power suspended, the landowners will seize upon the opportunity to begin a mad swapping spree. The Secretary would be powerless to withhold water, and the chaos would certainly lead to the destruction of the excess land program.

Senator Domenici states publicly that the problem rests with the regulations, but keys section 1 of his bill to "the acreage limitation provisions or residency requirements of Federal reclamation law."

It is my contention that the Domenici resolution is a veiled repeal of the excess land laws.

THE CRANSTON RESOLUTION

Section 1 and the last portion of section two contradict each other. In addition, the Cranston version of a moratorium, though sugar-coated with "nice whereases" has a serious defect.

Section two of the resolution gives the Secretary discretionary authority to permit sales throughout the reclamation program except Westlands [there are only 30 recordable contracts outside of California presently in effect]. However, having extended that authority, this resolution then strips from it, the selling mechanism—the lottery. It would be like buying an automobile with an engine, transmission, gear shift, steering wheel, but only three wheels. Senator Cranston's version of the resolution has a self-defeating provision. Moreover, it is unclear, in his version, whether or not the lottery is suspended for the moratorium or permanently repealed.

RECLAMATION—THE SUBSIDY

By any standards, a reclamation project is a good deal. The farmers blessed with a reclamation project have a virtual guarantee of project water from now until forever. Flooding is reduced and droughts eliminated. And, the farmers participating in reclamation projects get something else—a staggering subsidy. Repayment, for a portion of the project is interest-free and at least 40 years. Power to run the project is also reduced.

But with these opportunities come responsibilities. The benefits of projects cannot be hoarded and must be widely distributed. The Department's proposed regulations have come about because some people insisted on "hoarding" the program's tremendous benefits. As noted at the beginning of my statement, reclamation project lands

are only a fraction of the farmland in the west. In reality, only a few can participate. To date, fewer have participated than should have. This must be corrected. The Committee should table the pending resolutions. They are unnecessary. Even worse, they could be a tool of destruction and the means for removing the justification for these projects in the first instance.

Senator McCLURE. Our next witness is Mr. Hubert White, president of National Water Resources Association.

Mr. WHITE. Mr. Chairman, first I would like to thank both you and Senator Church for taking your time from your busy schedule to attend our annual meeting.

Senator McCLURE. We are going to congratulate you on your election to that office.

Mr. WHITE. Thank you.

STATEMENT OF HUBERT G. WHITE, PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION, TOWNSEND, MONT.

Mr. WHITE. My name is Hubert G. White of Townsend, Mont.

At the present time I have the honor of serving as president of the National Water Resources Association. The association is a confederation of the State water associations in the 17 reclamation States and Hawaii. Membership in our association represents more than half of all the irrigated lands in the West.

I am a smalltown "Main Street" merchant interested in water resources development because much of our economy depends on the productivity and prosperity of the Nation's farmers. Irrigated farmlands are a substantial part of that economy. The NWRA believes that we should make every effort to assure that we maintain that level of prosperity.

At our 46th annual convention in Boise, Idaho, just 2 weeks ago, we marked the 75th anniversary of the Bureau of Reclamation. The economic stimulus we have worked to attain through water resource projects of the Bureau has provided the basis for much of the solid growth and financial stability we have enjoyed in the Western States, and indeed, the entire Nation.

At this point I would like to quote some agricultural statistics from staff paper 77-9 prepared by Dr. R. J. McConnen, which is to be published in Montana Magazine. Dr. McConnen is the head of the agriculture economics department at Montana State University, and the economic adviser Helena Branch Federal Reserve Bank. Without quoting verbatim, Dr. McConnen had some interesting points to make. He notes that in 1900, 1 agricultural worker produced enough food for 6 people; in 1967, enough for 29 people; and in 1977, enough for 56 people. Dr. McConnen says that this increased productivity has meant that the U.S. consumer would spend less of his income for food than any other consumer in the world. Now, not quoting from Dr. McConnen, we know that our agriculture production machine under our free enterprise system is the greatest success story in the history of the world; and one of the important links in the chain driving this machine is irrigated agriculture. We cannot; we must not damage that link.

But, what of the difference in the number of people required to produce our food in the past 75 years. That 1 farmworker had released 50 people for other pursuits. Where are they; what are they doing today?

I think the answer is very clear. They have been free to make almost any choice they wish in their occupation, to move as they wish, to become educated as they wish, and the result has been the creation of a great society—the greatest in the world—and all because these 50 people per agriculture worker did not have to produce their own food.

I believe this establishes the superiority of our overall agriculture system. I would now like to return to irrigated agriculture and cite some very revealing data recently reported by the Denver Research Institute of the University of Denver as a result of a study conducted to determine the economic impact of Bureau of Reclamation projects.

In 1975, the latest year for which figures are available, the net increase in business activity in the United States, which clearly is attributable to reclamation projects, totals \$11.3 billion.

Let me emphasize that this multibillion dollar figure is for just 1 year. In addition, the study revealed a direct return to the Treasury in Federal internal revenues of \$1.8 billion, and State and local tax revenues of \$935 million.

If we consider increased business activity for a 5-year period 1971-75, the net increase in business activity totals \$46.3 billion, Federal internal revenues amount to \$7.5 billion, and State and local taxes total \$3.7 billion.

These are startling numbers, and they are all the more amazing when we realize that the total investment in Bureau of Reclamation activities over 75 years is only about \$7.5 billion, and that most of that cash outlay will be repaid to the Federal Treasury. We think it represents a sound investment in a strong America.

I do not wish to demean that 75-year investment of \$7.5 billion to assist the development of the West, but it is less than we will provide in foreign aid to South Korea this year. It is less than EPA will give away in grants this year for sewage treatment and pollution control.

Yet the reclamation program is under attack.

The Secretary of the Interior proposes new regulations governing acreage limitation and residency requirements throughout all of the 17 reclamation States.

We are here today, Mr. Chairman, to reluctantly support Senate Joint Resolution 93. I say reluctantly because we regret that this legislation is necessary, and many of our people feel that this 1-year delay may destroy them due to the reluctance of financial institutions to extend operating loans under these uncertain conditions; but, under current conditions, it is essential.

In response to one of your questions, we do think that if the parties to the sales of excess lands or contract sales are in agreement that they should be allowed to go ahead within that year and make some sales.

It seems to me, Mr. Chairman, if you were enacting legislation you would want to know the impact of that law. If I were issuing regulations I know I would want to know the effect of those rules. The same should hold true for the Secretary of the Interior; but, obviously, it does not.

I would like to ask this committee to request the following basic information from the Department of the Interior:

One: How many irrigated acres are in the reclamation program?

Two: How many individual farms receive irrigation water from the Bureau of Reclamation?

Three: How many farmers have holdings in excess of the of the 160-acre limitation?

Four: How many farmowners reside on their farms?

Five: How many farmowners are nonresidents?

Six: How many people will be directly affected by the proposed rules and regulations?

Mr. Chairman, I can assure that the data base to answer these fundamental questions does not exist without an environmental impact statement, which we think the Department should be required to file.

It would be our recommendation, Mr. Chairman, that Senate Joint Resolution 93 postpone the effective date of the final regulations developed pursuant to the proposed regulations published in the Federal Register on August 25, until such time that an accurate data base is submitted to this committee for its review and consideration, and, thus, to provide the opportunity for some informed decisions.

A few weeks ago there was good news from the White House. President Carter said, in part:

But I recognize, as do many of you, that 75 years ago, 320 acres for a husband and wife for irrigated land was all they could handle. Now, with massive development and large machinery, a larger acreage is necessary for an economically viable farm operation. So the law needs to be changed, but we do not have any alternative but to enforce the law.

We agree with the President that under present farming conditions a larger acreage is necessary for an economically farm operation. We do not agree with the President when he says: “* * * we don’t have any alternative but to enforce the law.” We would think that his administration, recognizing the need for an economically viable farm operation, could propose to the Congress, for its consideration, some amendments to modernize that 75-year-old legislation.

We do not consider Senate Joint Resolution 93 to be a solution to the problem. It only puts off the decision. The NWRA believes there is an alternative to the administration’s program, and that alternative is legislation to update the 1902 Reclamation Act.

To that end, I am pleased to report to this committee that we have experts from our land use committee and our water users committee, together with legal experts who are association members, meeting today in Salt Lake City, Utah, to begin drafting new legislative proposals which we will soon submit for the consideration of the Congress.

We, thus, hope the input we plan to offer for your review and decision will help guide us out of the present bureaucratic morass.

Mr. Chairman, I would like to insert in the record at this point several excerpts from some of the editorials published in the national press that will provide some insight of the reception the proposed rules and regulations are receiving, and, perhaps, underscores why Senate Joint Resolution 93 was introduced.

[The excerpts of editorials referred to above follow:]

EDITORIALS ON ACREAGE LIMITATIONS

[Los Angeles Times: October 23, 1977]

"We side with the farmers in their opposition to the Carter Administration's decision to enforce a dormant 75-year-old law that could have a serious effect on Western agriculture . . . Ex post facto enforcement of the 1902 statute would have two inevitable results: It would reduce the productivity of what is now the most efficient system of agriculture in the world, and it would increase the prices the consumers have to pay at the market."

[Wall Street Journal: September 8, 1977]

"We had always thought that land reform was something they did in places like Vietnam, or Chile or Iran. But that was before the Secretary's announcement that he intends to break up large land holdings in 17 Western states and distribute small parcels to thousands of aspirant farmers selected by lottery."

[Washington Post: September 3, 1977]

"No amount of administrative zeal can set aside the economic changes that have undermined the old-style family farm. It seems increasingly romantic and anti-economical to regard 160 acres of good irrigated land as a sacred formula, forever unchangeable."

[San Francisco Chronicle: August 28, 1977]

"What we need is a new law from Congress, one that matches the modern agricultural economy and that gets away from the unreal ideology that deludes its true believers with the notion that the tremendous, world-important job of California agriculture can be done perfectly well by family-size units."

[New York Times: August 26, 1977]

"A populist chorus now hails the decision by Interior Secretary Cecil Andrus to enforce a 1902 law limiting the size of individual farms and banning absentee ownership of land irrigated by Federal water projects. His decision is seen as a victory for the family farmer . . . (But) a family farmer would have to invest or borrow \$150,000 to buy land, plus perhaps \$300,000 more for machines."

[Los Angeles Herald Examiner: September 18, 1977]

"If the (rules are) rushed into operation, those farms in excess of the acre-limit, would be chopped up and placed for sale by the government at public lottery. In theory, this would give 'the little guy' a chance to break into agriculture. In practice, however, it takes an estimated bankroll of between \$200,000 and \$300,000 to get started on a 160-acre plot—hardly the kind of change a 'little guy' jingles in his pocket."

[San Diego Union: September 12, 1977]

"(Enforcement of the rules) threatens to become an all-too frequent modern-day American story in which an insensitive bureaucratic juggernaut intrudes into an operation that is working well and imposes harm and suffering."

[San Jose Mercury: August 24, 1977]

"Mechanized harvesting equipment, extremely expensive but extremely efficient, is utilized on vast (California) acreages. If the intent of the 1902 Reclamation Act was carried out to the fullest, it could mean an end to such mechanized farming techniques that are keeping food costs down."

[Redding Record-Searchlight: August 29, 1977]

"There may be a certain populist poetry to the idea of 'returning the land to the people,' but it's not going to serve anyone's best interest if the so-called family farm winds up being a flop—an economic and agricultural failure whose sole achievement is a reduction in the production of food."

Mr. WHITE. One final comment. There was an article in the November 5 issue of the Washington Post with the headline: "Interior is Gearing Up for Western Land Fight."

It disturbs me very much to think that one of our own Federal agencies—the servant of the people—is gearing up to fight us.

In the article, a statement of a Federal official was branded a lie by a private citizen. The Solicitor of the Department is quoted as saying: "People are saying we're antifarmer. That's not true."

Yet the final sentence of the article states: "Interior is now in the process of reexamining the entire reclamation Program to see whether it has outlived its purpose."

Mr. Chairman, I would like to include this article as a part of my statement because it describes some of the outlandish tactics that are being used by the Department of the Interior to work its will to overturn 75 years of rules, regulations, decisions, tradition, and experience that has shaped the Reclamation program into one of the strongest economic facets of our gross national product.

We need Senate Joint Resolution 93 to protect the program until new legislation can be enacted.

[The Washington Post article referred to above follows:]

[From the Washington Post, Nov. 5, 1977]

INTERIOR IS GEARING UP FOR WESTERN LAND FIGHT

(By Margot Hornblower, Washington Post Staff Writer)

In the face of growing political opposition, the Interior Department is gearing up to defend its proposed regulations breaking up large corporate farms on federally irrigated Western lands.

In a 4-inch-thick draft report on California's giant Westlands Water District, Interior for the first time computed that the federal subsidy per acre of irrigated land amounts to \$1,540.

The 600,000-acre Westlands District, an immense complex of dams, canals and pumping systems, is the focus of controversy because it contains a fourth of the land to be sold under Interior's regulations. The regulations were issued in August, after a federal court ordered the enforcement of a 1902 law limiting ownership of federally irrigated land to 160 acres per person.

The \$1,540 figure—and the \$769 million Interior calculates as the total Westlands subsidy—call into question claims by California farmers that they repay the cost of the project through water fees. Interior officials say only a part of the capital cost is repaid, and none of the interest.

Interior solicitor Leo Krulitz said yesterday the subsidy to land owned by the Southern Pacific Land Co., which owns 107,000 acres in the Westlands District, amounts to more than \$150 million.

However, Dan Flanagan, Southern Pacific's Washington representative, said the figure is "a lie—there's no two ways about it. It's all conjecture and we're very upset about it." He added that any federal subsidies benefit the farmers to whom Southern Pacific leases its land.

Jerald Butchert, head of the Westlands District, said the \$150 million figure is misleading because it represents a subsidy over the 40-year life of the project, and Southern Pacific will be forced to sell its land within about 10 years under the 1902 law, even without the new Interior regulations.

Interior officials, however, say the figure is valid because, unless the new regulations are enforced, the land could be sold, as it has in other parts of Westlands, in "insider deals" that would continue to cluster control of the land in a few hands, rather than dispersing it.

The dispute is part of an escalating rhetorical battle in which California farmers and Western members of Congress, backed by a massive advertising campaign, claim that Interior is unconstitutionally grabbing their land.

Bills have been introduced in the House and Senate to place a moratorium on enforcement of Interior's proposed regulations. A hearing is scheduled next week before the Senate Energy Committee. Interior officials say their opponents are distorting the purpose of the regulations. "People are saying we're anti-farming," Krulitz said. "That's not true. If Congress repeals the acreage limits or prevents us from enforcing them, then the subsidy goes into the pockets of those corporations, not to the family farmers for whom it was intended."

Krulitz said the reclamation program was designed at the turn of the century "to create family farms to settle the West by providing cheap water. I can't believe the country now wants to pay huge subsidies to corporations to bring land into produc-

tion—especially when the Agriculture Department is paying subsidies to keep land out of production.”

Interior is now in the process of reexamining the entire reclamation program to see whether it has outlived its purpose.

Mr. WHITE. One final thing. I was interested in Senator Domenici's statement about the New Mexico study.

I would like to say that Montana has such a study. I would like to have permission to include it in the record before the record is closed. I do not have it with me today. I would like to read just one of the many statements that I am submitting here. The Wall Street Journal, September 8, 1977, had this to say, and I quote:

We had always thought that land reform was something they did in places like Vietnam, or Chile or Iran. But that was before the Secretary's announcement that he intends to break up large land holdings in 17 Western States and distribute small parcels to thousands of aspirant farmers selected by lottery.

These are all comments. I am not saying they are all correct or they are not, but we are merely putting them in to demonstrate the responses being put forth throughout the country and coming from a small town in a small irrigation district such as I do, it is not refining that maybe they do not understand the rules and regulations.

I think the Department of the Interior should perhaps have talked to them and prior to promulgating these proposals and regulations, before they put them out, instead of after, and it is an old axiom, I think, that you may not have a serious illness, but if you think you are sick you are sick.

And the almost terror that some of our people are feeling as a result of this is a very serious situation, and I compliment you, Senator, for bringing up this resolution.

Thank you very much.

Senator CHURCH [presiding]. Thank you very much, Mr. White. We certainly will want to closely review any recommendations that are made by the National Water Resources Association in connection with the revision of reclamation law.

I do not know of any association that has had greater experience with the reclamation program, and so your association's proposal with respect to revising the basic law will be given most careful attention.

Mr. WHITE. Thank you very much.

Senator CHURCH. Thank you very much, Mr. White.

[The Montana State University study follows:]

STAFF PAPERS IN ECONOMICS

Agricultural Economics & Economics Dept.

College of Agriculture

College of Letters and Science



Montana State University, Bozeman

AN ECONOMIC ANALYSIS OF
160 ACRE LIMITATIONS ON IRRIGATED FARMS
IN MONTANA

By LeRoy D. Luft and Joseph F. Guenther
Staff Paper 76-23

This study results from a joint effort between the Department of Agricultural Economics and Economics, Agricultural Experiment Station, and the Cooperative Extension Service, Montana State University, Bozeman, Montana. The study was supported in part by the Bureau of Reclamation, U.S. Department of Interior, Billings, Montana.

Greater detail on enterprise cost data will be reported in the following Cooperative Extension Service Bulletins: Bulletin 1161, Enterprise Costs of Irrigated Crops in the Helena Valley; Bulletin 1163, Enterprise Costs of Irrigated Crops on the East Bench in Beaverhead County; Bulletin 1162, Enterprise Costs of Irrigated Crops in the Lower Yellowstone Valley, all authored by LeRoy D. Luft, Jerry Schaefer and Joseph F. Guenther; Bulletin 1151, Enterprise Costs of Irrigated Crops in South Central Montana; Bulletin 1143, Enterprise Costs for 160 Acre Irrigated Cropfarm in Blaine County; and Bulletin 1146, Enterprise Costs for 450 Acre Irrigated Cropfarm in Blaine County, all by Jerry Schaefer and LeRoy D. Luft.

This report will also be published as Agricultural Experiment Station Research Report 103.

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AN ECONOMIC ANALYSIS OF 160 ACRE LIMITATIONS ON
IRRIGATED FARMS IN MONTANA

LeRoy D. Luft and Joseph F. Guenther*

Summary

Panels of farmers who operated irrigated farms were brought together by county extension agents in order to collect the data for the studies. A computer budget generator program was used to calculate costs and returns for the average size irrigated farm and a smaller or 160 acre irrigated farm in five areas of Montana.

Costs and returns were tabulated for each of the farms to determine the return to labor, management, and real estate. Adjustments were made to these figures accounting for loan repayments under three different levels of debt load. This information was used to analyze the economic feasibility of irrigated farms subject to acreage limitations imposed by law and administered by the Bureau of Reclamation.

The 160 acre farms in the Helena Valley and Milk River Valley and the 320 acre farm in the East Bench Unit all return less than \$9,000 to labor, management, and real estate. These farms are thus unable to support a family even with no real estate debt load. The 160 acre farm in the Lower Yellowstone Valley and Huntley Project, however, might be able to support a small family if there were no real estate debt payments to make or interest charged on land investment. The average size farms in each area are much more financially sound and able to support a family than the smaller farms.

Based on the results of this study, it is recommended that the Reclamation Law be modified to allow irrigated farms on federal irrigation projects to be of sufficient size so that they are economically sound, self-sustaining units.

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As evidenced by this study, sufficient size varies from area to area. A simple blanket increase in the acreage limitation, then, would not be desirable. If any acreage restriction at all must be imposed, it should be determined separately for each project, or category of projects, and be subject to periodic review. The problem is not a simple one. Enforcement of a simple policy expressed in terms of physical acres can only result in economic confusion for both individual farm families and the Montana economy which depends so heavily on agriculture.

Introduction

The first practical use of irrigation was probably more than 12,500 years ago.^{1/} For many proponents there has been a certain romanticism attached to irrigation and much talk of making the desert "bloom as the rose." In fact, the reclamation and irrigation of agricultural lands has been, through the years, the foundation of many civilizations. Because of the land, climate, and limited water resources of the Western United States, reclamation has been an important component in the development of modern civilization in that region.^{2/} This was generally not true for the humid Eastern United States, but in the West, one of the important agricultural problems was and still is the supply of irrigation water.^{3/}

In the early years of the development of the West, most U.S. citizens were ignorant of both the agricultural potential and agricultural problems associated with that area. Some thought that it was largely a desert wasteland while others thought that the lush farmland of Iowa extended all the way to the Pacific Ocean. Few realized the importance of irrigation. The Mormon pioneers who entered the

^{1/} Huffman, Roy E., Irrigation Development and Public Water Policy, Ronald Press Co., New York, 1953, p. 7.

^{2/} Golze', A. R., Reclamation in the United States, The Caxton Printers, Ltd., Caldwell, Idaho, 1961, p. ix.

^{3/} Tinney, E. Roy, "Water for Western Federal Irrigation Projects," Water Resources Management and Public Policy, T. H. Campbell and R. O. Sylvester, Editors, Chapter 1, University of Washington Press, Seattle, 1968, p. 10.

Great Salt Lake Valley in the 1840's are considered by many to be the first successful modern irrigation farmers in the West. Other irrigation developments sprang up shortly thereafter in California and Colorado and spread rapidly to other states. This phenomenon created great national interest in irrigation, thereby leading to federal programs involving irrigation development.

Originally the public domain in the United States was sold in various sized tracts. Dissatisfaction with this land policy led to the Preemption Act of 1841 which gave settlers the rights to 160 acres of Western land at a price set by the government. This act established four important federal policies: (1) that the settlement of the public domain was more important than the revenue to be obtained from it; (2) that the land should not be opened to those who already had sufficient land; (3) that the public domain should be settled in small farms to permit the greatest possible development; and (4) that the settlers on the public domain should have a fair chance to gather sufficient sums to buy their lands.^{4/}

Speculators were able to take advantage of both the law and the settlers. This was one of the reasons for the enactment of the Homestead Act of 1862 which was signed into law by President Lincoln. Title to 160 acres could be obtained by settlers who met certain requirements such as residing on the land for five years, which was later amended to 14 months. The Homestead Act apparently didn't give consideration to the arid lands of the West so the Desert Land Act was passed in 1877. The Act attempted to promote irrigation. It allocated 640 acres per settler in the 11 far western states in hopes that it would induce settlers to invest in expensive irrigation construction on their farms.

The Homestead Act was instrumental in settling the West and except for the

^{4/} Golze', op cit., p. 63.

Northern Great Plains, nearly all arable land had been claimed by 1890 and only the large arid blocks were left vacant.^{5/} Additional legislation was required to provide water for irrigation of these arid lands. Settlers were unable to finance large irrigation costs even with the larger acreage allotments. Pressure for government aid led to the Carey Act of 1894. This Act dictated that the government donate up to one million acres to each state if the land would be settled, irrigated, and at least partially cultivated in plots of a maximum acreage of 160 acres. Investment of private capital was to be encouraged by providing that a lien be made on the land for the cost of reclamation.^{6/} The Carey Act did not produce a satisfactory irrigation development program in the West and so the Reclamation Act was passed in 1902.

Many of the simpler irrigation projects had been completed without federal aid. However, pressure was exerted for federal financial support for two purposes: (1) to provide water storage so that irrigated lands would have an adequate water supply in the late summer months when natural water levels subside; and (2) to provide a full water supply for additional lands which could not be adequately furnished with water from the natural flow.^{7/} The Reclamation Act of 1902 represents the federal government's first formal involvement with public irrigation projects. The main objectives of federal water policy were: to develop the arid lands of the West, to achieve a wide distribution of benefits, and to create a proper social environment. The Reclamation Act was a natural extension of the government's activities in public land disposal.^{8/} Subsequently, however, many reclamation projects involved land that was already

^{5/} Golze', Ibid, p. 64.

^{6/} Huffman, op. cit., p. 23.

^{7/} Golze', op. cit., p. 19.

^{8/} Brown, Gardner, "The Economics of Agricultural Water Use," Water Resources Management and Public Policy, T. H. Campbell and R. O. Sylvester, Editors, Chapter 3, University of Washington Press, Seattle, 1968, p. 36.

privately owned. This gave rise to many problems such as the excess lands problem.

Congress had held extensive hearings on the Reclamation Bill in 1901 but the bill failed passage in that year. In the fall of 1901 Theodore Roosevelt became President. Mr. Roosevelt, who considered land reclamation among the most important problems of this administration,^{9/} supported the bill and after a bitter congressional battle, he signed the law on June 17, 1902. This Reclamation Act is the foundation of modern reclamation in the United States and the Bureau of Reclamation of the U. S. Department of Interior is the nation's most important public water agency in agricultural development.

Among the important original provisions of the Reclamation Act are:

1. Establishment of a reclamation fund from the sale and disposal of public lands to be used in developing irrigation projects.
2. Agreement by the settler to repay the cost of construction in annual payments, to meet the residence requirements of the Homestead Act, and to reclaim at least half of the total irrigable area of his entry.
3. The selling of water rights to private owners of land but not more than 160 acres to an individual, and in no case to non-residents of the state in which the project is located.^{10/}

The third provision, which limits the delivery of water to tracts of not more than 160 irrigable acres, is subject to strong differences of opinion. The limitation was adopted in the first place to: (1) curb land monopolies; (2) prevent land speculation; and (3) encourage settlers to make their own homes on their own lands.^{11/} Congressman Newlands of Nevada, the prime framer

^{9/} Huffman, op. cit., p. 26.

^{10/} Huffman, op. cit., p. 25.

^{11/} Wallace, L. T., The 160 Acre Limitation Policy, Western Extension Public Affairs Committee Publication No. 1, 1907.

of the Act, testified in 1901 that "the whole policy of the government has been against land monopoly and has been intended to secure homes for actual settlers" and "the purpose there, as far as entry is concerned, is to permit the occupation of lands, and the purpose, so far as giving the right to use water is concerned, is to prevent the monopoly of lands."^{12/} Representative Mondell of Wyoming stated that, "under nearly every project undertaken by the government there will undoubtedly be some lands in private ownership; and it would be manifestly unjust and inequitable not to provide water for these lands, providing their owners are willing to comply with the conditions of the Act; and in order that no such lands may be held in large quantities . . . it is provided that no water right for more than 160 acres shall be sold to any land-owner."^{13/}

Supporters of the present limitation say that the philosophy of using federal funds for private subsidization has not changed and they see no reason to change either the philosophy or the Act. Opponents believe that the present limitation is obsolete due to the technical and economic environment of modern agriculture. Many of these people object to the existing size of the limitation rather than to the idea of an acreage limitation itself.^{14/}

There have been a number of laws designed to amend the acreage limitation. The Reclamation Extension Act of 1914 reduced the size of individual holdings to a "farm unit" to be determined for each project by the U.S. Department of Interior. This farm unit may be of any acreage determined sufficient up to a maximum of 160 acres. Other laws have been passed to increase or omit the 160 acre limitation on a few specific projects but the 1902 law still holds

^{12/} Golze', op. cit., p. 65.

^{13/} Golze', Ibid., p. 66.

^{14/} Wallace, op. cit., p. 2.

for most projects. Farmers holding lands in excess of 160 acres may still receive water by: (1) paying in advance all construction charges against excess land; or (2) signing a recordable contract with the Secretary of Interior for disposal of excess lands at dryland prices within 10 years.^{15/}

Bureau of Reclamation projects represent a significant portion of the agricultural resource base which exists in the state of Montana. There is a large variability concerning the soils, climate, crops and market potential for each project, but each is subject to some form of the 160 acre limitation. The same acreage limitation is applied to intensely farmed areas such as those found in California. In past years the Bureau of Reclamation has maintained a lenient policy regarding "excess lands" but recently pressure has been exerted to enforce it. The law apparently has sufficient strength to be enforced. In the U.S. Supreme Court case of *Ivanhoe Irrigation District vs. McCracken* (357 U.S. 275), a California Supreme Court decision was overruled concerning the 160 acre limitation. McCracken was a bachelor irrigating in excess of 160 acres (had he been married he and his wife could have irrigated 320 acres) and the Supreme Court decision denied him federal water to irrigate more than 160 acres. The court opinion was "in short the excess acreage provision acts as a ceiling, imposed equally upon all participants, on the federal subsidy that is being bestowed."^{16/}

Because of the variation in productive capabilities from one area to another, the acreage ceiling has significantly different economic consequences. Largely because of this, there have been recent efforts to modify the acreage limitation. The efforts seem to concentrate on establishing an adequate farm size unit under varying conditions of irrigation without abandoning the long-

^{15/} Golze', op. cit., p. 347.

^{16/} Trelease, Frank S., Cases and Materials on Water Law, West Publishing Co., St. Paul, Minnesota, 1967, p. 339.

standing family farm policy. Dr. Huffman includes the following as a component of sound irrigation policy in the U.S.

The family farm should remain as a basic objective in the expenditure of public funds for irrigation development but it should be a concept consistent with modern agriculture. The combination of resources which can be managed efficiently by the farm family has changed through the years. If an obsolete standard for the family farm is maintained in connection with public irrigation development it may result in the creation of a segment of agriculture which is at a competitive disadvantage not only with highly commercialized agriculture but the other family farms as well.^{17/}

Dr. Huffman's proposal, which was published in 1953, is still sound today. A 160 acre farm may well be feasible in some of the federal irrigation projects in the U.S. However, that same size farm, in terms of acres, may not be able to support a family in other projects. For example, an irrigated unit of 160 acres in California has a much higher productive capacity than a 160 acre unit in Montana.

This is an old problem. Because of recent legislative and court action, the existing arrangements which permitted a de facto policy whereby definition of size based on productive capacity rather than physical size is being called into question. This research was undertaken in order to provide information which can be used in the evaluation of a de jure policy which will be a livable policy for irrigated farmers in Montana. The specific purpose of this study is to evaluate, on the basis of economic criterion, the 160 acre limitation policy as it applies to projects in the state of Montana.

Procedure

In order to accomplish the objective, enterprise cost-return studies were made in five widely-separated locations in Montana. These locations are: East Bench-Dillon; Helena Valley; Huntley Project; Lower Yellowstone-Glendale,

^{17/} Huffman, op. cit., p. 305.

Sidney; and Milk River-Chinook. The costs and returns were estimated for a 160 acre irrigated crop farm and also on farms of the average or typical size in the same area. The costs of production were calculated using the Oklahoma State University Crop Budget Generator which was designed for the purpose of developing enterprise cost budgets.^{18/}

Data for the budgets were collected at meetings with a panel of farmers who operated irrigated farms. The meetings were set up by the respective county extension agents. The agents, as well as other interested parties such as agricultural lenders, also attended these meetings.

An attempt was made to have farmers who operated different size farms at the meetings: a group of typical, successful farmers to supply the average size farm data and a group of farmers whose acreage would be close to the 160 irrigated acres. In one of the locations, Huntley Project, an individual visit was made to each of four smaller farmers to collect the data for the 160 acre farm.

In some instances there were few or no farmers in the area who farmed approximately 160 acres. In these cases the typical farmers were asked to assume that they could only farm 160 acres and asked for their best judgments as to what their practices would be in such a situation. The costs calculated in these instances may be on the conservative side. The farmers felt that with an acreage limitation of 160 acres some of the machinery would be purchased as used machinery. In reality, the farmers would probably have to purchase a substantial amount of new machinery since the supply of used

^{18/} Information about the program is contained in: Kletke, Darrel D., Operations Manual for the Oklahoma State University Enterprise Budget Generator, Research Report P-719, Agricultural Experiment Station, Oklahoma State University, June 1975; and Walker, Rodney L. and Kletke, Darrel D., Users Manual Oklahoma State University Crop Budget Generator, Progress Report P-656, Agricultural Experiment Station, Oklahoma State University, November 1971, revised October 1972.

machinery may be quite limited.

The people at the East Bench meeting could not imagine anyone in the area even attempting to farm only 160 acres. However, there was one part-time farmer at the meeting who farmed close to 320 acres. Therefore, the remainder of the farmers were asked to consider a 320 acre farm and information was collected on this basis. The 160 acre limitation has been interpreted to mean that a husband and wife could each own 160 acres and together farm 320 acres. This aspect is discussed in a later section.

The budgets contain only crop enterprises and no livestock enterprises. The alfalfa hay and irrigated pasture produced on some of the farms were assumed to be sold at the current market price. Since the market for cattle has been depressed in recent years, a lower farm income may have resulted had cattle been included in the analysis.

Results

Enterprise cost studies were prepared for the average size irrigated crop farm and a 160 acre (320 acres in one case) irrigated crop farm in five areas of Montana. The summaries of the crop budgets from the enterprise cost studies appear in Tables 1 through 10. The tables show costs by category of machinery variable costs, materials and services, miscellaneous overhead, interest on operating expenses, machinery fixed costs and building depreciation, real estate taxes, insurance and water taxes. The residual after these costs are taken out is the return to management, labor and real estate (land and buildings). With a labor and management cost charged to the enterprise, the remaining figure shows the return to real estate. It must be noted that the opportunity cost of the capital invested in land is treated as a residual and not a cost. An economic analysis would normally treat this

Table 1

Summary of Crop Budget Data From An Enterprise Cost Study For An 800 Acre Farm on the East Bench Unit (Dillon), Montana, and Returns to the Various Factors of Production

	540 Acres Alfalfa	210 Acres Barley	50 Acres Spring Wheat
	Costs Are In Dollars Per Acre		
Gross returns	140.00 ^{1/}	178.50 ^{2/}	225.00 ^{3/}
Machinery variable costs ^{4/}	24.95	23.11	23.11
Materials and service	54.80	53.82	55.32
Miscellaneous overhead	6.00	6.30	6.38
Interest on operating capital	1.14	1.84	1.93
Total variable cost	86.89	85.07	86.74
Return over variable cost	53.11	93.43	138.26
Machinery fixed costs and building dep.	13.88	22.80	22.80
Water tax, real estate taxes, and insurance	8.41	8.41	8.41
Fixed costs	22.29	31.21	31.21
Return to management, labor and real estate	30.82	62.22	107.05
Labor and management cost	31.09	33.86	38.51
Return to real estate	-.27	28.36	68.54

^{1/} 3.5 T/A x \$40.00/T.

^{2/} 70 bu/A x \$2.55/bu.

^{3/} 60 bu/A x \$3.75/bu.

^{4/} Includes \$10/acre for sprinkler irrigation equipment costs.

Source: Guenther, Joseph F., Jerry Schaefer and Lekoy D. Luft, Enterprise Costs of Irrigated Crops on the East Bench Unit, Extension Bulletin 1163, Montana State University, Bozeman, Montana.

Table 2

Summary of Crop Budget Data From An Enterprise Cost Study For A 320 Acre Farm on the East Bench Unit (Dillon) Montana, and Returns to the Various Factors of Production

	220 Acres Alfalfa	80 Acres Barley	20 Acres Spring Wheat
	Costs Are In Dollars Per Acre		
Gross returns	140.00 ^{1/}	178.50 ^{2/}	225.00 ^{3/}
Machinery variable costs ^{4/}	24.25	22.78	22.78
Materials and service	54.80	53.82	55.32
Miscellaneous overhead	6.72	7.37	7.45
Interest on operating capital	1.14	1.80	1.90
Total variable cost	86.91	85.77	87.45
Return over variable cost	53.09	92.73	137.55
Machinery fixed costs and building dep.	28.80	44.48	44.48
Water tax, real estate taxes, and insurance	9.20	9.20	9.20
Fixed costs	38.00	53.68	53.68
Return to management, labor and real estate	15.09	39.05	83.87
Labor and management cost	30.37	33.14	37.79
Return to real estate	-15.28	5.91	46.08

^{1/} 3.5 T/A x \$40.00/T.

^{2/} 70 bu/A x \$2.55/bu.

^{3/} 60 bu/A x \$3.75/bu.

^{4/} Includes \$10/acre for sprinkler irrigation equipment costs.

Source: Schaefer, Jerry, LeRoy D. Luft and Joseph F. Cuentner, Enterprise Costs of 160 Acre Irrigated Farms, Staff Paper 76-22, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana.

Table 3

Summary of Crop Budget Data From An Enterprise Cost Study For A 600 Acre Farm in the Helena Valley, Montana, and Returns to the Various Factors of Production

	300 Acres Alfalfa	150 Acres Irrigated Pasture	75 Acres Malting Barley	40 Acres Oats	35 Acres Spring Wheat
	Costs Are In Dollars Per Acre				
Gross return	136.00 ^{1/}	32.00 ^{2/}	125.00 ^{3/}	117.00 ^{4/}	122.50 ^{5/}
Machinery and variable costs	21.92	6.29	20.41	20.41	20.41
Materials and service	27.82	16.25	33.95	30.75	30.75
Miscellaneous overhead	5.37	2.42	6.42	6.25	6.25
Interest on operating capital	1.15	.84	1.81	1.72	1.72
Total variable cost	56.26	25.80	65.59	59.13	59.13
Return over variable cost	79.74	6.20	62.41	57.87	63.37
Machinery fixed costs and building dep.	25.56	3.71	39.80	39.80	39.80
Water tax, real estate taxes, and insurance	9.73	9.73	9.73	9.73	9.73
Fixed costs	35.29	13.44	49.53	49.53	49.53
Return to management, labor, and real estate	44.45	-7.24	12.88	8.34	13.84
Labor and management cost	34.90	14.80	35.24	34.44	34.90
Return to real estate	9.55	-22.04	-22.36	-26.10	-21.06

^{1/} 3.4 T/A x \$40.00/T.

^{2/} $\frac{1}{4}$ AUM's/A x \$8.00/AUM.

^{3/} 50 bu/A x \$2.50/bu.

^{4/} 65 bu/A x \$1.80/bu.

^{5/} 35 bu/A x \$3.50/bu.

Source: Guenther, Joseph F., Jerry Schaefer and LeRoy D. Luff, Enterprise Costs of Irrigated Crops in the Helena Valley, Extension Bulletin 1161, Montana State University, Bozeman, Montana.

Table 4

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Helena Valley, Montana, and Returns to the Various Factors of Production

	80 Acres Alfalfa	40 Acres Irrigated Pasture	20 Acres Malting Barley	20 Acres Oats
	Costs Are In Dollars Per Acre			
Gross return	136.00 ^{1/}	32.00 ^{2/}	125.00 ^{3/}	117.00 ^{4/}
Machinery variable costs	23.28	8.12	14.15	14.15
Materials and service	27.62	16.25	49.95	45.15
Miscellaneous overhead	6.97	2.71	6.66	6.41
Interest on operating capital	1.16	.83	1.72	1.62
Total variable cost	59.03	27.91	72.48	67.33
Return over variable cost	76.97	4.09	52.52	49.67
Machinery fixed costs and building dep.	52.37			
Water tax, real estate taxes, and insurance	11.10	6.91	41.04	41.04
Fixed costs		11.10	11.10	11.10
Return to management, labor and real estate	63.47	18.01	52.14	52.14
Labor and management cost	13.32	-13.92	.38	-2.47
Return to real estate	37.57	14.17	27.79	-26.99
	-24.25	-28.09	-27.41	-29.46
^{1/} 3.4 T/A x \$40.00/T.				
^{2/} 4 AUM's/A x \$8.00/AUM.				
^{3/} 50 bu/A x \$2.50/bu.				
^{4/} 65 bu/A x \$1.80/bu.				

Source: Schaefer, Jerry, LeRoy D. Luft and Joseph F. Guenther, Enterprise Costs of 160 Acre Irrigated Farms, Staff Paper 76-22, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana.

Table 5

Summary of Crop Budget Data From An Enterprise Cost Study for a 300 Acre Farm in the Huntley Project Area, Montana, and Returns to the Various Factors of Production

	100 Acres Sugar Beets	100 Acres Corn Silage	60 Acres Spring Wheat	40 Acres Alfalfa
	----- Costs Are In Dollars Per Acre -----			
Gross return	612.00 ^{1/}	292.00 ^{2/}	243.75 ^{3/}	250.00 ^{4/}
Machinery variable costs	50.72	30.17	21.45	19.79
Materials and services	82.33	53.59	29.75	22.85
Miscellaneous overhead	15.44	8.72	6.93	5.50
Interest on operating capital	3.41	3.49	1.77	.95
Total variable cost	151.90	95.97	59.90	49.09
Return over variable cost	460.10	196.03	183.85	200.91
Machinery fixed costs and building dep.	123.10	57.78	46.29	44.14
Water tax, real estate taxes, and insurance	14.28	14.28	14.28	14.28
Fixed costs	137.38	72.06	60.57	58.42
Return to management, labor and real estate	322.72	123.97	123.28	142.49
Labor and management cost	102.72	54.59	40.95	43.62
Return to real estate	220.00	69.38	82.33	98.87

^{1/} 18 T/A x \$34.00/T.

^{2/} 20 T/A x \$14.00/T.

^{3/} 65 bu/A x \$3.75/bu.

^{4/} 5 T/A x \$50.00/T.

Source: Schaefer, Jerry and LeRoy D. Luft, Enterprise Costs of Irrigated Crops in South Central Montana, Extension Bulletin 1151, Montana State University, Bozeman, Montana.

Table 6

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Huntley Project, Montana, and Returns to the Various Factors of Production

	40 Acres Alfalfa	20 Acres Feed Barley	60 Acres Sugar Beets	20 Acres Irrigated Pasture	20 Acres Spring Wheat
	----- Costs Are in Dollars Per Acre -----				
Gross return	250.00 ^{1/}	160.00 ^{2/}	612.00 ^{3/}	48.00 ^{4/}	243.75 ^{5/}
Machinery variable costs	20.59	19.23	46.26	5.02	19.23
Materials and service	22.85	29.77	107.33	53.41	29.75
Miscellaneous overhead	5.81	6.05	15.65	4.11	6.46
Interest on operating capital	.96	1.72	4.25	2.29	1.72
Total variable cost	50.21	56.77	173.49	64.83	57.16
Return over variable cost	199.79	103.23	438.51	-16.83	186.59
Machinery fixed costs and building dep.	56.73	70.79	155.23	8.71	70.79
Water tax, real estate tax, and insurance	14.45	14.45	14.45	14.45	14.45
Fixed costs	71.18	85.24	169.68	23.16	85.24
Return to management, labor and real estate	128.61	17.99	268.83	-39.99	101.35
Labor and management cost	43.62	32.86	99.39	16.17	41.24
Return to real estate	84.99	-14.87	169.44	-56.16	60.11

^{1/} 5 T/A x \$50.00/T.

^{2/} 80 bu/A x \$2.00/bu.

^{3/} 18 T/A x \$34.00/T.

^{4/} 6 AUM's/A x \$8.00/AUM.

^{5/} 65 bu/A x \$3.75/bu.

Table 7

Summary of Crop Budget Data From An Enterprise Cost Study for a 300 Acre Farm in the Lower Yellowstone Valley, Montana, and Returns to the Various Factors of Production

	100 Acres Sugar Beets	40 Acres Beans	50 Acres Alfalfa	40 Acres Corn Silage	50 Acres Spring Wheat	20 Acres Barley
	----- Costs Are In Dollars Per Acre -----					
Gross return	612.00 ^{1/}	208.00 ^{2/}	160.00 ^{3/}	292.00 ^{4/}	175.00 ^{5/}	114.00 ^{6/}
Machinery variable costs	50.98	33.05	10.97	39.56	26.33	26.33
Materials and service	120.03	42.49	58.19	50.08	25.90	10.00
Miscellaneous overhead	17.04	9.83	6.80	12.21	7.11	6.29
Interest on operating capital	5.04	3.65	1.08	2.88	1.44	.95
Total variable cost	193.09	89.02	77.04	108.73	60.78	43.57
Return over variable cost	416.54	118.98	82.96	183.27	114.22	70.54
Machinery fixed costs and building dep.	95.81	71.57	35.96	100.25	46.74	46.74
Water tax, real estate taxes, and insurance	15.35	15.35	15.35	15.35	15.35	15.35
Fixed costs	111.16	86.92	51.31	115.60	62.09	62.09
Return to management, labor and real estate	305.38	32.06	31.65	67.67	52.13	8.34
Labor and management cost	109.14	49.75	28.55	63.42	42.12	36.02
Return to real estate	196.24	-17.69	3.10	4.25	9.99	-27.68

^{1/} 18 T/A x \$34.00/T.

^{2/} 16 T/A x \$13.00/T.

^{3/} 4 T/A x \$40.00/T.

^{4/} 20 T/A x \$14.60/T.

^{5/} 50 bu/A x \$3.50/bu.

^{6/} 60 bu/A x \$1.90/bu.

Source: Schaefer, Jerry, Joseph F. Guenther and LeRoy D. Luft, Enterprise Costs of Irrigated Crops in the Lower Yellowstone Valley, Extension Bulletin 1162, Montana State University, Bozeman, Montana.

Table 8

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Lower Yellowstone Valley, Montana, and Returns to the Various Factors of Production

	50 Acres Sugar Beets	50 Acres Beans	25 Acres Alfalfa	35 Acres Spring Wheat
	Costs Are In Dollars Per Acre			
Gross return	612.00 ^{1/}	208.00 ^{2/}	160.00 ^{3/}	175.00 ^{4/}
Machinery variable costs	42.64	25.61	12.15	18.70
Materials and service	120.44	42.49	70.37	29.90
Miscellaneous overhead	18.21	9.99	6.80	6.69
Interest on operating capital	5.08	3.64	.97	1.41
Total variable cost	186.37	81.73	90.29	56.70
Return over variable cost	431.63	126.27	69.71	118.30
Machinery fixed costs and building dep.	137.40	82.29	25.13	43.01
Water tax, real estate taxes, and insurance	15.38	15.38	15.38	15.38
Fixed costs	152.78	97.67	40.51	58.39
Return to management, labor and real estate	278.85	28.60	29.20	59.91
Labor and management cost	104.76	49.75	27.90	40.92
Return to real estate	174.09	-21.15	1.30	18.99
^{1/} 18 T/A x \$34.00/T.				
^{2/} 16 T/A x \$13.00/T.				
^{3/} 4 T/A x \$40.00/T.				
^{4/} 50 bu/A x \$3.50/bu.				

Source: Schaefer, Jerry, LeRoy D. Luft, Joseph F. Guenther, Enterprise Costs of 160 Acre Irrigated Farms, Staff Paper 76-22, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana.

Table 9

Summary of Crop Budget Data From An Enterprise Cost Study For a 450 Acre Farm in the Milk River Valley, Montana, and Returns to the Various Factors of Production

	Costs Are In Dollars Per Acre			
	Spring Wheat After Alfalfa Based On 30 Acres	Barley After Based On 45 Acres	Barley After Irrigated Pasture Based On 30 Acres	Alfalfa Hay Based On 150 Acres
	172.50 ^{1/}	172.50 ^{1/}	128.75 ^{2/}	122.50 ^{3/}
Gross return	172.50 ^{1/}	172.50 ^{1/}	128.75 ^{2/}	122.50 ^{3/}
Machinery variable costs	17.96	17.96	19.60	10.46
Materials and service	27.29	22.49	22.49	20.24
Miscellaneous overhead	4.71	4.47	4.80	3.17
Interest on operating capital	2.50	1.93	2.34	1.69
Total variable cost	52.46	40.47	49.23	35.56
Return over variable cost	120.04	132.03	79.52	86.94
Machinery fixed costs and building dep.	29.04	33.10	33.17	13.41
Water tax, real estate taxes, and insurance	7.55	7.55	7.55	7.55
Fixed costs	36.59	40.65	40.72	20.96
Return to management, labor and real estate	83.45	91.38	38.80	65.98
Labor and management cost	37.10	37.76	33.70	31.62
Return to real estate	46.35	53.62	5.10	34.36
				-8.51

^{1/} 45 bu/A x \$3.50/bu. + 3/4 T Straw at \$20.00/T.

^{2/} 55 bu/A x \$2.00/bu. + 3/4 T Straw at \$25.00/T.

^{3/} 3.5 T/A x \$35.00/T.

^{4/} 4 AUM's/A x \$8.00/AUM.

Source: Schaefer Jerry and LeRoy D. Luft, Enterprise Costs of 450 Acre Irrigated Cropland in Blaine County, Bulletin 1146, Montana State University, Bozeman, Montana.

Table 10

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Milk River Valley, Montana, and Returns to the Various Factors of Production

	Spring Wheat After Spring Wheat Based On 20 Acres	Spring Wheat After Alfalfa Based on 20 Acres	Alfalfa Hay Based On 60 Acres	Irrigated Pasture Based On 60 Acres
	----- Costs Are In Dollars Per Acre -----			
Gross return	172.50 ^{1/}	172.50 ^{1/}	122.50 ^{2/}	32.00 ^{3/}
Machinery variable costs	18.64	22.15	15.39	2.05
Materials and service	40.73	28.20	21.68	18.11
Miscellaneous overhead	5.22	4.61	3.83	1.54
Interest on operating capital	3.23	2.33	2.05	1.09
Total variable cost	67.82	57.29	42.95	22.79
Return over variable cost	104.68	115.21	79.55	9.21
Machinery fixed costs and building dep.	26.98	30.33	20.13	3.06
Water tax, real estate taxes, and insurance	8.38	8.38	8.38	8.38
Fixed costs	35.36	38.71	28.51	11.44
Return to management, labor and real estate	69.32	76.50	51.04	-2.23
Labor and management cost	35.33	37.04	31.62	10.85
Return to real estate	33.99	39.46	19.42	-13.08

^{1/} 45 bu/A x \$3.50/bu. + 3/4 T Straw at \$20.00/T.

^{2/} 3.5 T/A x \$35.00/T.

^{3/} 4 AUM's/A x \$8.00/AUM.

Source: Schaefer, Jerry and LeRoy D. Luft, Enterprise Costs for 160 Acre Irrigated Cropland in Blaine County, Bulletin 1143, Montana State University, Bozeman, Montana.

as a cost, but because of the nature of this study it was treated as a residual return. This step-by-step procedure is used for all of the crops for both farm sizes in each of the five areas.

It should be noted that the returns are based on a specific yield and price. Any variation, even if slight, could alter the returns picture considerably. Also, due to inherent agricultural price and yield variations, what may be a low return crop one year may be a high return crop the next year. These budgets represent, on the average, how farmers in each area adjust to the dynamic agricultural conditions.

Cropping strategies used may not be optimal; however, they reflect farming practices used in each area. For example, irrigated pasture is grown in some cases even though it was not found, on the average, to be a profitable enterprise. However, many farmers point out that they have some land on their farms that is suitable only for pasture. In some of the areas, no high value row crops are grown. Determination of optimal crop strategies is an important activity since the production of certain crops may be limited by soil type, climate, length of growing season, and market access in each area.

Contrary to what one might expect, there doesn't appear to be economies of size in the production of all of the crops. When comparing the average size and small size farm for the same area, costs per acre are sometimes nearly the same. If the same machinery and buildings were used, this would, of course, not be the case. Apparently the average size operator felt that large machinery expenditures were not out of order. These operators could afford a large investment in machinery while it was assumed that the small operator would either own a cheaper, used machine that would just get the job done or he may hire a custom operator. The farmer panels tended to pro-

vide low cost estimates for the smaller farmer since experience indicated he would have a difficult time being financially successful.

The return to management, labor and real estate in Tables 1-10 is, in effect, the amount of money available for family living, payment of income taxes, capital investment and real estate debt retirement. This figure for each crop is multiplied by the number of acres of the particular crop to give the return for the farm (Tables 11 through 15). The returns are summed to give the return to management, labor and real estate for the whole farm. From this, the farmer must pay his income taxes, repay any real estate mortgages, including principle and interest, make new capital investments and provide a living for his family.

The returns for the entire farm are, of course, quite a bit less for the small farm. The returns also differ from one area to the next. For example, a 300 acre farm in the Huntley Project area returns four times as much as a 600 acre farm in the Helena Valley. This is because row crops are grown in the Huntley Project area but not in the Helena Valley. Row crops are also grown in the Lower Yellowstone Valley but not in the East Bench Unit or the Milk River Valley. This provides a partial explanation of the differences in returns.

Analysis

The return to management, labor and real estate varies over a wide range for each of the areas in the study. Of particular interest are the returns to the smaller or 160 acre farms in each area. The Helena Valley 160 acre farm returns a low of \$467.00 to management, labor and real estate while the Huntley Project farm provides a high of \$22,861.20. From this, total debt payments on the farm must be made. The residual is what is available for income tax payment, family living and additional investment.

Table 11

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement and Capital Investment on an 800 Acre and a 320 Acre Irrigated Farm in the East Bench Unit of Montana

<u>800 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	540	\$ 30.82	\$ 16,642.80
Barley	210	62.22	13,066.20
Spring Wheat	50	107.05	<u>5,352.50</u>
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 35,061.50
<u>320 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor and Real Estate	Return to Farm by Crop
Alfalfa	220	\$ 15.09	\$ 3,319.80
Barley	80	39.05	3,124.00
Spring Wheat	20	83.87	<u>1,677.40</u>
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 8,121.20

Table 12

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement and Capital Investment on a 600 Acre and a 160 Acre Irrigated Farm in the Helena Valley of Montana

<u>600 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	300	\$ 44.45	\$ 13,335.00
Irrigated Pasture	150	- 7.24	- 1,086.00
Barley	75	12.88	966.00
Oats	40	8.34	333.60
Spring Wheat	35	13.84	484.40
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 14,033.00

<u>160 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	80	\$ 13.32	\$ 1,065.60
Irrigated Pasture	40	-13.92	- 556.80
Barley	20	.38	7.60
Oats	20	- 2.47	- 49.40
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 467.00

Table 13

Dollars Available for Family Living, Income Taxes, Real Estate Debt Retirement and Capital Investment on a 300 Acre and a 160 Acre Irrigated Farm in the Huntley Project Area of Montana

<u>300 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Sugar Beets	100	\$ 322.72	\$ 32,272.00
Corn Silage	100	123.97	12,397.00
Spring Wheat	60	123.28	7,396.80
Alfalfa	40	142.49	<u>5,699.60</u>
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 57,765.40
<u>160 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	40	\$ 128.61	\$ 5,144.40
Barley	20	17.99	359.80
Sugar Beets	60	268.83	16,129.80
Irrigated Pasture	20	- 39.99	- 799.80
Spring Wheat	20	101.35	<u>2,027.00</u>
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 22,861.20

Table 14

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement, and Capital Investment on a 300 Acre and a 160 Acre Irrigated Farm in the Lower Yellowstone Valley of Montana

<u>300 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Sugar Beets	100	\$ 305.38	\$ 30,538.00
Beans	40	32.06	1,282.40
Alfalfa	50	31.65	1,582.50
Corn Silage	40	67.67	2,706.80
Spring Wheat	50	52.13	2,606.50
Barley	20	8.34	166.80
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 38,883.00
<u>160 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Sugar Beets	50	\$ 278.85	\$ 13,942.50
Beans	50	28.60	1,430.00
Alfalfa	25	29.20	730.00
Spring Wheat	35	59.91	2,096.85
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 18,199.35

Table 15

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement, and Capital Investment on a 450 Acre and a 160 Acre Irrigated Farm in the Milk River Valley of Montana

<u>450 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Spring Wheat After Spring Wheat	45	\$ 83.45	\$ 3,755.25
Spring Wheat After Alfalfa	30	91.38	2,741.40
Barley After Barley	45	44.99	2,024.55
Barley After Irrigated Pasture	30	38.80	1,164.00
Alfalfa Hay	150	65.98	9,897.00
Irrigated Pasture	150	2.34	<u>351.00</u>
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 19,933.20

<u>160 Acre Farm</u>			
Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Spring Wheat After Spring Wheat	20	\$ 69.32	\$ 1,386.40
Spring Wheat After Alfalfa	20	76.50	1,530.00
Alfalfa Hay	60	51.04	3,062.40
Irrigated Pasture	60	- 2.23	<u>- 133.80</u>
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			\$ 5,845.00

Speculations are made as to what dollar amount an adequate residual would be. However, the amount of money needed to provide a farm family with comfortable living is a very arbitrary figure. Family living expenditures depend on the number, age and the health of family members, location of the farm and many other things. In this study two figures are arbitrarily selected for family living requirement analysis. A residual of \$12,000.00 and above is selected as sufficient for family living, income taxes and additional capital investment and a residual of \$9,000.00 or less is selected as being too low. Amounts between \$9,000.00 and \$12,000.00 are classified as marginal.^{19/}

The return to management, labor and real estate with no debt payment is (Tables 11-15):

East Bench Unit--\$8,121.20 for a 320 acre farm;

Helena Valley--\$467.00 for a 160 acre farm;

Huntley Project--\$22,861.20 for a 160 acre farm;

Lower Yellowstone Valley--\$18,199.35 for a 160 acre farm;

Milk River Valley--\$5,845.00 for a 160 acre farm.

According to the above criterion, Huntley Project and the Lower Yellowstone Valley would be the only two areas able to provide an adequate family income from 160 acre irrigated farms, providing there are no debt payments to make. It should be remembered, however, that no interest charge on land is made as an opportunity cost. An individual owning such land could sell the land, invest the capital elsewhere, and earn some rate of return. This foregone return was not included in this study. Return to real estate is shown as a residual return.

^{19/} These figures are lower than the average realized net income per farm of \$18,231 in 1973 and \$17,150 in 1974 as reported by the Montana Crop and Livestock Reporting Service, Helena, Montana.

Tables 16 through 20 depict what would be available for family living, income tax and additional investment after loan repayments are made at three different real estate debt loads. Loans were calculated at nine percent interest. In the Lower Yellowstone Valley and Huntley Project studies a 25-year loan was used. In the remaining three areas a longer 30-year loan was used because farmers in these areas apparently cannot make as large a yearly payment. The analysis is also presented for the average size farm in each area. For three of the areas, East Bench, Helena Valley and Milk River Valley, it is obvious that the small farms cannot be successfully operated under any of the debt loads. For the Lower Yellowstone, the 160 acre farm could not handle much more than a 25 percent debt load. In the Huntley Project, however, the success of the 160 acre farm does not become questionable until a debt load of nearly 50 percent is reached.

It would have been useful to have an average debt load of irrigated farms in each of the areas but that information could not be obtained. The farmers themselves are reluctant to talk about such matters and agricultural lenders don't like to give out such confidential information. However, one agricultural lender at Billings estimated that at least half of the irrigated farmers in the Huntley Project area were carrying a 65 percent real estate debt load. Thus, only a small minority of the 160 acre farms in the area would be successful. Obviously, 160 acre farms in the other four areas would be much worse off under that kind of debt load.

Apparently farmers in only two areas, Huntley Project and Lower Yellowstone Valley, would even have a chance of surviving on 160 acres. This slim chance, however, probably depends on the continued viability of the sugar beet industry in the areas, a situation which an individual farmer can do little to influence. Economic viability of 160 acre irrigated farms under the most favorable conditions in Montana probably depends on the continual operation

Table 16

Summary of Returns for a 320 Acre and an 800 Acre Irrigated Farm on the East Bench Unit, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes, and Additional Investment

Returns, Mortgage Payments and Dollars Available	320 Acre Irrigated Farm	800 Acre Irrigated Farm
Return to Labor, Management and Real Estate	\$8,121.20	\$35,061.50
Mortgage Payment on 25% Debt*	<u>4,816.35</u>	<u>12,118.71</u>
Available for Family Living, Income Taxes and Additional Investment	\$3,304.85	\$22,942.79
Return to Labor, Management and Real Estate	\$8,121.20	\$35,061.50
Mortgage Payment on 50% Debt*	<u>9,632.70</u>	<u>24,237.43</u>
Available for Family Living, Income Taxes and Additional Investment	-\$1,511.50	\$10,824.07
Return to Labor, Management and Real Estate	\$8,121.20	\$35,061.50
Mortgage Payment on 65% Debt*	<u>12,522.51</u>	<u>31,508.66</u>
Available for Family Living, Income Taxes and Additional Investment	-\$4,401.31	\$ 3,552.84

*Amortized loan for 30 years at 9 percent (amortization factor = .0973).
 Value of land and buildings for the 800 acre farm = \$498,200.
 Value of land and buildings for the 320 acre farm = \$198,000.

Table 17

Summary of Returns for a 160 Acre and a 600 Acre Irrigated Farm in the Helena Valley, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes, and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	800 Acre Irrigated Farm
Return to Labor, Management and Real Estate	\$ 467.00	\$14,033.00
Mortgage Payment on 25% Debt*	<u>2,685.48</u>	<u>9,671.62</u>
Available for Family Living, Income Taxes and Additional Investment	-\$2,218.48	\$ 4,361.38
Return to Labor, Management and Real Estate	\$ 467.00	\$14,033.00
Mortgage Payment on 50% Debt*	<u>5,370.96</u>	<u>19,343.24</u>
Available for Family Living, Income Taxes and Additional Investment	-\$4,903.96	-\$ 5,310.24
Return to Labor, Management and Real Estate	\$ 467.00	\$14,033.00
Mortgage Payment on 65% Debt*	<u>6,577.48</u>	<u>25,146.21</u>
Available for Family Living, Income Taxes and Additional Investment	-\$6,110.48	-\$11,113.21

*Amortized loan for 30 years at 9 percent (amortization factor = .0973).
 Value of land and buildings for the 600 acre farm = \$397,600.00.
 Value of land and buildings for the 160 acre farm = \$110,400.00.

Table 18

Summary of Returns for a 160 Acre and a 300 Acre Irrigated Farm in the Huntley Project Area, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	300 Acre Irrigated Farm
Return to Labor, Management and Real Estate	\$22,861.20	\$57,765.40
Mortgage Payment on 25% Debt*	<u>6,146.17</u>	<u>11,812.87</u>
Available for Family Living, Income Taxes and Additional Investment	\$16,715.03	\$45,952.53
Return to Labor, Management and Real Estate	\$22,861.20	\$57,765.40
Mortgage Payment on 50% Debt*	<u>12,292.35</u>	<u>23,625.74</u>
Available for Family Living, Income Taxes and Additional Investment	\$10,568.85	\$34,139.66
Return to Labor, Management and Real Estate	\$22,861.20	\$57,765.40
Mortgage Payment on 65% Debt*	<u>15,980.06</u>	<u>30,713.47</u>
Available for Family Living, Income Taxes and Additional Investment	\$ 6,881.14	\$27,051.93

*Amortized loan for 25 years at 9 percent (amortization factor = .1018).

Value of land and buildings for the 300 acre farm = \$464,160.

Value of land and buildings for the 160 acre farm = \$241,500.

Table 19

Summary of Returns for a 160 Acre and a 300 Acre Irrigated Farm in the Lower Yellowstone Valley, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	300 Acre Irrigated Farm
Return to Labor, Management and Real Estate	\$18,199.35	\$38,883.00
Mortgage Payment on 25% Debt*	<u>4,950.01</u>	<u>9,524.66</u>
Available for Family Living, Income Taxes and Additional Investment	\$13,249.34	\$29,358.34
Return to Labor, Management and Real Estate	\$18,199.35	\$38,883.00
Mortgage Payment on 50% Debt*	<u>9,900.05</u>	<u>19,049.32</u>
Available for Family Living, Income Taxes and Additional Investment	\$ 8,299.30	\$19,833.68
Return to Labor, Management and Real Estate	\$18,199.35	\$38,883.00
Mortgage Payment on 65% Debt*	<u>12,870.06</u>	<u>24,764.12</u>
Available for Family Living, Income Taxes and Additional Investment	\$ 5,329.29	\$14,118.88

*Amortized loan for 25 years at 9 percent (amortization factor = .1018).

Value of land and buildings for the 300 acre farm = \$374,250.00.

Value of land and buildings for the 160 acre farm = \$194,500.00.

Table 20

Summary of Returns for a 160 Acre and a 450 Acre Irrigated Farm in the Milk River Valley, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	450 Acre Irrigated Farm
Return to Labor, Management and Real Estate	\$5,845.00	\$19,933.20
Mortgage Payment on 25% Debt*	<u>1,727.08</u>	<u>4,857.39</u>
Available for Family Living, Income Taxes and Additional Investment	\$4,117.92	\$15,075.81
Return to Labor, Management and Real Estate	\$5,845.00	\$19,933.20
Mortgage Payment on 50% Debt*	<u>3,454.15</u>	<u>9,714.80</u>
Available for Family Living, Income Taxes and Additional Investment	\$2,390.85	\$10,218.40
Return to Labor, Management and Real Estate	\$5,845.00	\$19,933.20
Mortgage Payment on 65% Debt*	<u>4,490.40</u>	<u>12,629.24</u>
Available for Family Living, Income Taxes and Additional Investment	\$1,354.60	\$ 7,303.96

*Amortized loan for 30 years at 9 percent (amortization factor = .0973).
 Value of land and buildings for the 450 acre farm = \$199,687.50.
 Value of land and buildings for the 160 acre farm = \$71,000.00.

of sugar beet factories.

The current interpretation of the Reclamation Law is that a husband and wife may each own 160 acres and thus farm a total of 320 acres. A question then arises concerning the economic feasibility of 320 acre farms in each area. In the East Bench Unit the cost-return study was based on 320 acres and proved not to be feasible. In the Helena Valley, 320 acres would also not be sufficient since the average size farm of 600 acres is only successful with no debt load. Similarly, a 320 acre farm would not make it in the Milk River Valley. In the Lower Yellowstone Valley and the Huntley Project area, 320 acres would be sufficient since the average successful farm was determined to consist of 300 acres.

The means by which 320 acres may be farmed (under separate husband and wife ownership) is not based on sound economic reasoning, however. The probability of finding two 160 acre units that could be acquired within a reasonable distance of each other is remote. However, that is what a young, recently married farmer or a settler on a new project would have to attempt to do. Two distant units could not be operated nearly as efficiently as adjoining units or a completely integrated unit of adequate size.

Senator CHURCH. Our next witness is Mr. William T. Coleman, who will be accompanied by Mr. Larry Fleming of Imperial Valley.

**STATEMENT OF WILLIAM T. COLEMAN, JR., WASHINGTON, D.C.,
ACCOMPANIED BY LARRY FLEMING, IMPERIAL VALLEY, CALIF.**

Mr. COLEMAN. Good afternoon, Mr. Chairman. I have a prepared statement I have submitted, and I would like permission to summarize it.

Senator CHURCH. Yes, please.

Mr. COLEMAN. Mr. Chairman, members of the committee, obviously I consider this a rare privilege to testify before your committee on Senate Joint Resolutions 93 and 96. I am a partner in the law firm of O'Melveny & Myers. Our firm represents a large number of farmers in California. Mr. Larry Fleming, who is a farmer in the valley, is sitting at my right, and has a brief statement to make at the conclusion of my remarks.

I would like to emphasize that all of our clients are family farmers, and these farms have been in their families for many generations. We are here today to support Joint Resolutions 93 and 96, and we suggest certain modifications.

We believe that congressionally proposed moratorium is necessary for three reasons; first: The Department has admitted that it is not yet undertaking a thorough analysis of an economic and environmental proposed regulations. Second: The Department has admitted that it has not addressed the hardships imposed by areas that have not been subjected to excess land provisions historically. And, third: We are dealing with a law where Congress for 75 years has not had the opportunity to reexamine in light of modern-day agriculture.

Now, with respect to the resolution, Mr. Chairman, what happened was that Jim Parker in a decision in this district held merely that it was wrong for the Department of the Interior to proceed in individual cases by opinion letter, and said there should be some general regulations. He did not say, in his opinion, and when you read it, knowing your background as a lawyer, I am sure you will agree with me that not one word in that opinion says that anything that the Department has been doing is wrong other than the fact that whatever you do should be by general regulation than by an ad hoc decision.

Now, unfortunately, the Department has used that decision as the basis for making what is clearly drastic changes in the law, and there are many things that they suggest in their regulations which are not required by the statute. The statute has no words about leasing, but yet the Department wants to deal with leasing as well as ownership.

Now, with respect to the Imperial Valley, which is a unique situation, there the farmers, many generations ago, used private money and private initiative, irrigated the valley. The canal went through Mexico. In fact, 93 percent of our land today involved in this problem was irrigated through that.

The Government then decided for a different reason that it should build a dam. The farmers in that valley being very astute, in fact, said, we do not want that water coming in here if we are

involved with the 160-acre limitation. And actually there is a court decision which has, and this was because the Government committed itself, that which held that the 160-acre limitation would not apply.

And during that court proceeding a Secretary of the Interior wrote a letter to the court saying that. So, as a result of that, there was a shift made. Every Secretary of the Interior from 1933 on has held and ruled that the 160-acre limitation did not apply.

Certainly not to be invidious by pointing out, Secretary Hickeys, for example, had a great tradition of protecting the public interest. During his entire administration, he never questioned the fact that the 160-acres applied to the Imperial Valley.

So, as a result of the court decision that is now in question, we think the court was wrong, we have it on rehearing in the ninth circuit. We intend if we lose the ninth circuit to try to get it in the Supreme Court of the United States, and obviously, if we lose that we do think it is something that the Congress should address itself to.

So what should be done in the interim? These regulations threaten the very existence of this valley. I am surprised that the Secretary did not feel there should not be an environmental impact statement. I have written a letter to him. It is attached to my statement. It is in the record.

You will read his reply, and I leave it to your judgment, Mr. Chairman, as to whether you think under the law that you voted for, namely the law requiring an environmental impact statement, that this major Federal action does not require an environmental impact statement.

Our people tell us that if this law is made effective to them that somewhere between 20 and 40 percent of the land will be taken, and it just will not be used. That will cause an increase in the salt. It will also affect the river bank.

Second: There has been no analysis made by the Department with respect to the economic impact. Once again, we think that this should be done prior to the time, and I repeat, prior to the time that we have the issuance of proposed regulations becoming final.

Now, the two suggestions that we have in mind are that, first: We recommend that an additional section be added to the resolution that addresses the unique problems of areas in which the 160-acre limitation has not been applied. The provision should prevent the imposition of any requirements by the Department in an area which has not been subject to the 160-acre limitation, and concerning which the issue of legal applicability is the subject of pending litigation.

If the courts ultimately deem the 160-acre limitation applicable to such an area, the Department should not be able to promulgate any regulation or require any action pursuant to the section after 1 year after final determination of legal applicability.

This requirement would insure that adequate consideration is given by the Department and by this Congress with the special problems of farmers who invested their lives working and justified in good faith reliance upon judicial and administrative decision.

Second: We recommend that the resolution be modified to postpone not only the effective date of final regulations as Senate Joint Resolution 96 would do, but also the promulgation of final regulations until after the moratorium period is concluded.

We believe this modification would better achieve the underlying purposes of the resolution by insuring that the Department will undertake the information gathered on economic and environmental analysis that are necessary to shape proposals to implement the existing laws, or alternatively propose to Congress to change the existing law.

In other words, we think that the Department and usually I would not say that, because most executive branches move much too slowly, that here the Department is moving much too fast on a very, very complicated subject, and for that reason, we think that in those changes that the resolution should be adopted.

Senator CHURCH. You are speaking now of Senate Joint Resolution 96?

Mr. COLEMAN. Yes. As I say, Mr. Chairman, that the basic issue here with respect to the Imperial Valley is that for at least since 1928 those farmers have worked that valley in reliance on representation of the Government of the United States that the 160-acres does not apply.

It is also true that in that valley something like 93 percent of the farms are owned by families. There is a lot of talk about large holdings. The fact is that that involves by corporation less than 7 percent of the land in the valley. Most of that, I think, is owned by Southern Pacific, and they own it for the very simple reason that there was another governmental policy adopted many years ago, namely that if you built a railroad through an area that you got, in addition certain acreage, and that is how the Southern Pacific originally acquired most of that acreage.

So I do not think that—you know, there are big corporations and big corporations. In conclusion, I would just like to quote what I think is really involved here from the opinion of Justice Jackson who said, "It is very well to say that those who deal with the Government should turn square corners, but there is no reason why square corners should constitute a one-way street. The Government should be held to the same fundamental principles of fair dealing," and I think that after the long practice that has gone on in the valley that now to change the rules of the game, and to do it without an environmental impact statement or study of the exact effect, is not playing fair with the farmers in the Valley.

Senator CHURCH. Thank you very much for your statement. It was a concise and clear argument on behalf of the farmers in the valley, and as I said earlier today, there is an element of equity involved in this case by virtue of the governmental representations through the years that have suddenly been altered.

[The prepared statement of Mr. Coleman follows:]

STATEMENT OF WILLIAM T. COLEMAN, JR., WASHINGTON, D.C.

Mr. Chairman. Members of the Committee. Thank you for providing me the opportunity to testify on Senate Joint Resolution 93 and related proposals affecting the excess land provisions of the reclamation laws.

My name is William T. Coleman, Jr. I am a partner in the law firm of O'Mealveny & Myers. Our firm represents a large number of farmers in the Imperial

Valley of California. Mr. Larry Fleming, who is a farmer in the Valley, is sitting at my right and has a brief statement to make at the conclusion of my remarks. I also am accompanied by Mr. John Kubler, Ms. Louise Wiley, and Mr. Larry Gilbert, who are farmers in the Imperial Valley and whose families have farmed the Valley for several generations.

We are here today to support the concept that underlies Senate Joint Resolution 93, and also 96, and to suggest certain modifications to ensure that it achieves its purpose effectively. In our view, the resolution should enable the Congress to review thoroughly the reclamation laws and the implications of the Department of the Interior's proposed regulations on "excess land" before any unnecessary hardship is incurred by family farmers in the West or any irreversible damage done to a major source of the Nation's supply of agricultural products and to the environment. Pending such review, the resolution should prevent the Department of the Interior from acting prematurely and unfairly before a complete analysis of the implications of its proposed regulations is undertaken. We believe that a Congressionally imposed moratorium is necessary for three reasons. First, the Department has admitted that it has not yet undertaken a thorough analysis of the economic and environmental implications of its proposed regulations. Second, the Department concedes that it has not addressed the special hardships imposed by the regulations on areas that have not been subject to the excess land provisions historically. And third, the Congress has not yet had the opportunity to re-examine the 75 year old Reclamation Act and its 50 year old amendments in light of modern day agriculture.

Before elaborating on our proposed modifications, let me relate briefly the perspective from which we approach this hearing.

For those unfamiliar with the Imperial Valley, it occupies the southeast corner of California near its borders with Mexico and Arizona. Until developed by privately financed irrigation around the turn of the century, it was a barren desert. By 1928, the Valley was a flourishing farm community with over 405,000 acres under cultivation. The main facility constructed in this private effort was the Alamo Canal which carried water through northern Mexico back across the international boundary to the Imperial Valley farms. In 1928 Congress enacted the Boulder Canyon Project Act authorizing the construction of the All-American Canal to replace privately owned facilities as a means of bringing the waters of the Colorado River to the Valley. 93% of the land in cultivation today was in production before the first drop of water from a federal project reached the Valley in the 1940.

At present, the farmers of the Valley produce a wide variety of agricultural products on 475,000 acres of irrigated farmland. Specialty crops grown in the Valley, such as lettuce, tomatoes, and cantaloupes are distributed throughout the United States. During the winter months the Valley is the Nation's sole source of lettuce and certain varieties of asparagus. According to the most recent agricultural census, the value of agricultural commodities produced in Imperial County ranks fifth among all counties in the United States. The Valley today is an American success story. Second and third generation family farmers—applying hard work, modern technology and complex conservation practices—have transformed the barren desert into one of the most productive agricultural resources of the Nation.

The Imperial Valley's interest in Senate Joint Resolution 93 is unique and substantial. It is unique because unlike many other federal reclamation water districts, the Valley was originally irrigated by privately financed construction projects and when the Imperial Irrigation District entered into a contract in 1932 for the construction of the All-American Canal, it was on the assumption that the 160-acre limitation was not applicable—an assumption that was confirmed by the legislative history of the Boulder Canyon Project Act and in 1933 by an opinion-letter by the Secretary of the Interior and a decision of the Superior Court in *Hewes v. All Persons*.

Thus, for years the Department of the Interior has followed the 1933 ruling by the then Secretary, Ray Wilbur, reaffirmed by Secretary Krug in 1948, that the 160-acre limitations of the reclamation laws are not applicable to the Valley. In 1971 a United States district judge confirmed this ruling, holding in effect that the Secretary's 1933 ruling and subsequent reliance thereon accurately reflected the intent of Congress. However, on August 18, 1977 the United States Court of Appeals for the Ninth Circuit held, notwithstanding decades of administrative construction to the contrary, that 160-acre limitations do apply in the Imperial Valley. A petition for rehearing en banc is presently pending before the Ninth Circuit. Our clients intend to seek review of that decision in the Supreme Court should that become necessary. While this litigation is pending, the applicability of the basic law to the Valley remains uncertain.

If the acreage limitation provision is ultimately held applicable to the Valley and if the regulations proposed by the Department of the Interior to change radically the administration of the reclamation program are implemented, the impact on the Imperial Valley will be devastating. The reasons are obvious. The farmers in the Valley have planned their investments, organized their farming operations and improved their lands on the assumption that the acreage limitation provisions are inapplicable there. Over a great many years, the economic, social and governmental structure of a major farm community has been built upon this premise. Widespread dislocation and hardship will surely follow a decision to apply the limitation in the Valley. Experts have predicted, for example, that from 20 percent to 40 percent of the Valley's agricultural land will go out of production and revert to a desert state.

The majority of farms in the Valley are family owned and operated, many of them by second and third generation farmers—including brothers, sisters, and cousins—whose ancestors originally cultivated the desert soil. Less than three percent of the farm land in the Valley is owned by outside publicly-held corporations. Ironically, the proposed regulations would outlaw the purchase of a farm by a family except where the family members are in a direct lineal relationship or husband and wife.

Thus, the proposed regulation, rather than promoting the family farm, would destroy a family farming system that really works. About 800 farms in the Valley are operated in units exceeding 160 acres in size, accounting for over 90 percent of the cultivated land. A good deal of this land is owned by nonresidents, typically individuals who farmed the Valley for many years and then in old age moved to areas having more temperate climates, relying for retirement income on their ability to lease their farms. Leasing has also been the means by which young family farmers have gotten started, allowing them to accumulate the capital to buy their own land. About one-quarter of the farm land in the Valley is operated under lease, and there are approximately 1,200 lessors of farm land who do not live on or in the neighborhood of their land.

The Department's proposed regulations were not designed with areas like the Imperial Valley in mind. Indeed, we are not aware that any serious thought has been given by the Department to the special problems—economic, environmental and governmental—that would arise from imposing the acreage limitation requirements for the first time in an area where farming has been conducted for years in reliance on the government's assurance that the limitation does not apply. The proposed regulations were obviously drafted to apply to reclamation projects which have been historically subject to the acreage limitation provisions and to the existing recordable contract program for dealing with excess lands. These proposals simply do not fit, even mechanically, a region like the Imperial Valley. The Solicitor of the Department of the Interior has acknowledged as much in a recent letter to Senator Alan Cranston. The Honorable Leo M. Krulitz, wrote that lands in the Imperial Irrigation District "have, of course, been receiving water through federally constructed facilities for many years under the assumption that the acreage limitations do not apply to lands in that District. The proposed regulations do not squarely address themselves to this rather extraordinary situation." (Cong. Rec., Oct. 31, 1977, S 18278). Similarly, the Bureau of Reclamation's own Staff Analysis concedes that the Bureau has not addressed the implications of the proposed regulations on the Imperial Irrigation District and has, for example, determined to wait until a final judicial determination that the limitation applies in the Valley before compiling "the necessary data for that District to enable an accurate determination of excess land that may be available. . . ."

Moreover, so far as we are aware, the Department has failed to perform the legally-required analyses of the environmental and economic implications of the proposed regulations for areas like the Valley or indeed for other reclamation areas. We have requested the Department to comply with the provisions of the National Environmental Policy Act by preparing an Environmental Impact Statement on the proposed regulations. The Department has failed to do so and our clients have therefore joined with other farmers in seeking judicial enforcement of NEPA requirements. I would like to append to my statement the correspondence we have had with the Department on its NEPA obligations, and let the Committee decide whether the Interior Department has faithfully discharged its NEPA mandate. We have also requested the Council on Wage and Price Stability to encourage the Department to prepare an Economic Impact Statement pursuant to Executive Order 11049, and we hope that the Department will see fit to complete such an analysis.

Among the economic effects of the proposed regulations are the substantial possibility of a reduced supply of certain special agricultural commodities or their unavailability altogether in certain seasons, changed crop selection and rotation patterns, inflated prices, increased unemployment, and a reduced tax base in agri-

cultural communities. Among the environmental impacts are the probable conversion of up to 200,000 acres of farm land in the Valley to nonfarm use, the harm to the land by improper rotation of crops and neglect of soil conservation practices, the reversion to desert of large areas of productive land, and the reduced water level and increased salinity of the Salton Sea—the largest inland water body in Southern California and a major recreational area and wildlife habitat.

The farmers of the Imperial Valley, whose lives' work and savings could be wiped out by these regulations, are frankly astonished at the Department's apparent indifference to the consequences of the proposed regulations for the Valley. And they are surprised that the Department has not yet addressed the comprehensive environmental and economic implications of its proposals to alter radically farming patterns and practices in 17 Western states. We submit that a more deliberate and thoughtful process should be followed before any final regulations are promulgated.

With these considerations in mind, we conclude that Senate Joint Resolutions 93 and also 96 are important steps in the right direction. But they do not go far enough. They do not prevent the Department from prematurely promulgating final regulations without benefit of the careful analysis which the subject matter demands. They do not ensure that the Department will correct its complete failure to address the particular consequences of the proposed regulations for areas, like the Imperial Valley, that have never before been subject to the 160-acre limitation.

Moreover, by continuing the moratorium on land sales until final regulations are promulgated, the resolution would prevent legitimate land transactions and have the effect of further depressing the market value of land in affected areas. There is an implicit inconsistency in proposed Resolution 93 in this respect. On the one hand, it establishes a moratorium on the enforcement of the 160-acre limitation for one year. Presumably this is to enable thoughtful analysis of the basic statutory foundation upon which the 160-acre limitation and proposed regulations rest and of the implications of the proposals. Yet, by lifting the prohibition on land sales after such regulations are made final, the resolution does not prevent—but rather encourages—the hasty promulgation of final regulations. Thus, the resolution does not achieve what should be one of its major purposes: that of ensuring that the Department will not undertake radical changes in policies without deliberate consideration of the substantial economic, environmental and other consequences of such changes.

For these reasons, we recommend two modifications to the proposed resolution.

First, we recommend that an additional section be added to the resolution that addresses the unique problems of areas in which the 160-acre limitation has not applied historically. The provision should prevent the imposition of any requirements by the Department to an area that has not been subject to the 160-acre limitation historically and concerning which the issue of legal applicability is the subject of pending litigation. If the courts ultimately deem the 160-acre limitation applicable to such an area, the Department could not promulgate any regulation or require any action pursuant to such law for one year after the final determination of legal applicability. This requirement would ensure that adequate consideration is given by the Department and by Congress to the special problems of farmers who have invested their lives' work in justified and good faith reliance upon prior judicial and administrative decisions that the law is not applicable.

Second, we recommend that the resolution be modified to postpone not only the effective date of final regulations as S.J. Res. 96 would do, but also the promulgation of final regulations until after the moratorium period is concluded. We believe this modification would better achieve the underlying purpose of the resolution by ensuring that the Department will undertake the information gathering and economic and environmental analyses that are necessary to shape proposals to implement the existing laws or, alternatively, to propose to Congress legislation to change the existing law. We see nothing to be gained by promulgating final regulations when the basic statute is under consideration and when the final regulations cannot be enforced. The Department can communicate its proposals to Congress without promulgating final regulations. To encourage Interior to promulgate final regulations would risk pressing the Department to a premature position that could be changed only in a subsequent rulemaking proceeding and would create unnecessary uncertainty and hardship.

The Committee may also wish to include within the resolution a requirement that the Department report to the Congress within one year its recommendations for changes in the basic statutes that would achieve the overall purpose of the reclamation laws more effectively. I am appending a copy of proposed Senate Joint Resolution 96, containing the modifications we have suggested.

With these modifications, we believe that Congress will have ensured that if the Interior Department wishes to pursue its revolutionary agricultural land use concepts by using the vehicle of the reclamation laws, then it will do so only on the

basis of sound economic and environmental analysis in an objective, open and fair decisionmaking process. It is simply not necessary—and certainly not in the public interest—that the life-long toil, in some cases over three generations, of the family farmers of the Imperial Valley be decimated because of a precipitate attempt to apply a specific philosophy of so-called land reform without first seeking to understand how it will affect particular farm communities throughout the West.

O'MELVENY & MYERS,
Washington, D.C., September 12, 1977.

Attention: Code 410.

Mr. KEITH HIGGENSON,
Commissioner, Bureau of Reclamation,
Department of Interior, Washington, D.C.

DEAR SIR: We have been requested by a number of clients in California to assist them in reviewing and commenting upon your proposed regulations, published in the Federal Register of Thursday, August 25, 1977, concerning the administration of the Reclamation Act of 1902, as amended and supplemented, 43 U.S.C. 371 et seq., and especially the provisions specifying that only 160 acres of a single landowner's holdings may benefit from federal water projects.

Our clients believe that the proposed regulations may have a significant effect on the environment and therefore were surprised to learn that a determination has been made by the Bureau that the proposed regulations will not significantly affect the quality of the human environment and that no environmental impact statement is required under §102(2)(c) of the National Environment Policy Act, 42 U.S.C. § 4332(c). Because our clients are particularly concerned about some of the environmental implications of the proposed rule, we would very much appreciate your providing us a copy of your negative declaration and the reasons in support thereof. We would appreciate receiving copies of any analyses, studies, option papers, or other documents that describe the environmental effects that were considered by the Department or that otherwise bear on the Department's determination that an environmental impact statement is not required.

We also would appreciate your identifying those provisions of the Department of Interior, Departmental Manual—Part 516 and the Council of Environmental Quality Guidelines which were relied upon in the determination that an environmental impact statement is not required.

Because we consider this information essential to our clients' review and evaluation of the proposed regulations and their effect on the natural and human environment, we would appreciate your providing us with these documents and any other information that may be relevant within 10 days.

While I am confident that it is not necessary under the circumstances, given the Department's interest in soliciting public comment on the proposed regulations, you may also consider this letter as a request pursuant to the Freedom of Information Act, as amended, 5 U.S.C. § 522 et seq., for all information and documents relating to the determination by the Department of Interior that an environmental impact statement is not required.

If it would facilitate matters, we would be delighted to meet with you or with whomever you may designate for the purpose of discussing and clarifying the information we are requesting.

Thank you for your cooperation in this matter.

Sincerely,

WILLIAM T. COLEMAN, Jr.,
O'Melveny & Myers.

O'MELVENY & MYERS,
Washington, D.C., October 7, 1977.

Hon. GUY R. MARTIN,
Assistant Secretary of Interior, Department of Interior, Washington, D.C.

DEAR MR. MARTIN: Thank you for your prompt response to our letter of September 12, 1977. Your reply, however, does not dispel our concern that in connection with the Notice of Proposed Rulemaking concerning acreage limitations, the Department has not yet met the requirements of the National Environmental Policy Act. Our clients continue to believe that an environmental impact statement is required. We submit, further, that those who may be affected by the proposed rules are entitled to the benefit of the Department's environmental analysis during the rulemaking proceeding to assist them in commenting on the environmental, as well

as legal and economic, implications of the proposed regulations. Accordingly, we request that the present proceedings be discontinued pending completion of an environmental impact analysis by the Department or that the Department announce that it will postpone the contemplated hearings until the environmental impact statement is prepared and that it will extend the comment period until 90 days after availability of the statement to the public.

1. NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT

Your letter advances three reasons why an environmental impact statement is not required: (1) "much of the substance of the proposed regulations merely reflects existing law," (2) "much of the substance of the proposed regulations was required by law," and (3) "the environmental effects of the regulations [are] wholly speculative and probably insignificant." These reasons, with all due respect, we submit are contrary to fact and law.

The proposed regulations make fundamental changes in many well-established Department policies. We enclose a Department staff memorandum concerning the proposed regulations which concedes that the proposal embodies "several new concepts and requirements." The memorandum identifies seven significant changes in policy. The Department proposes, for example, to limit strictly multiple ownerships and leasing practices, in direct contradiction to previous policies that placed very few, if any, restrictions on either. Further, in contrast to long-standing existing policy, the proposed rules would impose residency as a requirement for the purchase of now-excess land. In short, the proposals the Department advances manifestly, embody sweeping changes. And this substantially revised program would affect millions of acres of farm land and hundreds of communities throughout the West. It is therefore unquestionably a "major federal action" within the meaning of NEPA. As the court said in *Scientists' Institute for Public Information v. AEC*, 481 F.2d 1079, 1088 (D.C. Cir. 1973): "[T]he term actions' . . . includes . . . expansion or revision of ongoing programs. . . ."

The Department cannot seriously contend, in the face of many years of contrary practice, that the proposed changes are "required" by statute. But even if they were, the Department's abrupt discovery of the legislative command does not obviate the requirement of an environmental impact statement. The proposed regulations still constitute an "expansion or revision of an ongoing program," and NEPA requires that relevant decisionmakers, including Congress, be informed of the consequences of the proposed new course of action. As the court said in *NDRC v. Morton*, 458 F.2d 827, 834 (D.C. Cir. 1972): "Congress contemplated that the Impact Statement would constitute the environmental source material for the information of the Congress as well as the Executive, in connection with the making of relevant decisions, and would be available to enhance enlightenment of—and by—the public." It therefore held that an environmental impact statement had to consider reasonable alternatives even if they were within the control of other departments of the Executive or of Congress. In its preparation of an environmental impact statement on the proposed rules, the Department should consider, as alternatives, (1) continuation of its present practices in administering the acreage limitation law, (2) modifications of the proposed regulations which would be more in keeping with national environmental policy, and (3) revisions in the law necessary to reduce adverse environmental effects. The Department would then have the analytical basis upon which to modify any undesirable provisions in the proposed rules not required by statute and to recommend to Congress amendments to provisions of the law which are thought to compel the promulgation of undesirable regulations.

Your letter concludes that any environmental effects are "wholly speculative and probably insignificant." This conclusion is based on a simplistic assumption that the only effect of the proposed regulations would be to change the ownership of land receiving water, without any effect on the physical environment. This assumption is completely unfounded and its mere assertion demonstrates that the Department has not yet taken the "hard look" at environmental questions that NEPA requires.

We have already mentioned the new restrictions on multiple ownerships and leasing practices and the residency requirement that the Department proposes. Inevitably these proposed limitations would lead to smaller operating farm units. Consequently, there will not be a simple substitution of one landowner for another landowner, but rather a substitution of relatively smaller farms for the relatively larger farms that would exist if present practices were continued.

Environmental consequences will inevitably flow from this fundamental change. For example, the study Central Valley Project Studies: Economic Effects published by the Bureau of Reclamation asserts that "a major cause of community differences lies in the size of the farm unit." *Id.* at 156. The report indicates that a community

of smaller farms will have a larger population and a higher number of automobiles per capita than a community of larger farms. *Id.* at 156, 178.¹ The environmental questions posed by proposed regulations that would lead to increased human and automobile population are too familiar to require elaboration.²

The NEPA Guidelines promulgated by the Council on Environmental Quality specifically provide:

"Secondary or indirect . . . consequences for the environment should be included in the analysis. Many major federal actions . . . stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities. Such secondary effects . . . may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects." 40 C.F.R. § 1500.8(3)(ii).

In certain areas, the regulations will also cause some land to be taken out of irrigated production, or out of agricultural production altogether, because some owners will choose not to enter into recordable contracts under the Department's proposed rules and will rather turn to dry farming or put their lands to non-farming uses or permit them to lie fallow. Such changes may have quite dramatic effects on the environment and the social and economic life of the affected communities.

Among the other questions posed by the proposed regulatory changes that would decrease farm size are the following:

(1) How much presently irrigated land in relatively larger operating units would be lost to production when, following conversion to smaller units, additional homesites, farmstead buildings, feed lots, equipment storage yards, roads, ditches, drains, and tail water ponds must be established?

(2) How much productive land presently under irrigation would be lost to production because it cannot economically be operated as a small farm (i.e., unsubsidized by operations on more productive land)?

(3) What effect would reductions in irrigated acreage have on air pollution, soil erosion, and soil exhaustion in various localities?

(4) What effect would a pattern of smaller farms have on crop patterns? Would smaller operators avoid relatively high risk crops or rely unduly on crops with a high yield per acre?

(5) How would a change in crop patterns affect the demand for water?

(6) How would a change in crop patterns affect the ability to rotate crops or to undertake other soil improvement or conservation methods?

(7) Would a change in crop patterns create problems with pest infestations or efforts to control them or require the introduction of new pesticides in a given area?

(8) What would be the effect on the tax base and public revenues from changes in land values resulting from adoption of the proposed rules?

Proper studies will reveal many other serious questions concerning the environmental effects or possible environmental effects of the proposed regulatory changes. These questions simply cannot be dismissed as "wholly speculative" or "insignificant." The regulations are designed to, and will, result in dramatic changes in how farm land is managed and in the character of agricultural communities. The Department ignores its own previous experience and common sense in denying that these changes will affect the physical and socioeconomic environment.

We note that these changes will be particularly dramatic in the Imperial Valley of California where our clients' farms are located. At present over 91% of the irrigated land in the Valley is held by owners of 180 or more acres. Thus, a very high proportion of farms in the Imperial Valley would be affected by the proposed regulations.³ In the same region, the proposed rules would probably affect the Salton Sea, a major recreational area with fish and wild life. The lake's re-charge is largely from agricultural drainage, and any significant change in water demand would likely cause changes in the salinity and level of the water in the Salton Sea. Obviously, the effects of the proposed regulations would differ from area to area, and the environmental impact statement should separately consider the impact in each distinct locality. Under NEPA law the Department could choose to analyze the

¹ The cooperative contract for the Westlands Water District, to which the Department is a party, recites that application of the 160-acre limit is expected to quadruple the population of the District.

² The environmental impact statement must also consider socioeconomic effects of proposed federal action. *Chelsea Neighborhood Ass'n v. Postal Service*, 516 F.2d 278 (2d Cir. 1975).

³ Whether the statutory acreage limitation has any application at all in the Imperial Valley is the subject of pending litigation.

specific impacts in diverse geographic areas in separate statements, along with a generic statement treating overall impacts.

2. TIMING OF THE ENVIRONMENTAL IMPACT STATEMENT

For all the foregoing reasons and others not set forth in this brief letter, an environmental impact statement is clearly required. Moreover, the statement should be prepared and circulated at the outset of the rulemaking process so that it may be taken into account by interested persons who participate in hearings or submit comments on the proposed rules.

NEPA requires that an environmental impact statement be "included" in an agency proposal for major federal action and that the statement "accompany" the proposal through the agency review process. 42 U.S.C. § 4332(2)(C); *Calvert Cliffs' Coordinating Comm. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971). The Supreme Court has noted that "[w]here an agency initiates federal action by publishing a proposal and then holding hearings * * *, the statute would appear to require an impact statement to be included in the proposal and to be considered at the hearing." *Aberdeen & R.R.R. Co. v. SCRAP*, 422 U.S. 289, 320 (1975). And the Council on Environmental Quality has specifically ruled that an environmental impact statement must be prepared before a Notice of Proposed Rulemaking is issued. 6 Env. Rptr. Current Developments 2112 (Apr. 16, 1976).

In short, the Department was required to issue an environmental impact statement at the time it issued the Notice of Proposed Rulemaking. Alternatively, if an environmental impact statement was not required, the Department was required to issue a negative declaration to accompany the Notice of Proposed Rulemaking. *Scientists' Institute for Public Information v. AEC*, 481 F.2d 1079, 1094-1095 (D.C. Cir. 1973). Yet you concede in your letter that neither document has been prepared even now and appear to indicate that the Department has also failed to meet its obligation to "consult with and obtain the comments" of other federal agencies with relevant expertise. 42 U.S.C. § 4332(2)(C). Not only is the timely preparation of an environmental impact statement or negative declaration required by law, it is also essential to make the rulemaking proceedings meaningful.

The environmental implications of the regulations are inextricably related to the overall question of the desirability of adopting the regulations as proposed. Hence, our clients and other affected persons are entitled to have the information NEPA is designed to provide before they can be expected to complete their assessment of the regulations. In short, until an environmental impact statement is available, interested private parties and government agencies will not be in a position to participate in rulemaking proceedings on a fully informed basis. And NEPA places the obligation to prepare such a statement squarely on the Department.

We respectfully submit that the Department must remedy these deficiencies in its procedure before the rulemaking may proceed. We believe that the Department may do so by suspending the rulemaking proceedings until it issues an environmental impact statement and then reopening the period for comment. This is particularly appropriate in this instance, in view of the Department's announcement of its intention to issue regulations concerning residency requirements in the near future. It would seem better practice for the Department and the public to assess these closely related matters simultaneously and with the benefit of a comprehensive environmental impact analysis.

We appreciate your cooperation in this matter and respectfully request that you respond to the foregoing requests no later than October 24.

Very truly yours,

WILLIAM T. COLEMAN, Jr.,
O'Melveny & Myers.

O'MELVENY & MYERS,
Washington, D.C., October 14, 1977.

Hon. CHARLES WARREN,
Chairman, Council on Environmental Quality,
Washington, D.C.

DEAR MR. WARREN: We represent about 800 family farmers of the Imperial Valley of California and non-farmer residents and organizations in the same area. Our clients have requested us to petition the Council on Environmental Quality to advise the Department of Interior of its non-discretionary statutory duty to prepare and file an Environmental Impact Statement ("EIS") on the proposed regulations that purport to implement the 160-acre limitation of the Reclamation Laws. We further request that you advise Interior to postpone its rulemaking proceedings,

including the hearings scheduled for November, until after a draft EIS is prepared and circulated for comment.

On August 25, 1977, the Department of Interior published in the Federal Register a notice of proposed rulemaking, concerning the administration of the Reclamation Act of 1902, as amended and supplemented, 43 U.S.C. 371 et seq., and especially concerning the acreage limitation provisions. For the reasons stated in the enclosed letter to Assistant Secretary of Interior Guy R. Martin, which we will not repeat here, we believe that the proposed regulations constitute a substantial departure from present Interior practices, and certainly exceed what the statute compels and, in many instances, what the statute authorizes. If adopted and applied to the Imperial Valley, these proposals would have a substantial impact on farm operations, land use, and the environment of that region.

The Department proposes a number of major changes from the past practice. For example, strict limitations on leasing practices and multiple ownerships are proposed in direct contradiction to previous policies that placed few, if any, restrictions on either. In contrast to the long standing existing policy, the proposed rules would also impose residency as a requirement for the purchase of excess land. The Department's substantially revised program would affect millions of acres of farm land and hundreds of communities throughout the West. It is therefore unquestionably a "major federal action" within the meaning of NEPA.

For the Imperial Valley, the environmental implications are especially dramatic. Historically, the 160-acre limitations have never applied to the Valley, and consequently the farmers of the Valley face the prospect of having to meet not only the requirements of the reclamation law for the first time but also the especially stringent regulatory proposals of the Department that would exacerbate the environmental consequences.¹ Over 90% of the farm land in the Valley may be affected.

Most of our clients have lived in the Imperial Valley their entire lives and are fully aware of the delicate ecological balance that currently exists in the Valley. Through decades of experience, the Imperial Valley farmers have learned to accommodate to the requirements of the environment in the utilization and drainage of water, in adjusting to difficult climatic conditions, and in proper land development, utilization and soil conservation practices. The nature of these accommodations is very much a function of the size of individual farm operations and the total amount of land in the area which is under irrigation. The proposed regulations are explicitly calculated to reduce drastically the size of farm operations and will very probably cause a large amount of land to be taken out of agricultural jurisdiction. Consequently, our clients were surprised to read in the preamble to the Federal Register notice that Interior had determined that the "proposed regulations will not significantly affect the quality of the human environment and that no Environmental Impact Statement * * * is required."

We wrote to the Department of Interior on September 12th requesting a copy of the negative declaration and the environmental analysis in support thereof. The Department responded on September 22nd, informing us that "the discussions and conclusions on these points were oral * * *" and that there are not any analyses or negative declarations, other than what was included "in the simple statement in the preamble to the proposed regulations. * * *" A copy of our correspondence and Interior's response is enclosed. The Department did state that it now, "because of (our) inquiry and others" had decided to "analyze the question of NEPA compliance further" and prepare a "formal environmental assessment." We believe that such an assessment should have been prepared prior to the publication of a proposal in the Federal Register, and, obviously, it should not be simply an after-the-fact rationalization of a matter that has already been prejudged. The mere publication of proposed regulations has already had a significant impact on the environment by affecting land development and improvement plans. Moreover, our clients are entitled to have the benefit of a complete and objective environmental analysis before they are asked to comment on the proposed regulations and the effect of those regulations on their land, natural resources and community.

Interior has scheduled a series of hearings in California in November, including one in the Imperial Valley on November 21st. We strongly recommend that the hearings and the proposed conclusion of the comment period on November 23rd be postponed until after an Environmental Impact Statement has been prepared. To do less would make a mockery of the hearing and comment process by denying our clients the benefit of information that we believe is essential to the preparation of thoughtful and constructive comments on the impact of the proposed regulations.

¹ Whether the statutory acreage limitation has any application at all in the Imperial Valley is the subject of pending litigation.

Among the issues that our clients firmly believe should be analyzed in an Environmental Impact Statement are the following:

1. To what extent would the regulations, if made final and applicable to the Imperial Valley, lead to a substantial break-up of present farm operations and to smaller operating farms or alternative uses of the land?

2. How much presently irrigated land in relatively larger operating units would be lost to production when, following conversion to smaller units, additional homesites, farmstead buildings, feed lots, equipment storage yards, roads, ditches, drains, and tail water ponds must be established?

3. How much productive land presently under irrigation would be lost to production because it cannot economically be operated as a small farm (i.e., unsubsidized by operations on more productive land)? Would such land be used for purposes other than farming or left fallow? Would owners choose not to sell land declared excess but instead let the land lie fallow? What are the short-term and long-term ecological effects of land left fallow in the Valley?

4. What effect would a pattern of smaller farms have on crop patterns? Would smaller operators avoid relatively high risk crops or rely unduly on crops with a high yield per acre?

5. How would a change in crop patterns affect the demand for water?

6. How would a change in crop patterns affect the ability to rotate crops or to undertake other soil improvement or conservation methods?

7. Would a change in crop patterns create problems with pest infestations or efforts to control them or require the introduction of new pesticides in a given area?

8. What would be the effect on the community, on employment, and on the tax base and public revenues from changes in land values and patterns resulting from adoption of the proposed rules?

9. What would be the effect on population density in the Valley, automobile traffic, industrial or commercial development, and air pollution from stationary or mobile sources?

10. What would be the effect on irrigation and drainage systems?

11. What would be the effect on private investment in environmental protection and resource conservation practices and improvements? Would smaller farms have sufficient capital to invest in the improvement of marginal land, to construct and maintain the drainage systems, and to adhere to sound environmental practices, such as leaching?

12. What would be the effect of changing land, crop, and drainage patterns on the salinity and level of water in the Salton Sea, a major recreational area with unique fish and wildlife habitats, which is recharged largely from agricultural drainage?

Obviously, the effects of the proposed regulations would differ from area to area, and the Environmental Impact Statement should consider separately the impact in each distinct locality.

These questions only highlight some of the most significant issues with which our clients are concerned. A third or fourth generation farmer in the Valley can explain the kinds of conservation practices, maintenance and structural improvements that are necessary to prevent excessive salinization and desertification. But the kind of comprehensive analysis that relates the various complex regulatory proposals—many of which are not clear in the notice—to the total environment in a “systematic, interdisciplinary approach” is within the special competence of government. Such an analysis is a vital resource if we are to participate in the comment process meaningfully. To avoid the environmental issues and address only the economic and legal problems that arise from the proposed regulations would be to neglect what may well be the most serious long-term consequences for the Valley in which our clients live.

Because of the CEQ's statutory mandate “to review and appraise various programs and activities of the federal government in the light of the policies” established by NEPA, 42 U.S.C. § 4332(b), and because of Interior's obligation to consult with CEQ to “insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations,” 42 U.S.C. § 4344(3), we are appealing to you to take action to advise Interior to prepare an Environmental Impact Statement and to postpone the rulemaking proceeding until after an EIS has been circulated for comment.

Your intervention with the Department is needed now to ensure that “a draft Environmental Impact Statement (is) prepared and circulated for comment in time to accompany the proposal through the existing agency review process * * *” and to ensure that the draft EIS is “available to the public at least fifteen (15) days prior to the hearing(s)” that will be held on the proposed regulations. 40 C.F.R. § 1500.2.(b) and § 1500.7(d)(4).

We would very much appreciate the opportunity to meet with you and your staff and to discuss these issues further. We would be delighted to provide any additional information, that may be helpful to the Council, including legal and factual support for our conclusion that Interior is obligated to prepare the EIS without further delay.

Sincerely,

WILLIAM T. COLEMAN, Jr.,
O'Melveny & Myers.

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., October 21, 1977.

WILLIAM T. COLEMAN, Jr., Esq.
O'Melveny & Myers,
Washington, D.C.

DEAR MR. COLEMAN: Thank you for your letter of October 14, 1977 regarding NEPA's application to the Department of Interior's proposed excess land regulations. We understand that the Department has begun preparation of an environmental assessment to determine whether an EIS will be required for these regulations. We share your concern that NEPA be properly implemented in this context and will continue to evaluate the environmental effects of the proposed regulations as additional information becomes available to us. We have also strongly recommended to Interior that members of the public be afforded a full and formal opportunity to comment upon the environmental assessment now being prepared, as well as any EIS that might be prepared, before the issuance of final regulations.

Sincerely,

CHARLES WARREN,
Chairman.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 22, 1977.

WILLIAM T. COLEMAN, Jr., Esq.
O'Melveny & Myers,
Washington, D.C.

DEAR MR. COLEMAN: This is in response to your letter dated September 12 requesting information about the Department's determination that publication of proposed excess land regulations did not require preparation of an environmental impact statement under NEPA. In preparing the regulations, Bureau of Reclamation staff and the Solicitor's Office considered this issue prior to publication. We concluded that the environmental effects of the regulations were wholly speculative and probably insignificant.

We based our conclusion of environmental effect on the fact that the proposed regulations contemplate no change in the management, operation or maintenance of Bureau project facilities. Moreover, the regulations do not alter the legal or administrative protection afforded to the environment, and do not require or in any way encourage the construction of physical work such as dams or diversion canals.

The proposed regulations will, in other words, presumably lead to the delivery of the same amount of federally-subsidized water to the same amount of land. Only the ownership of that land would in some cases be changed. The principal effect of the proposed regulations is, in other words, in determining the identity of the purchasers of land rather than in changing how much land must be sold, in order to receive federally-subsidized water.

We also concluded, based on advice from the Solicitor, that much of the substance of the proposed regulations was required by law, so that the discretion of the Secretary to act in this matter was limited by the Reclamation Act. Also, much of the substance of the proposed regulations merely reflects existing law as previously interpreted and enforced by the Department. Most of the changes in ownership which will occur as a result of the proposed regulations, in other words, would have occurred anyway under the law as already established by Congress.

The only other aspect of the proposed regulations which arguably might affect the environment is the Secretary's decision to require residency as a condition of receiving federally-subsidized water. Requiring residency arguably could mean some people will move into a particular area and demand such social services as housing

and transportation, the provision of which in turn could have some environmental impact.

We rejected this argument for three reasons: First, the Solicitor had advised us that residency is a legal requirement and must be applied. Second, because the proposed regulations establish generous limits on residency (up to 50 miles from the land benefited) for those purchasing excess lands, any physical impact would be scattered widely across many communities and areas and have a negligible effect on any one area. Third, it is at last equally probable that people now owning land receiving federally-subsidized water who do not live within 50 miles would choose to sell their land to persons living within 50 miles rather than choose themselves to move to within 50 miles. In that case, of course, the result would be only a transfer of ownership with no change in the provision of local services and therefore no environmental effect.

Our discussions and conclusions on these points were oral, and reduced to writing in the simple statement in the preamble to the proposed regulations that we had determined that no EIS was required.

Because of your inquiry and others we have received, and because the Department will, in the next few months, publish a proposal to apply residency across-the-board, I have directed my staff to prepare a formal environmental assessment to analyze the question of NEPA compliance further. I invite you and your clients to supply us with any information you have which bears on this issue, to assist us in our analysis.

Sincerely yours,

DANIEL P. BEARD,

Acting Assistant Secretary, Land and Water Resources.

THE SECRETARY OF THE INTERIOR,
Washington, February 24, 1933.

IMPERIAL IRRIGATION DISTRICT,
El Centro, Calif.

GENTLEMEN: Information at hand indicates that in connection with the contract with your district signed by me on behalf of the United States under date of December 1, 1932, some question has been raised concerning the maximum area of land in single ownership that may be irrigated from the proposed All-American Canal. My attention has been specifically called to the suit now pending in the Superior Court of Imperial County, Calif., entitled "*Charles Malan v. Imperial Irrigation District et al.*" Among other things the complaint in this case contains the following allegation:

"And it is further provided by the reclamation law of the United States that water shall not be delivered from any canal so constructed by the Secretary of the Interior under the said reclamation law to any landowner owning more than 160 acres of land."

The foregoing is an inaccurate statement of the reclamation law in this respect. Presumably this allegation is intended to refer to section 5 of the Reclamation Act of June 17, 1902, which reads in part as follows:

"No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made." [Emphasis supplied.]

It will be noted that while the reclamation law provides that no water shall be sold for a tract of land in excess of 160 acres in single ownership, it does not provide, as alleged, that no water shall be delivered from a canal constructed by the Government to any tract exceeding 160 acres in area.

The All-American Canal contract with the Imperial Irrigation District does not provide for the sale of storage water for use in the Imperial and Coachella Valleys. The contract, in article 17, provides merely for the delivery of water for use in these valleys, through the works to be constructed by the United States. No charge whatever is made for the water so to be delivered, and under the provisions of the Boulder Canyon Project Act no such charge can legally be made. From section 1 of this act for convenient reference the following is quoted:

"Provided, however, That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys."

Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160-acre limitation is

applicable to lands to be irrigated from this canal. Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use, or delivery of water to be furnished these areas.

In connection with the activities of the Bureau of Reclamation it has been held that the provisions of section 5 of the Reclamation Act restricting the sale of a right to use water for land in private ownership to not more than 160 acres will not prevent the recognition of a vested water right for a larger area, and protection of the same by allowing the continued flowage of the water covered by the right through the works constructed by the Government (Opinion of Assistant Attorney General, 34 L. D. 351; Anna M. Wright, 40 L. D. 116). On many projects it has been the practice to recognize vested rights in single ownership in excess of 160 acres and to deliver the water necessary to satisfy such rights through works constructed by and at the expense of the Government. This is true of the Newlands project, the North Platte project, the Umatilla project, and others.

The provision quoted from section 5 of the reclamation act relates to land in private ownership. This, of course, would not apply to the tributary public lands to be included within the boundaries of the district. While this particular provision would not be applicable to the public lands, they would be governed by section 4 of the reclamation act and other provisions which limit the area of public lands that may be entered to a farm unit required for the support of a family. This area will be such as may be fixed by the Secretary, consisting of not less than 10 nor more than 160 acres (sec. 9 of the Boulder Canyon Act and act of June 27, 1906 (34 Stat. 519)).

The foregoing has been long settled by decisions of the Department and by the practice in carrying such decisions into effect.

Sincerely yours,

RAY LYMAN WILBUR, Secretary.

[S.J. Res. 96, 95th Cong., 1st Sess.]

JOINT RESOLUTION To postpone until December 31, 1978, the effective date of the final regulations developed pursuant to the proposed regulations published in the Federal Register dated August 25, 1977 (43 C.F.R. 426), relating to Federal reclamation law, and for other purposes.

Whereas one of the original purposes of Federal reclamation law, as amended and supplemented, is to promote family farming and such purpose is still valid; and

Whereas the construction of Federal reclamation projects and the delivery of water from such projects involves a considerable expenditure of tax dollars; and

Whereas the Secretary of the Interior has proposed regulations in the Federal Register dated August 25, 1977 (43 C.F.R. 426), relating to the acreage limitation provisions of Federal reclamation law; and

Whereas the Secretary of the Interior is holding hearings and receiving comments prior to the preparation of final regulations concerning the acreage limitation provisions of Federal reclamation law; and

Whereas the publication of the proposed regulations has generated considerable public confusion and concern and has raised important, far-reaching issues; and

Whereas the Congress is responsible for oversight and review of the operation and enforcement of Federal reclamation law: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, no final regulations developed pursuant to the proposed regulations published in the Federal Register dated August 25, 1977 (43 C.F.R. 426), shall be promulgated or become effective prior to December 31, 1978.

Sec. 2. If the Secretary of the Interior develops final regulations pursuant to said proposed regulations, they shall be furnished to the appropriate committees of the Congress and shall be made available for public inspection.

Sec. 3. During the period which begins on the date of enactment and ends on December 31, 1978, the Secretary of the Interior may approve any sale or transfer of excess lands or any subsequent sale or transfer of such lands in any irrigation district subject to Federal reclamation laws, as amended and supplemented, except in Westlands Water District in California, only if the Secretary finds that such sale or transfer is in compliance with the proposed regulations announced in the Federal Register dated August 25, 1977 (43 C.F.R. 426): Provided, however, That the provision of the proposed regulations requiring that excess lands be disposed of by lottery to be conducted by the Secretary of the Interior shall not apply. If final regulations are developed pursuant to said proposed regulations and made public pursuant to

sec. 2. prior to December 31, 1978, all sales or transfers of land must comply with such final regulations.

Sec. 4. The time period specified in existing recordable contracts shall not be affected by this joint resolution: *Provided, however,* That the time period of any existing recordable contract which expires during the period from the date of enactment of this resolution to December 31, 1978, shall be extended an additional six months from December 31, 1978.

Sec. 5. *No final regulations relating to the excess land provisions of the reclamation laws shall become effective with respect to any lands in any irrigation district to which the Secretary has not heretofore applied the excess land provisions prior to one year after a final judicial determination that the excess land provisions do apply in such district.*

Sec. 6. Nothing in this joint resolution shall be construed to amend, repeal, or extend the effect of existing provisions of reclamation law or to affect any pending litigation or legal decision.

Senator CHURCH. Is there anything, Mr. Fleming, that you would like to say?

STATEMENT OF LARRY FLEMING, IMPERIAL VALLEY, CALIF.

Mr. FLEMING. Yes, I have a statement that will only last about 5 or 6 minutes.

Senator CHURCH. Very well.

Mr. FLEMING. Mr. Chairman, members of the committee, thank you for providing me with the opportunity to appear before this committee and to comment upon Senate Joint Resolutions 93 and 96 and similar proposals.

My name is Larry Fleming. I am a farmer in the Imperial Valley. My grandparents on both my father's and mother's side originally settled in the Imperial Valley at the turn of the century and helped to make what was then barren desert into productive farmland. My father, in partnership with an uncle, started in 1956 the farm on which my brother and I now work, and this farm has gradually acquired 600 acres of farmland and leased an additional 3,600 acres.

The leased land has enable us to invest in the land improvements and farm equipment necessary to operate an efficient farm, follow essential soil conservation practices, and produce a variety of both capital and labor intensive crops.

Many of the lessors of the land we farm are former farmers in the valley, who have now retired and moved away from the desert heat to more temperate climates, relying on the income from their leases for support in their retirement.

In addition, 17 members of my family, along with other persons, hold stock in another farm in the valley which is operated by my mother's brother.

If a purpose of the reclamation laws is to promote family farming, then the laws have succeeded in the Imperial Valley. We are among 800 family farmers in the Imperial Valley who operate farms, the average size of which is 619 acres. Contrary to the popular misconception, less than 3 percent of the farmland in the Imperial Valley is owned by outside publicly owned corporations. In fact, the complicated process by which marginal land is made productive in the valley is not conducive to farming by large outside interests, nor are the necessary skills easily acquired by an enterprising newcomer.

That is why the vast majority of the farmlands in the valley are owned by families who, over several generations, have invested their lives' resources in land improvements and have learned, sometimes through trial and error, the complex system of crop rotation and soil conservation necessary to prevent salinization and to keep the Imperial Valley from reverting to its natural desert state.

Because of capital improvements made over the decades, such as subterranean drainage systems, leveling, and cement lining of ditches, much of the land can be farmed productively today.

Among such improvements has been the establishment of an underground tile drainage system of over 23,000 miles which serves to leach away excessive salt from the soil. The amount of tile installed thus far is estimated to be roughly 60 percent of that which would be considered optimal.

Soil conservation and improvement require a continuing installation program in order to leach out the 1.3 tons of salts that enter the valley with each acre-foot of water.

The skill, experience, and investment of resources by which the delicate ecological balance of the valley is maintained cannot be purchased by lottery. They cannot be parceled out in plots to fit some theoretical scheme of so-called land reform.

Nor can the good faith reliance of the people of the valley on the assurances of their Government over decades be so easily forgotten or ignored.

As Mr. Coleman has stated, the people of the Imperial Valley have relied on opinions by the Secretaries of the Interior and on the consistent administrative practices of the Department and the rulings of the courts for over 40 years that the acreage limitations do not apply to our lands.

We have invested our lives' savings, built our farm operations, purchased our equipment, brought marginal lands into production, and planned for our families and our retirement on the justified assumption that we would not be subject to the acreage limitations.

Because we are proud of the fact that the experience of the valley demonstrates that the family farm is still a workable, dynamic concept in this day of mechanized agriculture, we are all the more bewildered by the Department of the Interior's proposed excess land regulations.

In their impact on the valley, these regulations would have the effect, not of promoting family farming, but of destroying it. The regulations were not designed—and do not, on their face, address—the unique experience of the Imperial Valley. Their effect on the valley would be substantially more severe than it would be on other areas where farming operations have been developed under the acreage limitation requirements.

Unlike other areas, we have not entered into 10-year recordable contracts, the provisions of which—if inconsistent with the proposed regulations—will be respected. There is not any similar provision to protect the commitments we have made in reliance on the Department's longstanding policy and past practices.

Unlike other areas, many of us have purchased additional land at the fair market value—about \$2,000 per acre today—and now face the prospect of selling our excess lands at a price appraised by

the Secretary that does not reflect the enhanced value attributable to the water supply, presumably the value of the land in its desert state. Yet, there is not any mechanism in the regulations to compensate us for this taking of our property value or for the loss of our lives' investment in the land.

There are hundreds of problems like these and many more questions for which the Department has no answers. Yet, the Interior Department appears intent on rushing toward final regulations that would decimate the family farming system of the Imperial Valley. A moratorium is needed to provide time to study the facts, to analyze the implications, and to act fairly and responsibly in the public interest.

I would like to add one comment, if I may.

Senator CHURCH. Yes.

Mr. FLEMING. My name also is on the ad which the gentleman before me referred to. Larry Gilbert would have definitely been affected the way we interpret the regulations today. His farming unit is 800 acres. Two of his sisters who are nonresidents and nonlineal descendants of Larry would be forced to sell that ground which would reduce his farm unit accordingly. Larry Gilbert is in a situation where the only way he can expand his operation into an economically viable unit is to lease. Now his children cannot go out and lease this ground; from a practical standpoint, his family is limited to what he, as an individual, is limited to.

The way the regulations are written, we are very confused. We feel very threatened, we think that the decision against us was completely unfair, and we think that the Government should take the time to properly analyze the situation before enforcing this law. Thank you very much.

Senator CHURCH. Thank you.

Mr. Coleman, can you give me some idea of how long the appeal is likely to take and how soon we will get a hearing in the court of appeals on this case?

Mr. COLEMAN. Well, Mr. Chairman, what happened was, the court of appeals reversed the lower court. We, within 10 days allotted, filed a petition for rehearing. If you remember your days as a lawyer, it is in the lap of the court.

The ninth circuit sometimes moves fast, sometimes it does not. Once that is over, we would then have 90 days in which to apply for a petition for certiorari.

Senator CHURCH. So your next step in the event that your motion for a rehearing is denied would be a writ of certiorari?

Mr. COLEMAN. Yes, sir, and we would have 90 days, and so that takes us until after the first of the year.

The other side, I think, under the rules—and do not hold me to it—is 30 days for them to file their reply. You then get to the point where the court may or may not act, so really it is the time that it would take—

Senator CHURCH. But you would know within the year contemplated by the moratorium whether or not it would be necessary for an effort to be made for the Congress to deal with the Imperial Valley problem?

Mr. COLEMAN. Well, if certiorari is granted, and I think it ought to be in this case, then it seems to me that the court would set it

down for argument next October. I cannot imagine that it would be argued during the current term.

Then, if it is argued in October, I doubt seriously if the court would decide it before the first of January. I really think that to talk about any type of action even for people outside of the valley before December 31, 1978, is being premature.

With respect to the valley, I think it really should be continued, and actually once a decision comes down, and is adverse, I do think we have such a good cause that we could come to Congress, and I feel that under the *ex parte Parry Schooner* case, which says that Congress passes the statute that becomes the law, that the farmers will get their rights that they are entitled to.

Senator CHURCH. Thank you very much.

Mr. COLEMAN. Mr. Chairman, just as an American citizen, I would just like to thank you to the extent to which you have gotten involved in a lot of major public issues, atomic energy, defense, and now this very pressing problem with respect to the farmers, and I for one thank you very much.

Senator CHURCH. Thank you, that is very kind.

Mr. FLEMING. Thank you, Mr. Chairman.

Senator CHURCH. Our next witness is Dr. Robert Parry, who is the senior vice president and chief economist of the Security Pacific National Bank in Los Angeles.

STATEMENT OF DR. ROBERT T. PARRY, SENIOR VICE PRESIDENT AND CHIEF ECONOMIST, SECURITY PACIFIC BANK, LOS ANGELES, CALIF.

Dr. PARRY. Mr. Chairman, I am Robert T. Parry, senior vice president and chief economist of Security Pacific National Bank. Security Pacific Bank is the 10th largest commercial bank in the United States with 512 offices in California and is the third largest private bank agricultural lender in the country with more than \$326 million in loans to agriculture outstanding as of June 30, 1977. I appreciate the opportunity to share with you today my thoughts on the farm acreage limitations imposed by the 1902 Reclamation Act as interpreted by the courts in several recent decisions.

As a representative of one of the Nation's leading agricultural lenders, I have been called upon increasingly in recent months to comment on topics related to agriculture, particularly in view of our serious drought situation in California. While the drought has not affected the status of agriculture as California's No. 1 income-producing industry, it has highlighted the importance of utilizing our western water resources in the most efficient way possible in order to maintain farm incomes, employment, and productivity.

It appears that the proposed new regulations on farm acreage limitations in federally irrigated areas could substantially alter the conduct of agriculture in some of California's main growing areas. Moreover, this industry is so crucially important to the economic performance of both California and the Nation that I feel it would be imprudent to proceed with such a sweeping reform program without giving careful study to the economic impact of the proposed regulations.

For that reason we support the 1-year delay in implementing the proposed Interior Department regulations, which are encompassed in Senate Joint Resolution 96. This delay will provide adequate time for an objective study of the issues raised by the court decisions, the proposed regulations and the applicability of the 1902 act to present-day agricultural economics and practices.

Let me provide you with a few figures to illustrate just how important California agriculture is to the State and the Nation. As measured by cash receipts from farming, California agriculture was a \$9.2 billion industry in 1976. This sum accounted for almost 10 percent of the national total, making California by far the most important agricultural State. In terms of realized net farm income, California accounted for over 12 percent of the national total.

In a standard list of 72 agricultural commodities, including both crops and livestock, California leads the Nation in production of 38 and ranks in the top 5 for 22 others.

Here are some of the percentages of production credited California: 73 percent of the lettuce, 72 percent of the tomatoes, 89 percent of the grapes, 99 percent of the dates and figs, 98 percent of the nectarines, 97 percent of the apricots, 86 percent of the lemons, 80 percent of the cauliflower, 74 percent of the strawberries, and 100 percent of the olives.

Last year, California ranked second in the production of cotton, despite drought-related losses.

Agriculture is also one of the major employment sectors in California. Counting only the jobs directly involved in farming and food processing, agriculture employed more than half a million people in California last year. It is likely that at least half a million more are employed in ancillary industries, such as agricultural chemicals, farm machinery, food transportation, and wholesale and retail trade related to agriculture.

I would also like to note that, despite its size, agriculture does not appear to be a highly concentrated industry in California. A review of our agricultural loan portfolio shows that our customers' farms are mostly family farming partnerships and family corporations. With the exception of our dairy loan customers, the substantial majority of our agricultural borrowers farm areas of 300 to 2,500 acres. The smaller farms are mainly growers of grapes and citrus, while the larger plant field crops such as cotton, hay, sugar beets, and mechanized vegetable crops.

Farm size varies not only by crop type but also by such characteristics as labor supply, soil, climate, and water availability. An economically efficient farm size for a family farm for one crop in one area is not necessarily the same as that for other crops and/or areas.

An economic impact study of the type that I envision would, at a minimum, examine the issue of economically efficient farm size and relate it to the proposed size of irrigable acreage, whether 160 or some other number, allowed under the acreage limitations. The potential problem with the acreage limitation as I see it is not only its absolute size, but also its arbitrariness and inflexibility.

While a 160-acre irrigated plot might enable a family unit to make a living in some cases, it might not in other cases. Moreover, it would seem to me that tying the permissible acreage to family

size would substitute family size for economic efficiency as a determinant of farm size.

Additionally, there is the issue of the considerable capital investment that may be required to conduct modern farming on irrigated land. To the extent that a 160-acre plot is too small to permit use of the appropriate technology, then productivity will suffer and society's well-being will be diminished. Capitalization is thus a very important dimension of economically efficient farm size.

Related to the impact on farm productivity is the issue of what the proposed regulations would do to production costs and commodity prices. If inappropriate technology and suboptimal scale of operation should result from the 160-acre limitation, as would be likely in at least some cases, then not only would output be diminished but production costs would also be higher, resulting in lower net farm income.

Assuming that consumer demand conditions would be unaffected by the acreage limitation, the restriction in supply of farm commodities would result in higher consumer prices.

It is interesting to note, as a special case, that the opposite price effect could occur for a particular crop in the short run. The neophyte farmers, it may be argued, could plant too much acreage in a given crop, depressing prices and incomes and depleting the land for future use. Thus, while consumers might temporarily receive some benefits, they would probably lose in the long run, since the initial increase in production would not long be maintained.

Finally, I think that the differential regional impact of the acreage limitation merits further study. Any negative effects on the productivity of California agriculture would serve to make California farm products less competitive relative to the production of regions not so dependent on Federal irrigation water.

Moreover, our competitive position in international markets could also be impaired, which would be a particularly troublesome development during a period of chronic deficits in the balance of trade.

The above remarks have sought to indicate what could be some of the broad, directional effects of a literal application of the proposed acreage limitation. Further study should be undertaken to determine not just who would benefit and who would lose, but also the potential magnitude of the gains and losses.

The original Reclamation Act, as I understand it, was a piece of social legislation that sought to allocate a public subsidy so that the benefits of low-cost Federal water could be widely shared. While the imposition of a strict acreage limitation obviously would assure the benefits of farmownership to a larger number of people, it is not clear that society as a whole would benefit through the dismantling of the highly productive and efficient farm enterprise that currently exists in the affected areas. Indeed, I believe there is a very good chance that our collective well-being could be reduced in the long run.

In view of the importance of the agricultural industry to both our statewide and national economies, I feel that it would at best be imprudent, and at worst, folly, to proceed without giving this sweeping reform much more careful thought. Security Pacific Bank believes that the issue is sufficiently important to warrant a pledge

of our financial support to help fund an independent study by a reputable consultant to assist Congress in its deliberations if this would be of benefit to your committee. This support would appear to be a modest investment, given the economic importance of this industry.

In summary, it is apparent that the proposed regulations impact many segments of the economy and diverse groups of people not only in California but also throughout the Nation. The economic interrelationships are extremely complex and should be thoroughly studied by Congress in an atmosphere unclouded by claim and counterclaim, continued litigation, public confusion, and unsubstantiated economic conjecture.

We believe Senate Joint Resolution 96 will provide the time necessary for calm, judicious deliberation of this important issue. We urge that this committee and the Senate act favorably as soon as possible.

Mr. Chairman, I would be pleased to respond at this time to any questions you or members of the committee may have.

Senator CHURCH. Dr. Parry, I have a question.

You make a very good statement of the economic importance of agriculture in California, and the issue that we face in the Imperial Valley particularly. I think it would be inappropriate for this committee to ask the bank to use its resources for hiring a reputable consultant. If the bank should choose to prepare a study, it believes to be competent and engage a consultant for that purpose, and then wishes to submit the study to the committee while it is considering possible changes in the law, then that would be regarded as testimony of your bank, and as a citizen of the country, we would welcome it as we would all other testimony.

Thank you very much.

Dr. PARRY. Thank you, sir.

Senator CHURCH. Our next witness is Mr. Ron Kokinda of the U.S. Labor Party.

STATEMENT OF RON KOKINDA, WASHINGTON OFFICE, U.S. LABOR PARTY

Mr. KOKINDA. Thank you, Mr. Chairman. My name is Ron Kokinda, and I am testifying today for the U.S. Labor Party.

In my testimony I would like to focus on three key issues concerning the proposed land divestiture.

One: The proposed regulations would destroy the productive capacity of American agriculture.

Two: The proposed regulations are unconstitutional.

Three: The so-called grassroots environmentalist groups are actually highly funded and controlled by Wall Street and London-based investment houses.

Before continuing, I would like to make one brief insertion here, and that is the extreme importance of a strong dollar currency at this point in time. And I think that one of the key aspects in maintaining a very strong U.S. dollar is a very public commitment, policy commitment, to maintain exports and the question of exports obviously in high-technology areas would also question tremendous amounts of agricultural experts with a key to maintain the strong dollar.

First: The present proposed regulations threaten to destroy the capacity of this Nation to create an export surplus vital for world peace and stability. The United States must emphasize as an immediate priority the development of agricultural production at home and abroad to levels of not less than 3,500 calories per day per capita and 250 grams of usable protein per day per capita for world population on the order of 4 billion persons. Large-scale divestiture runs counter to the interests of the Nation and would starve large sections of the Third World.

Second: These regulations are counter to the intent of the Constitution to promote the progress of science and useful arts. Referring not only to the narrow purpose of Copyright and Patent Offices, our Founding Fathers were dedicated to increasing the productive capacities of the country through scientific innovation and mechanization. As early as 1743, Benjamin Franklin wrote in "A Proposal for Promoting Useful Knowledge Among the British Plantations of America":

There are in every province circumstances to cultivate finer arts and improve the common stock of knowledge * * * and produce discoveries * * * to the benefit of mankind in general.

In this essay, he proceeds to propose that committees of correspondence be established to investigate all aspects of agronomy, emphasizing new mechanical inventions for saving labor, nature of soil and productions, and all philosophical experiments that let light into the nature of things, tend to increase the power of man over matter, and multiply the conveniences or pleasures of life.

Alexander Hamilton's "Report on Manufactures," in the Federalist Papers, emphasizes that the continual upgrading of the powers of both men and machinery increases the national wealth and creates: "In some instances a new, and securing in all, a more certain and steady demand for the surplus produce of their soil."

It is significant that "That Unfinished Agenda," on the environmentalist's major manifestos, stated that the Constitution should be loosely interpreted when it conflicted with environmental necessities.

American agriculture is the most emphatic proof of the correctness of the American system. Through a constant policy of reinvestment, an increasing productive capacity has raised the living standards of the world and enabled many populations to assimilate advanced technologies.

The magnificent farms of the San Joaquin and Imperial Valleys are the outcome of the large Federal irrigation projects combined with the most capital-intensive methods. World hunger can be defeated only through the increased use of tractors, implements, drainage and irrigation, fertilizers, desalinization, and adequate inventories of alternate genetic strains of seed stocks.

We must implement a policy of export-led agricultural expansion. Such a program must be undertaken in coordination with a program for rapid development of the Nation's nuclear energy resources and a corresponding nuclear energy grid. Ironically, the world's most advanced agriculture industry is seriously undercapitalized. By gearing up to full capacity production as defined by available, cultivable land and full use of capital inputs such as fertilizer, machinery, et cetera, output will not only double but also

food cost will decrease. I refer this committee to the attached copy of the U.S. Labor Party agricultural development program for the details of this proposal.

The concept of a small 160-acre labor-intensive farm and all the antimechanism, antifertilizer, antiresearch quackery associated with it clearly is against the statement of the Constitution to promote progress in science. As law, such quackery is unconstitutional. As a greenie environmentalist movement, such practices are treasonous.

Third: The environmentalist groups that are clamoring for divestiture are not grassroots organizations of family farmers. They are highly funded and controlled extensions of Wall Street, and London-based investment houses who have something to gain from deindustrialization. Through tax-exempt foundations, these investment houses fund radical think tanks and their local group foot soldiers.

The main funders of the environmentalist movement are the Kaplan, Field, Stern, and Rockefeller Foundations. No farmers sit on their boards of trustees. All the groups which are pushing the proposed divestiture—Exploratory Project for Economic Alternatives, Nader's Center for the Study of Responsive Law, the Institute for Policy Studies' Public Resource Center, the San Francisco-based Institute for Food and Development Policy—all receive funding from at least one of the above foundations. The National Land for the People group is not grassroots. It is represented by the major Wall Street law firm Rogovin, Huge, and Stern. Senior partner Mitchell Rogovin is General Counsel for both the CIA and the Institute for Policy Studies which has a thoroughly documented relationship to international terrorism.

The investment houses backing these groups have a stated policy of deindustrialization. To protect worthless paper investment, they will destroy the very basis of human existence. This committee must defend the interests of the American people and the dictates of the Constitution by recommending against the ratification of the proposed regulations.

We are in support of Senator Domenici, and hope that this law will eventually be repealed.

Senator CHURCH. Thank you for your testimony.

I do not think I have any questions.

Our next witness is Mr. William McFarlane.

STATEMENT OF WILLIAM MCFARLANE, CALIFORNIA WESTSIDE FARMERS, FRESNO, CALIF.

Mr. MCFARLANE. Thank you, Mr. Chairman.

I am Bill McFarlane, third generation Fresno County farmer. I live and farm east of Fresno on a ranch my family started in 1916. Since our ranch is under severe pressure from urban encroachment and rural residential development and since my five children wish to remain a farm family, we took advantage of the opportunity in the spring of 1974 to purchase, as individuals, property in the Huron area of Westlands Water District.

My appearance here today is as president of the California Westside Farmers, a voluntary organization formed a little more than 1 year ago by farmers within Westlands. Our members farm a total

of some 380,000 acres, more than two-thirds of the irrigable land in the district. Some are large landowners whose farms and ranches date back several decades, but many are new farmers who recently have purchased 160-acre parcels and are farming them in different sized operations under a variety of business arrangements; individual proprietorships, partnerships, and small corporations. The corporate form of business operation, of course, is increasingly common as every type of business seeks to limit liability and obtain estate and tax benefits.

Let me say at the outset that we, as farmers and landowners in Westlands, have every intention of fulfilling the commitments we have made to the United States to abide by the requirements of reclamation law as they existed at the time we made our commitments. The vast majority of the excess landowners have made binding legal commitments to dispose of their excess holdings by signing recordable contracts. The others are not receiving Federal water. The nonexcess owners are fully aware that under the historical provisions of reclamation law, they can receive project water for no more than 160 acres in a single ownership within an irrigation district. These conditions were spelled out and agreed upon by everyone involved—Federal officials, the Congress, the courts, the Westlands district, landowners and farmers—even before the project was authorized.

On the other hand, the landowners and farmers do not believe they have any moral or legal obligation to meet a new set of requirements, imposed after the fact, particularly if any of those rules or regulations would interfere with their basic property rights or tax their ability to compete in the free market economy.

It is with these thoughts in mind that we appear here today to endorse the concept of Senate Joint Resolutions 93 and 96 which provide for a moratorium on the implementation of the excess land rules recently proposed by Interior.

We, of course, have deep concerns about the scope of the proposed Department of the Interior regulations. We have expressed these in considerable correspondence with the Secretary of the Interior, and in our testimony prepared for the Department of the Interior hearing panel here in Washington tomorrow, and in Fresno next Tuesday. If appropriate, I would be happy to submit for the record the testimony to be presented at these hearings by California Westside Farmer witnesses.

Senator CHURCH. Very well.

Mr. McFARLANE. Basically, we urge that more adequate consideration be given to alternative solutions to the problems of subsidy, speculation, and the other issues which caused the Department of the Interior to issue the regulations.

The merits of the moratorium concept is that it gives all of us, the farmer, the consumer and the legislative, executive, and judicial branches of the Government a chance to look more carefully at just what these regulations mean and what, if any, alternatives should be considered.

There are several basic legislative alternatives which must be explored. These range from an outright repeal of the 1902 Act to legislating the rules proposed here. Included are alternatives all across the spectrum—eliminating residency requirements as most

people believe the 1926 Act intended to do; restricting or prohibiting leasing; establishing a two-price, antispeculation system such as advocated a short time ago by the New York Times; enacting the water price suggestions of the late Senator Clair Engle; authorizing farmer or district-wide payout of obligations; or reaffirming the status quo as understood during the first 74 years of the existence of the Reclamation Act.

The California Westside Farmers do not endorse any of these proposals. I assume we would support some and vigorously oppose others. However, we do maintain that these alternatives, these options, must be explored fully before the Federal Government forges ahead with a proposal which we feel will be extremely disruptive to irrigated agriculture upon which the Nation depends for so much of its food.

In the final analysis, most of these proposals and alternative solutions should undergo careful legislative review before enactment or implementation. It is the Congress that should make the final decisions.

And I would interject here that I was certainly pleased to hear that Senator Metcalf's committee will be working on this in the next session of your Congress, and we certainly look forward to working with the subcommittee in any way we can. We offer you our complete cooperation.

We, as an active farm organization, composed largely of true family farmers—families who have been farming for years—offer our complete cooperation and assistance in evaluating these alternatives so that we may find the best possible reclamation policy for all, from producer to consumer.

As a starting point, in a quest for a responsible reclamation policy, we offer the following objectives:

One: Enhancement of the fiscal integrity of Federal water resource projects.

Two: Elimination of the problems of possible unjust enrichment upon resale of lands purchased through sale under recordable contracts.

Three: Substantial reduction and in some cases elimination of subsidies on Federal water.

Four: Simplification of the administration of Federal water projects.

Five: Protection of users of Federal project water from unilateral changes in contracts, rules, interpretations and operations.

Six: Elimination of the speculative nonfarmer from purchases of land sold under recordable contracts.

Seven: Encouragement of farming by bona fide farmers.

In short, we wish to provide the opportunity for establishing small family farms where they can be economically competitive while minimizing the forced translocation of farm families who have developed and are presently farming the lands in question.

After all, most of us are family farmers. We all have worked for what we have. We do not ask for something for nothing. We are willing to carry our share of the burden, but we also do not want the Federal Government to pull the rug out from under that which we and our fathers before us have spent a lifetime building.

Let us now work together to achieve a responsible, reasonable reclamation policy which will continue to serve the Nation by providing food for our families and economic return and jobs for our people.

Thus, Mr. Chairman, we endorse wholeheartedly the moratorium concept because it would give us the time with which to work with all concerned, and especially the Congress, to achieve these goals. In this regard we note that during the moratorium period section 3 of Senate Joint Resolution 93 would forbid any sale approvals by Interior, while section 2 of Senate Joint Resolution 96 would permit them, but only in accord with the proposed rules, except in Westlands where no sales would be permitted. We think it preferable that neither provision be used, and that the bill confine itself to a moratorium on the proposed rules leaving discretion in the interim with the Interior Department to act in individual cases, and with the courts. This could be accomplished by striking section 3 of Senate Joint Resolution 93, which would make it substantially the same as H.R. 9707 as introduced in the House, which we also support.

We commend this committee for its wisdom and prompt action to move this matter at an expeditious pace.

Thank you.

Senator CHURCH. Senator Metcalf, this witness has pledged his cooperation in the effort your subcommittee will make to conduct hearings in the coming year on revision of the reclamation laws—we were encouraged by what he had to say about that. So I am going to leave this witness to you.

I have to make another meeting. It is 2 o'clock.

Senator Metcalf will complete.

Thank you.

Mr. McFARLANE. Senator, I have a couple of other remarks I would like to extend, if I might.

Senator METCALF [presiding]. Well, Thank you. Do you have other witnesses here? I have some other witnesses on my list.

Mr. McFARLANE. I have a little more I would like to say.

Senator METCALF. Fine, go ahead.

Mr. McFARLANE. First, I have a statement that I would like to submit from Mr. Kendall L. Manock, attorney for California West-side Farmers, and I would like to enter this statement in the record and call your attention particularly to the last two pages of the statement where Mr. Manock comments on the implications of the court order in the National Land for People's suit that has been referred to today.

We feel that Mr. Coleman in his testimony for the Imperial Valley farmers covered the position very well. We were pleased to hear the Secretary today indicate that the rules, the substance of the rules and regulations, did not come about by court order. They had to promulgate them, but it was not required by the court order in any substantive changes.

And we have to enter into the record, if it is not already, a copy of the order of that court. We would like to enter that as well.

Senator METCALF. All material will be entered into the record at this moment.

[The prepared statement of Mr. Manock follows:]

STATEMENT OF KENDALL L. MANOCK, ATTORNEY FOR CALIFORNIA WESTSIDE FARMERS

My name is Kendall L. Manock, an attorney with the firm of Baker, Manock & Jensen, Fresno, California. We are counsel for California Westside Farmers, an organization made up of farmers in Westlands Water District.

Based upon my personal experience in representing various buyers and sellers in the Westlands Water District and California Westside Farmers in litigation involving the excess land laws, I wish to comment on the new regulations under provisions of the Reclamation Law which have been proposed by the Department of Interior and published in the Federal Register on August 25, 1977.

The proposed regulations would have far-reaching effects and would very severely disrupt thousands of landowners, farmers, their employees and business relationships by forcing the redistribution of land from one group of farmers to another with very questionable social and economic benefits.

At least some of the provisions will apply to approximately 11,000,000 acres in the Western United States, including some of the most productive farm land in the world. Approximately 5,000,000 of those acres are located in California. These proposals demand a thorough study to determine the full economic, social and environmental impacts not only on farmers and landowners but also on the irrigation districts, state and local governments, the production of food and fiber, consumer prices, agricultural exports, balance of trade and the general economy. Nevertheless, we understand Secretary Andrus has decided that neither an environmental impact statement nor an economic impact statement will be prepared. The point I wish to stress to this subcommittee is that the proposed regulations are so revolutionary that a one-year moratorium on their implementation is necessary, not only to facilitate preparation of impact statements, but also to permit the Congress to carefully consider the need for legislation in this area.

Some of the proposed rules go far beyond the scope of the court order which merely required the initiation of formal rule making regarding the approval of excess land sales. In fact, the proposed rules include several substantive changes in the law itself, usurping a power which is reserved to Congress.

Reclamation history demonstrates that the intent of Congress has been to encourage the development of farm land and to break up large private land ownerships where Federal interest-free funds were used to provide water. To accomplish this purpose the laws limit the use of water for land in private ownership to no more than 160 acres for each landowner. Congress has never limited the use of the land or the size of farming operations.

Irrigation districts, landowners and farmers have entered into Reclamation Projects and signed water service, repayment and recordable contracts with the United States in reliance on the law and its consistent interpretation by all previous administrations and by the Courts. Wherever the law as so interpreted has been applied, it has resulted in the breakup of large land holdings. The large corporate and private landowners have sold off hundreds of thousands of acres of reclamation lands. They will continue to do so under present recordable contracts, whether or not the new regulations are adopted, upon lifting of the moratorium imposed by Secretary Andrus.

Now we are confronted with proposed regulations which in many respects completely ignore the reclamation law as written and reverse what have been considered to be settled interpretations of the law. For example, the proposals, in the name of the "Family Farm" ideal, would force farmers and landowners who were previously assured by the United States that they were in complete compliance with reclamation law to transfer their farmlands to other persons chosen by lottery. This raises serious questions concerning the need for such revolutionary changes and the manner in which they are proposed to be implemented.

Reclamation law is, of course, exceedingly complex and is not just a simple, easy-to-read-and-apply set of rules. It is a compilation starting with the Act of June 17, 1902, and all of its amendments and supplements requiring some 215 pages in the United States Code.

The excess land law provisions which apply to most Reclamation Projects in California are contained in the major changes in reclamation law which were made a part of the Omnibus Adjustment Act of May 25, 1926. This act dealt with the financial problems that had been encountered in many reclamation projects during the farm recession of the early 1920's and before. Its purpose, stated in Section 48 of the Act, was:

"the rehabilitation of the several reclamation projects and the insuring of their future success by placing them upon a sound operative and business basis . . ." (43 USC § 423f)

The 1926 Act did not mention the family farm or the residency requirement and Congress has not even mentioned these requirements in any amendments during the last fifty years.

THE QUESTION OF RESIDENCY

The question of residency presently remains undecided. A District Judge ruled in 1971 that the residency requirement applied to the Imperial Irrigation District, but stayed his enforcement of the order pending an appeal to the Ninth Circuit Court of Appeals in San Francisco. That Court has now ruled that the plaintiff did not have standing to raise the question. No other Court has ruled on the subject. Accordingly, it is mere speculation as to whether the residency requirement of the 1902 Act (43 USC 431) will ultimately be applied by the Courts to projects created after the 1926 Act. The Department of Interior has not applied the residency requirement to any reclamation project since 1926—more than fifty years. It proposes to do so now by regulations. Such a provision will almost surely be challenged in Court with a final determination probably years away.

Even so, 64 percent of the purchasers in Westlands, for example, as of early 1976 were residents (living within 50 miles of the District). Only 36 percent were non-residents. As to the sales completed since then I would estimate that the percentage of resident buyers is even higher. Considering all of the complicated legal problems connected with enforcing residency, it is not a particularly effective way of dealing with the size of farming operations. It may have been in 1902, but that was before the mobile home or even automobiles. A residency requirement, then should not even be considered today unless the Courts rule that the 1902 requirement remained part of the law following the 1926 Act. In that event, the law should be changed.

THE QUESTION OF THE FAMILY FARM

The existence of the Family Farm ideal in current reclamation law depends upon the answers to two questions. First, what does the law say and second, how has it been applied?

The 1926 Act, as we mentioned, says nothing about the family farm. The amendment was concerned with the sales of water to water districts. The 1902 Act, which does mention family farms, did so, however, only in the context of individual water rights. Under the 1902 Reclamation Act, the Department of Interior established procedures whereby individual landowners could submit a water right application along with an affidavit setting forth the necessary information to establish eligibility. The 1926 Act changed this procedure by transferring the administration of the reclamation projects to water user associations in exchange for financial benefits including the reduction of interest charges.

In order to justify the assertion that the fostering of family farms is the only purpose of the reclamation law, reliance must be made on the legislative history of the 1902 Act, not the legislative history of the 1926 Act. But again, even the 1902 Act deals only with ownership and not control of land. The 1902 Act provides:

"No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to one landowner." (43 USC §431).

It does not deal with the use of land or the size of farming operations.

The 1902 Act said nothing about one family or one family farm except in provisions of the law dealing with the settlement of public lands.

A fair reading of the reclamation laws shows a clear Congressional intent to allow the breakdown of large private ownerships by limiting individual ownerships to not more than 160 acres. No authority can be cited to show that this was to be done through some artificial, arbitrary definition of the family farm. Under the legislative scheme of both the 1902 Act and the 1926 Act the individual owner of not more than 160 acres could combine his farming operation with the operations of members of his family and of other families through joint ownership of land, leasing, joint farming ventures or any other traditional method of farming. It is clear that Congress was relying on the decisions of the individual non-excess owners to decide how they could best utilize their own property. By breaking up large blocks of land ownership, Congress then was content to allow the economics of farming to determine the size of a particular farming operation.

The guidelines of the Department of the Interior as contained in the opinions of the Solicitor of that Department over the years, have sought to insure that all basic property rights are obtained by the buyer of excess land.

The breakup of large landholdings in California Reclamation Projects is following this pattern.

In Westlands for example, before the project began there were several large landowners conducting farming operations. Among these, some, such as Anderson Clayton, Southern Pacific and Giffen, Inc., have chosen to sell the entirety of their landholdings and cease farming. On the other hand, many families engaged in farming operations before the project have members who intend to continue farming after sale of excess lands in compliance with their recordable contracts.

Very significantly none of us know of any large publicly held corporation that intends to continue farming in Westlands, let alone try to do so in the future. Frankly, my advice as a lawyer to such a corporation would be: don't even attempt it! The reasons are obvious. Once the land is sold to individual owners, no operator can permanently count on any land for his own use except his own 160 acres. He can't really count even on his own family members for the entire period of his farming career, let alone rely on owners who are not members of his family. Large scale farm investments simply cannot be based on such a tenuous hold on the farm land.

So we have a distinct pattern which has developed. The large farming operations of the past are being replaced exclusively with farming units consisting of family members who each own 160 acres or less. Often these parcels are leased to a family farming partnership or corporation owned by the operator, his wife and other members of his family. Farmers frequently add to their basic unit by leasing on a year-to-year basis or longer if the individual owners will agree. In some cases two or more active farm operators will join together in a common farming venture.

Heretofore, the Department of Interior has become involved in this process through the approval of eligible buyers by determining from the documents of title, financing and operation that the individual buyer is, in fact, the owner and has all the rights of any other owner of property in California.

So let me share my own experience with you to show how individual ownerships have been insured in California Water Districts, subject to the excess land provisions of the reclamation laws as interpreted to date.

The first and most natural desire of an individual farmer who seeks to dispose of excess land is the desire to provide for his family. The second, also natural desire of the farmer, is to provide for long-time employees and others, who, over the years, have become family friends. Sometimes these friends and neighbors may have children, including minor children, who are also engaged in or are headed toward a career in farming. Nothing in the letter or spirit of the reclamation law can be said to prohibit an excess owner from selling to his own family and the families of close friends and employees.

An attorney facing these facts recognizes several problems. First, special arrangements will need to be made concerning the minor children or grandchildren. This situation clearly calls for the use of a trust. The Department has a policy which carefully limits the types of trusts acceptable and also limits the persons who may serve as trustees. The beneficiary must have a clear and separable interest and the trustee may not be a member of the beneficiary's family or involved in the same farming operation and can do no business with the trust. In looking for a suitable trustee it is not at all uncommon that the client would select a long-time friend or neighbor, or even his attorney. In any case under California law the trustee is held to the highest fiduciary obligation to the beneficiary. The trust must be irrevocable. The trust property can consist of only the land granted which cannot exceed 160 acres. Periodic distribution of net returns from the operations must be made. Excess land in the trust must be so designated, otherwise it all will be treated as excess land. Finally, any property held in common with others must be partitionable.

The prospective new owners may not wish to own a particular parcel but would rather own the land jointly with their brothers, sisters, and sons and daughters to eliminate the question of which are the more valuable parcels. This is the epitome of the family farm concept. The legal mechanism for satisfying this desire is ownership in undivided interests. Department policy rightly required that each owner be able, if he or she wishes, to separate out his interest at any time. The use of undivided interests, then, is an acceptable legal practice which promotes the ideal of the family farm.

In spite of the frequent objections of landowners, business partners, even with long-standing relationships, are not allowed to take excess land in joint ownership unless they can show special circumstances to justify it. Corporations and partnerships are not allowed to own more than 160 acres and then the eligible acres must be deducted from the shareholders' or partners' individual entitlements to their own 160 acres. Limited partnerships are not permitted at all.

The buyer of excess land rarely has his own cash to finance a purchase. He must obtain land financing. If the mortgage covers more than 160 acres, the Department requires that each owner must be afforded the right at any time to pay of his share

of the mortgage. He must be able to separate his parcel from those of the others jointly liable on the mortgage. If he does not pay off his mortgage and separates the property, then he must be provided with full access to the property for all purposes including transportation and water. Under usual lending arrangements this privilege is not afforded to joint mortgagees. In Westlands, however, as far as I know, lenders have thus far agreed to make loans knowing these provisions are required.

The reclamation law contains no reference to leases and provides no authority to limit their use either by excess or non-excess owners. In fact, the Ninth Circuit Court of Appeals has specifically approved leasing within reclamation projects (*U.S. v. Tulare Lake Canal Co.* (9th Cir. 1976) 535 F. 2d 1093, 1115 and fn. 81). Nevertheless, the Department has restricted the terms of leases. I understand that this restriction is based on the principle that the acreage ownership limitation should not be circumvented by a long-term lease that is the equivalent of the actual ownership of the land. For example, an excess owner can receive lease rental payments that may be below the going market for comparable property. In some cases restrictions have been placed on leases even where an excess owner is not leasing the property back after the sale is completed. This is done if the lease is an integral part of the original transaction between the excess owner and the eligible buyer and others who may be involved in the transaction.

The statutory scheme regarding large land ownership is working and at the same time is reducing the size of farming operations. The statistics for Westlands, for example, provided by the District and the Bureau show that in 1968, before the project started, there were 2,491 separate ownerships with only 97 operators. Now there are 4,216 separate ownerships with 227 operators resulting from the sale of 166,500 acres of excess land. There are 302,300 acres of excess land remaining to be sold. If we assume that all of those 302,300 acres will be converted into non-excess status and if we further assume that the same ratio of new farm operators to acres of excess land converted to non-excess lands holds (130 new operators for the 166,500 acres sold into non-excess status), then there would be 463 new farms of an average size of only 1,171 acres each. Obviously this is a statistical analysis only and it could vary either way. But the record to date does dramatically show that the 1902 Act is breaking up the large land ownerships that existed in 1968 as the law intended, and at the same time is reducing the size of farming operations. As we pointed out, the record and logic show that the only operations that can survive are those that depend essentially on a family relationship.

EFFECT OF PROPOSED REGULATIONS

Let me point out some of the effects which are readily apparent. These deserve thorough consideration by this Congress. Impact reports would provide the basis for that consideration.

As I read the proposed regulations, they would:

1. *Impose a residency requirement on buyers of excess lands.*—The Department has stated that it will propose other regulations shortly to impose the requirement on all Reclamation land.

The present proposal would give the Secretary authority to require residency within anywhere from 0 to 50 miles from the property. Residency enforced in this manner would require roads, utilities, schools, police and fire protection, waste disposal, hospitals and other services. The local governments forced to supply these services from their tax base should be given an opportunity to comment on the impact of any such proposal. Apparently the law requires agencies to provide an environmental impact statement at the time of publication of their proposals in order to permit comment by local governments and other interested parties on the proposed impacts during the rule-making proceedings. (See *Aberdeen & R.R. Co. v. SCRAP* (1975) 42 U.S. 289, 320.)

2. *Limit the use of project water by any farmer to not more than 160 acres.*—A farmer could expand the size of his farm only by combining his 160 acres with his spouse's ownership or that of their lineal descendants through the use of family corporations or partnerships. Each farming unit presumably could then lease only one additional 160-acre unit. This would eliminate farming partnerships between brothers or sisters after their parents had died, and between other family members, employees or associates. The leasing restriction would prevent expansion and virtually eliminate the flexibility of land use which farm leases now provide everywhere in the United States. Reclamation lands could become less desirable, less productive, less competitive and ultimately in need of further government subsidy to support their owners. Neither Congress nor the courts have ever sanctioned such limitations on farming operations. The social and economic impacts of such arbitrary limitations on family farming operations deserve serious study.

3. *Threaten the preservation of prime farmland.*—The residency requirement would force people to live either in rural areas or in nearby small towns. In either case, significant amounts of prime farm land will be taken out of production by homes and the necessary service businesses they spawn. For example, the Kings County Planning Commission staff has estimated that in Kings County alone, over 2,000 new farm parcels would be created, causing an increase or shift in population of 5½ percent, altering energy and resource use, crop patterns and water supply. Furthermore, over 21 million dollars worth of new roads would be needed, as well as new schools and other services adding to the property tax burden. On the other hand, many of our larger cities and towns could provide both homes and services for many more people without taking significant amounts of prime land from the production base. Both the environmental and economic aspects of residency requirement should be determined before—not after—it is imposed.

4. *Require excess land now under recordable contract to be sold only through public lottery except that lineal descendants are to be given a preference.*—Again no congressional or court authority supports such a drastic change. It is also contrary to the contract right of the excess landowners. As pointed out by the Judge who ordered the formal rule making which led to these proposals, "the Bureau of Reclamation has no authority over whom the private seller sells his land" unless the power of attorney vests in the Secretary at the expiration of the 10-year contract period.

5. *Apply to all reclamation lands insofar as they limit leasing and ownerships in more than one district, and to all existing land under recordable contract.*—There is no justification for such a sweeping retroactive application. It is patently unfair and contrary to the customary prospective legislative application of any new laws.

6. *Adversely affect the very people Secretary Andrus intended to help by the regulations, the owners and operators of family-size farms.*—Residency on or near the farm would add heavy expenditures for residences that will require disposal facilities to prevent contamination of ground water, water treatment equipment to obtain suitable domestic water, and lengthy connections for electricity and telephone service.

7. *Severely limit the availability of credit to farmers who could not expand their farming operations beyond that which their own resident family members could provide.*—Many of the major farm lenders are seriously concerned that this limitation does not provide adequate security to provide either permanent long-term land financing or crop production loans. For example, even though the farmer has a lease, he cannot control the residency of his landlord, or really of his family either. If his landlord or children move beyond fifty miles, he loses the water for their acreage. The farmer would then be unable to meet his loan payments. Therefore, lenders, being required by law to protect their crop loans, operating loans, equity loans, and long-term financing would have to require that any long-term loan for a farm be signed by all members of the family, and by any person who leased land to that farm operation.

8. *Apply to any state project including the California Water Project if it is determined that the California Water is delivered "through federally financed facilities."*—This language was explained by the Solicitor of the Department of the Interior the day after the rules were issued as not applying where there is no federal subsidy involved. However, reliance on this explanation is no more a protection against application by a court than the Imperial Valley Irrigation District was afforded in similar assurances by prior administrations of nonapplication of the excess land laws.

Further study of the impact of the proposed regulations, I am sure, will reveal even more effects contrary to the interests of small and large farmers alike.

These proposals, if adopted in the present form, will almost certainly result in legal actions to determine whether they can apply to present nonexcess land or to land presently under recordable contract. In addition, if the proposed regulations are adopted, it is questionable that they will achieve the results sought by Secretary Andrus to encourage "genuine small family farms." They could have exactly the opposite effect. Not only would they affect present reclamation lands, but they could prevent new projects because private landowners would not be bound by the new regulations.

California farmers could support changes in Reclamation Law, depending on the form and manner of implementation, provided those changes do not unrealistically limit their legitimate aspirations. California farmers cannot support, however, law that would so restrict the right to receive project water that it would force existing farmers out of business by retroactive application, put reclamation projects at an unfair disadvantage, or compel landowners to refuse to sign recordable contracts in the first place. A proper balance between the aims of the law and its effect on the

individual farmer is essential to maintain and enhance our farming community and its ability to meet the ever-increasing demand for farm products here and abroad.

In order to strike this balance, adequate time must be afforded to Congress, the Administration, and all interested parties for comprehensive study and public discussion of this complex issue involving public policy considerations affecting the entire nation. The schedule on which the Secretary of the Interior is now operating simply does not provide this opportunity.

I strongly urge you to adopt legislation requiring the Secretary of the Interior to prepare an environmental impact statement concerning his proposed regulations, and extending the time frame for adoption of reclamation law regulations until a reasonable time has transpired following issuance of the environmental impact statement in order to permit full public discussion of its conclusions. Such a moratorium should extend for at least one year from the passage of the legislation.

With regard to the moratorium proposals before this Committee I respectfully register two specific objections to Senate Joint Resolution 96.

First, the language of this proposed resolution would specifically prohibit the Secretary of the Interior from approving voluntary sales of excess lands in Westlands Water District during the moratorium. This provision is apparently based upon the District of Columbia District Court's Order in *National Land for People, Inc. v. Bureau of Reclamation*, Civil Action No. 76-0928, August 13, 1976, which prohibits approval of sales in the Westlands Water District until publication (rather than effectiveness) of final regulations by the Secretary of the Interior. An appeal from that Order has been pending before the District of Columbia Circuit Court of Appeals since December 1976. This appeal could be decided before the end of the moratorium period proposed in S.J. Res. 96. In any case, the Westlands injunction expires by its own terms upon issuance of the final regulations. The prohibition provision is therefore unnecessary and on disposition of the appeal will either continue to be unnecessary or become unfairly discriminatory against Westlands Water District landowners depending upon the Court's holding. Therefore, no specific reference should be made to the Westlands Water District in S.J. Res. 96 as adopted.

Second, S.J. Res. 96 would permit approval of voluntary sales of excess lands if such sales are in compliance with the proposed regulation. We object to the inclusion of this language for the same reason previously provided in this statement for opposition to the proposed regulations themselves.

CONCLUSION

In conclusion, the most important aspect of this whole matter for the Committee to note is the continued expression by Secretary Andrus, to justify the substance of the proposed regulations and the speed with which he intends to have them promulgated, that he is merely following the compulsion of a court order and merely enforcing the reclamation laws. These statements are completely unfounded, dangerously misleading and only confuse the public dialogue on this vitally important subject.

The Court Order referred to by Secretary Andrus in the National Land for People case, merely required him to initiate formal rulemaking in conformity with the Administrative Procedure Act and said nothing regarding the substantive contents of the reclamation rules. The District Court based its Order on the conclusion that the Bureau of Reclamation had issued rules and regulations in past years informally in violation of the Administrative Procedure Act. Secretary Andrus has now complied with that portion of the Order in publishing proposed regulations and is no longer under any time pressure imposed by the Court to publish final regulations. The Court Order does not require that final adoption of the regulations be rushed, ignoring the necessity for full public discussion of these proposals and justifying a refusal to prepare and issue an environmental impact statement as required by the clear dictates of the National Environmental Policy Act.

Furthermore, as I have pointed out in this statement, Secretary Andrus is not merely enforcing the reclamation laws, he is going behind those laws and is seeking to amend them without Congressional approval. There is nothing in the federal reclamation laws now in effect either as enacted by Congress or interpreted by the courts, which would justify the proposed regulations regarding the family farm concept, restrictions on leasing excess or non-excess lands, sale of excess lands through the use of a lottery, limitations of sales and gifts of excess lands to lineal descendants, or the application of acreage limitations across project lines, to name the obvious. In addition, the Court has specifically refused to rule that residency is a requirement of reclamation laws. Such amendments raise broad national public

policy issues and should be the subject of Congressional rather than administrative consideration.

We support either a statutory moratorium or an administrative decision by Secretary Andrus to provide time for the preparation of economic and environmental impact statements in order as Senator Cranston has said, to provide "an atmosphere of calm, rational deliberation."

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Civil Action No. 76-0928)

National Land for People, Inc., plaintiff, v. the Bureau of Reclamation of the Department of the Interior, et al., defendants.

ORDER

Upon consideration of Plaintiff's Motion for Preliminary Injunction, which came on for hearing on July 9, 1976, the Court having fully considered the memoranda, exhibits, affidavits, arguments of counsel and post-hearing memoranda of all parties,

It is hereby ordered, that Defendants forthwith initiate public rule-making proceedings in compliance with the Administrative Procedure Act, 5 U.S.C. 553, respecting the criteria and procedures to be used by the Bureau of Reclamation, Department of the Interior, to approve "excess lands" sales under the federal reclamation laws, 43 U.S.C. 431, 43 U.S.C. 423e, and it is

Further ordered, that Defendants be, and they hereby are enjoined from tentatively or finally approving under the federal reclamation laws any contracts or other proposals for sales of any "excess lands" in the Westlands Water District, San Joaquin Valley, California that are submitted to the Bureau of Reclamation on or after August 10, 1976, until the final completion of said public rulemaking ordered to be initiated in subparagraph (A), *supra* in compliance with the Administrative Procedure Act, or until further order of the Court, and it is

Further ordered, that the defendants shall within 30 days from the date of this order, and every 30 days thereafter until further ordered, submit to the Court a report on all steps taken pursuant to the first paragraph of this order.

No security is required of the plaintiff; the Court does not perceive that the defendants will incur any damages by reason of this order.

August 13, 1976.

BARRINGTON D. PARKER,
U.S. District Judge.

Mr. McFARLANE. I would like to make one final remark, and this having to do with some of the comments during the morning, and I was rather astonished to hear the discussion of 100,000-acre farms in Westlands, and some of the exaggerations that are made about what is going on in Westlands Water District.

I think that we should realize and I have a few figures I would like to share with you in a moment, but understand that Westlands is, I am told, the largest irrigational water district in the Nation, and that the system under which reclamation law and the breakup of large acreage is the sale of excess lands has taken place has not had very long to work, and if I can share with you a few figures, I think this will indicate to you that if the system is allowed to work that we will come out in a situation where you will, indeed, have economic family-sized farms that will meet the objectives or meet, at any rate, what the pattern that has been developed in other areas such as the folks in Imperial Valley indicated this morning.

I want to mention first that although this distribution system in Westlands was only about three-fourths completed by mid-1976, more than 350,000 acres of the 430,000 acres of excess land in the district had already been placed under recordable contract.

By mid-1976, 67 of the excess land—of those excess landowners had sold 118,500 acres to 1,000 eligible buyers in parcels of 160 acres or less.

Now, the result of these transactions changed the number of landowners in Westlands which was recorded in 1968 as 2,491. In 1976, it becomes 4,105. The average acreage dropped from 240 to 145. The average size of operating unit was cut from 4,644 acres to about 2,400. If we move this forward and do a little projection, there remains about 233,000 acres of excess land that will ultimately be sold under the excess land provision that is already under recordable contract.

If the average parcel size in future sales is the same as in the past, which was 118 acres, the number of landowners will increase by another 50 percent and the average acreage owned by each person will drop from 145 to slightly more than 100.

The number of landowners will increase, estimated from 5,500 to 6,000. So the point that I make here is that given time the system will work, and the—the few that have been in Westlands in the past, the big ones, are already gone.

The largest single operation today is in the neighborhood of 20,000 acres, and these outside corporations or the true stockholder corporations, are becoming and will become a thing of the past.

Our attorney, Mr. Manock, points out in his presentation that he does not advise any of his private clients who are interested in farming in the Westlands area or developing operations. He thinks that the only operations that have any future are situations in which the ownership is tightly held within a family group.

So I wish to conclude my remarks with this, Mr. Chairman, but I did want to point out some of the things that are actually happening and are developing within the Westlands district.

Senator METCALF. You are telling us that insofar as you are concerned, in Westlands that you do not need any legislation other than this moratorium legislation?

Mr. McFARLANE. Well, we think, Mr. Chairman, as far as we are concerned, we are happy to live with the law as it was when Westlands made its contract with the Bureau of Reclamation.

Senator METCALF. Without regulations, or without enforcement?

Mr. McFARLANE. That is right, assuming that the interpretations were the same as they were at that time.

We do, however, think that there are some flaws in the law that some areas which Congress should address itself to. We are not pleased that there is the opportunity for the speculative gain that some previous witnesses testified to. These have been very few in Westlands, but nevertheless, the opportunity has been there.

In my personal knowledge, I think maybe two or three that I personally think would fall into that category—most people who bought land have bought it because they wanted to farm and they have held it, but there is no question that the opportunity has existed to turn around the day after escrow closed and double your money. This is not right.

So there are those areas that we think should be given some attention, and we think, too, that the subsidy issue needs to be addressed, and I commented in here on the Angel formula that this is a matter that has received a great deal of attention in recent weeks. I say some attention in recent weeks by some of the major newspapers, and we think it is an area we have to talk about.

Senator METCALF. Well, thank you very much, Mr. McFarlane. Thank you for coming and for your help, and as I said this morning, it may be that in the course of hearings on the substantive changes of the law, we will for help from all of the people who are here testifying on this moratorium.

Mr. McFARLANE. Thank you, Senator. I appreciate that.

[The prepared statement of Mr. McFarlane and a statement of the California Westside Farmers follow:]

STATEMENT OF WILLIAM F. McFARLANE, PRESIDENT, CALIFORNIA WESTSIDE FARMERS, FRESNO, CALIF.

I am William F. McFarlane, a third generation Fresno County farmer. I live and farm east of Fresno on a ranch my family started in 1916. Since our ranch is under severe pressure from urban encroachment and rural residential development and since my five children wish to remain a farm family, we took advantage of the opportunity in the spring of 1974 to purchase, as individuals, property in the Huron area of Westlands Water District.

My appearance here today is as President of the California Westside Farmers, a voluntary organization formed a little more than a year ago by farmers within Westlands. Our members farm a total of some 380,000 acres, more than two-thirds of the irrigable land in the district. Some are large landowners whose farms and ranches date back several decades, but many are new farmers who recently have purchased 160-acre parcels and are farming them in different sized operations under a variety of business arrangements; individual proprietorships, partnerships and small corporations. The corporate form of business operation, of course, is increasingly common as every type of business seeks to limit liability and obtain estate and tax benefits.

Let me say at the outset that we, as farmers and landowners in Westlands, have every intention of fulfilling the commitments we have made to the United States to abide by the requirements of reclamation law as they existed at the time we made our commitments. The vast majority of the excess landowners have made binding legal commitments to dispose of their excess holdings by signing recordable contracts. The others are not receiving Federal water. The nonexcess owners are fully aware that under the historical provisions of reclamation law, they can receive project water for no more than 160 acres in a single ownership within an irrigation district. These conditions were spelled out and agreed upon by everyone involved—Federal officials, the Congress, the courts, the Westlands district, landowners and farmers—even before the project was authorized.

On the other hand, the landowners and farmers do not believe they have any moral or legal obligation to meet a new set of requirements, imposed after the fact, particularly if any of those rules or regulations would interfere with their basic property rights or tax their ability to compete in the free market economy.

Our primary concern is that reclamation law be administered in the future, as it has been in the past, in harmony with the economic realities of farming.

Reclamation law does not—and cannot—insulate us from the demands of the marketplace, the vagaries of weather, or from Federal, State, and local laws and regulations in such areas as taxation, land use, health and safety, labor and pesticide use.

It is with these thoughts in mind that we appear here today to endorse Senate Joint Resolution 93 introduced by Senator Domenici and others, including Senator Hayakawa of California.

We, of course, have deep, deep concerns about the scope of the proposed Department of the Interior regulations. We have expressed these in considerable correspondence with the Secretary of the Interior and in our testimony prepared for the Department of the Interior hearing panel here in Washington tomorrow and in Fresno next Tuesday. If appropriate, I would be happy to submit for the record the testimony to be presented at these hearings by California Westside Farmer witnesses.

Basically, we urge that more adequate consideration be given to alternative solutions to the problems of subsidy, speculation, and the other issues which caused the Department of the Interior to issue the regulations.

The merits of Senate Joint Resolution 93 is that it gives all of us, the farmer, the consumer and the legislative, executive and judicial branches of government a chance to look more carefully at just what these regulations mean and what, if any, alternatives should be considered.

There are several basic legislative alternatives which must be explored. These range from an outright repeal of the 1902 act to legislating the rules proposed here. Included are alternatives all across the spectrum—eliminating residency requirements as most people believe the 1926 act intended to do; restricting or prohibiting leasing; establishing a two-price, antispeculation system such as advocated a short time ago by the New York Times; enacting the water priced suggestions of the late Senator Clair Engle; authorizing farmer or districtwide payout of obligations; or reaffirming the status quo as understood during the first 74 years of the existence of the Reclamation Act.

The California Westside Farmers do not endorse any of these proposals. I assume we would support some and vigorously oppose others. However, we do maintain that these alternatives, these options, must be explored fully before the Federal Government forges ahead with a proposal which we feel will be extremely disruptive and upon which the nation depends for so much of its food.

In the final analysis, most of these proposals and alternative solutions should undergo careful legislative review before enactment or implementation. It is the Congress that should make the final decisions.

We, as an active farm organization, composed largely of true family farmers—families who have been farming for years—offer our complete cooperation and assistance in evaluating these alternatives so that we may find the best possible reclamation policy for all, from producer to consumer. As a starting point, on a quest for a responsible reclamation policy, we offer the following objectives:

1. Enhancement of the fiscal integrity of Federal water resource development projects which provide irrigation benefits
2. Elimination of the problems of possible unjust enrichment upon resale of lands purchased through sale under recordable contracts
3. Substantial reduction and in some cases elimination of subsidies on Federal water
4. Simplification of the administration of Federal water projects, thereby minimizing administrative costs
5. Protection of users of Federal project water from unilateral changes in contracts, rules, interpretations and operations relating to delivery of Federal water to the farmer
6. Elimination of the speculative non-farmer from purchases of land sold under recordable contracts
7. Encouragement of farming by bona fide farmers

In short, we wish to provide the opportunity for establishing small family farms where they can be economically competitive while minimizing the forced translocation of farm families who have developed and are presently farming the lands in question.

After all, most of us are family farmers. We all have worked for what we have. We do not ask for something for nothing. We are willing to carry our share of the burden, but we also don't want the Federal Government to pull the rug out from under that which we and our fathers before us have spent a lifetime building.

Let us now work together to achieve a responsible, reasonable reclamation policy which will continue to serve the nation by providing food for our families and economic return and jobs for our people.

Thus Mr. Chairman, we endorse wholeheartedly the concepts expressed in Senate Joint Resolution 93 because they give us the time with which to work with all concerned, and especially the Congress, to achieve these goals.

We commend this committee for its wisdom and prompt action to move this resolution at an expeditious pace.

Thank you.

OPINIONS OF

CALIFORNIA WESTSIDE FARMERS

ON PROPOSED LAND REGULATIONS BY U.S. DEPARTMENT OF INTERIOR

STATEMENT OF JOHN F. WEIDERT

EXECUTIVE DIRECTOR, CALIFORNIA WESTSIDE FARMERS

TO U.S. DEPARTMENT OF INTERIOR HEARING ON PROPOSED RECLAMATION RULES

FRESNO, CALIFORNIA, NOVEMBER 15, 1977

My name is John F. Weidert, Executive Director of California Westside Farmers, representing the farmers of nearly 400,000 acres on the west side of the San Joaquin Valley, principally in the Westlands Water District. In all but two cases, they are family farmers. These are the people, like their counterparts throughout the west, who will be directly impacted by the proposals before us today. They are the same people who have not yet been consulted by their government. . . specifically their Secretary of Interior and his staff. . . about changes in the administration of reclamation law that would reverse 75 years of history. They are the people who now feel that their trust in government is being betrayed.

In our judgment, the proposed rules and regulations, as now written, would disrupt efficient family farming operations that exist in reclamation areas today. These are farmers who have abided by what they've been told by 11 previous Secretaries of Interior and 14 Solicitors, and they are there in good faith.

As with any large government program, it is likely that there is no way to write the rules so tightly that there will be no occasional abuse or evasion. I'm sure this has happened in the past and likely will happen in the future. But upon close objective inspection, I would suggest that, in this area at least, those abuses are nearly non-existent. It is not wise public policy, in our opinion, to destroy a viable family farming industry that today flourishes in reclamation areas under the dubious guise of spreading the benefits more broadly.

We have made every effort to offer input to those who wrote these rules--- both in Sacramento and Washington. And we still stand ready to be cooperative with the Administration on any responsible alternatives.

We have been told on various occasions by top officials that we should be positive in our approach to the proposed rules---that we should offer suggestions and alternatives. But to do that, we must first know your specific goals, and those have never been shared with us.

Probably the greatest weakness of the whole rule-writing procedure is the lack of alternatives that you would have considered if the environmental and economic impact statements had been prepared or if the whole matter had been placed in the legislative arena where it should be.

The lack of viable alternative considerations can, we believe, be traced to the determination of a small group of top Department of the Interior advisors---largely individuals with neither agriculture nor business backgrounds, but drawn instead mostly from environmental and social reform groups---to use the reclamation law to achieve agrarian reform without benefit of Congressional action which they could not, I am sure, obtain.

The aura of secrecy in which they operated, accepting no known input from western states which would be most affected, made it impossible to cooperate.

We fully understand the horsetrading process of starting with extreme positions in order to "negotiate" to the position truly desired. The rules and regulations are positions so extreme, however, as to be beyond the point of credibility.

Changing the law---and certainly the proposed regulations would change the law---is the responsibility of the Congress. The recently published draft report of the Special Task Force on the San Luis Unit, a task force mandated by Congress, demonstrates clearly that most of the changes proposed under these rules and advocated by the Task Force must be accomplished only through the legislative process.

We can and would cooperate---or negotiate if you will---during Congressional consideration, but it is imperative that everyone start these discussions from

responsible positions.

And, in developing a responsible position for the Federal Government, it is the first responsibility of the Secretary of the Interior to make it clear whether the reclamation program is to be used for agrarian reform or whether the reclamation program will be used to continue efficient family farming from which all people benefit.

What is it that you want to accomplish with these new rules? We can only guess based upon the public comments of those known to have had a hand in their authorship that the vague goals are to put more people on the land, provide a better way of life through proliferation of new rural communities, and spread the federal benefits more widely.

If your goal is a better way of rural life in small communities, isn't that contrary to the advice of professional land use planners and other agencies of government striving to preserve our prime farm lands? Further, a January 26, 1977 article in the Fresno Bee points out that two dozen small communities in Tulare County to the south of us are losing residents to the nearby larger towns. These people are choosing to live where better facilities can be provided and commute back to their farms and other businesses.

If your goal is to more widely distribute the benefits, is it not a fact that past administration of the law has promoted an efficient agriculture, producing plenty for everyone at reasonable prices? Also, by allowing leasing, two families rather than one are benefitting from the same parcel of land. A Denver Research Institute study presented at the fiscal 1978 USER Appropriation Hearings shows that the total^y cost of all reclamation projects from 1902 to 1975 amounted to \$9.4 billion and that in the single year of 1975 the increased business activity generated by those projects totaled \$11.4 billion. And the increased personal income and business profits pumped \$1.8 billion into the

federal tax coffers and another \$900 million into state and local governments in that single year. And this increased business activity created more than 700,000 additional manyears of employment during 1975. These figures suggest a rather wide distribution of the benefits under previous administration of the law.

If the time has come that this administration wants to change all this, then we think it should be done in concert with the people who will be affected.

We agree with President Carter's comments that the 1902 Reclamation Act is ancient and should be changed to reflect the realities of the age in which we live. We applaud that sentiment, but we also know that actions speak louder than words. We trust, therefore, that proposed revisions of the law, which you, as a leader in the Department of Interior will have much to do with, will be more responsible and reasonable than the proposed rules before us today.

We hope that you will carry back to the Secretary the message you receive here today and tomorrow. We think that he has been the victim of some bad advice from a small contingent of his staff, and we hope that you can help cut through that barrier.

We urge you to convey to him the message that farmers in western reclamation areas have done everything they have been told through the years. They are where they are today in good faith, having relied upon the advice of officials in the Department of Interior the same as we rely upon the advice of the IRS when paying our taxes.

We would further like the Secretary to know that if you want to change reclamation law for the future, we don't particularly object. But such changes should be proposed to the Congress where they can be discussed in open forum. In the meantime, we recommend that you continue to operate under the same guidelines you have been using for 75 years until either acceptable new rules or new

legislation are in place. But in any event, it is neither fair---nor legal in our judgment---to attempt to unilaterally apply any new terms to lands under existing recordable contracts until after the present owner has exercised his rights as spelled out by what his contract does or does not say. So if you concern yourself with prospective changes only---in other words, allowing present owners of both excess and non-excess lands to exercise their rights as they now exist---it seems to us that you can design nearly any kind of program you want and one of two things will happen: it will either be so lacking in incentives that nobody will participate and will mark the end of reclamation programs as we have known them, or it will provide the incentives necessary to attract participants.

But even if you were to apply today's set of rules only to future purchasers, most of us would still resist what we see before us. The reason is that such things as the lottery, residency, leasing restrictions and limits on who you can sell to infringe upon what we consider to be our basic rights in this country. We would resist such precedent wherever we see it.

Thank you.

STATEMENT OF
WILLIAM F. McFARLANE, PRESIDENT
CALIFORNIA WESTSIDE FARMERS
U. S. DEPARTMENT OF THE INTERIOR EXCESS LAND HEARINGS
FRESNO, CA, NOVEMBER 15, 1977

I am William F. McFarlane, a third generation Fresno area farmer. I live and farm on a ranch started by my family in 1916 and I am pleased that my five children wish to remain a farm family.

Since 1974, I also have farmed in the Westlands Water District, near Huron, and am here today as President of California Westside Farmers, a voluntary organization formed a little more than a year ago by farmers within the Westlands District. Our members farm a total of 380,000 acres, more than two thirds of the irrigable land in the district.

First, I would like to stress one point which is fundamental to the discussions here today and to the proposed rules before us.

Farmers served by the Bureau of Reclamation's Central Valley Project are abiding with the acreage limitations contained in the 1902 Reclamation Act. We agree with President Carter that the law is ancient and obsolete and should be changed. Nevertheless, we are conforming to the law as it has been interpreted for 75 years by Democratic and Republican Administrations.

To place the magnitude of the issue in some perspective, in the Central Valley Project there are 3.1 million acres of irrigable land. Of these, 1.6 million were classified "excess" because they are held in ownerships larger than 160 acres.

Of the 1.6 million acres, 220,000 have been sold by property owners in order to bring their holdings in conformity with the 160-acre limits. Another 252,000 acres have been placed under recordable contracts for sale under existing rules and time restrictions imposed by the Department of the Interior.

Owners of the remaining 1.1 million acres classified as "excess" are under no moral or legal compulsion to dispose of these lands at the present time because they are not receiving reclamation water.

The law provides that no excess lands shall receive water in the absence of recordable contracts. If the owners of large tracts do not receive water, the law does not apply to them.

Owners of land classified as excess but which neither have been sold nor placed under recordable contracts find themselves in this situation for one of two reasons:

1. The Bureau of Reclamation is not yet in a position to offer water service to these lands, or
2. The Bureau has offered water and the property owner has declined to accept water under the restrictions imposed by the Department of the Interior.

It is my opinion that if the new regulations become effective, the rejection of Federal water will become more and more prevalent, resulting in the disruption of the local irrigation and water districts contracting to purchase water from the Bureau.

Although we believe the reclamation law is badly outdated in many respects, we are conforming to it as the law was interpreted to us by the Federal Government at the time that we authorized our water and irrigation districts to enter into water delivery contracts with the U. S. Government.

My second point relates to these contracts between the Federal Government and our water service districts.

Individual property owners do not contract directly with the Federal Government. They did so under the 1902 Act, but in 1926 the law was changed to provide

for water delivery contracts between the Bureau of Reclamation and local water or irrigation districts which in turn sold the water to the individual farmers.

These water districts have valid existing contracts which are in full force and effect. There is no way that one party to these contracts can change unilaterally the provisions and/or the meaning of the language of these contracts. They are clear and simple in their provisions.

If the Federal Government is to meet its moral and legal commitments to these contracts, no retroactivity can be applied through the publication of new rules and regulations.

You cannot change the rules in the middle of the game!

Thus the proposed regulations now before us would apply only to those lands to be served by reclamation water in the future, those "excess" lands not yet under recordable contract.

In this context, I would like to comment on the proposed regulations and then to offer some suggestions which probably would require legislative action to implement.

The remarks introducing the proposed regulations declare that their objective is the "establishment of genuine small family farms." We do not quarrel with the fact that the purpose of the original Reclamation Act was to create family-size ownerships, but the law says nothing about "small family farms."

Even if the original law had specified small family farms, the definition of a small farm certainly has changed in 75 years. Then a farmer, working his small plot of ground, grew crops to feed himself and two or three other families. Today, the farmer must produce food and fiber for 50 or more other families. The average farm today is about 650 acres. Instead of a pair of mules, a plow

and a wagon, today the average California farm, according to the U.S. Census of Agriculture, has \$215,000 worth of equipment.

President Carter, in commenting on Department of the Interior actions relating to the 1902 Act, said that his administration must enforce the law. Fine. But don't go beyond the law in trying to achieve agrarian reform.

The 1902 Reclamation Act and its subsequent replacement in 1926 applied to ownerships and not to operations. No law requires the owner of a family-sized farm to operate that farm in any particular way.

Any restrictions on leasing clearly go far beyond the law or its intent, as has been interpreted consistently by the courts. Not only are leasing restrictions without foundation of law, but they also are poor public policy.

Leasing is a standard farm practice. U.S. Department of Agriculture records reveal that 40 per cent of the nation's crops are grown on rented or leased lands.

Leasing gives a family farmer the flexibility he needs to make his operations efficient. Various studies have shown that farm operations are most efficient on acreages ranging from 640 to 2,000 acres, depending upon the crop. If you impose limits on both ownership and leasing, you deny the family farmer the right to efficient operations, which in many instances is the right of survival.

Additionally, it is in the national interest to encourage young people into agriculture. This, I gather, is one of the goals of the proposed regulations. Restrictions on leasing are counter-productive.

A review of several studies involving the Westlands and other California farm areas reveals that it costs at least \$400,000 to become established on a 320-acre farm with annual operating costs running around \$100,000. These are conservative figures developed by the Library of Congress and other farm and business institutions.

Few young people have this kind of money. If a young person can start building a future by leasing lands from others who wish to scale down their

personal activities or to retire, then he should have this opportunity. On the other hand, if he can acquire the land, but does not have the capital with which to operate at first, he should have the right to lease to another while working at other employment, saving for the day when he personally can operate his own farm.

One more comment about leasing. There have been allegations that large land owners were circumventing the 160-acre limitation on a wholesale basis by selling their land to friends and relatives and then leasing it back so they could continue to operate as before.

The facts are that of a total of 125,000 acres of excess lands sold in the Westlands, less than 5,000 acres were leased back to original owners. With more than 1,000 purchasers of excess lands, only 36 buyers leased them back to original owners, and two-thirds of these were in the same family as the original owners.

Another factor which one must consider in deciding whether leasing is proper is beneficial ownership. If the farmer leasing land had complete control over the leased lands, it would be one thing. But he does not.

Since 1972, the Bureau of Reclamation has required that, as a condition of approval of excess lands sales, any leases involving these lands be written for no more than five years, with a single renewal option. The property owner thus has the ultimate control, NOT the farm operator.

With existing regulations and restrictions, corporate operators are getting out of farming, largely because a five-year lease is too short for the investment security they desire; thus, the reduction of corporation farming and the stimulation of family farming is being achieved through current practices.

Furthermore, the very court which ordered preparation of rules and regulations, declared that the Department of the Interior has "no authority over

whom the private seller sells his land."

The court could just as well have said that the Department of the Interior has "no authority over whom the private owner leases his land."

The court's comment brings us to the matter of sales and the manner in which these regulations would require sales to be made. Directly contrary to the declaration of the court, these rules would exercise a negative control over whom the private seller sells his land.

A farmer who must dispose of excess lands could not sell to his brother, his cousin, his foreman, or his neighbor who might well need the land to round out his operation within the 160-acre limitations except for sales to his "lineal decendants;" the farmer has absolutely no control over whom he sells his land to. This would be handled by a lottery, to which we are unalterably opposed and for which there is absolutely no foundation in the law.

The lottery is an obvious effort by the Department of the Interior to convert the reclamation program to the goals of agrarian reform, away from a program designed to develop a productive, irrigated agriculture in the best interests of the consumers and taxpayers of our nation.

It is appropriate, therefore, to demand that the Department of the Interior, before it proceeds further with these regulations, or any other action, declare whether we are going to use reclamation water for agrarian reform or to feed the nation.

Most of the proposed rules would indicate that the Department is "tilting" toward social use of the reclamation program. If this is so, the nation's consumers, who rely upon California agriculture for 25 per cent of all the food on their tables, should be fully aware of this fact and the economic impact which this conversion would have upon the balance of the payments of the United States.

When I contend that the regulations, as proposed, "tilt" toward agrarian reform, I refer not only to the leasing and lottery provisions, but also to sections relative to residency, survivorship, family composition, and multiple ownerships.

Not only would the proposed regulations establish residency requirements on lands transferred from excess to non-excess status, but they also promise to require residency on all lands served by Federal reclamation water. We strongly oppose residency restrictions.

A century ago, it made sense to require homesteaders to live on their lands to prove up title to Federal lands which they were acquiring from the government without cost. The residency requirements imposed in the 1902 act were an extension of this philosophy. But times change and a quarter century later, in 1926, the basic law under which we operate today through irrigation districts was enacted without mention of residency requirements. This was because residency restrictions in the 1902 act had been a failure.

Today, another half century later, times have changed even more. We no longer are homesteading federal lands, far removed from the circumstances of 1902. We are convinced that residency requirements would fail again if imposed in 1978, and this failure would carry with it serious consequences to our land and its people.

Consider the environmental and economic impacts of residency if property owners are required to live on or near their lands.

This will mean more all-weather roads, more schools, more utility services, more water and sewer systems, more police and fire protection. All of these cost money and probably would be financed by assessments paid by the property owner. Improved roads, for instance, cost \$100,000 per mile. Schools and other utilities and services are expensive, and are in some instances environmentally degrading. All this will add to the costs of operation and the price

of the land.

A brief look at two or three other proposed rules will emphasize why I ask whether the Department wants agrarian reform---or food for our people.

The regulations say what constitutes a family. A man and his wife and their three married children can farm together. But if the father and mother retire or die, the brothers and/or sisters cannot carry on the operation as a family farm because the government would decree that they no longer are a family. Why should "Big Brother" say who is family and who is not?

The regulations prohibit partnerships from owning more than 160 acres no matter how many partners there may be. Why should not partners share in a farming operation as they can in any other commercial venture? Where has Congress ever legislated against partnerships?

The regulations provide that if a man and wife farm 320 acres and one of them dies, the survivor can continue to farm the 320 acres unless the widow or widower remarries. In that case, 160 acres must be sold. What is the government trying to tell us about the joys of matrimony? I ask not only with this rule in mind, but also in light of recent reports that elderly couples, seeking a "meaningful relationship" in the words of the young, have been advised by Social Security people not to get married because they would be penalized by reduction of pension benefits.

So much for proposed regulations and whatever the Department of the Interior may be trying to achieve through them.

I would like to conclude on a more positive note. The California Westside Farmers do not believe that in the preparation of these proposed regulations all the many alternative approaches to the problems were analyzed adequately. For this reason we have consistently maintained, and so state here once again,

that comprehensive environmental and economic impact statements must be prepared.

There are several basic legislative alternatives which must be explored. These range from an outright repeal of the 1902 act to legislating the rules proposed here. Included are alternatives all across the spectrum---eliminating residency requirements, as most people believe the 1926 act intended to do; prohibiting leasing; establishing a two-price, anti-speculation system, such as advocated a short time ago by the New York Times; enacting water delivery price proposals made by the late Senator Clair Engle; authorizing farmer or district-wide payout of obligations; or reaffirming the status quo as developed during the first 74 years of the existence of the Reclamation Act.

The California Westside Farmers do not endorse any of these proposals. I assume we would support some and vigorously oppose others. However, we do maintain the alternatives must be explored fully before the Federal Government forges ahead with a proposal which we feel will be extremely disruptive to the agricultural community which we represent and upon which the nation depends for so much of its food.

We, as an active farm organization, composed largely of legitimate family farmers---families who have been farming for years---offer our complete cooperation and assistance in evaluating these alternatives so that we may find the best possible reclamation policy for all, from producer to consumer.

As a starting point, in a quest for a responsible reclamation policy, we would offer the following objectives:

1. Enhancement of the fiscal integrity of Federal water resource development projects which provide irrigation benefits
2. Elimination of the problems of possible unjust enrichment upon resale of lands purchased through sale under recordable contracts

3. Substantial reduction and in some cases elimination of subsidies on Federal water in exchange for elimination of restrictions
4. Simplification of the administration of Federal water projects, thereby minimizing administrative costs
5. Protection of users of Federal project water from unilateral changes in contracts, rules, interpretations and operations relating to delivery of Federal water to the farmer
6. Elimination of the speculative non-farmer from purchases of land sold under recordable contracts
7. Encouragement of farming by bona fide farmers

In short, we wish to provide the opportunity to establish small family farms where they can be economically competitive while minimizing the forced translocation of farm families who have developed and are presently farming the lands in question.

After all, most of us are family farmers. We all have worked for what we have. We do not ask for something for nothing, as some allegations relating to subsidies would indicate.

A word about subsidies.

A just-published draft report of the San Luis Task Force estimates that from the year 1948 through 2031, the subsidy for Central Valley Project farmers will total \$1.5 billion.

A considerable sum, but a University of Denver economic research report revealed that in the year 1975 increased Federal tax revenues, attributed directly to reclamation programs, amounted to \$1.8 billion. It is estimated that a fourth to a half of these benefits could be traced to the Central Valley Project. Thus much of the so-called subsidy which would accrue over 83 years was recovered through Federal tax revenues in a single year.

We, the family farmers of California, are willing to carry our share of the burden. We cannot, however, sit idly by while the Federal Government, through administrative action, attempts to destroy agriculture.

We would support the Department of the Interior in seeking a responsible solution to your problems and also in any efforts to correct the antiquities and inequities of the 1902 act, but we firmly agree with the finding of the Department of the Interior's San Luis Task Force, which in a draft report published just a few days ago indicates clearly that the solutions are legislative, not administrative.

Let us work together to achieve a responsible, reasonable reclamation policy, one based on legislation, not executive edict, one through which we may continue to serve the nation by providing an abundance of food and fiber to feed and cloth the American people.

STATEMENT OF KENDALL L. MANOCK
ATTORNEY FOR CALIFORNIA WESTSIDE FARMERS

BUREAU OF RECLAMATION

FRESNO, CALIFORNIA

November 15, 1977

My name is Kendall L. Manock, an attorney with the firm of Baker, Manock & Jensen, Fresno, California. We are counsel for California Westside Farmers, an organization made up of farmers in the Westlands Water District.

Based upon my personal experience in representing various buyers and sellers in the Westlands Water District and California Westside Farmers in litigation involving the excess land laws, I wish to comment on the legal background of the regulations published in the Federal Register on August 25, 1977.

The proposed regulations would have far-reaching effects and would very severely disrupt thousands of landowners, farmers, their employees and business relationships by forcing the redistribution of land from one group of farmers to another with very questionable social and economic benefits. In many respects they completely ignore

the reclamation law as written and reverse what have been considered to be settled interpretations of the law. These proposals raise serious questions concerning the need for such revolutionary changes and the manner in which they are to be implemented.

LEGAL BASIS OF THE PROPOSED REGULATIONS

Secretary Andrus, in attempting to justify the substance of these proposed regulations and the speed with which he intends to have them promulgated, continually states that he is merely following the compulsion of a court order and merely enforcing the reclamation laws. These statements are completely unfounded, dangerously misleading and at best oversimplified. They only confuse the public dialogue on this vitally important subject. Three recent court decisions must be understood to clear up the confusion. The Tulare Lake decision imposed acreage limitations on the Kings River Pine Flat water users for the first time and the Yellen decision did the same thing for the Imperial Valley area. These two decisions had nothing to do with the proposed regulations. As these decisions become final the Secretary has no choice but to enforce the law in those areas as has been done for 70 years in other reclamation projects including Westlands Water District.

RUSH TO PROMULGATION

The only court decision regarding regulations is in National Land for People v. Kleppe, in which we represent California Westside Farmers. That decision merely required the Secretary to initiate formal rule making in conformity with the Administrative Procedure Act, and said nothing regarding the substantive content of reclamation rules. The district court based its order on the conclusion that the Department of Interior in past years had issued rules and regulations informally, in violation of the APA. Secretary Andrus (as the successor of Secretary Kleppe) has now complied with that portion of the order by publishing proposed regulations and is not under any time pressure imposed by the court to publish final regulations. The court order does not require that final adoption of the regulations be rushed, ignoring the necessity for full public discussion of these proposals and for preparation and issuance of an environmental impact statement as required by the clear dictates of the National Environmental Policy Act.

ADMINISTRATIVE REWRITING OF RECLAMATION LAWS

Secretary Andrus is not merely enforcing the reclamation laws in the proposed regulations; he is going beyond those

laws and is seeking to rewrite them without congressional approval. There is nothing in the federal reclamation laws now in effect, either as enacted by Congress or as interpreted by the courts which would justify the proposed regulations regarding restrictions on leasing excess or non-excess lands, sale of excess lands through the use of a lottery, limitations of sales and gifts of excess lands to lineal descendants, or application of acreage limitations across project lines, to name the obvious. In addition, there is no present judicial determination that residency is a requirement of reclamation law. Such "proposals" raise broad national public policy issues and should be the subject of congressional, rather than administrative, consideration. The residency requirement and "family farm" aspects of the proposed regulations are indicative of this problem.

RESIDENCY. The excess land law provisions which apply to most reclamation projects in California are contained in the Omnibus Adjustment Act of May 25, 1926. The 1926 Act did not mention the family farm or the residency requirement. The Department of Interior has not required residency by a landowner within any reclamation project since 1926.

Whether residency is now required under the reclamation laws in view of the 1926 Act is an open question. While a District Judge ruled in 1971 that the residency requirement applied to the Imperial Irrigation District, the Ninth Circuit Court of Appeals in San Francisco has recently ruled that the plaintiff in that case did not have standing to raise the question. As a result, the District Court's ruling was wiped out. No other court has ruled on the subject. Accordingly, it is mere speculation as to whether the residency requirement of the 1902 Act will be applied by the courts to projects created after the 1926 Act.

THE FAMILY FARM. Reclamation history demonstrates that the intent of Congress has been to encourage the development of farm land and to break up large private land ownerships where Federal interest-free funds were used to provide water. To accomplish this purpose the laws simply limit the use of water for land in private ownership to no more than 160 acres for each landowner. Congress has never limited the use of the land or the size of farming operations, nor has any previous Secretary of Interior.

The 1926 Act says nothing about the "family farm." That Act was concerned with the sales of water to water

districts. The 1902 Act, which does mention family farms, did so, however, only in the context of individual water rights. Under the 1902 Reclamation Act, the Department of Interior established procedures whereby individual landowners could submit a water right application with an affidavit setting forth the necessary information to establish eligibility. The 1926 Act changed this procedure by transferring the administration of reclamation projects to water user associations in exchange for financial benefits including the reduction of interest charges.

In order to justify the assertion that the fostering of family farms is the only purpose of the reclamation law, reliance must be made on the legislative history of the 1902 Act, not the legislative history of the 1926 Act. But again, even the 1902 Act deals only with ownership and not control of land. It says nothing about one family or one family farm except in provisions of the law dealing with the settlement of public lands.

A fair reading of the reclamation laws shows a clear Congressional intent to break up large private ownerships by limiting individual ownerships to not more than 160 acres. No authority can be cited to show that this was to be done through some artificial, arbitrary definition

of the family farm. Under the legislative scheme of both the 1902 Act and the 1926 Act the individual owner of not more than 160 acres could combine his farming operation with the operations of members of his family and of other families through joint ownership of land, leasing, joint farming ventures or any other traditional method of farming. It is clear that Congress was relying on the individual non-excess owners to decide how they could best utilize their own property. By breaking up large blocks of land ownership, Congress was content to allow the economics of farming to determine the size of a particular farming operation.

ADEQUACY OF CURRENT LAW AND PRACTICE

The reclamation laws, as applied to date have been successful in breaking up large private land ownerships. In Westlands, before the project began there were several large landowners conducting farming operations. Among these, some, such as Anderson Clayton, Southern Pacific and Giffen, Inc., have chosen to sell the entirety of their landholdings and cease farming. On the other hand, many families engaged in farming operations before the project have members who intend to continue farming after sale of excess lands in compliance with their recordable contracts.

Very significantly none of us know of any large publicly held corporation that intends to continue farming in Westlands, let alone try to do so in the future. Frankly, my advice as a lawyer to such a corporation would be: don't even attempt it! The reasons are obvious. Once the land is sold to individual owners, no operator can permanently count on any land for his own use except his own 160 acres. He can't really count even on his own family members for the entire period of his farming career, let alone rely on owners who are not members of his family. Large scale farm investments simply cannot be based on such tenuous hold on the farm land.

So we have a distinct pattern which has developed. The large farming operations of the past are being replaced exclusively with farming units consisting of family members and employees who each own 160 acres or less. Often these parcels are leased to a family farming partnership or corporation owned by the farmer, his wife and other members of his family. Farmers frequently add to their basic unit by leasing on a year-to-year basis or longer if the individual owners will agree. In some cases two or more active farm operators will join together in a common farming venture.

Contributing to this pattern has been a set of guidelines developed by the Secretary of Interior in approving

excess land sales over the years. The informal manner by which the guidelines were developed prompted the District Court's order in the National Land for People case. The Court had nothing to say regarding the substance of these guidelines and most likely expected the Secretary of Interior to merely formalize them under the Administrative Procedure Act.

Current guidelines respect the interest of the farmer in providing for his family, or his friends, neighbors and employees and their families when he sells his excess land. With regard to trusts, the Secretary has required that they be irrevocable, the trustee not be a member of beneficiary's family or the same farming operation, the trust property not exceed 160 acres, the beneficiary have a clear and separable interest, and the net returns from the trust property be periodically distributed to the beneficiaries.

The Secretary has permitted ownership in undivided interests so that family members may share lands and avoid disputes among themselves as to the relative value of the parcels. Each owner, though, must retain the right to separate out his interest at any time.

Department policy has been to prohibit excess land from being taken in joint ownership unless the parties

can show special circumstances. Corporations and partnerships have not been permitted to own more than 160 acres. Any land owned by the entity has been treated as owned by the shareholders and partners individually when calculating their personal entitlement of 160 acres. Limited partnerships have been prohibited, altogether.

Department policy has been to restrict mortgage loans. If the mortgage covers more than 160 acres, each owner must be permitted to pay off his share. Each owner, too, must be able to separate out his parcel from the others covered by the mortgage.

The Secretary has also restricted leasing, even though no authority for such restriction appears in the reclamation laws. For example, the terms of leases have been restricted to five years with an option for an additional five years.

The statutory scheme previously implemented in this way by the Department is not only breaking up large land ownerships as required by reclamation laws, but it also is reducing the size of farming operations. The statistics for Westlands, provided by the District and the Bureau, show that in 1968, before the project started, there were 2,491 separate owner-

ships with only 97 operators. Now there are 4,216 separate ownerships with 227 operators resulting from the sale of 166,500 acres of excess land. There are 302,300 acres of excess land remaining to be sold. If we assume that all of those 302,300 acres will be converted into non-excess status and if we further assume that the same ratio of new farm operators to acres of excess land converted to non-excess lands holds (130 new operators for the 166,500 acres sold into non-excess status), then there would be 463 new farms of an average size of only 1,171 acres each. As we pointed out, the record and logic show that the only operations that can survive are those that depend essentially on a family relationship.

FURTHER STUDY OF THE EFFECT OF THE PROPOSED REGULATIONS

Without detailed environmental and economic impact statements, no one is able to foresee all of the consequences which the proposed regulations will have if implemented. However, we are able to state with certainty that the environmental and economic impacts will be massive.

Last Thursday, four lawsuits were filed simultaneously in the Federal Court for the Eastern District of California here in Fresno to compel Secretary Andrus to prepare environmental and economic impact statements before the regulations

are made final. The complaints and supporting affidavits contain preliminary data from county planning commissioners, public works officials, irrigation district officials, agricultural economists, educators and, of course, farmers.

Let me say that we appreciate the Secretary's cooperation in agreeing that to allow time for the Judge to rule on the need for impact statements, the comment period will be extended to December 31, 1977 and the regulations will not be effective until March 1, 1978. The matter will be heard by Judge Crocker on December 7, 1977.

Let me summarize some of the effects which the data in the affidavits in these cases indicate will be caused by the proposed regulations.

1. Increased Population in Project Areas. The residency requirement of the proposed regulations would cause thousands of additional farmers to live on or near their farms. These new residents would demand school services, fire and police protection, health services, welfare services, water and sewage and other utility services, recreation facilities, and roads. Providing these services would be extremely expensive. For example, to build all-weather roads every two miles in that portion of Westlands

located in Fresno County, (a two-mile interval would serve 320 acre farms, but not all 160 acre farms) would require 600 miles of roads at a cost of 54 million dollars, and in Kings County 21 million dollars. Of course, new residences, roads, schools, etc., will require thousands of acres of prime farm land to be taken out of production and cost more local tax dollars.

2. Changes in Farming Customs. Studies indicate an increase in the number of small farms will result in greater use of pesticides and make noxious weed control more difficult. Also, there would be a change in the type and amount of crops produced. In many cases, smaller farms would have to grow crops producing higher income per acre which require more water.

3. Lowering of Water Tables. The new regulations would affect the water tables in irrigation districts, because landowners not yet subject to recordable contract would not sign, at least until they had so depleted the underground supply of water that their wells could no longer be used for farming. Furthermore, because smaller farms would produce crops requiring more water, even the smaller farms which qualify for reclamation water would be drawing from the underground supply to supplement project water.

4. Severe Disruption of the Farming Community.

Under the proposed regulations, a farmer could expand the size of his farm only by combining his 160 acres with his spouse's ownership or that of their lineal descendants through the use of family corporations or partnerships. Each farming unit presumably could then lease only one additional 160-acre unit. This would eliminate farming partnerships between brothers and sisters after their parents had died, and between other family members, employees or associates. The persons now employed as expert farm managers, who do not own land, would become unemployed because their expertise in large farming operations would not be utilized by small farms, and because they would not be given a preference in obtaining land in the proposed lottery. Of course, the leasing restriction also would prevent expansion and virtually eliminate the flexibility of land use which farm leases now provide everywhere in the United States.

The regulations would have other effects upon the family. For example, a person whose spouse had died would not be able to remarry without losing ownership of half of the family farm. Children of the family who owned land in their name would not be able to move away from home without causing the family farm to lose a significant portion of its acreage.

In conclusion, the point I wish to stress is that the proposed regulations are so revolutionary and will have such widespread environmental and economic impacts, that a moratorium on their implementation is absolutely necessary, not only to facilitate the preparation of the impact statements, but also to permit the Congress and the Department adequate time to carefully consider the need for new legislation in this area.

As President Carter has said, the law needs changing and most of the major newspapers in the United States have agreed editorially. We of California Westside Farmers sincerely desire to work with President Carter, Secretary Andrus, and Congress to achieve this end.

Senator METCALF. According to the list that Senator Church left me, he has done a tremendous job of getting through a lot of witnesses.

I have Mr. George Ballis, executive director of the National Land for People, Fresno, Calif.

**STATEMENT OF GEORGE BALLIS, EXECUTIVE DIRECTOR,
NATIONAL LAND FOR PEOPLE, FRESNO, CALIF.**

Mr. BALLIS. Thank you, Senator.

I hesitate to take a lot of time today. However, I did ride a plane all night to be here, so I may impose a few minutes.

What I would first like to do is to make some general comments and then talk specifically about how we got to this room today, and then make some recommendations that we have on the resolution.

Senator METCALF. You run your statement the way you want to run it.

Mr. BALLIS. All right.

I have a written statement which I will submit for the record.

Senator METCALF. All right. Your statement is received without objection.

Mr. BALLIS. According to the U.S. Agricultural Census of 1974, the average size of the irrigated farm in California was 157 acres. The average size of the irrigated farm in the United States is 169 acres. This is not to say that every farm should be or is 157 acres or 159 acres, but I think it is a figure that we ought to keep in our minds when we are discussing the implications of the reclamation act, and how much land is needed to make money.

I also recognize since I have some friends in Montana and Wyoming that they do not cut as much alfalfa off 160 acres as we do in California. We cut six or seven times as much and six or seven times as often, I should say.

And those questions need to be dealt with. However, we are here today primarily as a result of some legal actions and one specific legal action I would liked to speak to is the one that we are involved in which resulted in Secretary Andrus issuing the rules in August of this year.

National Land for People is a Fresno-based organization of about 1,000 or 1,100 people. We have a nine-person board of directors, eight of them are farmers with from 10 to 1,400 acres, and with 4 to 40 years of experience.

Now, we were organized about 3½ years ago by a group of people who became interested in the land and water and irrigation and farm and food related issues in the San Joaquin Valley in about the mid-1950's. We were part of the process which resulted in the authorization of this project, and at that time in 1959 or 1960 we were very critical of some of the language in the act, and at that time we produced a lot of research which substantiated our criticism, and we were able to have the authorization amended, and we continued our interest and kept saying over and over again that unless there was some strict enforcement of the Reclamation Act and some rules and regulations put down to carry out the intent and purposes of the act, that there were going to be a lot of sales taking place in the Western Water District, particularly the San Luis area, which were going to circumvent that law.

And in 1973, those sales began to take place, and those of us who were acting in the previous 18 years or so as an ad hoc organization then formed National Land for People, and started researching these sales approved by the Bureau of Reclamation from the Fresno County recorder's office after the sales were approved, and the land transfers took place.

Senator, I would like to show you the first chart that we made from the sales of excess lands in the Western—Westlands Water District, approved by the Bureau of Reclamation. This sale took place late in 1973, and we researched it a couple of months later.

The brown box on this side indicates the sale of six parcels of 160 acres or less to six different legal entities with almost identical names. Cantu Ag Partners I, and Cantu Ag Partners II, III, IV, V, and VI.

Now, the general partners in those firms are the same two people, Robert Parry who—and they have the same address in Fresno. There is a different limited partner in each partnership, however, they are all named Pettit, and they happen to be husband, wife, sons, wife, and one daughter. They list their address as 4303 East Ashton in Fresno. There were three mortgages on that property when it was sold. One was held by Bank of America, the second was held by General Land Dynamics. Sequoia Land Dynamics have the same address. They are, in fact, two corporations controlled by the same person, named John Bonadella.

All of the people involved in this partnership and this purchase are associated with Bonadella either as employees or in some sort of business relationship or other, and none of them are farmers, and none of them live in the neighborhood. There is—4222 North Cedar, and on the Ashton side is 4303 East Ashton.

The second sale that we researched and charted and circulated around the San Joaquin Valley is this very complicated arrangement in which we have the sale of 12 parcels from 1 excess landowner to 12 different individuals, all of whom have the same address, 4224 North Cedar in Fresno, and they are all, it turns out, relatives or associates of John Bonadella in one way or the other.

Senator METCALF. Well, that takes care of the residency requirement, doesn't it?

Mr. BALLIS. Except that this address they use is more than 50 miles from the land.

Senator METCALF. Well, they are going to have to move that same address to within 50 miles.

Mr. BALLIS. Right.

What happened out of this sale was a double sale which in a period of 11 days there was a \$300,000 profit.

Well, we circulated this chart around the Fresno area and circulated it to the U.S. attorney, and 6 months later what we had is an investigation of this sale as a possible violation of the reclamation law by the U.S. grand jury. And the U.S. attorney who issued that first news release was very careful to point out that they were investigating the Bonadella group only, the buyer, this group only. They were not investigating the seller. They were not investigating the ultimate holder and financier of the land, the person, C. R. Shannon, or the Bureau of Reclamation, which approved the sale as legal in the first place.

So we protested that and we got a call from the FBI, and went down and talked to the FBI with five of these charts. By that time they had five, and we went over this thing with them for 2 or 3 hours, and he said, "Whew, bank robberies sure are a hell of a lot easier than that."

Presently there was an indictment and there was an indictment only of some of the parties in the Bonadella group. None of the sellers, none of the financiers, and none of the people in the Bureau of Reclamation. That is sort of an immaculate conception of property transactions in which the buyer group consummates the whole act by itself.

In any case, what happened finally was this was the first indictment ever under the Reclamation Act, and eventually the first conviction because Bonadella plead one of his corporations guilty to one charge of violating the Reclamation Act and was fined \$10,000.

That is not bad. \$10,000 and he made \$300,000.

Now, this is all by way of introduction to the fact that we produced over the last 4 years or so over 50 of these charges showing similar types of devices to evade the intent and purpose of the act, and we presented all this evidence to various Government officials. There were a couple of hearings conducted by Senator Nelson and Senator Haskell, but the Bureau showed no signs of changing its policy, which we felt was obviously a violation of the act.

So we formally requested that they change the rules by which they approve excess land sales. They refused. So in May of last year, we took them to court and, based on the evidence that we presented, in fact after the judge looked at the mountain of our evidence, the General Accounting Office reports showing how the Bureau had slipshod appraisal procedures, how they allowed excess landowners to sell equipment for twice what it was worth, our evidence together with GAO, and other independent studies which supported our contention, the judge at one point in the discussion said the evidence seems to indicate that something sinister might be going on in the Westlands Water District.

So, based upon what we presented, we in 3 short months got a court order directing the Bureau to change its rules, and we also got an injunction against any further excess land sales in the Westlands Water District until those rules are changed.

Now, what happened is that we never even got the semblance of progress until we put, if you will pardon the expression, everybody up against the wall, because we talked about this for 20 years and said these kinds of things are going to happen and we need some rules. Nothing happened until we got the court order.

In some other cases, the Imperial Valley case, and so forth, all these decisions coming at once, and we are here today.

Now, National Land for People does not oppose any moratorium on the rules. We have been working on this for 20 years, and another year would not be considered a deprivation in light of the long years of deprivation which have already taken place. In other words, a lot of people, particularly in the San Joaquin Valley where I come from, were promised opportunity by the reclamation law. That opportunity has not been provided. In the Westlands Water District before the court order, you could not buy excess

lands in the Westlands Water District unless you had a contact one way or the other.

In the conditions that they put on the sales, they specifically excluded the small buyer. The one largest owner who eventually sold out because he was retiring from farming sold 7,000 acres of leased and fee land at one time, and he had a very extensive list of conditions which included you had to buy cotton equipment, certain irrigation equipment, you had to buy stock in a cotton seed oil company, you had to agree to deliver cotton to that company, and you had to agree when you put in a bid that your bid could be replaced by a bid on a larger acreage, including the land that you bid on.

And the example they used in those conditions was that for example a bid on two sections of land, 1,280 acres, could be replaced by a bid on four sections of land, 2,400 or 2,500 acres, which included your two sections. That is a specific exclusion of small buyers. That is why we won a court case, and that is why we are here today, and we think that a moratorium is all right. We are studying the environment. We hardly can keep a straight face when we listen to some of these people proposing environmental studies. As one of our members said, they have been poisoning us for 20 years, and now they are interested in the environment. But we will go along with that and study the environment, except that no changes should take place while the studies are being made.

There should be no transfers of excess land, no transfers of nonexcess land, no transfers of water rights, and all commingling of water which is now permitted in Federal projects, particularly in California, should be ceased unless the excess landowner is using all such commingled water sign recordable contracts.

Now, of the two resolutions, the way I read them, the 96 one is closer to our recommendations. I think it could be amended just including some of the language that I mentioned, and the specific language included in my testimony.

Now, you might wonder why we are including in our conditions a ban on transfer of nonexcess land, and it is very simple, because that is also used as a device to evade the law, and we have one more chart before I go away.

This last chart that we produced of a land segment of the Westlands Water District produced in April of this year. Now legally this is not a sale, practically it is a sale. Now here is what happens. The green boxes over here indicate some local folks who bought some land, excess land, about 4 years ago. On March 29 of this year they took out a mortgage on the full value of the land with these eight paper corporations from the Netherlands Antilles, total value of the land.

Mr. BALLIS. These eight corporations loaned the full value of the land to these people. These people are still the owners in the Fresno County recorder's office. However, these people are now in control of the land. Because in April, about 1 week after this sale was recorded, these people took their deposit out of the Westlands Water District for water supply for the project and the new billee for the water was a person named Cal Miller.

So I called Cal Miller up, and I said, Cal, what is going on, and he said I am farming this land under lease with the new owners.

And I said, who are the new owners? And he said this guy named Mark Frulucia who is a real estate owner in Mountainview outside of San Francisco, which is about 175 miles from the land.

So I called Mark Frulucia up and said, what is happening, and he said, well, we bought the land and we are farming it. Now the Bureau of Reclamation said at this time in this correspondence that we have obtained from the record that these people cannot hold title to the land because it would be a violation of the land, therefore they have to get individuals to hold title. Those individuals, according to our check at the Fresno County recorder's office the day before yesterday, have not stepped forward. These people still own the land. These people still control it, and Cal Miller farmed a crop on it this year. Definitely an evasion of law, and definitely a very good reason why during any moratorium period we should have a ban on excess and nonexcess land transfers, particularly in areas where the land is gold, like in California.

Senator METCALF. You are going to leave those three charts for us, are you not?

Mr. BALLIS. I am going to leave a copy of them.

That is the sum of my testimony, except for one final comment. I find it hard to sympathize with the people from Kings River and people from the Imperial Valley, and the people in Westlands when they talk about we were promised this and we were promised that. The people in the Imperial Valley did, in fact, develop that area, but the water was chancey. There were no water storage dams on the Colorado River, and sometimes it flooded, and sometimes there was not enough water, and there was a lot of silt in the irrigation which cost the local district millions of dollars to keep the distribution system clean. The canal was subject to appropriation by Mexico. So the Imperial Valley landowners did not accept the project, they lobbied for the project, and when that project was completed in 1940, and the first water was delivered to the all-American Canal, the Imperial Irrigation District said now that the wealth and prosperity of this area is assured—I think it is important to remember when we talk about the extenuating circumstances in Imperial Valley, because I think there are some, because some people did evade the law along the way, that the Imperial Valley farmers do not repay any money on the dams that store the irrigation water on the Colorado River or provide flood control and silt precipitation. They pay almost all of the capital costs on the diversion dam and the all-American Canal, but they pay that at no interest. Furthermore, the canal began delivering water to Imperial Valley in 1940. No repayments at all were made until 1955.

Now, that is like buying a house and living in it 15 years and not making any payments and not paying any interest at all on the mortgage. It is a very good deal. And they have had it for 30 years, and that is even a very good deal, and they are asking for perpetual control.

And what we are asking for, and what the reclamation law promises, is opportunity for a lot of people, and to the extent that it provides that opportunity it should be supported. But to the extent that it does not in the Westlands Water District, the large extent of Kings River and Imperial Valley, it cannot be justified to spend the country's money on water projects, which enrich a small

group of people who have inside contacts or relatives, and the rest of us are excluded.

Thank you.

Senator METCALF. Thank you very much for a splendid statement. I want to assure you that as a cosponsor of one of the resolutions the purpose of this hearing is to find out where and how it and the other resolution will affect the people in affected areas, and certainly as far as this Senator is concerned, it is open to amendment or change or revision in accordance with your testimony, and in accordance with the testimony of the Secretary, and the other witnesses here today.

Thank you.

Mr. BALLIS. Thank you for the opportunity.

[The prepared statement of Mr. Ballis follows:]

STATEMENT OF GEORGE BALLIS, EXECUTIVE DIRECTOR, NATIONAL LAND FOR PEOPLE, FRESNO, CALIF.

My name is George Ballis, Executive Director of National Land for People which is an organization of farmers, would-be farmers and consumers based in Fresno, California. We were organized 3½ years ago by a group of folks who had worked together on land-water issues for nearly 20 years. 1959 was the first time I came to Washington, D.C. to work in favor of the anti-monopoly provisions of Federal Reclamation Law as applied to the Central Valley Project of California. The first time our president, Berge Bulbulian—a 150-acre farmer—came was in 1961.

National Land for People has about 1,000 members and is governed by a nine-person Board of Directors. Eight of them are working, resident farmers with from 10 to 400 acres and 4 to 40 years of experience. We have one expert, an economist, on our Board.

Our philosophy is that the basis of our free enterprise, democratic society is free enterprise, democratic land control. This commitment has led us to work in a number of related areas such as marketing, crop and land financing, taxation, etc. However, we spend the bulk of our efforts supporting the free enterprise democratic federal water policies embodied in the Federal Reclamation Law. This law is a critical factor throughout the Western States, but most particularly in California where the federally-subsidized irrigation projects deliver millions of acre feet of water to vast stretches of the country's richest farmland. This land is subject to the reclamation law requiring the establishment of resident family farmers on the land.

Through our research over the years we learned that a lot of land was owned by big corporations and Southern Pacific Railroad. We also learned that throughout much of the areas furnished with subsidized water, the free enterprise democratic provisions of reclamation law were being ignored, evaded and circumvented by the Bureau of Reclamation's lax administration. We closely monitored the development of the San Luis-Westlands project which was to become the biggest district furnished with subsidized irrigation water. Through our research we were able in 1960 to convince Congress that some of the language in the legislation would have undermined the law, and this language was removed.

We continued to express concern that when excess land users of subsidized water began breaking up their holdings under the law, there would be much evasion.

Some of these sales, with Bureau of Reclamation approval began to take place in 1973. What we had predicted 10-15 years earlier was becoming a reality. The Bureau was approving excess land sales which clearly violated the intent and letter of the law to establish family farmers on the project lands.

We organized National Land for People and set out to research these sales from documents in the Fresno County Recorder's office. We illustrated each land transfer or "sale" with a poster-sized chart.

Here is a copy of the first chart we did six months after the sale took place. This sale was approved by the Bureau of Reclamation as in compliance with the reclamation law. This chart was produced from documents in the Fresno County Recorder's office.

Explanation of chart.—The second chart we produced led to the first indictment and ultimately to the first conviction ever under the 75-year-old law.

Here is that second chart.

Explanation of chart.—Over the next two years, through two Senatorial hearings conducted by Senators Gaylord Nelson and Floyd Haskell, we produced over 50 charts of questionable Westlands excess land sales approved by the Bureau.

Among these sales were the following deals:

(1) The transfer of 12 square miles of fee and lease land financed by a Japanese trading corporation with a farm headquartered in a Manhattan skyscraper. Here is that chart.

(2) A transfer of 4,000 acres to 27 people in undivided interest with one mortgage.

(3) The sale of 70,000 acres of fee and lease land in several parcels to which were attached cotton gin stock and cotton producing equipment.

The Bureau showed no signs of changing. We asked that they make new rules under terms of the Administrative Procedures Act. They refused. In May, 1976 we filed suit in Washington, D.C. federal district court seeking an injunction against any further excess land sales and a court order directing the Bureau to change its rules. We submitted our mountain of information, including studies made by other groups and the GAO which supported many of our contentions. During oral arguments, the judge remarked that the evidence seemed to indicate that, quote, "something sinister", unquote, was going on in Westlands. We got both the injunction and the court order in three short months—unprecedented fast action in water cases.

Incidentally, our two attorneys faced a dozen lawyers from the government and the big landowners. It was under this court order that Secretary of Interior Andrus issued his proposed new rules in August of this year. We began to see the possibility of some positive results from over 20 years of careful, patient and happy work. Andrus' proposals were giant steps in the right direction but fell far short of enforcing the full intent and purposes of the law.

We began a campaign for stricter enforcement. Then the blitz hit. The large landowning interests raised well over \$1 million. PR firms were hired. The Farm Bureau, Real Estate Association and bankers were geared up. The publicity machine began to grind out lies. The Farm Bureau handles the big lie campaign nationally, while two big landowner fronts called "Fairness" and "Write for Rights" do the hatchet work in California.

Many small farmers and other people are being misled by the lies. Much of the so-called pressure Congress feels on this issue comes from such misled people. A reading of the mail at Interior reveals this misinformation ad infinitum—also indicated are heavy pressure tactics. In early October we read some of the mail being received at Interior. For example, we counted some 185 letters from Oklahoma; 182 were identical photocopied letters signed by different people. In the Imperial Valley we found as many as four letters from the same people.

Farmworkers in the Imperial Valley are being told that they are being laid off because of reclamation law, and the whole community is under heavy political and economic pressure to sign petitions and speak out against the reclamation act.

From Imperial Valley and other places in California we receive anonymous phone calls from folks who say, "We're on your side, but don't expect us to speak out. We got to live with these people."

The Imperial pressure is indicated by this anonymous letter to Andrus from Imperial Valley:

"I am writing in support of the 160-acre limit to be imposed on the Imperial County of California. Sir, these wealthy landowners are mounting a huge campaign to convince you, and others in the Carter Adm., that they are family farmers. Nothing could be farther from the truth. They are also collecting money from all the owners and have set up a committee to spread the word, all over the County that the government are being unfair. The working people are all for this law. But don't come down here expecting to collect testimony from them. They are afraid to speak out. They will be fired from their jobs. Their credit will be cut off. They will stay out of the city and off the welfare roles. And life will be a lot more pleasant for a man and his family. These farmers even have a retired banker making speeches to the effect we would not be able to survive because we could not get credit. They tell us we can't afford the equipment. But I know that there are a lot of big farms and a lot of little ones operating side by side.

"Representative Clair Burgener R-34th District is beating his breast and says he will introduce a law to change the 1902 Reclamation Law. Don't let them do that. God, with this we have a chance now. But we are afraid to come forward. Please, please, make the people obey the laws." Westmoreland, Ca.

As a result of the pressure, the big operators have smaller farmers fronting their monopoly grab of our water projects. The lies are widely circulated. For example, this ad has appeared in several of the country's biggest newspapers including the Washington Post, Los Angeles Times and San Francisco Chronicle. It is set for Time Magazine later this month.

It contains six lies.

Lie Number 1 in the second paragraph is: quote, "Just a few weeks ago, the government told us they are going to take away our land.", unquote.

The truth: after years of litigation and three years of study the U.S. Court of Appeals ruled the reclamation law applies to Imperial.

Lie Number 2 in the second paragraph reads: quote, "... they are going to force us to sell any land we own in excess of 160 acres.", unquote.

The truth: under new rules proposed by Secretary of Interior, this family could obtain permanently subsidized irrigation water for up to 960 acres they own (160 for each family member) and for up to an additional 960 acres they rented—a grand total of 1,920 acres' worth of subsidized water. On top of this, they could, if they desired, get subsidized water for up to five years on an unlimited amount of additional land they might own.

Lie Number 3 in the third paragraph is: quote, "... we will be forced to sell our land to whoever the government will decree based on pre-water land values!", unquote.

The truth: if this family ever sold land as part of a contract to receive the federally-subsidized water, on a temporary 5-year basis, family members would have preference. If no family members were eligible or interested, the land would be sold through a public lottery in which all of us would have an equal chance to share in the public wealth we all helped to create.

The price of the land would be current market value less the project benefits in other words, what the land would be worth today without the subsidized water.

Lie Number 4 in the fifth paragraph is: quote, "They (private landowners) brought water to Imperial Valley from the Colorado River through a privately owned canal that ran through Mexico, and they made these farms work.", unquote.

The truth: the water supply was silt-loaded and unreliable—alternating between floods and low flows because there were no water storage dams on the Colorado River. The heavy silt required huge expenditures to clean out distribution systems. The international canal was subject to appropriation by Mexico.

For these reasons, Imperial landowners actively lobbied for the Boulder Canyon Project including Hoover Dam, three other dams which store water, prevent floods and precipitate silt; one diversion dam and the All-American canal. When the project was finished the Imperial Irrigation District announced:

"It now may be said with confidence, that no section of our nation is more assured of a permanent and prosperous future than is this Valley."

Lie Number 5 in the seventh paragraph reads: quote "This was no giveaway or government boondoggle. We agreed to pay for the All-American Canal in full. Come next March, it will be over half paid for.", unquote.

The truth: Imperial Valley landowners do not pay any of the costs for Hoover Dam or any of the other three Colorado dams which provide flood control, water storage and silt precipitation. Most of the dam costs are borne by Los Angeles taxpayers. Imperial landowners are repaying most of the capital costs of the diversion dam, Imperial, and the All-American Canal; however they are paying no interest on the 40-60 year "loan." Also, the canal began delivering water in 1940. Repayment did not begin until 1955. How would you like to buy a house, live in it 15 years before making any payments and never pay any interest on the mortgage.

Lie Number 6 in the third paragraph of the second column reads: quote "Well, that old 1902 Act has nothing to do with our contract or our land.", unquote.

The truth: the Boulder Canyon Act of 1928 authorizing all the dams and the All-American Canal said: "This act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation and management of the works therein authorized, except as otherwise provided."

No "otherwise" is provided by any act of Congress.

Nevertheless, Imperial was "granted" and "exemption" from reclamation law during the last two weeks of President Hoover's Administration in February, 1933. At the request of the Imperial Irrigation District, an assistant secretary of Interior named Northcutt Ely—without seeking the legal counsel of the Interior lawyers—wrote an "exemption" letter. Secretary of Interior Wilbur signed the letter. Two weeks later Roosevelt replaced Hoover in the White House, and letter writer Northcutt Ely began a lifetime career representing the Imperial Irrigation District.

In 1963, Interior Solicitor Frank Barry ruled that Ely's letter was "clearly wrong," thus beginning the long court wrangle which ended in August when the Appeals court ruled that the law applies in Imperial.

Why are these folks so "sad?" Under the proposed Andrus rules they would be eligible for up to 1,920 acres' worth of subsidized water on farmland "where the sun spends the winter." Even under NLP's strict proposals they could get up to 640 acres' worth of subsidized water. Could it be that these folks are fronting for SP,

Irvine, Safeway and the other big corporations? Congress must answer that question.

It is to this highly-financed, fully-orchestrated lying pressure to which the Congress is responding with these moratorium-on-the-rules resolutions. Let us be openly honest. These calls for impact studies from people who have never before displayed any environmental interest are merely stalling tactics. However, we do not oppose an environmental impact study on the rules. We have worked on this issue for over 20 years, so another year or so is not a great deprivation, considering the long history of deprivations to this date; if the Congress also prevents further subversions of the law as we have exposed so carefully, proven many times over in court and which have been used over the years to keep many of our members and other folks frozen out of the free enterprise democratic opportunity promised by the reclamation law and the sponsors of the specific projects such as Westlands.

For these reasons we will support a moratorium on the final application of new rules only under these five conditions:

- (1) The court order we have obtained remain in full force.
- (2) Time on existing recordable contracts continues to run.
- (3) The commingling of well, and surface water cease unless the excess land users of any such commingled water sign five year recordable contracts.
- (4) Excess landowners wishing to receive subsidized water obtain no temporary water rights but be required to sign five year recordable contracts.
- (5) The secretary of Interior be directed to approve no transfers of land or water rights within any project area for either excess or nonexcess land unless such transfers are of an emergency nature and made in conformity with the rules as proposed.

What we are saying is that the moratorium on final application of the rules should not provide the opportunity for further deprivation of the law and its purposes. In this regard we are concerned about nonexcess and excess land sales, alike.

Here's one example. This is the last chart we produced in April of this year. It shows how control of nonexcess land is transferred without a legal sale being made—the whole purpose being to thwart the intent of the law.

Explanation of chart.—None of the resolutions I have read meet these five criteria. The closest one seems to be S.J. Resolution 96.

We would support that resolution with the following amendments:

- (1) deleting of lines 1 to 4 on page 3 which would propose suspending application of the lottery provision of the proposed rules.
- (2) replacing section 3 with the following language: "Upon the expiration of this resolution or the promulgation of the final rules whichever occurs later, excess landowners with expired recordable contracts shall have 60 days to arrange transfers to eligible lineal family members up to a total of 640 acres. At the end of 60 days land not so optioned shall become available for lottery distribution by the secretary."
- (3) Directing the secretary to order the suspension of all commingling of water by excess landowners unless such owners sign recordable contract covering all such water commingled.
- (4) Directing the secretary to make no temporary water delivery agreements with excess landowners and require five year recordable contracts on all water deliveries to excess landowners.

To conclude, we urge the Congress to weigh the merits of rules moratorium alongside the deprivations of the law and free enterprise opportunity which have occurred through the maladministration of the law by the Bureau of Reclamation. To weigh the sources of the pressure you are now receiving alongside the promises of the reclamation law. And finally to ask yourselves what kind of a country we want, remembering what the original sponsor of the law said when he was under the same kind of pressure you are now feeling. Teddy Roosevelt came to the rich man's Commonwealth Club in San Francisco to defend the then new reclamation law. He said:

"Now I have struck the crux of my appeal (for the excess land law). I wish to save the very wealthy men of this country and their advocates and upholders from the ruin that they would bring upon themselves if they were permitted to have their way.

"It is because I am against revolution; it is because I am against the doctrines of the Extremists, of the Socialists; it is because I wish to see this country of ours continued as a genuine democracy; it is because I distrust violence and disbelieve in it; it is because I wish to secure this country against ever seeing a time when the 'have-nots' shall rise against the 'haves'; it is because I wish to secure for our

children and our grandchildren and for their children's children the same freedom of opportunity, the same peace and order and justice that we have had in the past."

I CAN'T BELIEVE THIS IS HAPPENING TO US

It's happening. In America. In the United States of America. In a small California valley called Imperial. It's happening to about 800 families like mine.

Just a few weeks ago, the government told us they are going to take away our land. I know it sounds crazy—I still can't believe it myself—but the government told us they are going to force us to sell any land we own in excess of 160 acres. (Or they will cut off the water to it.)

And just as outrageous, they said we will be forced to sell our land to whoever the government tells us to. And at a price the government will decree—based on pre-water land values!

My wife and I were born here in the Imperial Valley, like many of our neighbors. We're farmers. Some of us are still farming the same ground that our fathers and grandfathers and great-grandfathers first reclaimed from the desert, working behind mules and land-levelers in 100 degree heat.

They brought water to Imperial Valley from the Colorado River through a privately owned canal that ran through Mexico, and they made these farms work.

Then, in 1932, they signed a contract with the Department of the Interior to build the All-American Canal. This was no "giveaway" or government boondoggle. We agreed to pay for the All-American Canal—in full. (Come next March, it will be over half paid for.) And there weren't any strings attached, either, like acreage limitations.

What the government is talking about now is an old 1902 Federal Reclamation Act that says no one can own more than 160 acres of land that is irrigated with water from a federally funded project.

Well, that old 1902 act has nothing to do with our contract or our land. And that fact was documented at the time by a letter from the Secretary of the Interior.

But now, after 45 years of documented promises and agreements—and three generations of work and sacrifice—the government said, "Sorry, but we're changing the rules, and you lose".

I can't believe this is happening to us. This is America.

All we want is fairness. We want the government to keep its word with us. Our whole future depends on it.

We need your help. We want to know if the government has ever been unfair to you, too. Call us toll-free at the number below. We'll send you a "Call For Fairness" bumper strip and a copy of the letter my wife and I sent to President Carter.

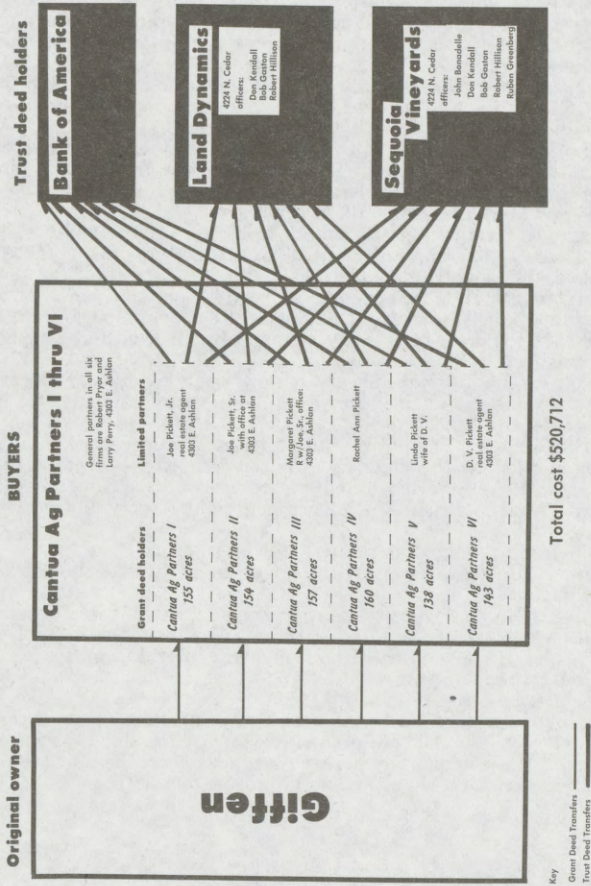
You can help by writing your own letter to President Carter to let him know how the government has been unfair to you, too.

We are asking President Carter to create a continuing Presidential Commission on Government Fairness. And we are asking for congressional action to continue to exclude Imperial Valley from any acreage limitations on the land we own.

We are asking our country to keep its promises to its citizens.

1

AN EXAMPLE OF THE QUESTIONABLE LAND TRANSACTIONS IN WESTLANDS WATER DISTRICT, CALIFORNIA



Real owner?

(According to Fresno County Recorder documents)



These people

**"borrowed"
this money**

from these companies

**all of which are controlled
by this corporation**

fronted by these men

oil residents of N.A.
W.J.T. Van Elk
G. F. H. van Rooijen
& C.D. Lind
are
managing directors
of Caracus Corporation

Curacao Corporation, N.A.
is
managing director of
all 8 companies

Sarang, N.A. & Indju, N.A.

6765	378*	\$333.615
6765	382	\$188.445
6765	384	\$166.808

IRIGATED LAND

Wm. & Darr 320

Wm. Carr 160

Tranquillity Modesta, N.A.

10	6745 380 \$188.445
10	6755 385 \$188.445

160
Cathleen
160
Micha el
160

*numbers refer to book and page
Fresno County Recorder's office

[illegible]

Seashell, N.A. & Pinto, N.A.

6765	363	\$426,802
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Totals
\$1.5 million
1280 acres

Farms	Keith & Frances Erskine
Clerk	320 acres
4	release recorded 3-29-77

Green
Fresno
file

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WHAT WE CAN TAKE PLACE

WHY THESE "SALES" The injunction your prohibits the Westlands. The "sales" on this ch the Enklines and Bureau of Reclam coe deal from c

wife and son - live at the same address in Dos Pelos.
All the Erskines - husband, wife and three children - live at the same address in Dos Pelos

every choice
to monopolize
ices. They can't

the Bureau
in shut off the
should be
control for 40

eligibility of the
does not approve
water. NLP believe
subject to price on
years.

10

100

National Land for People



La tierra pertenece al que la trabaja...
The land belongs to those who work it

November 1975

1759 FULTON, ROOM 7, FRESNO, CALIFORNIA 93721
(209) 233-4727

PARTIAL WESTLANDS VICTORY??? WARM BODIES, FAMILY GROUPS & NEW WRINKLES

A land appraiser and a syndicator complain
about NLP page 2

NLP DEMANDS BUREAU ENFORCE EXCESS LAND LAW

NLP gives Bureau 45 days to start making public
rules on procedures for excess land sales. page 3

BUREAU WRITES A SLOPPY FORM -- U.S. ATTORNEY FINDS AN IMMACULATE CONCEPTION

First indictment ever under the 73-year-old excess
land law; how it happened; how the U. S. Attorney
developed a new legal theory which saw guilt in only
one party to a four-party deal; how the Bureau of
Reclamation composed a loopholed excess land
form and a Federal Judge threw out 21 of 22
counts pages 4 & 5

THIS IS A RAILROAD? also NELSON HEARINGS IN JANUARY?

and other items page 7

45 DAY COUNTDOWN

NLP Demands Bureau Enforce Land Law

Charging the US Bureau of Reclamation with slipshod and illegal administration of the excess land law, NLP, in mid-November, filed a petition for rulemaking with the bureau and its parent agency, the U.S. Department of Interior.

NLP exercised a little-used public right under federal law to demand that the bureau and the department set up formal proceedings with public hearings in the San Joaquin Valley to develop rules for the disposing of excess land to small, resident farmers as the law requires.

"Despite the fact that Congress intended farmworkers and small farmers to be the beneficiaries of the Reclamation Act, the Bureau of Reclamation is approving these questionable sales of excess lands and is thus denying them the benefits of the Act.

"Such deprivation is a direct result of the practices of large landowners in the Westlands Water District who are transferring their excess land in violation of the provisions of the Reclamation Act of 1902."

NLP also demanded that the final rules be published in the federal registry a procedure which binds the agency to their enforcement.

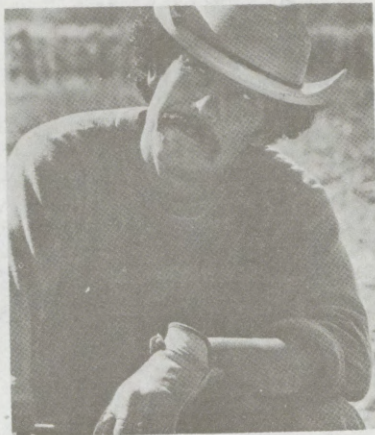
NLP noted, "At present, there are no rules and regulations promulgated by either the Department of Interior or the Bureau of Reclamation in the Code of Federal Rules which establish criteria or procedures for governmental approval of excess land sales."

Under the terms of the excess land law, large landowners in federally-subsidized irrigation districts such as Westlands can water their holdings over 160 acres if they sign a contract with the Government agreeing to sell their excess within 10 years into parcels of 160 acres or less and at pre-water prices.

Owners must live on the land or in the neighborhood.

The Bureau must approve both the buyers and prices in excess land sales.

The sales cited in the NLP petition were among the 35 submitted in July of this year to the U.S. Senate at the request of a Joint Panel of the Senate Small Business and Interior Committees.



The NLP petition pointed out that the excess land law has "been vigorously upheld by the courts." The petition cited several court opinions including the following:

"Devices were incorporated into the bill in order to prevent land monopolization and profiteering by large corporations... The idea was to create a class of self-reliant family farmers..."

NLP said: "The courts have spoken. The (excess land) law is clear on its face. Yet the purposes of the Act are being subverted by the Bureau of Reclamation approval of the very types of excess land sales which the courts have deplored."

In the NLP petition and memorandum, Attorney Mary Louise Frampton charged "many of the excess land sales approved to date by the Bureau of Reclamation without benefit of formal written rules violate both the spirit and the letter of the (excess land) law."

NLP also charged that the bureau is approving sales prices more than twice what Fresno County Tax Assessor Gerald Gard says the land is worth.

Frampton gave the Bureau and the Department 45 days to start the rulemaking proceedings.

PARTIAL WESTLANDS VICTORY???

Warm Bodies, Family Groups & New Wrinkles

In separate phone interviews, an appraiser and a syndicator charged that NLP's campaign for enforcement of the excess land law in Westlands Water District has stopped the Bureau of Reclamation from approving any more big illegal group sales -- small ones maybe.

When Fresno Appraiser Jim Miles was called about appraising a Westlands piece, he said:

"I'm going to talk myself out of a job. You just tell me where the property is, and I'll tell you within \$50 what the Bureau will approve.

"All prices now are around \$650 and pushing to \$700 an acre. But price is not your problem. Your problem is qualifying the buyers.

"A name on each 160-acre piece was all right last year, but now it's getting to the point you need a warm body."

A SENATOR'S DUST

Miles said, "That senator (Gaylord Nelson) stirring up all that dust, making political hay, that's what changed things.

"I went to Sacramento last week with a Belgian group that wanted to buy into Westlands. The Bureau told me, 'We'd get killed if we approved a deal like that.'

"They won't go for any more investor groups, foreign or domestic. You almost have to have a family group."

A SYNDICATOR'S LAMENT

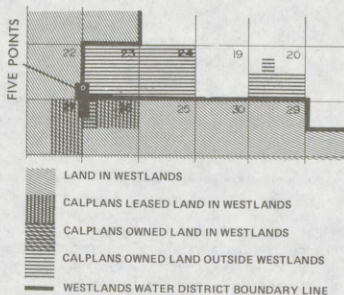
Syndicator Tom Fish of Calplans was contacted by NLP after the 633-person partnership -- nobody lives in the neighborhood -- bought and leased some 2,000 acres, 640 of which is Westlands. The rest is right next to the district. See accompanying chart.

He accused NLP of being "the people who kept us out of the district." Further nosing around by NLP indicates the possibility of more investor promotions at the edge of Westlands with real estate operators saying the land "may or may not be annexed to the Westlands Water District."

Perhaps this will be the new wrinkle: investment farming will spring up at the edge of Westlands -- with a small piece in the district -- to suck-up the subsidized water supplied by the project. The sucking-up to take place by wells just outside the district and/or by running water out of district to adjacent land owned by the same operators????

Failing that, the district could be enlarged little by little????

Avarice displays a creative deviousness.



From Fresno County Recorder's documents #80801 & #80804 10/24/75
Researched and produced by National Land for People

A new wrinkle in excess land law evasions is shown on this map. As noted in this article, Calplans, a Bay Area, California, investor syndicate with 633 partners bought in fee and leased land about 2,000 acres of farmland in and at the edge of Westlands. Their owned land in Westlands is less than 160 acres. Their leased land in Westlands is about 500 acres. Their owned land just outside Westlands is about 1600 acres.

Calplans Investment Corporation

100 Webster Street
Oakland, Ca. 94607
(415) 465-8500



Thomas C. Brown

Thomas C. Brown is Chairman of Calplans Investment Corporation and President of Calplans Securities, Inc. His primary responsibility is administration of Calplans' corporate and partnership entities. Mr. Brown was associated with Thomas C. Brown & Associates, a firm specializing in corporate planning and programming investments for business owners and corporate executives. Many of those programs relate to oil and gas, cattle, real estate and agriculture. He has been actively engaged in the formation and sale of oil and gas drilling programs for more than seven years. Mr. Brown holds a Bachelor of Science degree in Business Administration from Utah State University.

**Is This A Railroad
Station Or
A Farmhouse?**

A Joint Venture Of
The Equitable Life Assurance Society of the U.S.
And Southern Pacific Land Company

This Is A Railroad?

Southern Pacific Railroad is the largest landowner in Westlands -- 106,000 acres which equals a one mile wide strip of land 165 miles long. Also SP is the largest private landowner in California and several other western states through 100 year old federal land grants -- freebies. The idea behind these grants was that the land was to be sold to settlers after the railroad was finished. It wasn't.

NLP now has an administrative complaint in the Department of Interior demanding a resurrection of this old idea. It's time has come.

Those of you who see this as strictly a rural problem should dwell on these facts:

- (1) SP owns choice city properties in Los Angeles, San Francisco and other western locations.
 - (2) SP owns large industrial parks.
 - (3) SP owns the world's largest slurry which pipes liquified coal from Black Mesa.
 - (4) SP owns a nationwide communications network with antennas on top of the Empire State Building.
 - (5) SP's president serves on the board of directors of Tenneco.
 - (6) One of SP's executive committee members chairs the executive committee of Safeway.
 - (7) SP is building a mountain lake resort with Disney and the Sierra Pacific Power Company.
- AND SP killed its passenger service!

THIS IS A RAILROAD?

NELSON HEARINGS IN JANUARY?

Senator Nelson recently told a letter writer that he planned to hold California hearings on the Westlands illegalities in January -- and that he was still considering conducting such a hearing in Huron. Apparently he has been encouraged by people who want the law enforced.

\$7.7 MILLION PGE LIBEL

PGE's efforts to suppress a documentary film unfavorable to atomic power plants resulted in a \$7.7 million libel award to the filmmaker.

A San Francisco jury agreed that PGE falsely attacked the filmmaker in an effort to ruin his reputation and prevent circulation of the film, entitled "The Powers That Be."

PGE widely circulated a letter falsely claiming that the filmmaker, Don Widener, had doctored the film.

The award was the largest libel judgment ever made to an individual in the United States.

BROWN'S POSITION?

California Governor Jerry Brown's Administration was completing a four-month study of Westlands and related issues in late November. The study and policy recommendations were to be presented to the governor in early December. Possibly a state position would be made public by January 1. By request, NLP presented its findings of illegal Westlands sales to the Brown researchers. Brown had earlier asked the federal Government to hold up any Westlands water contract pending his study of the issues.

UNRUH'S POSITION?

By request, NLP also presented its findings to members of State Treasurer Jesse Unruh's office. The state treasurer has the responsibility to pass on all water district contracts with the federal government. In September, NLP asked Unruh to announce that he would reject the proposed Westlands contract in its present form.



"In what does real power consist?
The answer is short and plain -- in
property. A general and tolerably equal
distribution of landed property is the
whole basis of national freedom."

-- Noah Webster, 1787



National Land for People

1759 FULTON, ROOM 7, FRESNO, CALIFORNIA 93721

RESOURCES

□ **Newsletter**, \$10 annually. Report on NLP and related activities and issues.

□ **Seminars in Reality**. One day bus tours of Fresno farm areas: Westlands illegalities, water project, farm labor housing, small and large farms, small towns. "The Richest Land" film. Start 5 a.m., NLP office. Free Fresno crash. \$7.50 per person in advance. Next tour: January 17.

□ **Speakers** available for a fee to speak with film and/or slide show plus charts, maps on Westlands and corporation domination. Schools, colleges and community groups. All colleges have funds for visiting lecturers.

□ **Folder** outlining NLP activities and policy positions. Free.

□ Reprint **NATIONAL JOURNAL** article "Role of family farmer figures in reclamation debate." An impartial analysis of the excess land law and the Westlands issues. Quotes NLP, National Farmers Union, the big landowners lawyers and the Bureau of Reclamation. 25¢ handling charge.

□ 24" by 36" **COLOR POSTER**. (Same photo as newsletter cover). \$3 each.

□ **THE RICHEST LAND** film. 16 mm or super 8 color, 23 minutes. The beauty, bounty, conflicts and international implications of California Agriculture. With study guide. Rental \$30; purchase \$300.

□ **DISCOVER AMERICA** slide show on Westlands-related issues. 45 minutes sync sound. With study guide. Rental \$25; purchase \$100.

□ Reprints law review articles by **Paul Taylor**. Internationally recognized authority on water law. "Mexican Migration and the 160-acre Water Limitation" from the **CALIFORNIA LAW REVIEW**. "Public Policy and the Shaping of Rural Society" (a historical perspective of Reclamation Law) from the **SOUTH DAKOTA LAW REVIEW**. "California Water Project: Law and Politics" from **ECOLOGY LAW QUARTERLY**. 25¢ handling charge on each.

□ Reprint **NATIONAL FARMERS UNION** 4-page tabloid on questionable Westlands excess land sales including reproduction of 4 NLP charts illustrating sales. 25¢ handling.

□ **THE DISPOSSESSED** film. 16 mm color-sepia. 33 minutes. Struggle of Pit River Indians (N. California) to reassert control of their land from PGE, Safeway, SP, LA Times, Hearst, etc. and how their fight relates irrigation, farmworkers, ecology, foreign wars. An international prizewinner. With study guide. Rental \$50. Sale \$350.



IDEAL CHRISTMAS GIFT: ask friends and relatives who would normally buy you a gift to make a donation in your name to NLP.



Senator METCALF. I have taken that "redeye special" that you took in here. I know how you feel today.

Mr. O. J. Linde, president of the Southern Pacific Land Co., San Francisco, Calif.

Mr. Linde, you are the witness we have been waiting for all day, I suppose, the last witness at least for the day.

Oh, did I skip one? No, my record shows that Mr. Michieli submitted his statement for the record.

[The prepared statement of Mr. Michieli follows:]

STATEMENT OF RONALD A. MICHIELI, DIRECTOR, GOVERNMENT AFFAIRS FOR LAND AND NATURAL RESOURCES, NATIONAL CATTLEMEN'S ASSOCIATION, WASHINGTON, D.C.

The National Cattlemen's Association (NCA) appreciates the opportunity to offer comment in support of S.J. Resolution 93, or similar legislation which, if enacted, would place a one year moratorium on the proposed Interior Regulations relative to enforcing the 160 acre limitation requirements of Reclamation Law.

The National Cattlemen's Association is the recognized national spokesman for the nations beef cattle industry, an industry which represents the largest segment of American Agriculture.

NCA represents 280,000 professional cattlemen, including individual members plus members of 52 affiliated state cattle associations and 13 national breed organizations.

Richard McDougal, President of NCA, in his first major speech after the consummation of the merger on September 1, 1977 between the then American National Cattlemen's Association and the National Livestock Feeders Association, summed it up for NCA's being here today to testify. McDougal stated, and I quote "a billion more people on earth in just 15 years! By the year 2000, the world must be able to produce and distribute as much additional food as it has learned how to produce since the beginning of time! Food will become the most important element of domestic and foreign policy. And animal protein, the most perfectly complete of all proteins, will play an increasingly important role in that policy. The wide and productive use of our nation's pasture and range lands and crop lands and maintaining the vitality of our highly efficient cattle feeding system—these will be among key issues we will face."

NCA firmly believes that the ultimate resolve of this issue rests with the Congress of the United States, and not with any agency of the Federal Government that arbitrarily determines a scheme to re-distribute agricultural lands beyond Congressional intent. Intent that was re-affirmed time and time again going back to 1933 with the Secretary of Interior, Wilbur, and continuing on with opinions by previous solicitors of the Department and other Secretaries. These actions set the stage for recognizing that the law had become antiquated and not responsive to the changes in land ownership and forming methods that evolved as a product of improved labor conditions, consumer affluency, increased consumer disposable income, improved farming and ranching efficiencies and practices brought about by improved technologies and breakthroughs in research.

That is the real world of agriculture today! Confronting seventy-five years of social, environmental, economic and political change will be a difficult task. Not to recognize those changes would strike at the very heart of the free enterprise system, let alone our democratic system of governmental representation.

NCA believes that the proposed Rules predicated on the law are wrong. "Changes are needed to reflect today's real world. For example:

1. *Residency.*—The federal government will impose residency requirements for the first time in 50 years. This then is to assume that the federal government, through HUD Flood Control programs, Conservation programs, Farmers Home Administration programs, Rural Development programs and others, will be subject to residency requirements. A ranchers or farmers primary function is "managing" his business and this function need not require that he live on the land. Further, many ranchers and farmers have retired, leased their land and manage from locations other than "on the farm". This would be a blatant abuse of denial of supportive and "earned" income.

2. *Acreage limitation.*—The new rules call for limiting the acreage to 160 acres in the aggregate. This was never recognized and deprives the owner operator of optimum management capabilities for the wise use of his employees and subjects them to, at best, seasonal and uncertain employment and lessens the operations ability to pay meaningful annual wages.

3. *Divestiture.*—Previous rules called for a 10 year span for disposal of excess acreage. New rules call for a 5 year span. This rule would force property sale subjecting it to lesser values.

4. *Multiple Ownerships.*—This provision of the rule speaks to corporations, partnerships, or trusts only within the context of "family relationships" to mean direct lineal descent—this precludes a great number of family relationships—the Secretary's action was designed to preserve family farming?

5. *Lotteries.*—One or more bidders on a land parcel declared in excess would go to a lottery system to declare the winners. This is a direct denial of an individuals right to dispose of his property using his best personal judgment.

6. *Land Values.*—The Secretary of Interior now becomes the appraiser for private lands. The price in reality is set by the appraiser who is to determine its value which in theory is the appraised value less any value added by the reclamation project. Knowledgeable land appraisers and experienced farmers and ranchers will tell you that in most cases this land had little if any value before irrigations.

7. *Environmental and Economic Impacts.*—The Department in proposing these rules and regulations has failed to file an environmental impact statement and an economic impact statement.

In reviewing this issue it is that absent these considerations there has been a blatant attempt to by-pass the National Environmental Policy Act.

NCA recommends Congressional Action to resolve these many inequities inherent under the law and as would be mandated by the Secretary's proposed regulations.

American agriculture can ill afford to stand idle while federal regulations grasp for a resolve to the critical issue which can, if allowed to stand, change the structure of our agricultural system.

Senator METCALF. Are you Mr. Linde? We have a prepared statement here. We are glad to have you here.

You go right ahead. If you want to read your statement, or put it in the record and summarize it, it is not very long.

STATEMENT OF O. J. LINDE, PRESIDENT, SOUTHERN PACIFIC LAND CO., SAN FRANCISCO, CALIF.; ACCOMPANIED BY NED A. SMITH, ASSISTANT GENERAL MANAGER, SOUTHERN PACIFIC LAND CO.

Mr. LINDE. I am O. G. Linde, president of the Southern Pacific Land Co. Thank you for inviting us to participate in these hearings on Senate Joint Resolutions 93 and 96.

I think that it is important that the committee have some historical perspective on farming on the west side of the San Joaquin Valley of California in its deliberations concerning the joint resolutions.

About 30 years ago, the west side of the San Joaquin Valley, including Southern Pacific property in the present Westlands area, began to bloom under modern agricultural methods, deep-well irrigation, and programs to leach out the alkali content of the soil. Southern Pacific land was leased by local farmers on the basis of negotiated rentals which gave incentive to the farmers to improve the land through leveling, well drilling and construction of irrigation systems—in effect, improvement subsidies from Southern Pacific.

During the late 1950's, the Westlands Water District was formed for the purpose of obtaining a supplemental water supply as quickly and economically as possible. Both Federal and State water sources were then explored. Southern Pacific supported district

association with the State water project involving a Feather River source, with full cost of construction borne by the water users and no acreage limitation, but the majority of westlands farmers ultimately decided upon a Federal source under the Bureau of Reclamation's San Luis unit of the Central Valley project.

After the Federal water became available through its canal system in 1968, our farmer-tenants urged that Southern Pacific sign recordable contracts requiring us to dispose of our lands within 10 years so the land would have the benefit of that resource. Southern Pacific analyzed the language and requirements of the recordable contracts and the interpretation and procedures used by the Bureau of Reclamation over the past 40 years in other water districts, considered the production potential of the imported water, the desires of our lessees, and the district assessments we would be required to pay even if water were not taken. We also had to consider the handicaps we would create for others in the design and construction of the water distribution system if Southern Pacific lands were not participating in the Federal water program. The decision, based on the balance of all these factors, was made in 1971 to begin signing recordable contracts, on a selected basis, and recordable contracts on 84,392 acres of Southern Pacific property located in Westlands were signed over a period of years. Prior to suspension of all sales in August of 1976, 2,588 acres had been sold pursuant to the requirements of the contracts.

The proposed reclamation rules and regulations for acreage limitation recently issued by the Department of the Interior are revolutionary in scope. They would undo 50 years of interpretation and application of reclamation law, not only with respect to future reclamation projects and land not presently receiving Federal water, but also by their express terms, attempt to rewrite the existing contracts between the United States and the landowners who are required to dispose of any land in excess of 160 acres receiving Federal water.

Thus, Southern Pacific supports the concept of a moratorium on application of the proposed rules and regulations while the Congress studies the many issues created by administrative rewriting of the reclamation law. We believe, however, that in fairness to the landowners who contracted with the United States for a 10-year period in which to sell their lands, that the moratorium should include a tolling of the 10-year period of the recordable contracts, rather than a simple extension of the period in which the land must be sold to 6 months after the rules and regulations are finally adopted.

As things presently stand, the landowners are being forced to bear the risk of a decline in the market value of their lands. Their right to select the optimum time to sell their lands, as bargained for and reflected in the recordable contracts, has been destroyed by the current suspension of sales.

The larger the landowner, the worse the problem. In the case of Southern Pacific, we had embarked on an orderly sales program prior to the suspension of all sales and had disposed of 2,558 acres long in advance of the expiration of the 10-year period. But for the suspension, we would have sold approximately 19,000 acres by this time. If we are forced, by reason of delay in adopting the proposed

rules and regulations, to dump the entire 81,000 acres remaining to be sold on the market at one time, it is quite possible that the sale price we logically and rightfully expected at the time we entered into the recordable contracts will be adversely affected to a very material degree.

Speaking briefly to the merits of the proposed rules and regulations, we believe that they seek a return to an era of farming which disappeared long ago, when the first mechanical farm equipment began to appear, and the farmer got out from behind his mule and climbed up onto a tractor powered by an internal combustion engine.

We are unable to perceive any public purpose in prohibiting two brothers from farming together in a partnership, if their father is not also a partner, yet the proposed rules and regulations would do that. Nor can we understand why the Secretary seeks to prohibit a farmer from leasing as much land as he can profitably farm.

What public purpose is served by requiring conversion of prime agricultural land to residential and commercial uses to support the increased population in water districts receiving Federal water which would be required by those regulation?

The California legislature has recently been debating the question of how to prevent such conversion, and has enacted what is there called the Williamson Act to give property tax incentives to keep land dedicated to bona fide agricultural use. While California has not yet developed all its strategies and answers in this field, the Secretary's proposals appear to accentuate the problem.

We had been allowing the local farmers who have invested so much time, effort and money in improving the land the first opportunity to buy the land they have been leasing, to the extent they are qualified nonexcess purchasers. We believe they have a more equitable claim to the land than someone who wins the right to but the land in a lottery as proposed by the Secretary.

In considering the impact of the proposed rules and regulations, we would urge that the Congress repeal the present acreage limitation provisions of reclamation law and enact legislation which would allow any landowner receiving federally provided water to pay the full cost of such water, including interest on the construction cost of irrigation works, and keep its land, or alternatively, to sign recordable contracts calling for sale of excess land with a more realistic acreage limitation based on the particular characteristics of the property.

We believe that a simple method of curing speculation in purchase of excess lands sold pursuant to recordable contract would be to have all such lands sold at their fair market value, with the landowner receiving the exproject benefits value of the land, as at present, with the balance attributable to the presence of the Federal water going to the United States to pay back project costs.

In the 19th century, 160 acres was about as much land as one man could plow with a mule. The Homestead Act which was the source of the 160-acre limitation, was repealed years ago.

We ought not to let its outdated concept ruin our present agricultural economy. Units too small to utilize modern agricultural technology and finance themselves through the ups and downs of weather and markets cannot but result in diminished production.

This country needs to produce its food and fiber in the most efficient and economical manner possible for the benefit of all people, and lowering the productivity of the land will only result in smaller supplies and higher prices to consumers.

The question that should be asked is not how many 160-acre farms can be created as a social experiment, but, rather, how we can best insure continued production of necessary farm products at the lowest possible price for the American people.

I have attempted to be analytical and reasonable in my comments to you today. As you are aware, the entire subject has generated a great deal of interest in the press recently, and some of the stories that have appeared have been highly inaccurate and extremely unfortunate.

I would like to submit, for the record, a copy of a telegram to Secretary Andrus commenting on one recent, widely reported story.

And, Mr. Chairman, I would also like to supplement my testimony with a copy of the letter to the Commissioner of the Bureau of Reclamation, Mr. Keith Higginson, which has been submitted.

[The telegram and letter referred to above follow:]

NOVEMBER 9, 1977.

Hon. CECIL D. ANDRUS,
Secretary of the Interior.

You are widely reported in the press as having made a statement last week alleging that the Southern Pacific Land Company is receiving a subsidy of approximately \$150 million from the federal government for agricultural lands which it owns in the Westlands Water District of California. We have reviewed the draft report upon which your statistics apparently are based, and analyzed the report, as well as several prior reports issued by the General Accounting Office on the same question. We regretfully conclude that your statistics and conclusions are grossly inaccurate, and we believe that your statement was most unfortunate.

Southern Pacific Land Company is not an agricultural operator in the Westlands Water District but has followed the standard practice of leasing its properties to farmers under types of leases which originated long before Westlands ever came into being. Under these circumstances, it is difficult to understand how Southern Pacific Land Company can be claimed to receive any element of subsidy.

84,392 acres of Southern Pacific land in Westlands Water District are now subject to recordable contracts requiring sale in no more than ten years from the date of these contracts, most of which were executed from 1971 to 1974. Under these circumstances, any allegation of subsidy necessarily would be restricted to this short period of Southern Pacific ownership of the land.

The amount of claimed subsidy indicated in your statement varies in great extent from the conclusions of a study submitted by the General Accounting Office to the Congress on November 30, 1972 and another study forwarded to Senators Nelson and Haskell on April 9, 1976.

In view of the facts as set forth here and the conclusions reached by the General Accounting Office, we cannot believe that you will permit the statement attributable to you to stand as a public record, and we earnestly hope you will take appropriate corrective action.

Copies of this telegram will be submitted as attachments to our Company's testimony before both your Department's hearings in Washington on November 11, 1977 and the Senate Energy and Natural Resources Committee hearings scheduled for November 10, 1977.

We are fully prepared and look forward to discussing this with you at your convenience.

O. G. LINDE,
President, Southern Pacific Land Co.

SOUTHERN PACIFIC LAND CO.,
ONE MARKET STREET,
San Francisco, Calif., November 11, 1977.

Attention: Code 410.

Subject: Proposed Reclamation Rules and Regulations for Acreage Limitation—
Comments of Southern Pacific Land Company.

Mr. R. KEITH HIGGINSON,
Commissioner, Bureau of Reclamation,
Department of the Interior, Washington, D.C.

DEAR COMMISSIONER HIGGINSON: We have reviewed the proposed Reclamation Rules and Regulations for Acreage Limitation issued by the Bureau of Reclamation on August 22, 1977, and published in the Federal Register August 25, 1977, and wish to call your attention to what we believe are major deficiencies or illegalities in the proposals. Southern Pacific believes that any attempt to impose the proposed Rules and Regulations upon existing Recordable Contracts between the United States and present excess landowners would amount to a major, and constitutionally impermissible, unilateral rewriting of those contracts. Furthermore, Southern Pacific believes that the social experimentation implicit in the proposed Rules and Regulations is contrary to agricultural economic reality and current farming practices prevalent throughout the western United States, without reference to the presence or absence of federally subsidized water. These comments are organized in two parts, the first dealing with the attempted unilateral rewriting of existing Recordable Contracts, and the second dealing with the application of the proposed Rules and Regulations to Recordable Contracts entered into after the date the Rules and Regulations are finally adopted.

A.—EXISTING RECORDABLE CONTRACTS

Southern Pacific has entered into Recordable Contracts with the United States covering 84,392 acres in the Westlands Water District in the San Joaquin Valley of California. Additionally, Recordable Contracts covering 1,260 acres in the Arvin-Edision Water District in California have been entered into. Prior to the order of Judge Parker in *National Land for People v. The Bureau of Reclamation, et al.*, Civil No. 76-928 in the United States District Court for the District of Columbia, Southern Pacific had received price approval from the Bureau of Reclamation for sales of lands subject to Recordable Contracts in the Westlands Water District on purchase proposals covering 2,558 acres. Sale of said lands has been completed and Southern Pacific presently owns 81,834 acres within Westlands which are subject to Recordable Contracts.

The Recordable Contracts entered into by Southern Pacific and the Bureau are on forms prescribed by the United States, as required by the Contract Between the United States and Westlands Water District Providing for Water Service dated June 5, 1963. The form of these contracts had been developed by the Regional Office of the Bureau over an extended period of time, and they are very specific in their terms. They were not subject to negotiation between the landowners and the Bureau, and the Bureau's terms were necessarily accepted in their entirety. The understandings of the parties concerning the terms and conditions of the Recordable Contracts had been developed over the period of construction and operation of the initial units of the Central Valley Project which preceded the contract between Westlands and the United States by some thirty years. The understanding of the District Contract and the Recordable Contracts concerning the 160 acre limitation were reflected in a series of questions and answers transmitted to the Directors of all Water Districts participating in the Central Valley project by R. J. Pafford, Jr., then Regional Director of Region 2 of the Bureau of Reclamation in Sacramento, on March 4, 1963, during the period of time when the District Contract was being negotiated, copy attached hereto as Exhibit A. There are many fundamental variances between the rules essentially set forth in the Questions and Answers referred to and the now proposed Rules and Regulations, yet both emanate from the same Governmental Agency and apply to the same matter. Additional sources of interpretations of the District Contract and the Recordable Contracts were a series of opinions of the Solicitor of the Department of Interior. These materials were widely disseminated and provided the foundation for a detailed analysis of the rights and obligations of Southern Pacific if it should elect to enter into Recordable Contracts covering its excess lands. Southern Pacific did elect to enter into Recordable Contracts with the Bureau, as previously related, in good faith, believing that their terms and conditions were binding on it and the Bureau as well. As stated by the Comptroller General of the United States in his letter of August 20, 1976, to Senator Gaylord Nelson:

"Those persons who have already entered into agreements with the Bureau have a contractual right to rely on the limitations—or lack of them—which were in effect at the time they entered into their agreements . . ."

"Accordingly, action by the Secretary or by the Congress to abridge a landowner's right under the relevant contracts would appear to involve Fifth Amendment and/or breach of contract considerations."

Thus Southern Pacific respectfully concludes that the statement set forth in Section 426.2(b) of the proposed Rules and Regulations that they are to apply to existing Recordable Contracts to be both an inequitable and a legally untenable proposition. These existing valid contracts are wholly consistent with the reclamation laws and opinions and interpretations thereof by the Bureau at the time of execution, and we believe that application of any significant portion of the proposed Rules and Regulations to the existing Recordable Contracts would amount to a significant alteration without the due process of law guaranteed by Article 5 of the Constitution of the United States.

Specific provisions of the proposed Rules and Regulations are clearly and specifically irreconcilable with existing Recordable Contract terms already entered into on behalf of the United States by the Department of Interior, as hereinafter discussed.

Section 426.12(c), which provides that the Secretary shall appoint all three appraisers if an excess landowner requests an appraisal by a panel of three appraisers. Southern Pacific's existing Recordable Contracts provide for a panel of appraisers also, one to be appointed by the Bureau, one by the District, and the third by the first two. Section 426.12(c) also attempts to take away from existing excess landowners their right to two appraisals at the expense of the United States if desired. These appraisal provisions were formulated by the Bureau, and were the accepted manner of conducting appraisals of excess lands long before the District Contract was signed and they were agreed to by both parties to the contracts. See the answer the question numbers 4 and 9 of the Questions and Answers Regarding Excess—Land Provisions of Federal Reclamation Laws transmitted with R. J. Pafford, Jr.'s letter of March 4, 1963. These provisions are central to the fairness of these Recordable contracts and may not be violated. These rights are clearly guaranteed under the existing Recordable Contracts in Paragraph 7 thereof, and any attempt to alter these provisions unilaterally would constitute an invasion of the rights of the contracting parties.

Under the existing Recordable Contracts, Southern Pacific is free to sell its excess lands to whomever it pleases, so long as the purchaser would not thereby become an excess landowner. As stated by Judge Parker in his Memorandum Opinion in *National Land for People v. The Bureau of Reclamation*, until the power of attorney to sell the property contained in the Recordable Contracts vests in the Secretary of Interior, "... the Bureau of Reclamation has no authority over whom the private seller sells his land." It is quite clear that any attempt by the Bureau to impose a lottery scheme of the sort proposed in Section 426.10(b), on existing Recordable Contracts would be a substantial invasion of the rights and reasonable expectations of the landowners. Southern Pacific has adopted a policy of selling its excess lands to the lessees who have spent so many years developing them into productive farms. The Company believes such persons have a much more logical and equitable claim to being allowed to purchase the Company's lands than someone who just happens to be "interested" in such lands when the "interest" is in large part the results of the Company's development credits and the labor of the present lessee.

The present Recordable Contracts provide that "sale of said excess land shall be only for cash or upon terms satisfactory to the landowner." The contract provision was not new at the time of Southern Pacific's Recordable Contracts, indeed, it was well understood prior to execution of the District Contract. See the answer to question number 6 of the Questions and Answers: "The sale must be for cash or upon credit terms satisfactory to the owner." Section 426.10(b)(4) of the proposed Rules and Regulations provides "Such financing must comply with reasonable terms established by the owner, or if power of attorney has vested, with the terms of the district contract with the United States." A clearer case of irreconcilable conflict is hard to imagine. The right of the seller to name its own terms, if any, for sales of these excess lands is a fundamental provision of the Recordable Contracts. Without certainly as to acceptable manner of payment (cash in the present contracts) a contract of the sort where the Bureau is to pass on what are or are not reasonable terms is no contract at all.

Section 426.8 of the proposed Rules and Regulations is ambiguous in material respects. "No person or legal entity shall be entitled to lease more than 160 acres of land served by federal water provided pursuant to the reclamation laws." Does that mean that the Bureau is now taking the position that Southern Pacific may lease only one 160-acre parcel of the 81,834 acres it has under recordable contracts in

Westlands to a local farmer? Such a reading of the proposed rule is certainly proper grammatically, and if correct would constitute a massive invasion of present excess landowners' rights.

On the other hand, if the proposed regulation is read to provide that no person or entity may be a lessee of more than one 160-acre parcel, then hundreds of existing leases between owners of excess lands subject to Recordable Contracts and lessee farmers are suddenly declared a nullity. Either way the Bureau proposes to read the quoted language, it constitutes a unilateral and major change in the terms of the existing Recordable Contracts. It was clearly understood by the Bureau, the District and all parties executing Recordable Contracts that there was no limitation on leasing of lands subject to Recordable Contracts. This question was specifically dealt within a joint Memorandum of the Commissioner of Reclamation and the Solicitor of the Department of Interior of March 19, 1962, approved by Secretary Udall December 21, 1962, as follows:

"The mere coordinated operation of individual nonexcess holdings for the most economically beneficial use of the lands is not, in itself, contrary to the excess land provisions of the law. The legal owners of separate parcels of land might properly, for example, lease their lands to the owner of a winery or enter into an operating agreement with such owner for their mutual advantage."

Leasing of individual ownerships of nonexcess lands has been noted by the courts as well. See *United States v. Tulare Lake Canal Co.*, 535 F. 2d 1093, 1115 (1976) fn. 81.

"In the Central Valley Project, where almost complete compliance with the excess land laws has been attained, many individual landowners have leased their lands to individual or corporate operators. H. Hogan, Acreage Limitation in the Federal Reclamation Program 119-121, 127-128 (Study prepared for the National Water Commission 1972) (Distributed by National Technical Information Service, U.S. Dept. of Commerce). It has been said that farming of a number of separately owned tracts by a single operator may become 'the Reclamation equivalent of the condominium in apartment house ownership operation,' *Id.* at 127."

Entirely aside from the clearly unconstitutional attempt to impose limitations on leasing of lands subject to existing Recordable Contracts, such a radical departure from past construction of the reclamation laws, which do not contain one word about leasing of land receiving Federal water, is clearly the sort of change in interpretation of the law which should be mandated by Congress if it is to be the applicable prospective law.

The matter of who were eligible purchasers of excess lands sold pursuant to Recordable Contract was well understood by Southern Pacific and the Bureau at the time Southern Pacific began executing Recordable Contracts. The subject had been exhaustively covered in a series of opinions issued by the Office of the Solicitor of the Department of Interior. These opinions form part of the Recordable Contracts entered into by Southern Pacific and the Bureau as they clearly defined eligible purchasers for Southern Pacific's land and were presented to the landowners by the government as doing precisely that at the time the contracts were being executed. Section 426.7 of the proposed Rules and Regulations purports to prohibit delivery of project water to any form of multiple ownership not composed of persons having a direct lineal descendant relationship. Nowhere in any of the opinions issued by the Office of the Solicitor is there mention of such an artificial limitation of the class of eligible purchasers. To the contrary, these opinions dealt with all manner of joint ownerships without reference to family relationships. The common thread running through all the opinions discussing the various forms of joint ownership authorized to purchase excess lands under existing Recordable Contracts is that no member of such an entity may have a beneficial interest in more than 160 acres, and each member must have the right to sell or partition his interest at his election. For the Bureau now to reverse itself on the meaning of the Recordable Contracts by placing a direct lineal descendant limitation on the class of eligible purchasers permitted in existing Recordable Contracts would amount to a major rewriting thereof, in short there exists an irreconcilable conflict between Section 426.7 and every existing Recordable Contract. This was recognized and confirmed by the Comptroller General in his letter of August 20, 1976, to Senator Nelson as follows:

"Those persons who have already entered into agreements with the Bureau have a contractual right to rely on the limitations—or lack of them—which were in effect at the time they entered into their agreements and the Bureau may not unilaterally alter or restrict, for policy reasons, the class of persons to whom those landowners may sell their lands. Consequently, the owner is presently free to sell his land in large minimum acreages to a group as long as no individual member of the group has an interest in excess of 160 acres."

The 1963 Contract between the United States and Westlands Water District was made and entered into pursuant to Section 46 of the Omnibus Adjustment Act of 1926. This act replaced in its entirety the prior system of enforcing acreage limitations through regulation of individual water right sales. As pointed out by the court in *United States v. Tulare Lake Canal Co.*, supra at 1107-1108:

"The mechanism adopted by Section 46 of the 1926 Act for accomplishing the antimonopoly and antispeculation objectives of acreage limitations was to direct the Secretary of the Interior to include in repayment contracts with irrigation districts provisions under which the districts were required to withhold water from owners of excess lands who had not executed recordable contracts agreeing to sell that excess land at exproject prices. *This enforcement mechanism, based upon contractual relationships, replaced the prior method of enforcement through regulations governing water right applications* (emphasis added)."

In *United States v. Imperial Irrigation District*, 599 F. 2d 509, 522 (1977) the U.S. Court of Appeals for the Ninth Circuit, speaking of an irrigation project approved in 1928 stated:

"At that time, the portion of the reclamation law governing contracts for payment of the costs of 'constructing, operating, and maintaining' works on new reclamation projects was Section 46."

That provision of the reclamation law contains no mention of any residency requirement. Fifty years of interpretation of the reclamation laws since Section 46 was enacted have consistently held that residency was not required in any District contracting with the United States pursuant to Section 46. Residency is not provided for in any Recordable Contracts covering Westlands property so far as this landowner is informed, and there is an irreconcilable conflict between the provisions of such contracts and the provisions of Section 426.10 to the extent that the definition of eligible nonexcess owner contained in Section 426.4(1) is incorporated therein. It should be noted that an irreconcilable conflict exists not only with reference to the attempt to impose the residency requirement of Section 426.4(1), but also with reference to the provision of that section which would prohibit ownership of land receiving Federal water in more than one irrigation district. Imposition of either requirement would substantially reduce the class of persons eligible to purchase Southern Pacific's excess land in derogation of its rights under the Recordable Contracts.

B.—FUTURE RECORDABLE CONTRACTS

Addressing the question of the future, and the application of the proposed Rules and Regulations to Recordable Contracts yet to be made, the following comments may be helpful.

Prior to Judge Parker's ruling in *National Land for People v. Kleppe*, and the subsequent publication of the proposed Rules and Regulations presently at issue, Southern Pacific had been considering whether to subject additional uncommitted lands within Westlands to new Recordable Contracts. The issue primarily involved was whether the return to the Company would be higher if the lands were held for why this will happen. The five-year period proposed for future commercial development or if they were farmed with the federally subsidized supplemental water and disposed of in accordance with the then understood Recordable Contracts. The now proposed Rules and Regulations make the decision very easy. If they are adopted in their present format, Southern Pacific could not economically enter into any more recordable contracts and lands that might have remained in production will ultimately be withdrawn from agriculture. Economic logic accounts for why this will occur. The five-year period proposed for future recordable contracts in Section 426.5(a)(2)(i) is simply too short a period of time for the potentially increased production from application of the federally subsidized supplemental water supply to generate enough additional income to offset the reduced sale price arising from the forced sale under the Recordable Contract. There is no incentive for an excess owner to subject its lands to these proposed Rules and Regulations.

The sweeping nature of the changes in interpretation of reclamation law contained in the proposed Rules and Regulations makes it most likely that their impact will be felt in future projects, if any, since their application to existing projects and contracts already entered into appears to be constitutionally impermissible.

The framers of these Rules and Regulations appear to have lost sight of the fact that the Bureau of Reclamation is not the only source of irrigation water. The owners of lands which would benefit from application of imported water are not without choice in the matter of choosing how to arrange for such water supplies. In the case of Westlands, Southern Pacific preferred that the District arrange for water from sources developed by the State of California, which of course does not

have any acreage limitation in its water projects. Southern Pacific felt that the higher priced water from the state project was preferable to the lower priced federal water with the acreage limitation. Unfortunately, our neighbors did not agree and Westlands contracted with the Bureau of Reclamation for a supplemental water supply from the San Luis Unit of the Central Valley project. We doubt very much that our neighbors would have voted for the federal water if the proposed Rules and Regulations were in effect. Furthermore, we doubt that any landowner with a choice would willingly submit his future to the arbitrary and unreasonable treatment contemplated by the proposed Rules and Regulations. Thus, it becomes clear that the proposed Rules and Regulations may never have any effect whatsoever and the historic process of federal assistance in reclaiming arid areas of the nation will come to an end because of the inequitable terms and conditions of the reclamation program. The breaking up of large ownerships so zealously sought will not occur, simply because other methods of securing water supplies which do not subject the present farmers to acreage limitation, at least under the oppressive Rules and Regulations now proposed, will be sought out and implemented.

Entirely aside from the basic unfairness of the proposed Rules and Regulations to existing owners of more than 160 acres, they proceed on the assumption that creation of a large number of small "family farms," along with the concomitant conversion of large amounts of prime agricultural land to residential and commercial uses to support the vastly increased population contemplated by the proposed Rules and Regulations is for the ultimate good. Southern Pacific, on the other hand, believes that the national interest is best served by production of food and fiber in the most economical manner possible. Elementary economics tell us that the mode of production of each item produced will seek its own most economic size. The nation has been witness for decades to ever larger farming operations and the decline and all but disappearance of the size of farm which the Bureau now seeks to promote. Southern Pacific believes that the inevitable result of forcing agriculture into a seventy-five year old strait jacket will be unnecessary inflation and shortages of supply, along with unnecessary increases in consumer costs across all levels of consumption, low income and high income alike.

If we are now indeed entering an era of limits, a time when our population is straining the productive capacities of our agricultural economy, why are we now embarked on what can only be a debilitating carving up of some of the nation's most productive lands?

Southern Pacific believes that the nation would best be served by retaining a viable ongoing federal reclamation effort. It should be structured in a manner that would allow existing landowners to pay their full share of project costs and retain their lands, or alternatively, agree to dispose of their excess lands pursuant to fair and even-handed regulations. A quick and easy method of putting a stop to speculation in resale of former excess lands which should be contained in any regulations adopted by the Secretary would be to require sales of excess lands to be made at their fair market value and have that portion of the price attributable to project benefits be paid to the United States for the purpose of repaying project costs. That way the United States would receive complete pay back at an earlier time, and would not have to maintain an additional bureaucracy to administer the price control scheme for subsequent sales contemplated by the current proposals. This would have the effect of providing resources for budget balancing not heretofore available.

To sum up, on the second portion of this submission, Southern Pacific believes that the ultimate result of adoption of the proposed Rules and Regulations would be to significantly damage federal reclamation efforts and ultimately hinder creation of the smaller ownerships which have been one of the goals of those efforts. The proposals are lacking in elementary fairness and present the real prospect of a material setback in the U.S. agricultural economy. They should be drastically revised.

Respectfully submitted,

[Original signed] O.G. LINDE.

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Sacramento, Calif., March 4, 1963.

Directors of Water Districts Participating in the Central Valley Project, Calif.

GENTLEMEN: From time to time questions are directed to me or to other employees of the Bureau of Reclamation regarding the excess-land provisions of the Federal reclamation laws. The frequency and character of these questions make it apparent that after several years of widespread discussion there still remain a great

many farmers who do not completely understand these provisions. In view of this, I have prepared answers to a number of selected questions to assist you, as district directors, in discussing the excess-land provisions with members of your districts.

You are aware, I am sure, that basic objectives of the excess-land provisions of the Federal reclamation laws are to make the benefits from project water available to a maximum number of people and to prevent speculation because of the project. I also would like to stress the point that the excess-land provisions of the Federal reclamation laws do not limit the number of acres of land which may be owned by an individual. They only limit the number of acres of land owned by an individual to which water can be furnished by a Federal reclamation project and thereby may influence the number of acres of land which he chooses to own.

Additional copies of this letter consisting of questions and answers may be made available if you can use them to advantage in discussing the excess-land provisions with your members.

Sincerely yours,

R. J. PAFFORD, Jr.,
Regional Director.

Attachment.

QUESTIONS AND ANSWERS REGARDING EXCESS-LAND PROVISIONS OF FEDERAL RECLAMATION LAWS

Question 1. What is "excess" land?

Answer. Excess land is irrigable land in excess of 160 acres held in the beneficial ownership of any single individual when such land is either:

- (1) Located within the service area of an irrigation district or similar organization having a contract with the Bureau of Reclamation for water service; or
- (2) Owned by an individual who has such a contract.

Question 2. What are the major excess-land provisions of the Federal reclamation laws?

Answer. Federal reclamation laws require that any contract with the Bureau of Reclamation for irrigation water must provide that:

- (1) Water shall not be furnished to, or (in case the contract is with an individual) used on, excess land unless the owner executes a recordable contract agreeing to dispose of such land within a certain period of time to a buyer who can take title as a nonexcess landowner at a price within the appraised value of such land, exclusive of project benefits, as approved by the Secretary of the Interior, and further agreeing that if he does not do so the Secretary may sell the land for him; and further
- (2) Water shall not be furnished to or used on excess land, even though sold into smaller ownerships, unless the sale price is within the appraised value approved by the Secretary of the Interior.

Question 3. Can irrigation water or service be made available to excess land acquired after a water service contract is executed?

Answer. No. The owner may not place such land under recordable contract. Such excess land may not receive project water until sold to a person who can take title as a nonexcess landowner at a price that does not reflect project benefits.

Question 4. What procedure is established for appraising excess land?

Answer. Ordinarily, appraisals of excess land will be made only when the land is to be sold. However, appraisals may be made earlier, either at the request of the landowner or the Government. Water service and recordable contracts provide that at the option of the landowner or the Government the appraised value of the excess land may be determined by a board of three appraisers. The contracts also authorize the Government to appraise and reappraise excess land and approve sale prices without resorting to the 3-man board, if the value so determined is acceptable to the owner. In the event of an appraisal by a 3-man board, one of the appraisers is selected by the district (or the individual landowner if the water service contract is with him), one is selected by the Bureau of Reclamation, and the third is selected by the two appraisers.

Question 5. What is a recordable contract?

Answer. A recordable contract is one which can be recorded in county land records. This contract provides that the landowner will sell at an approved price and within a designated time such excess land to a buyer(s) who can take title to such land as a nonexcess landowner(s). The landowner further agrees that if the land is not sold by him within the period provided by the contract, then the Secretary of the Interior shall have a power of attorney to sell the excess land for him.

Question 6. May the Secretary of the Interior dispose of the excess land at any price after the period of the recordable contract has expired?

Answer. No. Any sale of excess lands by the Secretary must be for a price approved by the Secretary or as determined by an appraisal made by a 3-man board and approved by the Secretary. The appraised price cannot reflect project benefits. The sale must be for cash or upon credit terms satisfactory to the owner.

Question 7. Suppose the Secretary of the Interior fails to find a buyer for the property?

Answer. From the time the recordable contract is signed and until the property is sold either by the owner or the Secretary, the landowner will be entitled to receive project water for the excess land.

Question 8. If, after an appraisal is made, land values undergo a general change, must the land be sold at the original appraised value?

Answer. No. The water service contract and the recordable contract provide for reappraisals. They will reflect changes in improvements, increases in land values, and any other factors affecting land values except the availability of water or service from the project.

Question 9. Who pays for the appraisals?

Answer. The United States pays the cost of the appraisal and the first reappraisal. Any additional reappraisal must be paid for by the party requesting it.

Question 10. Do the excess-land provisions of the Federal reclamation laws mean that a man and wife can receive project water for only 160 acres of irrigable land?

Answer. Not necessarily. The provisions limit water deliveries to 160 irrigable acres of land in the beneficial ownership of any one person. A husband and wife may own property as community property, as joint tenants, or as tenants in common, with equal interests, any may thus receive project water for 320 irrigable acres.

Question 11. Suppose Mr. Doe and Mr. Roe (neither being married) are unequal partners in a partnership, each owning an undivided interest in 320 acres of land. In this case, Mr. Doe's interest is two-thirds and Mr. Roe's one-third. May they still obtain project water for the 320 acres?

Answer. No. Since Mr. Doe owns two-thirds of the partnership, he really is the beneficial owner of two-thirds of each acre of the land. Mr. Roe is really the beneficial owner of one-third of each acre of land. The partnership may obtain project water for 240 acres only because Mr. Doe's interest therein would be equal to 160 acres. The principle involved here is that no one owner is entitled to water for more than 160 acres. Since the ownership assumed here is undivided, designations of the area for service must be made jointly by the partnership. It is to be noted that Mr. Roe would be entitled to water service for an additional 80 acres of separately owned land.

Question 12. A corporation with 800 acres of land is owned by five shareholders. Is the corporation entitled to water for 160 acres per shareholder?

Answer. No. The corporation is entitled to project water for 160 acres only, because legally it is an entity distinct from its shareholders. However, the fact that the corporation owns and obtains project water for 160 acres does not necessarily affect the right of the stockholders to obtain project water for any individually owned land they may have.

Question 13. Many an owner of excess land, by transferring 160 acres of his excess land to a corporation wholly or almost wholly owned by him, receive a project water supply for this excess land?

Answer. No. Corporations may not be used as a device to augment the acreage for which project water is obtained. The transfer of excess land by the owner to a corporation in which he owns all or substantially all of the stock will be regarded as an attempt to circumvent the excess-land provisions of the Federal Reclamation laws, unless sufficient evidence to the contrary is supplied.

Question 14. Can a farmer correct his excess-land condition merely by passing title to other members of his family?

Answer. Distribution of land by title only with the benefits being retained in a single holding would be a circumvention of the intent of Federal reclamation laws. However, if there is a bona fide transfer of property to the children or other persons and they actually receive the benefits of ownership of the property, the transfer would be considered the same as a sale to any other individual.

Question 15. Suppose a landowner owns more than 160 irrigable acres of land and does not execute a contract agreeing to dispose of his excess holdings. Does that mean that he cannot receive any project water for his land?

Answer. No, it does not. He may receive project water to irrigate 160 acres of land but he must designate the 160 acres of land on which the water is to be used.

Question 16. Suppose after designating 160 acres of land to receive project water the landowner changes his mind and desires to redesignate the location of the 160 acres to receive project water. May he do so?

Answer. The water service contract permits the landowner to redesignate his nonexcess land with the concurrence of the Bureau of Reclamation. When a redesignation is made, the land which was previously designated becomes subject to the excess-land provisions.

Question 17. Mr. Doe is a single man and owns 260 acres of land. He has an existing water right sufficient to irrigate 100 acres of his land. Can he get an additional supply of water without executing a recordable contract agreeing to sell the land owned by him in excess of 160 acres?

Answer. Yes. The provisions of the water service contract do not affect the use of his existing water supply. He may get enough project water to irrigate up to 160 acres of designated land.

Question 18. Mr. Doe, who owns 260 acres of land and has an existing water right under which he could divert sufficient water to irrigate 100 acres, receives the water to which he has an established right through a distribution system financed with Federal funds under Federal reclamation laws (other than the Small Reclamation Projects Act of 1956 as amended). Does this affect water deliveries under his water rights?

Answer. Yes. Under this situation he will be entitled to water for only 160 acres of land, unless he signs a recordable contract, because any water conveyed through a distribution system so financed is subject to the excess-land provisions. If construction of the distribution system is otherwise financed, water deliveries under his established water rights will not be affected and in addition he may receive project water for 160 acres.

Question 19. Mr. Roe owns 600 acres of land. The land is appraised but he does not sign a recordable contract agreeing to dispose of his excess. He sells 80 acres of his excess land at more than the approved appraised value. May the district deliver water to this 80 acres?

Answer. No, it may not, because the excess-land provisions provide that the sale of excess land will not carry with it the right to receive project water unless the purchase price involved is within the appraised value of the land approved by the Secretary of the interior.

Question 20. Can a new owner who unknowingly buys excess land at more than its appraised value receive project water? If not, isn't he being penalized for an act committed by the original owner?

Answer. No. The buyer has a responsibility for ascertaining title limitations. The districts also have an important responsibility to see that their own solvency and the operations of the district farmers are safeguarded by a widespread knowledge of the conditions under which water may be delivered. They also have the responsibility to avoid illegal delivery of water.

Question 21. Will the establishment by the Secretary of the Interior of the appraised values through a 3-man appraisal board constitute a recommendation by the Government that prospective purchasers buy the land at that price?

Answer. No. The appraisal approved by the Secretary only establishes the highest price that may be paid for the land without loss of eligibility for water service from the project. The prospective purchaser should consult his own appraiser or credit agency for advice, if desired, with respect to the value of the property to him.

Question 22. Can land acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance or by devise, which becomes excess land upon such acquisition, be furnished project water?

Answer. Yes. Excess land acquired in such manner is eligible for project water for a period of five years and no longer. Such land to be eligible for project water thereafter must be sold at an approved price to a buyer(s) who can take title thereto as nonexcess land.

Question 23. Mr. and Mrs. Doe jointly own 320 acres. Mr. Doe dies. So 160 acres become ineligible to receive project water upon the death of Mr. Doe?

Answer. No. As long as the surviving spouse (Mrs. Doe) remains unmarried the land will remain eligible for project water.

Question 24. Are lands owned by a district or other subdivision of the State subject to the excess-land provisions of Federal reclamation laws?

Answer. They may be. Each case must be analyzed and considered on its own merits to determine whether land is excess within the intent of the excess-land provisions of the Federal reclamation laws.

Mr. LINDE. And I have one more comment to make.

I just want to clarify something that—a statement made by Mr. Coleman earlier that he felt that Southern Pacific was a major landowner in the Imperial Valley. The fact is that we own 700

acres in the Imperial Valley, and we do not consider that to be a major landowner.

Senator METCALF. Well, I do not either, as far as the Imperial Valley is concerned.

When I first visited the Imperial Valley, I was then a Member of the House of Representatives under the chairmanship of Congressman Engle, we were overlooking those squatters on the Colorado River. I never did find out what eventually happened to them. They built rather large and ornate buildings, motels, and camps, and so forth on the land that belonged to the Federal Government.

Whatever did happen to them, do you know?

Mr. LINDE. Well, I think some of them have gone by the wayside, but there are still squatters out in the desert areas.

Senator METCALF. These people were on riverfront property.

Mr. LINDE. Along the Colorado River. I could not comment on that.

Senator METCALF. I remember looking at the seepage and salinity of the land in the Colorado Valley. That was 25 years ago. I have been on the committees that have been concerned with your area for quite a while.

In fact, I went to Stanford back in the 1930's and while you were testifying I was thinking about the Santa Clara Valley. I remember that was a beautiful, beautiful valley with the kind of farming that you are talking about, and now all it is is subdivisions of either Santa Fe or San Francisco.

Mr. LINDE. That is right.

Senator METCALF. Thank you very much for coming. Thank you for your testimony, and the material you supplied, and it certainly will be examined.

I want to ask you what you think should be the kind of resolution, because I am going to make inquiry as to what people think should be a popular land unit if we do replace 160 acres in the various geographical locations and various altitudes, and it may be that we will have a half dozen ideas or maybe will just start with 220 acres and go from there.

If the Arabs keep after us, though, that mule power contrivance won't be so out of order as we think of it nowadays, will it?

Thank you very much.

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

Senator METCALF. Is there anything else? Any other witnesses?

[No response.]

Senator METCALF. That concludes the listed witnesses that we have for today.

We will now recess subject to the call of Chairman Jackson.

[Whereupon, at 2:45 p.m., the committee recessed, subject to the call of the Chair.]

APPENDIX

ADDITIONAL STATEMENTS AND COMMUNICATIONS SUBMITTED FOR THE RECORD

STATEMENT OF THE NATIONAL COTTON COUNCIL OF AMERICA
FOR THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON PROPOSED REGULATIONS UNDER THE RECLAMATION ACT OF 1902
November 11, 1977

The National Cotton Council is the central organization of the raw cotton industry and represents producers, ginners, merchants, warehousemen, cooperatives, manufacturers, and cottonseed crushers in the 18 cotton producing states from the Carolinas to California.

We appreciate this opportunity to express our views on the new rules and regulations recently proposed to implement the sale of excess land under the Reclamation Act of 1902.

While we understand the responsibility of the Department of Interior to enforce provisions of law as interpreted by the courts, the Department also has a responsibility to adhere insofar as possible to the historical interpretations and assurances which farmers and other landowners have relied upon since the law was written. Since the proposed new rules and regulations represent a complete departure from past administration and enforcement of reclamation law, this whole question becomes one of obvious concern.

It is difficult to understand how these new rules could be proposed without a thorough and complete analysis of their impact. Even more difficult to understand is the basis for declaring that they are not major proposals -- yet this was done in the Federal Register announcement.

The new regulations would directly affect more than 2.1 million acres of farm land. Much of this is in California where 25 percent of all U. S. table food and 40 percent of our fruits and vegetables are grown. California also is the second leading producer of cotton, accounting for 20-25 percent of U. S. production. Virtually all California cotton production is in the affected counties. The potential effect is not limited to the West however. Competent legal analysts believe there are implications in the proposals that could affect federally-funded projects all over the nation. Thus, if these proposals are implemented, they would have a serious effect on the nation's food and fiber supplies as well as commodity prices.

The purpose of these proposed new rules has been variously expressed as a means of encouraging family farms. But the vast majority of farms in the affected areas are already family-owned and family-operated. As a result, these proposals will serve only to make it more difficult for such farms to operate efficiently and profitably.

The regulations proposed by the Interior Department reflect a complete lack of understanding of the changes in farming practices since the law was written. The acreage limitations imposed in 1902 are simply inconsistent with the economic reality of agriculture today.

Advances in technology and better land management have allowed American farmers to achieve a level of efficiency in producing food and fiber that is unequaled anywhere in the world.

To produce the variety and quantity of crops needed to meet domestic and foreign demand, farmers have had to enlarge their operations very considerably to maintain their productivity and efficiency due to the high cost of machinery, labor, and overhead items.

Rather than recognizing these changes, the proposals put additional restrictions on land ownership and use that go beyond those required by law. The most striking of these is the provision that no more than 160 acres may

-3-

be leased by any individual.

This would deny a farmer the flexibility he needs to adjust to changing technology costs and market conditions. It also would make it difficult for him to take advantage of modern farming methods and market opportunities.

There are other areas of concern which also should be addressed by the Department before these new rules and regulations become effective.

Although the proposals would affect more than 2.1 million acres, no detailed analysis has been made of ownership and residency patterns to determine the acreage that will be forced on the market. It has been conservatively estimated that perhaps 30 to 40 percent of this acreage would actually have to be sold under the new regulations. A more complete analysis is necessary if the full impact is to be accurately measured.

Another concern which should be addressed is the problem of financing those desiring to begin farming on excess land.

To operate profitably in farming today requires a huge investment in land and equipment. Even at land prices substantially below market value as proposed, a husband and wife -- each desiring 160 acres -- face a minimum initial investment of some \$440,000. Obtaining adequate financing may prove difficult, particularly if the prospective buyers of excess land have no production history.

It may be that some form of government assistance would be necessary. The extent of this would depend on the actual acreage involved and the number of prospective buyers. Conservatively, the long-term financing requirement could be about \$800 million in California alone, with another \$235 million or so needed for annual operating capital.

Another serious question is whether new farmers, even with assistance in the form of low-interest loans, could operate profitably within the acreage limitations on ownership and leasing.

According to data from the California Extension Service, 320 acres in that state devoted to present cropping patterns would not provide an adequate return. Actually, at current prices, there would be a loss of over \$3,000 not considering the higher costs involved in depending on custom operators for heavy tillage and harvesting.

Certainly, low commodity prices are one cause of the projected loss. But costs of production are also much higher due to the loss of economies of scale arising from the acreage limitation. Data from a recent study by the University of California indicate the loss of economies of scale can add over \$15 million to the cost of producing food and fiber annually on the affected acres in California.

A different crop mix would provide different results, assuming prices are held constant. But there are limits to the acreage which can be shifted to various crops and the shifts almost assure that prices will not be constant. Agricultural commodity prices -- especially vegetables -- are extremely sensitive to changes in production. Significant shifts probably would lead to substantially lower prices and farm income.

Still another problem area which the Department should address is the impact of the residency requirement.

Residency has not been required under reclamation law since 1926. As a result, land ownership and residency patterns have developed over a period of more than 50 years without any consideration of meeting such a requirement. If residency is required as proposed, an additional burden will be placed on local communities for increased expenditures for roads, utilities, schools, police, and fire protection, waste disposal, hospitals, and other facilities and services. The initial investment is estimated at about \$230 million, and the annual cost at \$13 million.

It seems reasonable to conclude that these proposed new rules and regulations could have a significant economic and social impact on rural communities and the nation's agricultural sector. For this reason, we have strongly urged that the Department of Interior undertake a comprehensive study to determine the full impact of these proposals before finalizing any new regulations.

We would further urge that the Congress direct the Department of Interior to delay for one year the implementation of any new regulations relating to land sales and leases under the Reclamation Act of 1902 as amended. At least this much time is required to assess fully the economic, environmental and social impact on the affected areas.

We would like to submit for the record a paper entitled, "Economic Considerations of the Excess Land Law," from which most of the data in our testimony was drawn.

We appreciate the opportunity to present our views.

ECONOMIC CONSIDERATIONS OF THE EXCESS LAND LAW

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Economic Considerations Of The Excess Land LawINTRODUCTION

The proposed Excess Land Law regulations limit a person or legal entity from owning more than 160 acres of land which receives federal project water. Leasing would be limited to an additional 160 acres. Residency -- living within a maximum radius of 50 miles of the property -- is specified as a required condition for receiving federally subsidized water. Sale prices of excess lands must be approved by the Secretary of Interior for the original sale and all subsequent sales for ten years after the original sale.

The Department of Interior has claimed the new rules for disposal of excess land (all acreage over 160 acres) are not a major proposal. This arbitrary ruling means an economic impact statement is not required. The judgement was made without complete information on the acreage that would be subject to sale.

The proposed new rules and regulations will likely cause a significant economic impact on the affected areas. A complete land ownership survey should be conducted to provide data for a comprehensive economic impact analysis.

The following analysis illustrates three areas requiring study. These economic concerns are financing difficulties, loss of economies of scale and increased local government fiscal requirements.

Excess Acreage and Acreage Subject To Sale

Excess land is estimated to total 2.1 million acres and is distributed among seventeen western states. The bulk of the affected acreage (89 percent) falls in California alone. The 2.1 million figure is composed of 1.33 million acres known to be subject to reclamation laws and 755 thousand recently determined by federal courts to fall under reclamation restrictions. The court-determined acreage is in the Pine Flat, Isabella and Imperial Irrigation Districts in California.

The proposed new rules and regulations would apply to all existing excess land. The total excess of 2.1 million acres, however, will not necessarily be made available for sale. The rules state the Bureau of Reclamation will select purchasers of excess land by lottery or other impartial means, except that a person in a family lineal descendant relationship with the excess landowner would have a preference to buy the land.

TABLE 1
ACREAGE OF EXCESS LAND AND AMOUNT SUBJECT TO SALE

	<u>Excess Acres</u>	<u>Acreage Subject To Sale</u>
Bureau Projects ¹	1,331,252	542,265
Projects ² { Pine Flat	322,000	97,000 - 129,000
By Court { Isabella	167,820	50,346 - 67,128
Ruling { Imperial	265,000	80,000 - 106,000
Total	2,086,072	769,611 - 844,393

¹Source: Data supplied by Division of Water and Land, Department of Interior.
²Source: Data (estimates) supplied by Gene Hinds and Michael S. Hacksaylo (Department of Interior) via telephone, 10/21/77.

The Department of Interior estimates 770 to 844 thousand acres would be subject to sale (table 1). Approximately 90 percent of the excess acreage is in California and this situation was, therefore, selected for analysis. The results and conclusions should be indicative of the situation for the total affected acreage.

The acreage subject to sale in California is estimated at 750,000 acres¹. Dividing this acreage into farms of 320 acres -- a man and wife each owning 160 acres -- will require 2,344 new owner units.

The existing farms receiving federally subsidized water will also be reduced in size. The average-size operation would likely be greater than 320 acres because these operators would have sufficient capital to lease an additional 320 acres and a son or daughter might also be involved. The following analysis focuses on the 2,344 new operating units and explores the areas of financing, economies of size and local government expenditure requirements.

¹This was determined by taking 89 percent (California excess acreage as a percent of total) of the 844,000 acres estimated to be subject to sale in all states.

CAPITAL REQUIREMENTS

Financial requirements to commence farming operations on 320 acres pose a momentous problem. An initial capital investment of \$440,000 is necessary to purchase land, machinery and equipment, a residence, and provide the first year's operating capital (Table 2). A maximum leveraged loan position requires \$66,000 equity.

TABLE 2
CAPITAL INVESTMENT FOR A 320 ACRE FARM

	<u>Total Investment</u>	<u>Equity Required</u>
Land ¹	240,000	36,000
Equipment	50,000	10,000
Buildings Including House ²	50,000	5,000
Annual Operating Capital	<u>100,000</u>	<u>15,000</u>
TOTAL	440,000	66,000

¹ 320 Acres @ \$750/acre with 15 percent down
² 1400 sq. ft. house @ 26/sq. ft - \$36,400; \$14,600 for equipment shed and other buildings
Source: see text

Real estate loan terms are normally 20-25 years maturity, 15-20 percent cash and an interest rate of 9.0-9.5 percent. The purchase of 320 acres at \$750 acre requires \$240,000 with a minimum of \$36,000 down.

The controlled resale price, after the original sale also imposes a change in the financing arrangements. When the resale price of excess land was not controlled, lending institutions could finance 100 percent of the original sales price. This occurred because the resale price was substantially above the controlled sale price. If the controlled price was \$750/acre and the resale price \$1,000/acre, the lending institutions could finance the entire \$750 and after closing, hold a 75 percent equity position (\$750/\$1,000), because the land value would rise to \$1,000/acre. This will no longer be the case and a buyer's equity position will be mandatory.

Machinery and equipment investment is placed at \$50,000. This would not include any harvesting or heavy tillage equipment, because their high costs could not be justified on 320 acres. Heavy tillage equipment is assumed to be rented and harvesting work done by custom operators. The equity requirement is computed at 20 percent, or \$10,000.

The residency requirement specifies all future purchasers of excess land must reside on or in the neighborhood (considered to be a maximum radius of 50 miles) of the land they wish to buy or state under oath that they will meet the residency requirement within three years of acquisition of the land.

The residency stipulation will require the purchase of a residence and in many cases the construction of a new home. A storage shed and other farm buildings will also be required. The total purchase price for all buildings (including a house) is \$50,000. This total is comprised of a \$36,400 residence and the remainder in other buildings.

Funds will be needed to finance the first year's operations. Lenders of production capital rely heavily on a producer's history when analyzing a loan application. New owners may not have such a history and this will introduce an additional element of risk. Some equity will be required to swing a production loan, the amount depending on the crop mix. A total capital requirement of \$100,000 is not an unreasonable figure, and a 15 percent equity position would require \$15,000.

The long-term capital required for 2,344 units, excluding owner operating capital, is \$797 million (Table 3). Equity and debt requirements are \$119 and \$678 million, respectively. This relationship between equity and debt represents maximum leverage. Different proportions would simply change the composition of the \$797 million among the two items.

TABLE 3
TOTAL CAPITAL, FINANCING (DEBT) AND EQUITY REQUIREMENTS
FOR 750,000 ACRES (2,344 FARMS OF 320 ACRES)

	Total Capital	Debt	Equity	Percent Debt
	(million \$)			
Land ¹	563	479	84	85
Equipment ²	117	94	23	80
Residence ³	<u>117</u>	<u>105</u>	<u>12</u>	<u>90</u>
Total	\$797	678	119	85

¹ 750,000 acres @ \$750/acre with 15 percent cash

² 2,344 farms at \$50,000/farm with 20 percent cash

³ All farm buildings at \$50,000/farm for 2,344 farms with 10 percent cash

DEBT SERVICE REQUIREMENTS AND FAMILY LIVING EXPENSES

The question of whether the potential new farmers can arrange financing depends on their equity position and the projected cash flow from the farming operation. The higher the equity, the greater the likelihood of obtaining the necessary financing. Once financing is secured, the farming venture has to generate a return sufficient both to service debt and provide for family living expenses.

A reasonable starting point is the determination of income necessary to service the debt and provide for living expenses. A comparison of projected net farm income and required expenses will provide insight into the feasibility of such an enterprise.

The debt service plus family living expenses are put at \$47,368. This consists of payments of \$20,768 for land, \$11,600 for equipment and \$15,000 for living expenses. A farm consisting of 320 gross acres will enable a net plantable acreage of 310 acres, because roads, space for equipment, buildings, etc., take about 10 acres of farm land. This translates into \$153 net income required per acre.

Net Income

It is difficult to characterize a typical farm because rotations are practiced and the acreage composition changes as the respective commodity prices change. The crops considered in this analysis are barley (representing small grains), tomatoes (representing vegetables), cotton and alfalfa hay. There are many other crops grown, but these are usually considered to be the main alternatives in the San Joaquin and Imperial Valleys of California.

A model or base farm was constructed by calculating the 1974 acreage planted to cotton, alfalfa, vegetables, barley, and wheat in these areas (Table 4). Each commodity grouping was expressed as a percentage of the total for the above mentioned crops. These percentages were utilized to divide the 310 acres into the typical farm consisting of 133 acres of cotton, 84 acres of barley, 65 acres of alfalfa and 28 acres of tomatoes. This simulates the average 1974 farm.

Production costs per acre for the four crops were taken from Cost Analysis Work Sheets supplied by the California Extension Service. Costs are listed in Table 5 and the work sheets are in the appendix, Exhibits 1 through 4.

The per acre costs are divided into preharvest cash costs, harvest costs and diseconomies of scale. These costs exclude the fixed costs of land and equipment.

TABLE 4
ACREAGE OF SELECTED CROPS IN THE SAN
JOAQUIN AND IMPERIAL VALLEYS 1974 1/

	<u>Farms</u>	<u>Acres</u>	<u>% of Commodity Total</u>
Cotton	4,003	1,149,603	43
Alfalfa	3,243	554,403	21
Vegetables	960	239,508	9
Barley and	1,116		
Wheat	<u>1,065</u>	<u>731,316</u>	<u>27</u>
Total	N. A.	2,674,830	100

1/ Source: 1974 Census of Agriculture, California State and County Data,
U. S. Department of Commerce, Bureau of Census

TABLE 5
CROP BUDGETS 1/

<u>Cost Item</u>	<u>Barley</u>	<u>Tomatoes</u>	<u>Cotton</u>	<u>Alfalfa</u>
Preharvest Cash	113	477	232	182
Harvest Cost	27	427	151	109
Diseconomy of Scale ^{2/}	<u>8</u>	<u>11</u>	<u>29</u>	<u>23</u>
Total	148	915	412	314

1/ Source: Selected Cost Analysis Worksheets (barley, tomatoes, cotton and
alfalfa) University of California Agricultural Extension Service.
Exhibits 1-4 Appendix

2/ Diseconomy costs extrapolated from Goldman, Economic Effect of Excess Land
Sales in the Westlands Water District, p. 32, University of California,
Pub. No. 3214, June, 1977

The diseconomy of scale arises because of the smaller farm size. Per acre production costs decline as farm size increases, at least up to a certain point. A 310 acre farm (plantable acreage) is not large enough to permit ownership and operation of heavy tillage and harvesting equipment. Tillage equipment would have to be rented and harvest work done by custom operators. The smaller farm size does not permit the machinery investment and overhead costs to be spread over enough acres to utilize their capacity fully. The loss of such technical efficiencies leads to higher per acre costs. Not taken into consideration in Table 5 figures are the higher costs of custom work and probable loss of quality

and yield due to untimely availability of custom machines. Custom operators normally are farmers who do their own work first and then work for their neighbors as time is available. There may also be some pecuniary diseconomies involved. Smaller units would possess less bargaining power when purchasing production inputs and may not have access to marketing outlets equal to larger farms.

It is difficult to determine precisely the difference in cost due to the loss of economies of scale. The assumption used by the Goldman study² was a 39 percent increase in preharvest machinery costs due to diseconomies of scale. This amounted to increased per acre charges of \$8 for barley, \$11 for tomatoes, \$29 in cotton and \$23 for alfalfa hay. These figures are employed in the Table 5 analysis.

TABLE 6
INCOME AND EXPENSE STATEMENT

Typical Farm #1 (Base)
Income and Expenses

Income:

<u>Crop</u>	<u>Acres</u>	<u>Yield</u>	<u>Production</u>	<u>Price</u>	<u>Total</u>
Cotton	133	1,000 lbs.	133,000 lbs.	\$.53	\$ 70,490
Cottonseed		83 tons	110 tons	\$ 90	\$ 9,935
Barley	84	2 tons	168 tons	\$ 80	\$ 13,440
Alfalfa	65	7 tons	455 tons	\$ 50	\$ 22,750
Tomatoes	28	25 tons	700 tons	\$ 50	\$ 35,000
	310		Total Gross Income		- \$151,615

Expenses:

Operating Costs	-----	\$113,258
Cotton 133 x \$412	-----	\$54,796
Barley 84 x \$148	-----	12,432
Alfalfa 65 x \$314	-----	20,410
Tomatoes 28 x \$915	-----	25,620
Interest on Operating Loan (50% preharvest @ 8%)	-----	\$ 2,621
Payment on Land Loan	-----	20,768
Payment on Equipment Loan	-----	11,600
Living Expenses	-----	15,000
Total Expenses	-----	\$163,247
Allowance for Labor Contribution of Owner Operator	-----	8,000
		\$155,247
MARGIN	-----	(3,632)

² Goldman, McLeod, Nakazawa and Strong, Economic Effect of Excess Land Sales in the Westlands Water District, University of California, Special publication No. 3214, June 1977.

Operator Income Margins

An analysis of income and expenses for the base farm will reveal the margin of income over expenses. Typical crop yields for the San Joaquin and Imperial Valleys, current prices and the production costs specified in Table 5 are employed. The income and expense statement is presented in Table 6.

Total gross income of \$113,258 exceeds operating costs, but does not provide an amount sufficient to cover the sum of interest on the operating loan, payments on land and equipment loans and provision for living expenses. Even an \$8,000 allowance for the labor contribution of the owner leaves the balance in deficit by \$3,632. A net return per acre of \$152 was required, but only \$141 was generated leaving a \$11.72 per acre deficit.

Dividing the 310 acres differently among the four crops changes the incomes margin of the operation. Growers tend to increase the acreage of crops with the highest margin of gross returns over costs and decrease the others. A second typical farm income and expense statement was constructed by increasing acreage in cotton and tomatoes by 25 percent and decreasing barley and alfalfa by the same amount (Table 7). This analysis shows a positive margin of \$19,204. But, this is not a realistic outcome because prices were held constant. There are limits to the acreage which can be shifted into a crop since agricultural commodities -- especially vegetables -- are very price sensitive to changes in production. Significant acreage shifts over 750,000 acres would lead to substantial changes in price and net income.

Analysis of sample farms by Production Credit Associations indicate similar results -- positive margins for farms with substantial acreages of high value crops such as tomatoes, sugar beets and blackeyes (appendix Exhibits 5 and 6), but deficits for higher acreages of field crops.

Commodity prices are the critical aspect of the budgeting process. An analysis will appear favorable if prices are high or a substantial acreage is shifted to the intensive high income crops (at constant prices). Low prices produce a deficit margin.

Commodity prices are currently lower than in the past several years. Prices are cyclical and some will likely be higher at some point in the future. It is not reasonable to select a particular year's price (whether high or low) and project the future on that basis. For instance, if all commodity prices were 10 percent higher than those used in the base analysis, the margin would have been a plus \$11,530 rather than a deficit of \$3,632.

Prices move up and down and do not move in unison. Growers must be able to make it through the lean years in order to enjoy the years of favorable prices. The large, well-financed growers will likely be squeezed in 1978.

The current situation would place a maximum-leveraged new grower in a terrific predicament. This could be the road to poverty rather than to the "Promised Land."

TABLE 7
INCOME AND EXPENSE STATEMENT

Typical Farm #2
Income and Expenses

Income:

<u>Crop</u>	<u>Acres</u>	<u>Yield</u>	<u>Production</u>	<u>Price</u>	<u>Total</u>
Cotton	166	1,000 lbs.	166,000 lbs.	\$.53	\$ 87,980
Cottonseed	---	83 tons	138 tons	\$ 90	12,420
Barley	51	2 tons	102 tons	\$ 80	8,160
Alfalfa	58	7 tons	406 tons	\$ 50	20,300
Tomatoes	35	25 tons	875 tons	\$ 50	<u>43,750</u>

Total Gross Income - \$172,610

Expenses:

Operating Costs	-----	\$126,177
Cotton 166 x \$412	-----	\$68,392
Barley 51 x \$148	-----	7,548
Alfalfa 58 x \$314	-----	18,212
Tomatoes 35 x \$915	-----	32,025
Interest on Operating Loan (50% preharvest @ 8%)	-----	2,861
Payment on Land Loan	-----	20,768
Payment on Equipment Loan	-----	<u>11,600</u>
Total Expenses	-----	\$161,406
Allowance for Labor Contribution of Owner	-----	8,000
		\$153,406
MARGIN	-----	\$ 19,204

Utilizing the current set of projected commodity prices, a man and wife could not earn an acceptable standard of living by farming 320 acres. One or both would have to earn outside income.

The normal real estate financing sources would not be willing to lend the money to lottery winners with projected deficit cash flows. Production Credit Associations would likely not be willing to provide production financing to growers projecting deficits on a total cost basis, particularly if there is no production history.

The conclusion is a government guaranteed loan program would be necessary to make such a situation feasible for the growers utilizing maximum leverage.

ECONOMIES OF SCALE

The signed recordable contracts obligate excess landowners to dispose of holdings over 160 acres. However, these legal agreements do not specify anything concerning leasing arrangements and lottery sales. This is a ruling and interpretation of the Department of Interior.

The leasing restriction will decrease the average size farm subject to the excess land ruling. The per acre diseconomies of scale used in the crop budgets were: barley - \$8, tomatoes - \$11, cotton - \$29 and alfalfa - \$23. Using the acreage distribution given in Table 4 and the above estimates of diseconomies of scale and extending these figures over the entire 750,000 acres, produces a loss of \$15 million annually.³

One of the stated objectives of the Reclamation Act is "to distribute widely the benefits from public-supported reclamation because interest-free money and low-priced water are involved." Restricting leasing to 160 acres increases the cost of production on the affected operations. This restriction could prevent such farms from adopting new technology in the future and make the diseconomies of scale even larger.

Transfer of Wealth: Court Rulings

The court ruling, making the Pine Flat, Isabella and Imperial Irrigation Districts' projects subject to the 160-acre limitation, presents an additional problem. These landowners will be required to sell excess holdings at a controlled price which is less than the going market price. This will constitute a redistribution of wealth and is in reality land reform. If 755,000 acres of excess land are sold in these projects, either to direct family members or to lottery winners, at \$750/acre rather than \$1,500/acre, there will be an involuntary transfer of \$566 million.

This precedent could be applied to other areas of the country where federal funds have been used. It is conceivable that all Corps of Engineers, Bureau of Reclamation and Tennessee Valley Authority projects could be included.

A thorough economic analysis is needed to determine if it is in the public's best interest to impose such restrictions.

³Equation for computation: Per acre loss = .27 (\$8 barley) + .09 (\$11 tomatoes) + .43 (\$29 cotton) + .21 (\$23 alfalfa) = \$20.45. (750,000 acres x \$20.45 = \$15.34 million)

LOCAL COMMUNITY IMPACTS

Excess land sales of 750,000 acres would lead to 2,344 new operators as well as other new residents in rural areas. The residency requirement would force absentee owners to move within fifty miles of their holdings. These changes would require local governments to provide additional community services. The additional services would be items such as schools, health facilities, roads, fire protection, electrical power distribution, law enforcement, community water and sewer, telephone, etc.

An initial capital investment would be required as well as annual costs to maintain such services. Estimates made by the University of California indicate an initial investment of \$97,551 per 320-acre farm for such service with annual costs of \$5,566 (Appendix Exhibit 7). Extrapolation of these figures over the 2,344 new farms would require local governments to invest \$229 million and provide \$13 million in annual expenditures.

Movement of additional people into these rural areas would increase the tax base and tax revenues, but whether it would be sufficient to cover the additional costs is another question. The ability of local governments to provide services hinges on the effects on income and employment within the area. One study of the Westlands Water District⁴ concluded:

1. "The dollar value of total agricultural production from 30,000 acres of WWD farmland is expected to increase by \$7,607,000".
2. "Total dollar sales, direct and indirect, in Fresno County's economy is anticipated to increase by \$16,398,000".
3. "Total employment, direct and indirect, in Fresno County is expected to increase by approximately 540 job equivalents as a result of this hypothetical change in economic activity".

These results were for 30,000 acres and resulted because cropping patterns were projected to shift to more intensive crops like vegetables. Crop prices were assumed to not change as a result of the shift. Prices may not change significantly for a 30,000 acre situation, but they would when 750,000 or a million acres are involved. Crop price changes would impact on community income, employment and the tax base. This needs careful study and a complete cost-revenue analysis should be conducted before these rulings are finalized.

⁴Goldman, G., McLeod, D., Nakazaqa, T., and Strong, D., Economic Effect of Excess Land Sales in the Westlands Water District, University of California Special Pub. 3214, June, 1977

SUMMARY AND CONCLUSIONS

The proposed rulings represent a major proposal and require a thorough economic impact analysis.

A 320 acre unit (husband and wife) would require a minimum investment of \$440,000 with \$66,000 in equity. The typical farm in the areas affected by the ruling would not be able to generate a sufficient return to cover all debt service and costs and provide family living expenses. A deficit of \$11.72/acre or \$3,632 would be incurred.

The total capital required for 750,000 affected acres in California alone would be \$797 million. Maximum leverage would require financing of \$678 million. The deficit return situation casts doubt on funds being made available to prospective new borrowers.

Loss of economies of scale would add \$15 million per year to farm production costs in California.

The acreage limitation and residency proposals would require local governments to invest \$229 million in new facilities and spend an additional \$13 million annually.

EXHIBIT 1

COST ANALYSIS WORK SHEET

SAMPLE COSTS TO PRODUCE EARLEY IN KERN COUNTY - (Single Crop) - 1976

Based on man labor at \$3.90 and \$4.30 per hour; including compensation insurance and Social Security;
80 h.p. wheel tractor cash cost per hour \$3.60; Depreciation \$1.45; Interest \$.65

David R. Woodruff, Farm Advisor		Operation	Hours Per Acre	Cash and Labor Cost Per Acre			Sample Costs	My Costs
				Labor	Fuel and Repairs- Equipment	Material and Other Costs		
Cultural:								
		Land preparation	2.0	\$ 8.60	\$ 7.20	Seed: 90 lbs. @ \$13 cwt.	\$ 15.80	
		Plant	4	1.70	2.60	Water: 1 1/2 ft. @ \$10.00	\$11.70	
		Irrigate: 1 pre, 2 crop	4.0	15.60	3.00	Nitrogen: 90 lbs. @ \$.25	15.00	
		Fertilize	2	.85	.70		22.50	
		Taxes					13.80	
		Miscellaneous overhead		3.30	2.80		3.75	
		Total Cultural Costs		\$30.05	\$16.30		\$66.75	\$113.10
Harvest:								
		Combine		Contract \$10.00 + \$.30/cwt.			\$22.00	
		Haul		2 Tons @ \$2.50/ton			5.00	
		Total Harvest Costs					\$ 27.00	
Total Cash and Labor Costs								
				Cash and Labor Cost Per Ton @ 4,000 lbs. Yield			\$140.10	
							\$ 70.05	
Costs at Varying Yields								
	Pounds Per Acre	Total Cost Per Ton		Investment	Per Acre	Annual Cost Depreciation Interest 9%		
	2,000	\$260.30		Land	\$1,000.00	\$ 90.00		
	3,000	176.35		Irrigation System	250.00	\$18.75	11.25	
	4,000	134.40		Tractor 3 hrs.		4.35	1.95	
	5,000	109.20		Equipment	16.50	1.65	.75	
	6,000	92.45		Total		\$24.75	\$103.95	\$128.70
				TOTAL COST PER ACRE			\$268.80	
				TOTAL COST PER TON @ 4,000 LBS. YIELD			\$134.40	

COST ANALYSIS WORK SHEET - CANNING TOMATOES ON RENTED LAND
SOUTHERN SAN JOAQUIN VALLEY - 1975

Based on a yield of 25 tons per acre, mechanically harvested. Man labor @ 2.80 per hour total, irrigator \$3.20, equipment operator \$3.60, including Social Security and Workman's Compensation Insurance. 90 h.p. crawler per hour cash costs \$7.00, depreciation \$5, interest \$2.50. 120 h.p. 4-wheel drive diesel @ \$4.80, \$2.00 and \$1.00. 70 h.p. wheel diesel @ \$2.95, \$1.04 and 52¢. 50 h.p. wheel diesel @ \$2.10, \$1.24 and 62¢.

	Sample Costs		My Costs	
	Per Acre	Per Ton	Per Acre	Per Ton
Pre-Harvest Cash Costs:				
Plow 1X: 1/2 hr. man and 90 h.p. crawler	\$	5.30		
Float 1X: 1/2 hr. man and 90 h.p. crawler		5.30		
Landplane 1X: 1/2 hr. man and 90 h.p. crawler		5.30		
Pre-irrigate: water 6" @ \$15/ac. ft.		7.50		
labor: per acre 1 1/4 hrs. @ \$3.20		4.00		
Disc 1X: 1/2 hr. man and 90 h.p. crawler		5.30		
List and fertilize: 100 lbs. N @ 12¢		12.00		
1 hr. man and 120 h.p. 4-WD		8.40		
Incorporate herbicide, 1/3 hr. man and 120 4-WD; materials \$10.50		13.30		
Fertilize and plant: 1/2 hr. 2 men and 50 h.p. wheel tractor		4.25		
Fertilizer: 150 lbs. material @ \$300/ton		22.50		
Seed: 1 lb. @ \$16		16.00		
Irrigate up 2 times				
Water: 6" @ \$15/ac. ft.		7.50		
Labor: \$2 per time		4.00		
Crop irrigations: 6X furrow method				
Water: 2 ft. @ \$15/ac. ft.		30.00		
Labor: 7 hrs. @ \$3.20		22.40		
Cultivate 3X: 1 1/2 hrs. man and 70 h.p. wheel tractor		9.83		
Thin and weed: 1 1/4 hours @ \$2.80		39.20		
Pest control: custom, materials & application		35.00		
Misc. inc. 2 hrs. man and 50 h.p. wheel tractor		20.00		
Repairs to equipment except tractors		12.00		
Rent		125.00		
Office, car, operating capital, business costs		51.20		
Supervision		12.00		
TOTAL PRE-HARVEST CASH COSTS	\$477.28	\$19.09		
Harvesting Costs:				
Field preparation for harvest 1/3 hr. man & wheel tractor	\$	2.18		
Custom harvest: \$17/ton		425.00		
TOTAL HARVESTING COSTS	\$427.18	\$17.09		
TOTAL CASH COSTS	\$904.46	\$36.18		
Depreciation:				
90 h.p. tracklayer: 2 hrs. @ \$5	\$	10.00		
120 h.p. 4-wheel diesel: 1 1/3 hrs. @ \$2		2.66		
70 h.p. wheel diesel: 1 1/2 hrs. @ \$1.04		1.56		
50 h.p. wheel diesel: 2 1/2 hrs. @ \$1.24		3.10		
Other equipment: \$75 - 10 yrs. life		7.50		
TOTAL DEPRECIATION	\$24.82	\$.99		
Interest on Investment @ 8%:				
90 h.p. tracklayer: 2 hrs. @ \$2.50	\$	5.00		
120 h.p. 4-wheel diesel: 1 1/3 hrs. @ \$1		1.33		
70 h.p. wheel diesel: 1 1/2 hrs. @ 52¢		.78		
50 h.p. wheel diesel: 2 1/2 hrs. @ 62¢		1.55		
Other equipment: 1/2 cost \$37.50		3.00		
TOTAL INTEREST ON INVESTMENT	\$11.66	\$.47		
TOTAL COST OF PRODUCTION	\$940.94	\$37.64		

COTTON
COST ANALYSIS WORK SHEET - 1976

Sample costs to produce cotton in Fresno County. Costs are based on a field producing 1000 lbs. lint per acre. Man labor at \$2.90 per hour total, and equipment operator at \$3.50. Wheel diesel tractor per hour cash costs \$3.10, depreciation \$2.00 and interest \$1.20. Gin turnout assumed to be 31%.

	Sample Costs		My Cost	
	Dollars	Cents Per	Per	Per
	Per Acre	Lb. Lint	Acre	Lb. Lint
PRE-HARVEST CASH COST	\$ 19.50			
Land preparation: 3 hrs. man & tractor				
Nematode control, if needed - \$35.00				
Plant: acid delinted seed - 14 lbs. @ 35¢/lb.	4.90			
½ hr. man & tractor	1.63			
Irrigate: 1 pre & 5 crop, 8 hrs. labor	23.20			
3 ac. ft. @ \$8.00/ac. ft.	24.00			
Pre-emergence herbicide, custom & ½ hr. man & tractor for discing	10.60			
Hand weeding, if needed - \$8.00 - \$18.00	10.00			
Cultivate 4 X: 2 hr. man & tractor	13.00			
Fertilize: 100 lbs. N @ 20¢	20.00			
application: custom	3.00			
Pest control: materials	24.00			
application: 3 X @ \$2.50	7.50			
Defoliation	8.00			
County taxes	20.25			
Misc. labor, materials, 1 hr. man & tractor	10.00			
Repairs to equipment except tractor	12.00			
Office and business costs	20.00			
TOTAL PRE-HARVEST COSTS	231.58	23.16		
HARVEST COSTS				
Picking and hauling				
85% 1st pick @ \$2.50/cwt	68.55			
15% 2nd pick @ \$3.00/cwt (\$18.00 minimum)	18.00			
Ginning, bags, ties, insurance, storage \$2.00/cwt.	64.52			
TOTAL HARVEST COST	151.07	15.11		
MISCELLANEOUS COSTS				
Research and promotion @ \$1.00/bale	2.00			
Pink bollworm eradication @ 50¢/bale	1.00			
In lieu tax @ 25¢/bale	0.50			
National Cotton Council - 20¢/bale	0.40			
TOTAL CASH COSTS	386.55	38.66		
DEPRECIATION				
Irrigation system - \$220 - 15 yrs.	14.67			
Tractor - 6 3/4 hrs. @ \$2.00	13.50			
Other equipment \$50 - 10 years	5.00			
TOTAL DEPRECIATION	33.17	3.32		
INTEREST ON INVESTMENT @ 9%				
Irrigation system ½ cost \$110	9.90			
Tractor: 6 3/4 hrs. @ \$1.20	7.20			
Other equipment ½ cost \$25	2.25			
Land \$800/acre	72.00			
TOTAL INTEREST ON INVESTMENT	91.35	9.14		
TOTAL COST OF PRODUCTION	511.07	51.11		
Credit for seed - 1700 lbs. @ \$110/ton	93.50	9.35		
NET COST OF PRODUCTION	417.57	41.76		

ALFALFA HAY PRODUCTION

Exhibit 4

Cost Analysis Worksheet - 1977

Sample costs to produce alfalfa hay in Fresno County. Man labor \$3.50 per hour total and equipment operator \$4.20, which includes employer's Social Security and Workmen's Compensation Insurance payments. 60 h.p. wheel diesel tractor per hour cash costs \$2.84 depreciation \$1.80 and interest 88¢.

Costs are based on a yield of 8½ tons per acre average, with a three year stand life.

	Sample Costs		My Costs	
	Per Acre	Per Ton	Per Acre	Per Ton
Pre-Harvest Cash Costs:				
Irrigate 13 times: labor 8 hrs.	\$ 28.00			
power for 4½ ac. for water @ \$9.00	40.50			
*Fertilize *44 lbs. of "actual" phosphorus in phosphate form	23.40			
Bulk spreading of fertilizer	2.75			
Weed control: including application	16.00			
Insect control: total	13.00			
Taxes	18.00			
Repairs to irrigation system & equip. except tractor	12.00			
Misc. labor, materials - 1 hr. man & tractor	11.00			
Business expense, office, car, etc.: 6% of pre-harvest & harvest costs	17.80			
TOTAL PRE-HARVEST CASH COSTS	\$182.45	\$21.46		
Harvesting Costs:				
Swath & rake 7x: contract \$4.00 per ton	34.00			
Bale: contract \$9.00 per ton	76.50			
Roadside: contract \$2.50 per ton	21.25			
TOTAL HARVESTING COSTS	\$131.75	\$15.50		
TOTAL CASH COSTS	\$314.20	\$36.96		
Depreciation:				
Irrigation system & equip. - \$250, 15 yr. life	16.67			
Tractor 1 hr.	1.80			
Stand: cost \$167.02, 3 yrs.	55.67			
TOTAL DEPRECIATION	\$ 74.14	\$ 8.72		
Interest on Investment at 8%:				
Irrigation system & equipment: ½ cost, \$125	10.00			
Tractor 1 hr.	.88			
Stand: ½ cost, \$83.51	6.68			
Land: \$900 per acre	72.00			
TOTAL INTEREST ON INVESTMENT	\$ 89.56	\$10.54		
TOTAL COST OF PRODUCTION	\$477.90	\$56.22		

No allowance has been included for the cost of management.

No income from sheep grazing has been indicated, although this is sometimes earned by hay growers.

*P x 2.29 = P₂O₅ (or 500 lbs. of single super phosphate per acre)

FRESNO-MADERA PRODUCTION CREDIT ASSOCIATION

1250 WEST OLIVE AVENUE, P.O. BOX 4286, FRESNO, CALIFORNIA 93744

TELEPHONE (AREA CODE 209) 233-6536

October 21, 1977



Dr. Don Debord
National Cotton Council
P. O. Box 12285
Memphis, Tennessee 38112

Dear Dr. Debord:

Enclosed is the information you requested regarding farming on the West Side of the San Joaquin Valley under the 160 acre limitation law.

I apologize for not getting this information sooner. The staff of our San Joaquin office has furnished some examples of costs and income based on a full 160 acres and 320 acres. Actually, roads, space for equipment, buildings, etc., will take out as much as 10 acres of farm land.

During years of drought as we are now experiencing, part of the farm land is laying idle unless adequate well water is available. Full use of well water has also presented problems with excessive boron and salts damaging some crops. Tomatoes were especially hard hit in 1977 cutting yields drastically where all well water was used.

In the enclosed examples we have projected in Example I the estimated capital costs of purchasing and improving 160 acres or 320 acres (man and wife ownership).

Example II shows 160 acres production costs on cotton and barley (preharvest and harvest).

Example III shows 320 acres production and harvest costs on cotton, barley, tomatoes and sugar beets.

All harvest is custom hired as this equipment would generally be too costly for a small operator to own.

I suggest you contact Bob Sheesley of the University of California Cooperative Extension Service who has just completed an in depth analysis of the economic, water and

Dr. Don Debord -- 2
October 21, 1977

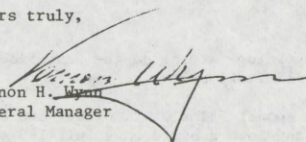
other conditions facing farmers under the 160 acre limitation law. You can contact Bob Sheesley at the following address:

Mr. Bob Sheesley, Farm Advisor
Farm & Home Advisors Office
1720 So. Maple Avenue
Fresno, California 93702

Phone (209) 453-5931

If we can be of any other assistance do not hesitate to call.

Yours truly,


Vernon H. Wynn
General Manager

VHW:hs

Encl.

EXAMPLE I

<u>CAPITAL</u>	<u>160 AC.</u>		<u>320 AC.</u>
Land @ \$750	\$120,000		240,000
Improvements:			
Sump & Return	12,500		18,000
Level & Grade	12,000		24,000
Equipment	115,000		145,000
Shop Bldg.	20,000		20,000
Home - 1400 sq. ft. @ \$26	36,400		36,400
Water:			
Domestic:			
Pump	3,500		3,500
600' @ \$45 Well	27,000		27,000
Ranch:			
1280' @ \$70	89,600		89,600
Pump 600' @ 150 HP	<u>40,000</u>		<u>40,000</u>
	451,700		643,500
	\$2823/ac.		\$2011/ac.
75%	\$338,878		482,625
5-years - Equipment: \$86,250	17,250	108,750	21,750
20 years- Capital 252,628	12,631	373,875	18,693
Interest @ 8%	<u>27,110</u>	Interest @ 8%	<u>38,610</u>
	56,991	\$356/ac.	79,053
			\$247/ac.
50%	225,850		321,750
5-years - Equipment 57,500	11,500	72,500	14,500
20 years- Capital 168,350	8,417	249,250	12,462
Interest @ 8%	<u>18,006</u>		<u>25,740</u>
	37,985	\$237.41/ac.	52,702
			\$164.69/ac.

EXAMPLE II160 ACRES:

80 acres cotton:	Preharvest	\$293.85	
	Harvest	<u>170.47</u>	464.32
80 acres barley:	Preharvest	213.35	
	Harvest	<u>17.00</u>	230.35
Short term 50% Preharvest at 8%			20.29
F/C			<u>356.00</u>
			1,070.96

Cotton:

1000# @ 60¢	600.00
Seed Credit	
1700# @ \$110	93.50

Barley:

2T @ \$90	<u>180.00</u>	<u>873.50</u>
		(197.46)

EXAMPLE III320 ACRES:

80 acres cotton:	Preharvest	\$293.85	
	Harvest	<u>170.47</u>	\$464.32
80 acres barley:	Preharvest	213.35	
	Harvest	<u>17.00</u>	230.35
80 acres tomatoes:	Preharvest	435.80	
	Harvest	<u>450.00</u>	885.80
80 acres sugar beets:	Preharvest	302.50	
	Harvest	<u>78.00</u>	380.50
F/C			247.00
Short term 50% Preharvest at 8%			<u>49.72</u>
			2,257.69
Cotton:			
1000# @ 60c		600.00	
Seed Credit 1700# @ \$110		93.50	
Barley:			
2T @ \$90		180.00	
Tomatoes:			
25T @ \$55		1,375.00	
Sugar Beets:			
20T @ \$20		<u>400.00</u>	<u>2,648.50</u>
			390.81

Exhibit 6

**FEDERAL LAND BANK ASSOCIATION OF BAKERSFIELD
BAKERSFIELD PRODUCTION CREDIT ASSOCIATION**

2424 Chester P.O. BOX 636, BAKERSFIELD, CALIFORNIA, 93302

TELEPHONE: (AREA CODE 805) 327-3224



October 17, 1977

LIBRARY
National Cotton Council

OCT 21 1977

FILE COPY

Dr. Don DeBord
National Cotton Council
P. O. Box 12285
Memphis, Tennessee 38112

Dear Dr. DeBord:

As per your request, we have prepared an income and expense analysis on a 320 acre cotton farm in this area. Two different analyses were prepared, each using cotton as the main cash crop, but the rotational crops were changed.

The analysis was prepared by our Assistant General Manager, Alvin G. Teixeira. His report is enclosed. Any questions concerning the report should be directed to him.

We hope the information will be of some benefit. We want to do all we can to make sure Congress gets the right information on the acreage limitation problem so if there is anything more we can do please do not hesitate to call on us.

Yours very truly,

Stan Perisich

Stan Perisich
General Manager

SP:ew

encl



**HEAD OFFICE
BAKERSFIELD PRODUCTION CREDIT ASSOCIATION**

2424 CHESTER AVENUE, P.O. BOX 638, BAKERSFIELD, CALIFORNIA, 93302

TELEPHONE: (805) 327-3224



October 17, 1977

Dr. Don DeBord
National Cotton Council
P. O. Box 12285
Memphis, Tennessee 38112

Dear Dr. DeBord:

As per your request we have prepared income and expense on a typical 320 acre irrigated field crop farm in our area.

On typical farm #1, the main cash crop is cotton, and the rotation crops are alfalfa hay, wheat and grain sorghum double cropped behind wheat.

On typical farm #2 the main cash crop is cotton, and the rotation crops are sugar beets, wheat and blackeye beans double cropped behind wheat.

The farm consists of 320 gross acres. In this area the county maintains a dedicated county road easement every mile. So this farm would have 5.46 acres used up by paved county roads. Farm roads and turning space would require 3.64 acres. Farmstead and return water sumps would require an additional 9/10 acre. Therefore, net plantable acres is 310 acres. Cost of the farm is \$750 per acre. The owner-operator has paid 15% down, and the balance is on a 30 year repayment schedule at 9% interest.

This typical farm receives an average of $2\frac{1}{2}$ acre feet per irrigated acre of water from an irrigation district. The balance of the water is pumped from the underground. The farm has a well on each 160 acres. The well has a 16 inch casing and is 700 feet deep. Each pump is a 75 horsepower electric turbine. Pumping level is 300 feet, the bowls are set at 360 feet.

It is assumed that the farm is in the agricultural preserve and property taxes are \$7300 per year.

The cost of receiving district water is as follows:

Cost of servicing the bonds and other indebtedness of the district is \$11 per gross acre per year. Cost of operation and maintenance of the district is \$5 per acre per year. The cost of the water is \$12 per acre foot.



<u>Equipment Needed</u>	<u>Cost</u>
130 horsepower tractor with cab and duals Price is for a 2 year old model. Cost of a new model would be \$26,370	\$ 14,500
13'6" offset disc - new	5,750
Four bottom roll-over plow - new	4,840
6 row cultivator - new	3,200
6 row planter - new	6,100
Grain drill - new	1,660
3 harrow sections - new	420
2 row cottonpicker - used This is a good, used model two years old A new picker would cost \$49,000	38,500
6 row bedder-mulcher - new	2,900
7 foot standard V-ripper - new	1,650
13'9" standard disc	4,600
Automobile - 3 years old	4,000
Pickup - 3/4 ton - 3 years old	4,200
Pickup - 1/2 ton - 7 years old	1,000
6 - 30 foot cotton trailers	6,600
Miscellaneous shop equipment and tools	<u>3,000</u>
TOTAL COST OF EQUIPMENT	\$ 102,920

The equipment cost is financed on a 4 year repayment plan at 9% interest. The loan is for 75% of the cost of the equipment.

INCOME AND EXPENSE

Typical Farm #1INCOME

Crop	Acres	Yield per Acre	Total Yield	Price	Total
Cotton	155	1100# lint	170,500 lbs	52¢	\$ 88,660
Cottonseed	--	1.1 tons	170.5 tons	\$90	15,345
Alfalfa	100	8.5 tons	850.0 tons	55	46,750
Wheat	55	2.0 tons	110.0 tons	85	9,350
Milo (DC)*	(55)	2.5 tons	137.5 tons	70	9,625

Total Gross Income

\$ 169,730

*DC-double crop

EXPENSE (Per Acre)

	Cotton	Alfalfa	Wheat	Milo
Land preparation	\$ 19.67		\$11.37	\$ 5.59
Pre-emergence herbicide	10.00			
Plant: Seed	6.40		20.30	6.00
Planting	2.87		3.40	7.22
Fertilizer	24.00	\$ 18.75	20.00	18.00
Cultivate	8.50			4.25
Thin and weed	20.00			
Pest control	25.00	40.00		
Irrigation labor	31.20	31.20	27.30	23.40
Water cost	99.08	133.70	55.31	55.31
Defoliate	9.00			
County taxes	23.54	23.54	11.77	11.77
Personal property tax	4.15	4.15	2.07	2.07
Repairs & maintenance	20.00	10.00	7.50	7.50
Telephone, dues, subscrip- tions, legal, acctg	5.00	5.00	2.50	2.50
Insurance	5.00	5.00	2.50	2.50
Harvesting	19.25	127.50	27.00	31.25
Ginning	77.36			
Establish stand		55.00		
TOTAL COST	\$410.02	\$453.84	\$191.02	\$177.36

RECAP OF TYPICAL FARM #1

Total Gross Income		\$ 169,730
<u>Operating Cost</u>		
Cotton	155 x \$410.02 - - - - -	\$ 63,553
Alfalfa	100 x \$453.84 - - - - -	45,384
Wheat	55 x \$191.02 - - - - -	10,506
Milo (DC)	55 x \$177.36 - - - - -	9,754
Interest on operating loan @ 9%	- -	5,814
Payment on land loan:		
\$204,000 payable 30 equal payments		
at 9%	- - - - -	19,858
Payment on equipment loan:		
\$77,190 ÷ 4 = \$19,298 principal)		
\$77,190 x 9% = 6,947 interest)	-	26,245
Living Expense	- - - - -	<u>10,000</u>
TOTAL EXPENSE		191,114
Allowance for labor contribution		
of owner-operator		<u>(8,000)</u>
NET OPERATING COST		\$ 183,114
MARGIN		\$ (13,384)

INCOME AND EXPENSE

Typical Farm #2INCOME

Crop	Acres	Yield per Acre	Total Yield	Price	Total
Cotton	155	1100# lint	170,500 lbs	52c	\$ 88,660
Cottonseed	--	1.1 tons	170.5 tons	\$90	15,345
Sugar Beets	80	25.0 tons	2000.0 tons	22	44,000
Wheat	75	2.0 tons	110.0 tons	85	9,350
Blackeyes(DC)*75	18.0	cwt	1350.0 cwt	22	29,700

Total Gross Income

\$ 187,055

*DC-double crop

EXPENSE (Per Acre)

	Cotton	Sugar Beets	Wheat	Black- eyes
Land preparation	\$ 19.67	\$ 18.92	\$ 11.37	\$ 5.59
Pre-emergence herbicide	10.00	21.85		
Plant; seed	6.40	4.00	20.30	7.50
planting	2.87	7.44	3.40	4.25
Fertilizer	24.00	52.60	20.00	
Cultivate	8.50	8.50		8.50
Thin and weed	20.00	18.00		
Pest control	25.00	7.00		25.00
Irrigation labor	31.20	39.00	27.30	23.40
Water cost	99.08	99.08	55.31	70.75
Defoliate	9.00			
County taxes	23.54	23.54	11.77	11.77
Personal property tax	4.15	4.15	2.07	2.07
Repairs & maintenance	20.00	15.00	7.50	7.50
Telephone, dues, subscrip- tions, legal, acctg	5.00	5.00	2.50	2.50
Insurance	5.00	5.00	2.50	2.50
Harvesting	19.25	81.25	27.00	40.15
Ginning	77.36			
Fumigate		33.60		
Reclean, sacks, fumigate, storage				25.00
TOTAL COST	\$410.02	\$443.93	\$191.02	\$236.48

RECAP OF TYPICAL FARM #2

Total Gross Income	\$ 187,055
--------------------	------------

Operating Cost

Cotton	155 acres x \$410.02	- - - -	\$ 63,553
Sugar beets	80 acres x \$443.93	- - - -	35,514
Wheat	75 acres x \$191.02	- - - -	14,327
Blackeyes (DC)	75 acres x \$236.48	- - - -	17,736

Interest on operating loan @ 9%	- - -	5,816
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Payment on land loan:

\$204,000 payable 30 equal payments	
at 9%	19,858

Payment on equipment loan:

\$77,190 ÷ 4 = \$19,298 principal)	
\$77,190 x 9% = 6,947 interest)	26,245

Living expense	- - - - -	<u>10,000</u>
----------------	-----------	---------------

TOTAL EXPENSE

193,049

Allowance for labor contribution	
of owner-operator	

(8,000)

NET OPERATING COST

\$ 185,049

MARGIN

\$ 2,006

We have used a land price of \$750 per acre. This is the value that the Bureau of Reclamation was approving in the Westlands Water District; however, in this area the Bureau has approved excess land sales at \$1000 per acre.

In this area, if an excess land owner had to sell at \$750 per acre he would not sign a recordable contract.

Yours very truly,

Alvin G. Teixeira

Alvin G. Teixeira
Assistant General Manager

AGT:ew

TABLE

INITIAL INVESTMENT COST FOR 10,000 NEW RESIDENTS

<u>Service</u>	<u>Per Unit (320 acre farm)</u>	<u>Total</u>
Schools and education	\$ 2,782.00	\$ 3,840,000
Health facilities and services	1,811.00	2,500,000
Roads	12,500.00	17,250,000
Fire protection	463.00	640,000
Electrical power distribution	4,500.00	6,210,000
Housing	64,371.00	88,832,000
Law enforcement	905.00	1,250,000
Community water and sewer	6,796.00	9,379,000
Other miscellaneous service and county administration	2,173.00	3,000,000
Telephone distribution	<u>1,250.00</u>	<u>1,725,000</u>
TOTAL	97,551.00	\$134,626,000

In addition, the following data has been developed for the annual cost
for those community services that would be needed by these new residents.

TABLE

ANNUAL COST BASED ON 10,000 ADDITIONAL POPULATIONUSING 1974 FRESNO COUNTY EXPENSES

<u>Service</u>	<u>Per Capita</u>	<u>Total</u>
General cost, county administrative and operations	\$ 44.44	\$ 444,400
Law enforcement	38.62	386,200
Fire protection	19.00	190,000
Road maintenance	25.46	254,600
Health	17.63	176,300
Public assistance	141.25	1,412,500
Education (County expense)	6.31	63,100
Education (School District #1581 per ADA)	474.00	4,740,000
Recreation	<u>1.56</u>	<u>15,600</u>
TOTAL	\$768.27	\$7,682,700

C. C. Rivas, U.C. Extension

Statement of the
Cotton Warehouse Association of America
Presented to the
Senate Committee on Energy and Natural Resources
Reclamation Act of 1902
November 29, 1977

The Cotton Warehouse Association of America appreciates this opportunity to present its views on the proposal to implement the sale of excess lands under the Reclamation Act of 1902.

The Association has headquarters in Washington and represents warehouses from the Carolinas to California. Its members handle a substantial amount of the cotton produced in the United States. They provide a service that is essential to the efficient and orderly marketing and movement of cotton from farms to textile mills. And they are vitally dependent on the production of cotton in volume and the continuance of a healthy agricultural economy.

This proposal is of a great deal of concern to cotton warehouses since it would directly affect more than two million acres of farmland, most of which is in California. This State accounts for 20-to-25 percent of the total cotton production in the United States. It is surpassed only by Texas. Nearly all of the land affected is in primary cotton-production areas.

It is our considered view that, should these regulations be implemented, they would radically alter the efficient production pattern in this area, substituting therefore an unrealistic plan that would be exceptionally difficult to implement and nightmarish to administer. This, in turn, would bring about a drastic reduction in the production of cotton--which cannot be produced efficiently and profitably on small land units--and would have a serious impact on the cotton-warehousing industry.

Of course, we are gravely concerned about this threat to cotton-production efficiency in California and other Western states. But a cause for equal anxiety is that implementation of these regulations could mean that similar restrictions might well be applied to Federally funded projects throughout the country. This is by no means inconceivable and could have a far-reaching effect on American agriculture as we know it.

There have been three generations of farmers since the Reclamation Act of 1902 became law. Those occupying the affected lands today have geared their operations, obligations, and expectations to an assurance that the Act would be administered as in the past. Now they face an abrupt about-face from past administrations and enforcement of the law. The rules are being changed after the start of the ball game.

It would appear that such a radical shift in interpretation and changes of the Reclamation Act--affecting as many people's lives and more than two million acres--should not have been proposed without an exhaustive study of their potential impact on those affected. Yet, this has not been done. More disturbing, however, is the basis for declaring that these rule changes are not major proposals as was done in the Federal Register announcement.

The proposed regulations plainly ignore the agricultural revolution that has occurred over the 75 years since the Reclamation Act of 1902. They seek to turn back the clock. The Act is tailored to conditions that existed prior to the advent of the tractor. They ignore all the attendant efficiencies of technology that have brought unparalleled progress in manpower savings--along with ever-higher productivity per individual.

These gains have come about as a result of continually rising financial outlays in order to keep pace with research findings and costs associated with

their implementation. This has demanded expansion of land holdings rather than contraction. It has demanded spreading costs over more acres to lower input per unit.

The proposed Excess Land Law regulations limit a person or legal entity from owning more than 160 acres of land which receive Federal project water. Leasing would be limited to an additional 160 acres and the owner or lessee would have to live within 50 miles of the property.

A total of 320 acres might well have been an economical unit in 1902, and a residency requirement of 50 miles might well have been realistic in horse-and-buggy days. Neither is realistic in 1977.

California studies indicate that under today's conditions a man and wife could not earn an acceptable standard of living by farming 320 acres. One or both would have to earn outside income.

It has been estimated that promulgation of these regulations would force the sale of from 30-to-40 percent of the more than two million acres in the affected area.

How would those desiring to start farming these acres obtain financing? If they are able to obtain this land at considerably below market value--as has been proposed--they will face a considerable outlay for equipment and other essentials. A man and wife--each desiring 160 acres--would require an estimated minimum initial investment of \$440,000. Obtaining that kind of money might be difficult for a farmer even with a good production history. It would be extremely hard for a beginner.

Overall, the total long-term financing requirement could amount to \$800 million in California alone. Another \$23.5 million would be needed for operating capital. Whether or not lending institutions in the area would consider

investments of this scope is a point that does not appear to have been considered seriously by the proponents of this proposal.

Even with assistance in the form of low-interest Government loans, it is doubtful whether or not new farmers could operate profitably within the acreage limitations on ownership and leasing. For that matter, it is doubtful and highly unlikely that experienced and astute farmers could break even either.

It is well to talk about encouraging the family farm. That is a worthwhile objective and in the great American tradition. In the area in question, however, most of the farms already are family owned and family operated. Implementation of these proposals would force sale of some of their lands, cut back the size of their units and make it harder for families to survive economically.

The California Extension Service study indicates excess land sales of 750,000 acres in that state--leading to 2,344 new operators, as well as other new residents in rural areas. The residency requirement would force absentee owners to move within 50 miles of their holdings. This would necessitate provision of additional services by local governments. Schools, health facilities, electric power, water, waste disposal, and police and fire protection would be among the many new needs. The report estimates these local governments would be required to invest \$229 million initially and \$13 million annually.

The Extension Service notes that under the court ruling the Pine Flat, Isabella and Imperial Irrigation Districts' projects are subject to the 160 acre limitation. This means that these landowners must sell their excess holdings at a controlled price less than their market value. The study concludes that this, in reality, is nothing more than land reform.

If 775,000 acres of excess land are sold in these projects, either to direct family members or to lottery winners, at \$750 per acre rather than \$1500 per acre, this would be an involuntary transfer of \$566 million.

In addition to all the studies, a matter of serious concern to us is: "What is the real present day objective of the Reclamation Act?" Is its purpose to break up efficient food and fiber producing units without concern for the increase in costs for the consumer? Thousands of taxpayers, whose money has and is being used to develop these water systems, are entitled to receive some benefit from such massive investments through adequate supplies of food and fiber at the least possible cost. Under the proposed rules and regulations, if adopted, these taxpayers will be called upon to pay the additional cost of reduced productivity through higher prices for products coming from the affected areas. It seems neither fair nor reasonable that the elected officials of this country would penalize the majority of their constituents for the questionable benefit of a few.

In summary, implementation of the sale of excess land under the Reclamation Act of 1902 would:

1. Radically alter the efficient agricultural production pattern now prevailing in the affected area;
2. Restrict the size of land units to an unprofitable level--one that could not sustain an acceptable standard of living to those farming them;
3. Open the door to application of similar restrictions wherever projects are Federally funded;
4. Break up existing family farms;
5. Pose tremendous and possibly insurmountable financing problems for new landowners;

6. Require local governments to spend more than \$229 million initially and \$13 million annually to provide services to new households created under the 50-mile radius residency requirement;

7. Force present owners to surrender their lands at less than market value--in reality, imposing land reform.

We wholeheartedly agree with the study's conclusion that a "thorough economic analysis is needed to determine if it is in the public's best interest to impose such restrictions."

STATEMENT
OF THE
FARM & INDUSTRIAL EQUIPMENT INSTITUTE
TO THE
COMMITTEE ON ENERGY & NATURAL RESOURCES
NOVEMBER 22, 1977

The Farm and Industrial Equipment Institute (FIEI) is a nonprofit trade association representing 220 manufacturers of farm and industrial equipment. Collectively member companies are accountable for approximately 95 percent of the farm equipment produced in the U.S. of all sizes and types.

A significant part of America's agricultural industry would be adversely affected by the Acreage Limitation Regulations proposed by the Bureau of Reclamation, Department of Interior in the Federal Register of August 25, 1977. The Institute supports the moratorium on the effective date of the regulations as set forth in SJR93.

Over the last 75 years the advances in both science and technology have made pronounced changes in America's food and fibre production system. The sudden arbitrary 160-acre constraint placed on water from federally funded irrigation projects in 17 states warrants reexamination in light of these changes. It would seem imprudent to proceed with the implementation of the proposed acreage limitation regulations without prior study of the environmental impact and the inflationary impact on the economy in accordance with the National Environmental Policy Act and Executive Order No. 11821 respectively.

The 160-acre limitation is subject to question from an economic standpoint. According to the Office of Agricultural Economics in the U. S. Department of Agriculture, the average size of a farm in 1977 (393 acres) is approximately $2 \frac{3}{4}$ as large as in 1900 (146 acres). This

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evolution in size is a direct outgrowth of the economic pressures at work in our economy which reflect our society's desire for cheap and abundant supplies of food. Arbitrarily enforcing a standard for social purposes which has not had the benefit of subsequent modification by either house in Congress in over 70 years is inequitable. It is essential the final regulations, should they be deemed necessary, take the least disruptive course in dealing with an industry which is so vital to the health and well-being of our nation and other nations which depend upon the U. S. for food supplies. FIEI commends the Committee on Energy and Natural Resources for its interest in the proposed regulations.

FIEI urges the Committee to favorably report legislation which mandates a moratorium on the implementation of the proposed acreage limitation until Congress is able to assess the validity of the 1902 Reclamation Act in terms of 1977 and future food needs of our nation.

Submitted by

Emmett Barker
Executive Secretary
Farm & Industrial Equipment Institute
410 N. Michigan Ave.
Chicago, IL 60611

Rural America

1346 Connecticut Avenue NW Washington DC 20036 phone: (202) 659-2800

STATEMENT OF CLAY L. CUHRAN
EXECUTIVE DIRECTOR, RURAL AMERICA

ON S.J. Res 93 and S.J. Res 96 TO DECLARE A ONE YEAR
MORATORIUM ON IMPLEMENTATION OF THE ACREAGE IN THE
FEDERAL RECLAMATION PROGRAM

BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
OF THE UNITED STATES SENATE

WASHINGTON, D.C.
NOVEMBER 28, 1977

RURAL AMERICA APPRECIATES THE INVITATION TO COMMENT ON THE
PENDING RESOLUTIONS WHICH WOULD ESTABLISH A ONE-YEAR MORATORIUM
ON THE IMPLEMENTATION OF THE RULES AND REGULATIONS FOR ENFORCE-
MENT OF THE ACREAGE LIMITATION IN THE RECLAMATION ACT OF 1902.
WE BELIEVE THAT THE IMMEDIATE ENFORCEMENT OF THE PROPOSED RULES,
SUCCESSFULLY APPLIED, WILL BE A SIGNIFICANT STEP IN STRENGTHENING
AND PRESERVING THE FAMILY FARM IN AMERICA.

THE PROPOSED RULES REPRESENT THE FIRST SERIOUS ATTEMPT BY
THE DEPARTMENT TO CARRY OUT A CONGRESSIONAL MANDATE IT WAS GIVEN
75 YEARS AGO. THEN, AS TODAY, THE FEDERAL WATER AND RECLAMATION
LAW WAS A PROMISE OF THOUSANDS OF FAMILY FARMS IN WESTERN STATES
ON IRRIGATED LANDS. AS THE COMMISSIONER OF THE U.S. RECLAMATION
SERVICE STATED, THE PURPOSE OF THE ACT WAS "NOT TO IRRIGATE THE
LANDS WHICH NOW BELONG TO LARGE CORPORATIONS OR SMALL ONES...BUT
TO BRING (THE LAND) INTO THE HANDS OF THE SMALL OWNER, WHERE THE
MAN WITH A FAMILY CAN GET ENOUGH LAND TO SUPPORT A FAMILY..."

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OVER THE YEARS, THE BUREAU OF RECLAMATION HAS REFUSED TO ENFORCE THE PROVISIONS OF THE RECLAMATION LAW. THE RESULTS WERE PREDICTABLE, I.E. GIVING LARGE LANDHOLDERS - MANY OF THEM CORPORATIONS - AN INCREDIBLE BONANZA OF TAXPAYER AND RATE PAYER DOLLARS.

CONTROL OF WATER AND IRRIGATED LANDS HAS HAD SMALL FARMERS, ENERGY COMPANIES, AND AGRIBUSINESS GIANTS EMBROILED IN A STRUGGLE SINCE THE BEGINNING OF THE CENTURY. FROM ITS INCEPTION IN 1975 AS A NON-PROFIT MEMBERSHIP ORGANIZATION, RURAL AMERICA HAS BEEN CONCERNED ABOUT THE RELENTLESS EXPANSION OF LARGE-SCALE ABSENTEE AGRICULTURE.

WE ARE NOT MISLED BY REPORTS OF SUCCESSFUL ENFORCEMENT OF THE RECLAMATION ACT. IN THE PAST, IT HAS BEEN COMMON FOR EXCESS LAND TO BE SOLD TO MEMBERS OF THE FAMILY OR TO BUSINESS ASSOCIATES, MAINTAINING A PATTERN OF CLOSELY HELD OWNERSHIP. THE PARCELS HAVE BEEN COMBINED AND REMAINED AS A SINGLE FARMING UNIT. THESE KINDS OF TRANSACTIONS HAVE MADE IT POSSIBLE FOR CORPORATIONS LIKE SOUTHERN PACIFIC RAILROAD TO RETAIN TITLE TO SOME 110,000 ACRES IN CALIFORNIA'S WESTLAND WATER DISTRICT ALONE. SMALL FAMILY FARMERS HAVE SIMPLY BEEN CUT OUT, UNABLE TO COMPETE. IT NOW APPEARS THAT THE DEPARTMENT OF INTERIOR PLANS TO RESUME ITS ORIGINAL MISSION AND PUT AN END TO THE DOMINATION OF FARMLAND BY CORPORATIONS AND LARGE SCALE LANDOWNERS THAT HAS PLAGUED PARTS OF THE WEST.

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IT IS NOT LIKELY THAT SUCH IMPRESSIVE CONCENTRATIONS OF POWER AND INFLUENCE WILL LIE DORMANT AS ITS FAVORED AND HIGHLY PROFITABLE POSITION IS ERODED. WE ARE AWARE THAT A MASSIVE CAMPAIGN HAS BEEN LAUNCHED AND FINANCED BY THE LARGE LANDOWNERS IN THE WEST, CORPORATE AND NON-CORPORATE, DESIGNED TO PERSUADE AND INFLUENCE GOVERNMENT OFFICIALS AND CONGRESS TO CHANGE THE LAW RATHER THAN ENFORCE IT.

IN THE WAKE OF THREE-QUARTERS OF A CENTURY OF NEGLECT, ANY ELEVENTH HOUR ATTEMPT TO DELAY IMPLEMENTATION OF THE ACREAGE LIMITATION IS INHERENTLY SUSPECT. HISTORY COMPELS SUCH DOUBT. WE THEREFORE URGE THIS COMMITTEE TO SUBJECT THE RESOLUTIONS BEFORE IT TO THE CLOSEST SCRUTINY. THE CONSEQUENCES OF IMMEDIATE IMPLEMENTATION MUST BE ACTUAL, PROVEN, AND MASSIVE TO JUSTIFY FURTHER DELAY WHILE THE FAMILY FARMER IS FORCED TOWARDS EXTINCTION.

ALTHOUGH RURAL AMERICA SERIOUSLY QUESTIONS THE NECESSITY FOR DELAYING INTERIOR'S PROPOSED ACTION, WE RECOGNIZE THAT THE COMMITTEE MAY DECIDE THAT A MORTORIUM IS WARRANTED. IF SUCH A COURSE IS ADOPTED, IT IS ESSENTIAL THAT IT BE UNDERTAKEN IN A FASHION THAT DOES NOT SUPPORT FURTHER EVASION OF THE LETTER AND SPIRIT OF THE RECLAMATION ACT. THE GRANT OF A MORATORIUM ON FIVE CONDITIONS WOULD ACHIEVE THIS END. DURING THE ONE YEAR DELAY:

1. THE TIME SCHEDULE OF CURRENT RECORDABLE CONTRACTS MUST CONTINUE TO RUN.
2. NO LAND SALES OF ANY KIND CAN BE MADE WITHIN THE AREAS AFFECTED BY THE RECLAMATION LAW.

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3. THERE CAN BE NO INTERIM AGREEMENTS AMONG EXCESS LANDOWNERS CONCERNING PROJECT WATER.
4. THE CO-MINGLING OF SURFACE, WELL AND WATER SOURCES SHOULD BE SUSPENDED UNLESS EXCESS USERS SIGN RECORDABLE CONTRACTS.
5. THERE CAN BE NO INTERFERENCE WITH THE COURT ORDER THAT INITIATED THE PROPOSED NEW RULES FOR RECLAMATION LANDS DISTRIBUTION.

WE URGE THIS COMMITTEE TO CONSIDER THE HISTORICAL AND SOCIAL IMPORTANCE OF ITS DECISION. INCREASED ACCESS TO LAND AND RENEWED STRENGTH FOR THE FAMILY FARMER ARE IN THE BALANCE.

"IT IS TIME FOR AMERICA...TO MOVE ON FROM A SOCIAL ORDER IN WHICH UNREGULATED PROFIT IS THE DRIVING FORCE. IT IS TIME TO MOVE UP TO A SOCIAL ORDER IN WHICH QUALITY OF OPPORTUNITY WILL CEASE TO BE A DREAM AND ACTUALLY COME TO PASS." GIFFORD PINCHOT, 1947.

STATEMENT OF TONY J. CUNHA, DEAN, SCHOOL OF AGRICULTURE, CALIFORNIA
STATE POLYTECHNIC UNIVERSITY, POMONA, CALIF.

The proposed 160 acre limitation is only one of many instances of over-regulation by various governmental agencies. I share the view that it is a serious injustice to farmers.

The U.S. farmer, through our free enterprise system and incentive to produce, provides a vast food abundance which all Americans enjoy. Once this incentive is lost by acreage limitation and other governmental intervention, the competitive spirit dies. The end result is food shortages such as is occurring throughout the world where the incentive to produce is not viable.

It is almost unthinkable that the U.S. government is considering breaking its word to hundreds of farmers who spent their lifetime developing farms from the original desert land in the Imperial Valley. Now government is asking them to break up their farms into smaller units. This is occurring about 44 years after the U.S. Secretary of the Interior stated they were not subject to the 160 acre limitation. I know this kind of action occurs in some foreign countries but I thought the United States was beyond this type of activity. To me, it is like "turning back the clock."

I have worked in Agriculture all my life. During the past 33 years I have been involved in University research, teaching, extension and have worked closely with farmers and industry. It has been a strange experience for me to see some of the retrogressive actions involving agriculture which have occurred in the last 5 to 10 years. I have seen science and industry which was geared to producing food more efficiently and at less cost gradually have to divert more of its talent, energy and other resources to prevent erosion of their capability to produce economically or even to stay in business. A few examples of these are the following:

1. Those who want the farmer to limit farm size and break up economic farm units. They do this without solid facts to show what it will accomplish and who will benefit from such action. If it is a matter of developing small farms, there are over 800 million acres of grazing land, from which a few million acres can be used for this purpose. Why break up existing farms?

2. Those who want to eliminate agricultural chemicals needed for food production, processing and preservation without scientific facts to back them up. Unfortunately, scientific facts are no longer the main basis for many of these decisions. We all need to be careful in the use of agricultural chemicals, but our decisions should be based on scientific facts and not otherwise.

3. Those who want farmers to eliminate certain production practices because they require energy. They disregard the fact that all farmers use only 2 to 3 per cent of the total energy consumed in the U.S. yearly and eliminating all energy use on the farm wouldn't have much impact on the total energy problem. We do need to develop methods of increasing efficiency of energy use on the farm but the answer is not to eliminate its use in food production.

Those who have forgotten that food is produced on the farm and not at the Supermarket and who seem bent on gradually making it more difficult for farmers to operate by over-regulation and the increasing amount of paperwork required.

These four are just a tip of the iceberg on the burden of over-regulation which is driving farmers to the point of exasperation. Among others are zoning regulations, taxation levels, environmental restrictions, some questionable OSHA regulations, foreign competition, lack of dependable labor, high energy and transportation costs and many others. Probably the most unfortunate is the current lack of appreciation, by a large segment of the American public, for the outstanding job the U.S. farmer is doing.

The efficiency and productivity of the American is the envy of the rest of the world. U.S. consumers spend the least amount of their disposable income for food of any nation on earth. They spend about 17.2 per cent of it for food whereas the world average is about 60 per cent—or almost 4 times as much. The high standard of living in the U.S. owes a great deal to the American farmer who is largely responsible for it. But, many recently proposed regulations, if enacted, could seriously erode the productivity and efficiency of the farmer. The net effect would be higher priced food and all consumers would be the ultimate losers. Cutting farm size, just because one uses federal water is a first step in this direction. Moreover, once this occurs, there could be other demands placed on the farmer who uses federal water. This appears to be the history where federal funding or federal control occurs.

So, I would like to plead with those in authority to think very seriously about the implications of acreage limitation. It doesn't appear reasonable to impose a 1902 limitation of 160 acres in the year 1977. Today's farming technology is entirely different than it was in 1902 (a very poor technology era) and it will not be adequate

when the next generation takes over 25 years from now. A recent National Academy of Science study showed that if today's farmers were all using 1950 farming practices that food prices would be 2 to 3 times as high as they are now. So, if we want to keep food prices within reasonable levels, farmers need to have the freedom of operation and the incentive to produce. This is what made America great.

The U.S. is still the best country on earth—and it's the only country you and I have. So, let's work to keep it strong and viable.

STATEMENT OF RONALD KOKINDA, U.S. LABOR PARTY

In my testimony I would like to focus on three key issues concerning the proposed land divestiture:

(1) The proposed regulations would destroy the productive capacity of American agriculture.

(2) The proposed regulations are unconstitutional.

(3) The so-called "grassroots" environmentalist groups are actually highly funded and controlled by Wall Street and London-based investment houses.

First, the present proposed regulations threaten to destroy the capacity of this nation to create an export surplus vital for world peace and stability. The United States must emphasize as an immediate priority the development of agricultural production at home and abroad to levels of not less than 3,500 calories per day per capita and 250 grams of useable protein per day per capita for a world population on the order of 4 billion persons. Large scale divestiture runs counter to the interests of the nation and would starve large sections of the Third World.

Second, these regulations are counter to the intent of the Constitution "to promote the progress of science and useful arts." Referring not only to the narrow purpose of copyright and patent offices, our Founding Fathers were dedicated to increasing the productive capacities of the country through scientific innovation and mechanization. As early as 1743, Benjamin Franklin wrote in "A Proposal for Promoting Useful Knowledge Among the British Plantations Of America":

There are in every province circumstances to cultivate finer arts and improve the common stock of knowledge . . . and produce discoveries . . . to the benefit of mankind in general.

In this essay, he proceeds to propose that committees of correspondence be established to investigate all aspects of agronomy, emphasizing "new mechanical inventions for saving labor . . . nature of soil and productions . . . and all philosophical experiments that let light into the nature of things, tend to increase the power of man over matter, and multiply the conveniences or pleasures of life.

Alexander Hamilton's "Report on Manufactures" in the Federalist Papers emphasizes that the continual upgrading of the powers of both men and machinery increases the national wealth and creates "in some instances a new, and securing in all, a more certain and steady demand for the surplus produce of the soil."

It is significant that The Unfinished Agenda, on the environmentalist's major manifestoes, stated that the Constitution should be loosely interpreted when it conflicted with "environmental necessities."

American agriculture is the most emphatic proof of the correctness of the American System. Through a constant policy of reinvestment an increasing productive capacity has raised the living standards of the world and enabled many populations to assimilate advanced technologies.

The magnificent farms of the San Joaquin and Imperial Valleys are the outcome of the large Federal irrigation projects combined with the most capital-intensive methods. World hunger can be defeated only through the increased use of tractors, implements, drainage and irrigation, fertilizers, desalinization and adequate inventories of alternate genetic strains of seed-stocks.

We must implement a policy of export-led agricultural expansion. Such a program must be undertaken in co-ordination with a program for rapid development of the nation's nuclear energy resources, and a corresponding nuclear energy grid. Ironically the world's most advanced agriculture industry is seriously undercapitalized. By gearing up to full-capacity production as defined by available cultivable land and full use of capital inputs such as fertilizer, machinery, etc., output will not only double but also food cost will decrease. I refer this committee to the attached copy of the U.S. Labor Party Agricultural Development program for the details of this proposal.

The concept of a small 160-acre labor-intensive farm and all the anti-mechanization, anti-fertilizer, anti-research quackery associated with it is clearly against the statement of the Constitution to "promote progress in science." As law, such quackery is unconstitutional; as a greenie environmentalist movement, such practices are treasonous.

Third, the environmentalist groups that are clamoring the divestiture are not grass-roots organizations of "family farmers." They are highly-funded and controlled extensions of Wall Street and London-based investment houses who have something to gain from deindustrialization. Through tax-exempt foundations, these investment houses fund radical think-tanks and their "local-group" footsoldiers. The main funders of the environmentalist movement are the Kaplan, Field, Stern and Rockefeller foundations. No farmers sit on their boards of trustees. All the groups which are pushing the proposed divestiture—Exploratory Project for Economic Alternatives, Nader's Center for the Study of Responsive Law, the Institute for Policy Studies' Public Resource Center, the San Francisco-based Institute for Food and Development Policy—all receive funding from at least one of the above foundations. The National Land for the People group is not "grassroots"; it is represented by the major Wall Street law firm Rogovin, Hugu and Stern. Senior partner Mitchell Rogovin is general counsel for both the CIA and the Institute for Policy Studies which has a thoroughly documented relationship to international terrorism.

The investment houses backing these groups have a stated policy of deindustrialization. To protect worthless paper investment, they will destroy the very basis of human existence. This committee must defend the interests of the American people and the dictates of the Constitution, by recommending against the ratification of the proposed regulations.

FEDERAL INTERMEDIATE CREDIT BANK OF SPOKANE,
Spokane, Wash., November 3, 1977.

Attention Code 410

Mr. KEITH HIGGINSON,
Commissioner, Bureau of Reclamation, Department of Interior, Washington, D.C.

DEAR COMMISSIONER HIGGINSON: The Federal Intermediate Credit Bank of Spokane is responsible, through the Farm Credit Act of 1971, to supervise the Production Credit Association of the Twelfth Farm Credit District and to provide funds for their short- and intermediate-term lending activities to farmers and ranchers. The Twelfth Farm Credit District is composed of thirty Production Credit Associations in the states of Idaho, Montana, Oregon, Washington, and Alaska. In 1977, the PCA-FICB system of the Twelfth District will provide over \$1½ billion to over 15,000 farmers and ranchers. None of the loans made by PCAs are guaranteed by the government nor are the bonds which are sold by the Federal Intermediate Credit Banks to raise the funds for this financial activity guaranteed by the government.

As the supervisory Bank for the Twelfth District Production Credit Associations this Bank objects to those proposed Regulations which will impact upon the Production Credit Associations' ability to fulfill Congress' charge for PCAs to provide short- and intermediate-term agriculture credit on a constructive basis.

The following are the most significant concerns which have impact upon farm operators and subsequently upon the ability of Production Credit Associations to provide constructive credit to existing and potential borrower/members.

1. Security values of these lands affected by the proposed regulations would be significantly decreased. Many excess acreages will be placed on the market and because of the regulations, potentially only a limited number of eligible purchasers will be available. Therefore, the law of supply and demand will tend to force values down significantly. As lenders, the Production Credit Associations would experience a significant reduction of current and future values of real estate security. The ability of PCAs to finance farmers would be further hampered because the farmers being financed would experience net worth drops due to decreased real estate values, thus forcing PCAs to reduce lines of credit.

2. Leasing of irrigated lands is a common practice among many farmers financed by Production Credit Associations. The proposed limitation on leasing and size of leased acreages would greatly reduce the incomes and, consequently, repayment capacities for servicing existing and potential PCA loans.

3. The proposed regulations seriously affect the ability of landowners to grant security interest in lands which are under Bureau of Reclamation jurisdiction. Production Credit Associations have developed favorable policies and special programs which enable them to finance young farmers who cannot obtain needed financing on their own merits. Very frequently co-signatures provide the financial strength necessary to meet those special lending policies. If PCAs will be unable to secure those co-signatures supported by security interest in real estate owned by the parents and other landlords, many existing and potential financing arrangements will be reduced or be made impossible.

4. Many Production Credit Association loans are made possible because the operators not only have the income and repayment capacity from the real estate they own, but depend upon real estate they lease—many times from landlords who are not within the proposed fifty mile radius limitation. Absentee ownership becomes impossible under the proposed regulations, consequently, many existing farm units will not be qualified for financing.

5. Even those loans which are not directly affected by the proposed regulations will feel the impact of the new regulations as it is our understanding monitoring and compliance expenses must be borne by the water/irrigation district. This will result in increased rates to all operators.

For these reasons, the Federal Intermediate Credit Bank/Production Credit Association System of the Twelfth Farm Credit District strongly requests that the Bureau of Reclamation declare a moratorium on implementation of these proposed regulations until this entire matter can be thoroughly re-evaluated and more equitably resolved in terms of economic and sociological impacts.

Sincerely,

WM. F. BARRATT,
President.

MORTGAGE BANKERS ASSOCIATION OF AMERICA,
1125 FIFTEENTH STREET, NW.,
Washington, D.C., November 28, 1977.

Hon. HENRY M. JACKSON,
*Chairman, Committee on Energy and Natural Resources,
Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: On behalf of the Mortgage Bankers Association of America, the trade association of this Nation's mortgage banking industry, I am submitting this statement in connection with the hearings your Committee has held on S. J. Res. 93 and related proposals which call for a moratorium on the issuance by the Department of the Interior of regulations dealing with the enforcement of the irrigation acreage limitation under the Federal Reclamation Law of 1902 as amended and supplemented. We should very much appreciate it if this could be made a part of the hearing record.

MBA favors the enactment of legislation which would place a moratorium upon the Department of the Interior for the enforcement of the Rules and Regulations designed to enforce the Federal Reclamation Law.

Many of our members, both mortgage bankers and institutional lenders are, and have been continually active in the financing of agricultural real estate. As a matter of interest, this Association was originally organized in 1914 as the Farm Mortgage Bankers Association of America. Our members have been responsible for financing many hundreds of millions of dollars worth of agricultural property since the association was founded. Needless to say, we have a very deep concern about anything which affects the value of real property offered as collateral for a mortgage loan.

In our judgment there would be very serious results if the Department of the Interior enforced the Rules as they stand. This would almost certainly lead to a disruption in and possibly a halt to the long-term institutional financing of farms containing so-called "excess lands" in the seventeen western states and thus impose an unforeseen hardship upon farmers.

Our concern stems from two sources. First, the forced sale of land selected by chance and not by the choice of its owner may create a market that is artificially depressed because of the likelihood that acreage now deemed to be "excess" would be thrust upon the market. This conceivably would have a disruptive effect and consequently depress land values within the Reclamation Districts. Lenders understandably would avoid lending where the value of the security for the investment is uncertain.

Secondly, the status of the 10-year recordable contract would be put in doubt. It is unclear from the regulations whether lands presently subject to 10-year recordable contract and previously approved by the Bureau would be held to be in non-compliance. The regulations purport not to apply to existing contracts unless there is a clear, specific and irreconcilable conflict between the contract and the regulations. The decision as to whether or not there is such a conflict is much too interpretive and open to honest disagreement. This factor would undoubtedly affect land values which again might persuade a lender to avoid such investments.

Aside from concerns as to what will happen to land values, there are other aspects of the proposed Rules and Regulations which concern us.

In the past it has been customary for family related landowners to convey small individually owned parcels into a single jointly owned parcel which because of its size, could be farmed much more profitably than could a parcel of 160 acres or less. This large parcel would then be financed under a single mortgage instrument. The value of the total security being mortgaged would be appraised as a large working farm and not simply as the sum of the small, less efficient component land parcels whose value could vary considerably among themselves on a per acres basis. The proposed regulations, however, do not permit one owner to be obligated on a joint indebtedness with others. This means that each individually owned parcel would have to be individually appraised and underwritten without reference to its being part of an assemblage which will be operated more efficiently and hence be of higher value than just the sum of its parts.

Further, because of the juxtaposition of the component parcels among themselves, complex release arrangements would have to be built into the debt instruments to insure that the loan balance is always secured by land of adequate value as individual parcels are released from the lien of the mortgage. The need to make individual appraisals and create complex release provisions will only make loans within the Reclamation areas more expensive for the borrowers.

Should a default in the loan occur there is serious question whether or not a lender would be permitted to foreclose the entire security in a single action or whether it must proceed against each component parcel in separate actions. The regulations seem to support this latter interpretation. Again this likelihood will only make these loans more expensive for the borrower.

The residency requirement is another source of concern since water delivery can be cut off if a family member of a non-family lessor moves his residence more than fifty miles from the farm. This act would seriously impair the farm's value. Knowing this could happen, a lender, considering a loan application, would have to decide whether this prospect, at the lease, simply increases the risk his loan faces or, at the most, constitutes an impediment to his making the loan at all.

The proposed Regulations would not appear to mirror the realism of 1977 agriculture and the abrupt enforcement of the Regulations will certainly create serious economic dislocations, not only for long-term lenders but also for borrowers, investors and all types of creditors who, in the past, have relied on the interpretation of the law by the Bureau of Reclamation. To prevent these economic hardships from occurring and to create an atmosphere conducive to the maintenance of lenders' confidence, we feel that a moratorium of the application of these revised regulations is justified.

For your information and use, a copy of a resolution on this matter adopted by MBA at its recent Board of Governors meeting in New York City is attached.

Sincerely,

JOHN C. OPPERMAN,
President.

Attachment

RESOLUTION ADOPTED BY THE BOARD OF GOVERNORS OF THE MORTGAGE BANKERS
ASSOCIATION OF AMERICA AT ITS ANNUAL CONVENTION IN NEW YORK CITY ON
OCTOBER 26, 1977

Whereas in 1902 the Congress of the United States enacted Legislation entitled the Federal Reclamation Law, which was intended to make available to the small "family" farmer lands irrigated by federally funded projects, and

Whereas this law limits the amount of land which an individual landowner may irrigate from a federally funded Bureau of Reclamation Project to no more than 160 acres or 320 acres for a husband and wife, and

Whereas there are currently over one million acres deemed to be held in "excess" for a violation of this law throughout the 17 western states serviced by the Bureau of Reclamation Projects, and

Whereas the economic viability of the 160 acres limitation is impractical in light of current production costs which a farmer must incur in order to achieve a profitable level of operation, and

Whereas proposed regulations for the enforcement of the law would require private property owners to sell their property via federal controls which would prohibit sales through the traditional free market system, and

Whereas, strict enforcement of regulations promulgated by the law would cause undue hardship, severe economic ramifications, disruption of agricultural produc-

tion, and an artificially created decrease in the value of the farmland in those 17 states affected by the law: Now, therefore, be it

Resolved, That MBA urges the Congress and the Secretary of the Interior to support legislation amending the present law to reflect the realities of modern-day agricultural technology and efficiencies which often require large scale farming operations with respect to federally funded irrigation activities.

NATIONAL FARMERS UNION,
1012 14TH STREET, NW.,
Washington, D.C., November 9, 1977.

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Energy and Natural Resources,
Dirksen Senate Office Building, Washington, D.C.

To the Chairman and All Members of the Energy and Natural Resources Committee:

At the 1975 joint hearings of the Senate Small Business and Interior Committees on the future of family farming in the West, the National Farmers Union again called for development and implementation of rules and regulations for enforcement of the acreage limitation and residency provisions of the 1902 Reclamation Act. This plea had strong support also from other interested organizations.

As a result of the suit of the National Land for the People, a federal district court in Washington, D.C., on August 13, 1976, directed the Bureau of Reclamation to develop and implement rules and regulations pertaining to excess lands. The Court enjoined the Bureau of Reclamation from approving any sales of excess lands in the Westlands Water District until the rules and regulations become operative. The Court directed the Bureau to report to it monthly.

Even though the Court placed a great deal of urgency upon action by the Bureau, it was not until August 25, 1977 (a full year later) that a proposed set of rules and regulations, Part 426, was published in the Federal Register.

A comprehensive hearing process is now under way and thousands of views of interested persons are being received. It may be several weeks after the November 23rd deadline for submission of views before a decision is reached and published. The process will then have taken 16 months or somewhat longer.

The system is finally beginning to work, through the courts and the executive branch. We are appalled therefore that it is being seriously proposed that the Congress halt the process of enforcement of a law and a concept which the U.S. Supreme Court has found to be both constitutional and reasonable.

The Congress itself, in the Food and Agriculture Act of 1977, again stated its commitment to the family farm principle as follows:

"Congress hereby specifically reaffirms the historical policy of the United States to foster and encourage the family farm system of agriculture in this country."

We believe that it would be inappropriate for the Congress at this juncture, to either abrogate the 1902 Reclamation Act as proposed in Senate Joint Resolution 93, or to delay the implementation of Part 426 until after December 31, 1978, as proposed in S.J.R. 96.

It is true there is considerable public confusion and concern and some hysteria, but it has little basis in fact or truth. Many people who think they will be adversely affected by Part 426 will surely soon realize, when they understand the truth, that this is not the case. This process need not be stretched out for another year.

Every farmer who irrigates cropland in the 17 Western states will not be affected by Part 426. Department of Interior data indicates that there are only 5,288 farms in these states which have excess lands subject to Part 426. The totals of affected farms in Western states represented on this committee are:

Washington, 121; South Dakota, 47; Oklahoma, 9; Montana, 174; Idaho, 98; Wyoming, 157; Nevada, 6; Colorado, 42; Oregon, 91; and New Mexico, 83.

Apparently, only a few of these farms are family-sized operations and the effects of Part 426 upon them would be ameliorated by adoption of the administrative recommendations which National Farmers Union has made to the Department of the Interior, which include endorsement of a Class I Equivalency formula, which would authorize federal project water for 200 acres of Class II land, 265.5 acres of Class III land and 320 acres of Class IV land.

Clearly, then 99% of the farmers of the 17 Western states will not be harmed by the application and enforcement of Part 426. The opportunity for establishing several thousand family farm households on the land, however, will open up if the courts and the executive branch are allowed to proceed with enforcement.

Some legislation may eventually prove to be needed. The Farmers Union supports legislation to make the Class I equivalency formula available to areas with a

growing season of 180 days or less. But a more considered judgment will be possible on the part of Congress as experience with the administration of Part 426 shows changes to be desirable to enhance the achievement of the family farm goal of the 1902 Act. This will be a much better course than to attempt to legislate before the administrative experience is available.

Understandably, there are differences of opinion about Part 426 as published. We ourselves have proposed several meaningful revisions to assure that excess lands hereafter sold come into the possession of eligible applicants, who shall be resident farm owner/operators intending to make farming their principal occupation.

Therefore the adoption of Part 426, whether or not it incorporates all the recommendations we have made, will represent some definite progress. The same process which has developed the Part 426 can later amend and improve it as needed.

Enforcement of the family farm law has already been delayed too long. Family farmers will not be helped by maintaining the "status quo" for the relatively few huge land owners, syndicates and corporate interests who have evaded and abused the law for many years, with substantial gain from the public treasury.

We therefore urge you as members of this committee to reject proposals which would delay implementation of the court-mandated rules and regulations.

Sincerely,

TONY T. DECHANT,
President.

cc: All members of the Energy and Natural Resources Committee.

1528 GLASS NE.
Olympia, Wash., November 1, 1977.

Re Present day enforcement of 1902 Reclamation Service regulations pertaining to land ownership, water use, and residency on service projects.

Hon. HENRY M. JACKSON,
Senate Office Building, Washington, D.C.

HONORED SIR: Your effort to delay application of these regulations for one year, while laudable, is only a step in the direction. I fear mass public opinion favors the idea on the general thought to soak the wealthy. A recent TV editorial on CBS in Seattle was to that effect.

The enclosure is self explanatory as to effect on one small holding, (240 acres) and present day owners.

Respectfully,

FRED W. RHODES.

BUREAU OF RECLAMATION REGULATIONS PERTAINING TO ACREAGE, WATER USE, RESIDENCE AS OF 1902, NOW BEING BELATEDLY ENFORCED, AND ITS DISASTROUS EFFECT ON TWO WYOMING FARMS

Herewith a thumbnail sketch history of them:

1902—My father, Joseph M. Rhodes filed a homestead on one of them in what is now Washakie Co., Wyoming.

1903—A group of settlers, with proper permits formed the Bluff Canal Co. and built a ditch, 13 miles long to provide irrigation water for their land. A diversion from the Big Horn River. A permit was granted in perpetuity for one cubic foot per second for each 70 acres. The State of Wyoming claimed title to the water and authority to do this.

1906—My 21st year, Father and I bought a nearby farm, water rights attached. Upland sage was too tough and thick to plow under. I grubbed 50 acres by hand for our first crop.

1911—That year that farm produced 400 tons of hay.

1913—The land, having poor natural drainage, became bogged and the yield of hay was only 175 tons.

1916—Naturally the bogged area extended and yields became less. Artificial drainage became imperative. I dug the trench by hand and laid 2,500 feet of tile six feet in the ground.

1924—By this time a climax had been reached. Slow recovery from the bog, meager returns from extra effort and expense, no money to hire help and failing health led the wife to declare "I have to get you off this farm or I am going to have to raise these three kids by myself, and I don't want to do that." With \$2,859.00, the proceeds of a farm loan we bought a small grocery in Spokane. Returns from tenancy on the farm continued poor, but I was able to send small amounts of money from the grocery for taxes and farm loan payments.

1940—With a better tenancy and better conditions generally financial tension eased, but another problem developed. Noxious weeds became too prevalent to ignore. Canadian thistle, morning glory, knapweed, white top, and others. For many years I spent my summers in the field with a knapsack sprayer on my back trudging from one spot to another in a consistent effort to keep them down.

1969—I deeded the farms to my three children: Doris R. Gaddis, Olympia, Wa., Alice R. Gardner, Tucson, Ariz., Donald F. Rhodes, Priest River, Idaho. The present residency of these three co-owners as of now makes it ridiculous for them to have to establish residence in Wyoming to validate title to their property. Our own project and water supply had been operating for more than 50 years when the Reclamation Service came into the picture. The accretion of a mere 35 acres to our original irrigation acreage has brought it into jeopardy.

If these regulations are fully enforced, which they may well be if not repudiated, and these fee simple owners of real property are forced to sell, all the rules of due process supposedly protected by all levels of government will be violated.

The buyer will be aware of the seller's handicap under Bureau of Reclamation regulations, and there would be no reason to bargain. The operation of life's contingencies under the Bureau of Reclamation regulations would rule the status of ownership, rather than property rights under the law.

I am 92 years old and claim now only an academic interest in these farms. Hopefully this resume will point up inconsistency of the whole thing in the loss to one family of the lifetime of effort and attention of their progenitor to which they are rightly entitled.

Respectfully,

FRED W. RHODES.

PROPOSED ADDITIONAL PROVISION TO BE ADDED TO S.J. RES. 93 AND S.J. RES. 96,
Submitted by Southern Pacific Land Co.

Provided, however, to assure the orderly disposal of excess lands under existing recordable contracts, the agreed period of years for voluntary sale to non-excess owners shall not be deemed to be running during such time as sales approval by the Secretary is suspended.

Explanation: under existing recordable contracts, excess land owners are given 10 years in which to dispose of their excess lands in an orderly fashion. Because of Judge Parker's order, more than a year has passed in which all sales have been enjoined, and no end to this moratorium is in sight. There is also the additional factor of a possible Congressional moratorium. Unless the running of the 10 year period is tolled, it will be necessary to dump a huge acreage on the market in a very short time, thus greatly, artificially, and unfairly depressing its price.

The excess land owners contracted with the government for 10 years in which to dispose of their land; they should get it.



