VARIOUS RESOURCE PROTECTION BILLS

HEARING

BEFORE THE

MMITTEE ON RESOURCE PROTECTION

OF THE

COMMITTEE ON

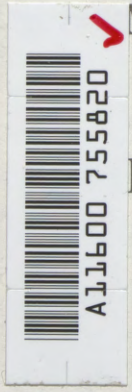
RONMENT AND PUBLIC WORKS

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON



S. 691

A BILL TO PROVIDE FOR THE PRESERVATION AND ENHANCEMENT OF CRITICAL HABITAT FOR MIGRATORY WATERFOWL AND OTHER WETLANDS-DEPENDENT MIGRATORY BIRDS OF THE PACIFIC FLYWAY IN THE GRASSLANDS AREA OF THE SAN JOAQUIN VALLEY, CALIF.

H.R. 2329

A BILL TO IMPROVE THE ADMINISTRATION OF FISH AND WILDLIFE PROGRAMS, AND FOR OTHER PURPOSES

H.R. 8394

A BILL TO PROVIDE FOR PAYMENTS TO LOCAL GOVERNMENTS BASED UPON THE ACREAGE OF THE NATIONAL WILDLIFE REFUGE SYSTEM WHICH IS WITHIN THEIR BOUNDARIES

AUGUST 15, 1978

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VARIOUS RESOURCE PROTECTION BILLS

TUESDAY, AUGUST 15, 1978

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON RESOURCE PROTECTION,
Washington, D.C.

The subcommittee met at 9:33 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. Kaneaster Hodges presiding.

Present: Senators Gravel, Hodges, and Wallop.

OPENING STATEMENT OF HON. KANEASTER HODGES, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator HODGES. The hearing will come to order.

Today the Subcommittee on Resource Protection will receive testimony on three bills dealing with fish and wildlife conservation. These are S. 691, which provides for protection of waterfowl habitat in the San Joaquin Valley of California; H.R. 2329, the Fish and Wildlife Improvement Act; and H.R. 8394, amendments to the Refuge Revenue Sharing Act.

The 46,000-acre Grasslands Water District, located in the San Joaquin Valley, contains some of the most valuable habitat in the country for waterfowl wintering. Each year this area provides over 50 million use-days for dozens of species of waterfowl, shore birds, and marsh birds.

Unfortunately, there are growing pressures on these property owners to convert their lands to intensive agriculture and other more profitable uses. S. 691 would provide an incentive for landowners to conserve these wetlands by eliminating the charge for water delivered from the Central Valley water project to the Grasslands Water District for waterfowl conservation.

The Refuge Revenue Sharing Act as passed by Congress in 1935 to establish payments to counties for lands taken off the tax rolls for conservation purposes. Several provisions contained in the law are outdated, and have resulted in large inequities in the payments.

For example, net receipts received from refuge products are insufficient to meet entitlements due these local units of government. This has made many counties uneasy about permitting the Federal Government to acquire additional lands for conservation purposes. H.R. 8394 addresses these difficulties with the law and should help to encourage local governments to support the acquisition of nationally significant fish and wildlife habitats.

The many conservation laws governing the Fish and Wildlife Service's programs, and to a lesser extent those of the National Marine

Fisheries Service, have developed on a piecemeal basis, with different statutes containing different authorities. This has posed a particular problem for the Service in the areas of land acquisition and law enforcement.

For instance, while the Endangered Species Act permits the agency to acquire easements and other partial interests in lands to conserve endangered species, similar authority for the conservation of waterfowl is not contained in the Migratory Bird Conservation Act. H.R. 2329, by standardizing and clarifying these important authorities, will improve the efficiency and effectiveness of these programs.

The statements of Senators Anderson and Cranston, and Congressman Sisk will be made a part of the record at this point.

[The statements follow:]

STATEMENT OF SENATOR WENDELL R. ANDERSON BEFORE
THE SENATE ENVIRONMENT & PUBLIC WORKS COMMITTEE
August, 15, 1978

Mr. Chairman, let me first say that I appreciate this opportunity to appear before the Senate Environment and Public Works Committee. I realize that the business at hand this morning is H.R. 8394, legislation authorizing payment in-lieu of taxes for federal wildlife refuges. My testimony this morning relates to an amendment which I would like the Committee to consider during its consideration of this legislation.

The Big Stone National Wildlife Refuge is the pride of midwestern Minnesota. The area is enjoyed for its scenic splendor and abundant wildlife by visitors from all over the United States. While several people worked for many years to see this wildlife refuge become a reality, one person clearly distinguished himself in his dedication to this project. That person is Mr. Lemuel A. Kaercher of Ortonville, Minnesota.

Mr. Chairman, today I am asking the Committee to consider amending H.R. 8394 to include a provision authorizing the renaming of this wildlife refuge as a living memorial to this distinguished Minnesotan, who unselfishly gave his time, talent and personal funds for a decade to see the Big Stone National Wildlife Refuge as it is today.

A brief historical account of the Big Stone Lake-Whetstone River project is warranted because it illustrates Lemuel A. Kaercher's decisive role in the establishment of the Big Stone National Wildlife Refuge. The State of Minnesota diverted the Whetstone River into Big Stone Lake as a result of both low water levels in Big Stone Lake during the 1930's and the annual flooding of agricultural lands below Ortonville. While the intent of the project was first to maintain a more desirable water level in Big Stone Lake, and, second, to provide downstream flood protection, using Big Stone Lake as a retention reservoir did not alleviate the two problems. Although well planned and popular at the time, the 1937 work proved to be more detrimental than beneficial. Specifically, the increased water flows into Big Stone Lake caused flooding and damage to lands and property contiguous to the lake. Moreover, the Whetstone River flood waters when released did not eliminate the flooding downstream as intended, rather they merely prolonged the duration of flooding. The final problem, manifested by diverting the Whetstone River into Big Stone Lake, was the increased silt deposition in the lower reaches of the lake.

Solutions to correct the Big Stone Lake problem were proposed and studied in the years following work on the original diversion channel. After reviewing numerous proposals, an alternative suggested by the Minnesota

Department of Conservation (now DNR) and developed jointly with the states of Minnesota and South Dakota, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers resulted in what later became known as the Big Stone Lake-Whetstone River Project. Lem A. Kaercher was the key local figure promoting the project and has been the Big Stone Lake-Whetstone River Project general chairman from the project's inception to the Congressional authorization of the Flood Control Act of October, 27, 1965 (P.L.89-298).

The aim of the Act was three-fold: First, to preserve the level of Big Stone Lake for recreational enjoyment and improvement. Second, to prevent recurring floods. And, finally, to establish a wildlife refuge. The Corps of Engineers' feasibility study of the Big Stone-Whetstone Project projected that 85 percent of the benefits and a similar share of the costs were allocated to improvement of habitat for wildlife, primarily waterfowl. The Bureau of the Budget, to whom the feasibility report was sent for clearance, had no intention of authorizing the project for consideration by Congress because of the precedent it feared it would set, that is, approving a flood control project with such a high and non reimbursable cost allocation to wildlife. It was the addition of this major waterfowl refuge which increased the cost/benefit ratio and greatly assisted in making this much-needed flood control project a reality.

While others were pessimistic about the project's viability, Lem, in a diplomatic and persuasive manner, persevered, especially through his work with the Bureau of

the Budget and the Chief of its Natural Resources Division. Overcoming tremendous odds, Lem's good efforts generated the impetus necessary for the Bureau to clear the project for favorable consideration by Congress. Indeed, Lem did not rest on these laurels, rather he bird-dogged the authorization bill through Congress, and went on as the principal advocate at the Budget Bureau and in the Congress to get money appropriated for the project. Due to the persistence and perseverance of one man, Lem Kaercher, this refuge is today a reality.

Lem Kaercher is currently 86 years old and though not a wealthy man has spent his own funds on dozens of trips to Washington to support this project. The federal government should grant him his wish, which is so richly deserved, to brighten his last years. I can think of no greater tribute to this outstanding member of the Ortonville community nor a better way to honor this Minnesotan than to bestow upon him this distinction which he so aptly deserves by renaming this major waterfowl reserve the Lemuel A. Kaercher National Wildlife Refuge.

I thank you, Mr. Chairman, and the Committee for your consideration of my request.

STATEMENT BY SENATOR ALAN CRANSTON BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE SUBCOMMITTEE ON RESOURCES PROTECTION IN SUPPORT OF S. 691, A BILL TO PROVIDE FOR THE ENHANCEMENT OF CRITICAL HABITAT FOR MIGRATORY WATERFOWL OF THE PACIFIC FLYWAY IN THE GRASSLANDS AREA OF CALIFORNIA -- August 15, 1978

Mr. Chairman, I'm pleased to present this statement in support of my bill, S. 691, to provide for the enhancement of critical habitat for migratory waterfowl in the Grasslands area of California.

The Grasslands area of the San Joaquin Valley is one of the most important wintering areas for waterfowl in the Pacific flyway and the nation. The area supports about 50 million waterfowl use days annually. There are two national wildlife refuges in this portion of the San Joaquin Valley, but over half of the managed waterfowl lands are controlled by private property owners such as the members of the 46,000-acre Grassland Water District. These property owners purchase water from the Central Valley Project at a price set under the 1954 Act incorporating fish and wildlife conservation as a project purpose.

However, today there are growing economic pressures on these private landowners to convert their land from waterfowl purposes to more economically attractive uses. There are strong indications that this conversion will occur unless there are additional economic incentives for the private owners to maintain their land for waterfowl.

The Grasslands area is so important to waterfowl that the Department of Interior has indicated it would move to acquire these private lands, using existing authority, if the landowners continue to divert their property from wildlife conservation. This acquisition could cost the federal government in excess of $30 million.

S. 691 provides an alternative program to preserve the Grasslands area as wildlife habitat. It gives an incentive to private property owners to maintain their land for waterfowl by providing for the delivery of water at no cost. The bill provides that in exchange for the free water, the Grasslands landowners would be severely restricted by covenants to use that water for waterfowl and wildlife habitat conversion uses only.

I understand that the Department of Interior recommends eliminating the portion of the bill which provides that the cost of furnishing water shall not be reimbursable from the Central Valley surplus power revenues under federal reclamation law. I have no objection to the Committee's amending the bill along these lines.

Mr. Chairman, S. 691 is supported by the State of California and by waterfowl groups. In addition, it has the active support of Congressman B.F. Sisk, whose district includes the Grasslands area and who has sponsored an identical bill, H.R. 2865, in the House. I ask that a prepared statement by Congressman Sisk in support of S. 691 be included as part of the official hearing record.

This concludes my remarks. I hope that the Committee will look favorably on S. 691 and report the bill to the Senate floor in the near future so we can enact the bill this year. Thank you.

COMMENTS OF HONORABLE B. F. SISK OF CALIFORNIA
BEFORE THE SUBCOMMITTEE ON RESOURCE
PROTECTION, COMMITTEE ON ENVIRONMENT AND
PUBLIC WORKS U. S. SENATE, IN SUPPORT OF S.691

AUGUST 15, 1978

MR. CHAIRMAN, Members of the subcommittee, I appreciate your calling this hearing today on S. 691, a bill introduced by Senator Alan Cranston and a companion bill to H. R. 2865 which I introduced in the House of Representatives.

As a matter of past history let me outline a little of the development of this legislation. In 1976 I introduced the original bill which was designed to enhance the Grasslands area of California and the migratory waterfowl of the Pacific flyway. The bill was reported by the House Interior and Insular Affairs Committee in an amended form and later was passed by the House. On the last day of the 94th Congress the bill was passed by the Senate, but a nongermane amendment was added. Unfortunately, the House had adjourned for the session and we could not address the amended legislation.

What Senator Cranston and I have introduced in this Congress is the legislation as passed by both the House and Senate in the 94th Congress.

Put in the most simple terms, what this legislation seeks to do is provide water to privately owned lands for waterfowl enhancement only, and to do this at no charge to the landowners. It also provides water to state and federal wildlife refuges.

As was brought out at hearings during the 94th Congress and again in hearings before the House Subcommittee on Water and Power Resources in the 95th Congress, what we are faced with in the Grasslands area is continuing pressure on the landowners to convert the land from waterfowl purposes to more intensive use. The Fish and Wildlife Service has stated that any concentrated conversion of the lands might force outright purchase so as to protect this vital wildlife area. Should that develop, it could cost the federal government in excess of $30 million.

S. 691 and H. R. 2865 provide an alternative that just makes more sense. Today the private landowners in the Grassland area pay into the federal treasury $5,000 annually for water purchased from the Bureau of Reclamation. These bills would eliminate that charge and hopefully prevent the federal government from ever having to go into the area and involve itself in a vigorous land acquisition program.

In addition, I would hope that this body will note that in exchange for the free water the Grasslands landowners will be severely restricted by convenants to use that water for waterfowl and wildlife habitat conservation uses only.

In his report on H. R. 2865, in which enactment was recommended, Secretary of the Interior Cecil Andrus proposed that the nonreimbursable portion of the bill be striken. I support that amendment and recommend that in marking up S. 691 that the Senate concur.

Secretary Andrus suggested that this could be accomplished by striking lines 7 through 9 on page 1 and lines 1 and 2 on page 2 and inserting thereof: "the contracting parties without charge: Provided, That, the cost of furnishing the water shall be reimbursable from Central Valley project surplus power revenues under the Federal Reclamation laws: Provided Further, That, in order for the delivery of such water to continue without charge:"

This legislative approach is supported by the State of California and by waterfowl groups. I urge that it be reported and I will do all I can to gain concurrence by the House of Representatives.

Thank you.

Senator HODGES. We are pleased to have several witnesses here today to give this subcommittee their views on these bills.

Let us now turn to our first witness, Congressman Bill Steiger.

STATEMENT OF HON. WILLIAM A. STEIGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. STEIGER. Mr. Chairman, thank you very much. I have a statement which I would like to ask unanimous consent it be made a part of the record.

Senator HODGES. Without objection, it will be so ordered. [See p. 80.]

Mr. STEIGER. We are very grateful that the subcommittee is willing to hold hearings on the Refuge Revenue Sharing Act. I am very sorry that Bo Ginn, my colleague from Georgia, who is the cosponsor of the bill, is not able to be here this morning. I appear on his behalf as well as on my own.

H.R. 8394 extends the existing payments-in-lieu-of-taxes concept to our National Wildlife Refuge Lands System. When Congress enacted the payments-in-lieu-of-taxes concept through the vehicle of Public Law 94–565 2 years ago, the Congress was acting in good faith on the recommendations of the Public Land Law Review Commission. The problem was, of course, that the law excluded the national wildlife refuge lands from this compensatory payments program. This bill is intended to remedy that exclusion, which resulted primarily from technical and legal problems, which reads as jurisdictional problems within the House of Representatives.

Our National Wildlife Refuge System comprises a great treasure of natural resources. The problem is when units of local government contain lands owned by the Federal Government, they are deprived of the property taxes these lands would otherwise generate. Under Federal ownership, these lands are immune from taxation. Affected local governments suffer under a double strain in these circumstances. Revenues fall, and the presence of Federal lands often leads to increased demand for local government services.

I do appreciate the fact that local units of government are currently receiving payments under the existing Refuge Revenue Sharing Act of 1935, but the current payments are entirely inadequate. In fact, the Fish and Wildlife Service now estimates this fund which helps to pay the local governments will be exhausted by 1983 unless efforts are made to update the existing law.

This bill further provides a new mechanism for the reappraisal of refuge land by the Fish and Wildlife Service every 5 years, rather than relying on the USDA agricultural land index averages.

H.R. 8394 also removes the restriction that payments must be used by local jurisdictions only for roads and schools.

It is important to note that this bill applies to refuge lands that have been acquired by the Federal Government, and not to public domain lands which have never been on the local tax rolls. For acquired lands, counties would receive the greater of 75 cents per acre, three-fourths of 1 percent of the fair market value of the land, as determined by the Secretary of Interior under the new appraisal mechanism, or 25 percent of the net receipts collected by the Secretary from the area.

The cost, Mr. Chairman, as the committee report indicates, will range from $3.5 million in fiscal 1979 to $14.6 million in fiscal 1983. But if receipts increase, as we may expect if oil and gas development continues on our refuge lands, there may well be no additional cost to the Treasury under this proposed revision.

I believe the bill provides an urgently needed remedy. A county containing a national wildlife refuge experiences the same double strain that a county containing a national park or national forest experiences. It makes no difference, it seems to me, to a county now unable to provide needed services into which classification of Interior Department lands the Federal areas fall. This bill is designed to have some degree of equity.

I hope before October 14 the subcommittee will report the bill and the Senate will approve it and send it to the President.

Senator HODGES. Thank you, Congressman, very much. I have assurance from the committee chairman that we will be able to take this up before or on August 25, which is our date for reporting bills out for consideration. I have the assurance we will be given time on the floor to take the bill up. I have very high hopes we will pass it and the President will sign it.

Mr. STEIGER. Thank you very much for letting me come over this morning.

Senator HODGES. We are delighted to have you here.

Also, at this time I will make a part of the record a letter to the Honorable Jennings Randolph, chairman of our Senate Environment and Public Works Committee, in support of H.R. 8394, the letter being from Sam Nunn and Herman Talmadge, the Senators from the State of Georgia.

[The letter referred to follows:]

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., June 20, 1978.

HON. JENNINGS RANDOLPH,
Chairman, Senate Environment and Public Works Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We have noted that on June 6 the House passed H.R. 8394, the Refuge Revenue Sharing Act of 1978, and subsequently referred this measure to your distinguished Committee for consideration. This proposal attempts to rectify the inequities that exist between payments to counties who house wildlife refuges and payments to counties who house other types of federal properties.

As you well know, the Congress updated the formula for making payments to local jurisdictions for loss of tax revenues from National Forest, National Park, and Bureau of Land Management lands in enacting the Payments-in-lieu-of-Taxes Act in 1976. No revision was made in this legislation affecting wildlife refuges which represent the same kind of loss of tax revenues to local areas, but without the added benefit of enhanced economic activity which is created by timber and mineral production and tourism on other classifications of federal land.

We feel it is important that the Senate take action on this proposal, in order to correct the inequity in making these payments as well as to insure the ability of the U.S. Fish and Wildlife Service to acquire in the future needed lands for the protection of critical wildlife habitat. That acquisition cannot continue without local support, and that support will not be forthcoming if the compensation for loss of taxes does not reflect a more realistic value of the land acquired and does not take into consideration the purposes for which the land is to be purchased.

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For these reasons, we urge you and the Members of your Committee to expedite your consideration of this House-passed proposal, so that action may be taken during this Session of Congress. We feel that it is important for it will affect 543 counties in all 50 States and three Territories, which heretofore have given their full support, at considerable local expense, to the federal role in fish and wildlife management.

Thank you for your attention and consideration.

Sincerely,

HERMAN E. TALMADGE.
SAM NUNN.

Senator HODGES. We will now proceed to our next witness, Mr. Jack Gehringer, Deputy Director of the National Marine Fisheries Service.

STATEMENT OF JACK W. GEHRINGER, DEPUTY DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, ACCOMPANIED BY STEPHEN J. POWELL, ASSISTANT GENERAL COUNSEL, ENFORCEMENT AND LITIGATION, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; AND EUGENE A. BENNETT, SPECIAL AGENT IN CHARGE, ENFORCEMENT DIVISION, NATIONAL MARINE FISHERIES SERVICE

Mr. GEHRINGER. Thank you, Mr. Chairman. I am Jack W. Gehringer, Deputy Director of the National Marine Fishies Service. Accompanying me on my right is Stephen Powell, of the General Counsel's Office, and on my left is Eugene Bennett, from the Office of Enforcement.

It is a pleasure to appear before you today to discuss H.R. 2329, a bill that would amend a number of existing fish and Wildlife statutes to improve their administration by the Secretary of the Interior and the Secretary of Commerce. The bill contains eight sections. Sections 3 and 4 are of particular interest to the Department of Commerce.

Section 3 of the bill consolidates the enforcement authority of the Department of the Interior and the Department of Commerce with respect to the protection of fish and wildlife resources. Specifically, this section, among other things, would: One, incorporate fish and wildlife enforcement powers of the Department of the Interior and the Department of Commerce into one law; two, provide for cooperation with other Federal and State agencies in the enforcement of Federal fish and wildlife laws; three, authorize the disposal of certain abandoned or forfeited items: and four, extend the application of Federal criminal sanctions for the protection of employees of the Department of Commerce.

Section 4 of the bill would, among other things, authorize the Secretar yof the Interior and the Secretary of Commerce to use the services of volunteers in conducting fish and wildlife programs under their jurisdiction.

Enactment of H.R. 2329 would alleviate an existing problem: that is, the law enforcement authority of both the Fish and Wildlife Service and the National Marine Fisheries Service is fragmented and scattered throughout various statutes. In some program areas, this authority has not been clearly defined, thereby resulting in an assumption by the Services that their enforcement officers had "implied" authority to take certain actions. H.R. 2329 would provide uniform, com-

prehensive law enforcement authority for both Services, and the Department of Commerce strongly recommends enactment of this legislation.

Our enforcement officers are responsible for the enforcement of approximately two dozen fish and wildlife statutes and treaties, each with differing enforcement authorities. This variety of authority raises some difficulties for our enforcement officers.

H.R. 2329 would fill a void in present, separate authorizing statutes by clarifying a fish and wildlife enforcement agent's authority to use all of the power presently permitted by law.

Another provision in section 3 of the bill is the express authority for enforcement agents to carry weapons for self-defense. While our agents currently carry sidearms to protect themselves, statutory authority would assist in dealing with State and local gun control and registration requirements.

A provision in section 3 which perhaps should be clarified is that providing authority to arrest for "any offense against the United States," not just crimes relating to fish and wildlife. Such ancillary authority is desirable in the efficient performance of enforcement duties relative to fish and wildlife laws. The provision goes on to indicate that our enforcement officers will not "pursue any subsequent investigations of any violation which is not related to fish and wildlife matters."

We have neither the personnel nor funds to engage in extensive investigative work involving crimes that are not related to fish and wildlife. However, there are instances where it may be necessary to do some initial investigative work to, for example, preserve evidence until the responsible Federal or State enforcement agency can be informed or called to the scene. We would want to be assured that limitation in the bill is not construed to prevent such immediate or onscene activities.

We are troubled by the present wording of certain provisions in section 3 related to warrantless searches and seizures. The original bill permitted searches, seizures, and arrests without a warrant "as provided by law." This language recognized that specific limitations on these important and standard law enforcement tools are better left to legislation dealing directly with these powers, such as S. 1437, the Criminal Code Reform Act, and the Federal courts in their continuing application of specific law enforcement situations to the protections of the Constitution.

As amended by the House, sections 3(a)(1)(C) and 3(a)(1)(D) limit warrantless researches and seizures to situations in which the agent has "reasonable grounds to believe that a person has committed or is attempting to commit an offense in his presence or view." While it is this Department's policy that an agent's first consideration will be to seek a warrant, we also recognize that circumstances such as the imminent concealment or destruction of evidence may make this course of action inconsistent with our enforcement responsibilities.

We would like to take some comfort from the fact that section 3(a)(1) begins with the statement that the powers granted by the section are "in addition to any other authority conferred by law," but we are not confident that the courts will agree that the section has no effect on search and seizure provisions in other conservation statutes

administered by this Department, such as the important package inspection authority in section 11(c)(3) of the Endangered Species Act of 1973. For this reason, we oppose the House amendments to section 3, and we recommend that section 3(a) be deleted in its entirety.

We would also like to point out that section 3(b) will be a helpful addition to the Department's general authority to conduct training and research and development programs similar to those authorized under that section. As a matter of policy, we believe that training conducted for State and local law enforcement officials should be provided on a reimbursable basis, where appropriate.

An important provision in section 3(d) of the bill is the authority to dispose of forfeited or abandoned property. Forfeited property has become a real concern to us over the past decade. Numerous fish and wildlife laws provide for forfeiture of property illegally held but only patchwork authority for the disposition of such property. We presently have approximately $500,000 worth of property in various forms of storage. We lack adequate storage facilities, especially for perishable products, and we lack specific authority to dispose of such forfeited property.

We support the inclusion of the Department of Commerce under section 114 of title 18 of the United State Code, as would be provided by section 3(o)(3), in order to clearly give our law enforcement officers protection against assaults in the performance of their duties.

We do not anticipate significant financial or manpower changes as a result of H.R. 2329. The only foreseeable funding change would be with regard to the training programs under section 3(b) and section 4(c) of the bill, and neither is expected to amount to more than $50,000 a year.

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

Senator HODGES. Thank you, Mr. Gehringer. There may be some questions and we will submit them to you in writing. Both Senator Wallop and I are limited in time. I will see if Senator Wallop has any question he would like to ask at this time.

Senator WALLOP. Mr. Chairman, in the interests of time, I would rather submit mine, too. Thank you very much.

Senator HODGES. Thank you.

Our next witness will be Mr. Greenwalt, Director of the Fish and Wildlife Service.

STATEMENT OF LYNN A. GREENWALT, DIRECTOR, FISH AND WILDLIFE SERVICE

Mr. GREENWALT. Good morning, Mr. Chairman. I am Lynn Greenwalt, Director of the Fish and Wildlife Service.

I am very pleased to be here to have an opportunity to talk about three bills of interest to the Fish and Wildlife Service that you outlined in your opening statement.

Mr. Chairman, I am keenly aware of your time constraints. I appreciate the special effort that both of you have made to be here this morning. In the interest of time, I will very quickly highlight my commentary on each of the three bills, and then present myself for whatever questions you have.

Senator HODGES. That is fine. Your statement in full will be entered in the record. [See p. 84.]

Mr. GREENWALT. Mr. Chairman, I will begin with the Refuge Revenue Sharing Act, H.R. 8394, which has been discussed by Congressman Steiger earlier. Let me very quickly point out, as has been expressed earlier in the Congressman's statement, that the intent of this legislation is to correct an inequity that has existed for some time in terms of the National Wildlife Refuge System and its Revenue Sharing Act as it applies to counties in which lands have been acquired in fee.

I think there are a couple of points that should be made relative to the bill in question, which I should bring to the attention of the committee. One of these has to do with a change in wording that would have considerable impact about which the committee should be aware. This has to do with the disposition of moneys generated from oil and gas exploitation on the Kenai moose range in Alaska. This is presently in litigation. The question centers around the allocation of revenues from mineral receipts from refuges which were withdrawn from the public domain.

The important point to make here, Mr. Chairman, is that while the language of the act would not settle the dispute currently in the courts with regard to the past payment of these mineral receipts it would have a profound effect on future revenues from sources from the public domain lands, and these could be considerable revenues. This has a direct relationship to the continuation of the National Wildlife Refuge Fund, from which are derived the moneys which are used for payments to the counties annually. If the language as presently carried in the bill is approved, then the determination will have been made that all revenue from the public domain land will go to the National Wildlife Refuge Fund and will be available for distribution to the counties in the future. That, I think, is a very important consideration.

Another point, Mr. Chairman, is that the administration is, in fact, concerned about some of the provisions of this bill as they relate to appropriating funds to make in-lieu-of-tax payments based on the market value of acquired land. We believe this is a concept that must be studied carefully. We recommend as an alternative that the coverage of the Payment-In-Lieu-of-Taxes Act, passed in the last Congress, be extended to the National Wildlife Refuge Lands. We recognize that certain units of local government may experience a net decrease if wildlife revenue lands are included within the coverage of the Payment in Lieu of Taxes Act. To compensate for this loss of revenue, we recommended a provision that for a period of 5 years the revenue received by a unit of local government under the Payment in Lieu of Taxes Act, as amended, shall not be less than the amount which the unit of local government would have received had wildlife refuge lands not been added to the payment-in-lieu-of-taxes base.

The administration does support certain provisions of the legislation, particularly the provision in the bill which would clarify mineral receipts from public domain lands. That is a very complex issue.

We support and recommend enactment of provisions which permit units of local government to use in-lieu-of-tax payments derived from National Wildlife Refuge Lands for any purpose, not just for schools and roads.

Mr. Chairman, this concludes my prepared comments on H.R. 8394. I would be happy to answer any questions you would have on this particular piece of legislation.

Senator HODGES. Thank you. I will follow the same procedure as I did with the previous witnesses. I think if we do have some questions, we will submit them in writing.

Senator WALLOP. I might just say I have a couple of questions that I would like to submit as well dealing with land acquisition policies and also with problems with the Eagle Protection Act.

Mr. GREENWALT. I am generally familiar with your interest in land acquisition. I would be pleased to answer any question you may have.

[Responses to written questions follow:]

QUESTIONS FROM SENATOR HODGES

H.R. 8394

1. Q. In your statement you said that the Administration would prefer to have lands administered by the Fish and Wildlife Service brought under provisions of P.L. 94-565, the Payment in Lieu of Taxes Act, rather than being treated separately under H.R. 8394. What would be the difference in the amount of payments made to counties under the two bills?

   A. A comparison in the payments to counties between H.R. 8394 and the Administration favored proposal for inclusion of Fish and Wildlife Service lands under P.L. 94-565 is as follows:

	1978	1979	1980	1981	1982	1983
			(In Millions)			
H.R. 8394	$ 8.4	$10.1	$12.0	$15.1	$17.0	$19.0
Administration Proposal*	7.9	7.6	6.6	6.3	5.8	5.1

2. Q. In making payment in lieu of taxes to counties, is there any rationale for distinguishing between refuge lands and other national interest lands?

   A. The argument can be made that refuges differ from the other so-called "entitlement lands" included in the Payment in Lieu of Taxes Act due to their impact on the local economy. Generally speaking, refuge management is directed towards benefits to wildlife which often bring little economic benefit to the local communities. For example, approximately 10% of the acquired lands held by the Service are waterfowl production areas. Restored to native grasses, these areas produce no income and have practically no visitor use. By contrast, National Park lands draw much more visitation, with the concomitant multiplier effect of the monies the visitors spend for goods and services. Other "entitlement lands," such as those managed by Bureau of Land Management or the Forest Service, are managed under the principle of "multiple use" in which the economic benefits of particular uses play significant roles in management decisions.

   It should be pointed out, however, that, in our opinion, these differences would not justify the establishment of a direct entitlement program to replace the existing revenue sharing program.

*Assumes that oil and gas revenues from public domain lands accrue to the Revenue Sharing Fund and that payments are made to prevent counties from incurring a loss if FWS lands are covered by P.L. 94-565.

3. Q. H.R. 8394 extends provisions of the Refuge Revenue Sharing Act to all lands administered by the Service, including non-refuge lands. What other types of lands would be included? What is the projected amount of additional payments to counties for these lands? Will there be sufficient revenue increases to offset these payments?

A. The additional types of lands administered by the Service which would be eligible for revenue sharing under H.R. 8394, are National Fish Hatcheries, Fishery Research Stations, Wildlife Research Centers and Administrative Sites.

The payments to counties for these lands are estimated to be $350,000.

The revenues from these additional lands will very nearly equal the new payments.

4. Q. The Revenue Sharing Act permits the Service to deduct from gross refuge receipts the costs of administering revenue raising activities. Can you give us some examples of the types of administrative costs which are incurred?

A. Such activities could include the building of roads and bridges to gain access to products, the laying out of a timber sale, and the building of fences around grazing areas. It would also include any staff time to administer and maintain surveillance over any commercial activity.

S. 691

1. Q. Much of the land in the Grasslands Water District that S. 691 is intended to conserve for migratory waterfowl is used by hunting clubs. Does hunting pose a threat to waterfowl populations in the San Joaquin Valley? If in the future you determine it to be a threat, what kind of authority do you have to regulate waterfowl taking in this area?

A. The Fish and Wildlife Service and the California Department of Fish and Game conduct cooperative surveys to monitor status and use of waterfowl in California, including the San Joaquin Valley. The present level of hunting in the San Joaquin Valley poses no threat to the status of waterfowl species or populations either locally or on a flyway basis. If the take of ducks by hunters becomes excessive, the Service has authority under the Migratory Bird Treaty Act and adequate means of implementing it through the regulatory process to provide needed protection for species or populations in reduced numbers.

ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

In Reply Refer To:
FWS/LE
FWS 8934

SEP 20 1978

The Hon. Malcolm Wallop
United States Senate
Committee on Environment and Public Works
Washington, D.C. 20510

Dear Senator Wallop:

This responds to your August 18 letter posing questions pertaining to the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d; 54 Stat. 250).

The first of these deals with the statute's prohibition against the molestation or disturbance of bald and golden eagles as well as their nests and eggs. You have observed that a literal construction of this language may prevent the performance of activities which pose a disturbance to eagles or their nests, but are nevertheless compatible with the preservation of these species. This has led you to inquire whether an inactive or abandoned golden eagle nest can prevent a proposed or existing mining activity from being undertaken or completed.

Your observation is in conformity with this Service's interpretation of the Bald Eagle Protection Act. As presently constituted, that statute would appear to prohibit the performance of any activity, regardless of its environmental impact, which would pose a disturbance to bald or golden eagles, including their nesting sites. Owing to the fact that the act does not differentiate between active or inactive eagle nests, is prohibition against molestation and disturbance would apply to nests in either state.

You have asked that I identify a purpose which may be served by the prohibition upon the removal or relocation of inactive nests which appear to be mandated by the Eagle Act. In response, I wish to first apprise you of the fact that insufficient biological research has been conducted as yet to allow us to identify what constitutes an "inactive nest." Golden eagles are known to construct a number of alternate nests in addition to the nests which they primarily occupy. As many as fourteen of these satellite nests have been found in use by a single pair of golden eagles. In addition, eagles have been known to reoccupy nests which have remained abandoned for several years. The disturbance of what would appear to be an inactive nest might therefore have an adverse impact

upon the subsequent use of the site by eagles. However, provided the golden eagle population remains stable, this Service would not advocate that developmental interests be totally sacrificed in order to ensure that protection of inactive nests. In those instances where it can be shown that a golden eagle nest has remained inactive for an extended period, disturbance incident to the performance of socially beneficial development activity is entitled to toleration.

In reference to your second question, concerning the incidence of conflicts between eagle nesting and mining activity in the Western states, I have provided the following excerpt from a report on this subject submitted by the staff of our regional office in Denver, Colorado: "The absolute magnitude of the resource conflicts is unknown. The practical experience we have had in Region 6 indicates that the conflicts are significant and increasing as land use changes occur. In certain large areas in our region it can be anticipated that virtually every major coal strip mine will affect eagles and several other species of migratory birds. It is a matter of record that the majority of mining plans reviewed by the Colorado Coal Coordinator either had an eagle nest on the mine site or eagle nests were located close enough to be disturbed by mining activities. Even old mined areas present problems from eagles nesting on highwalls." Abandoned surface mines appear to serve as ideal habitat for golden eagles, as the highwalls left from the excavation are well suited for use as nesting sites, and the soft soil which remains following mineral extraction attracts burrowing rodents and other animals which the golden eagle finds desirable as prey.

Unfortunately, this Service is presently constrained from offering any relief to mine operators or other environmental developers whose projects interfere with inactive golden eagle nests. This results from the fact that no authority exists in the Eagle Act to allow the issuance of permits for the "taking" of golden eagle nests for anything but scientific or exhibition purposes, Indian religious ceremonial use, or depredation control. As "molestation or disturbance" is comprehended within the act's definition of the word "take", and eagle nests are included within its concept of wildlife entitled to protection, the issuance of such a permit would be necessary to avoid a violation of the law on the part of mine operators or those conducting similar enterprises in the vicinity of inactive golden eagle nests.

In reference to your third question, the Service does not feel that any serious jeopardy would result to the golden eagle population if permits were issued for the removal or relocation of their inactive nests which interfere with certain authorized resource activities. The Service would, however, be reluctant to allow interference with active golden eagle nests or those which have not remained abandoned for a sufficient period, and would furthermore be unwilling to authorize any activity which has a detrimental impact upon the nesting sites of the endangered bald eagle.

In response to your final question, we are in agreement that the abuses which you have described may well be encouraged by the present inflexibility of the Bald Eagle Protection Act. The proposed amendment would achieve the objective of offering some accommodation to socially beneficial environmental development without jeopardizing wildlife resources in a significant fashion. It would allow for rational enforcement of the Eagle Act, which hopefully would engender respect for the law. As a result, it may discourage those whose activities interfere with golden eagle nests from resorting to self-help measures which would go unmonitored by the Service, and could conceivably be detrimental to the survival of the species.

Thank you for affording me the opportunity to comment on this legislation. Feel free to call upon me if you should require further information or assistance.

Sincerely yours,

[illegible]

Director

Questions by Senator Wallop
Mining/Eagle Conflict

Mr. Greenwalt, recently I have become concerned about potential conflicts between coal mining interests and the stringent construction of the Eagle Protection Act of 1940. As you know, that law originally protected bald eagles, but later was amended to include golden eagles. I understand that the bald eagle is now also protected as an endangered species in 43 states. Golden eagles were apparently given protection under the law because golden and bald eaglets closely resemble each other. Protecting golden eagles would avoid confusion between the two, and any possible threat to bald eaglets. I am told that golden eagle populations are thriving and under no population threats.

The Eagle Protection Act protects bald and golden eagles, as well as their nests and eggs, by prohibiting their taking, possession, sale, purchase, barter, molestation or disturbance. This stringent language would appear to mean that even an activity which is compatible with preserving the species or the environment cannot proceed if it would disturb an eagle or its nest. Thus even an inactive or abandonned golden eagle nest can prevent a proposed or existing mining activity. Is this true, Mr. Greenwalt, and if so what purpose does prohibiting the removal or relocation of an inactive nest serve?

I've been told that virtually every major strip mine in western states has either eagle nests on the site or located close enough to the site that mining activity would be considered a disturbance, and therefore prohibited under this law. Even the reclamation of old mined areas present problems from eagles nesting on highwalls. Is this true, and if so what are you doing to resolve the conflict?

Since the taking of golden eagles can be allowed by permit for certain purposes, including protection of livestock purposes, do you feel any jeopardy would occur if permits could be issued for removal or relocation of nests which interfere with certain authorized resource activities?

It seems to me that the net effect of this law might well be to encourage parties in conflict with the law to simply destroy a nest and thereby possibly truly harm a species, rather than inform proper authorities who could take proper measures to move qualifying nests and thereby permit the conflicting activity. Do you feel some flexibility in the law is called for to handle such situations, and would you please comment on the attached possible amendment to the Bald Eagle Protection Act of 1940?

EAGLE PROTECTION ACT OF 1940

(16 U.S.C. 668-668d; 54 Stat. 250), as amended

Section 2 of the Act of June 8, 1940 (16 U.S.C. 668a; 54 Stat. 251), as amended, is further amended by inserting the word "for" before the words "other interests in any particular locality", and by inserting before the period ending the subsection the following: ": Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with environmental development or resource recovery operations".

Mr. GREENWALT. If I may, Mr. Chairman, I would like to turn to H.R. 2329.

Senator HODGES. Before you do, I would simply announce to you that Senator Gravel, who is unable to be here, is working on some complementary language of the Migratory Bird Treaty Act to offer as amendments to H.R. 2329. These amendments have been reviewed at the Fish and Wildlife Service staff level and will be available for review by you this afternoon. He would very much appreciate your comments this week if possible.

Mr. GREENWALT. Thank you. I look forward to seeing that.

Senator HODGES. You may proceed.

Mr. GREENWALT. Mr. Chairman, I shall not address the law enforcement issues of S. 2329 because they were very capably covered by Mr. Gehringer and his people.

I would like to quickly go over certain sections of the bill which have as a purpose general housekeeping improvements, and, therefore, are not necessarily related one to another.

For example, section 2 of the bill amends the Fish and Wildlife Cooperative Units Act and would enable us to use appropriated funds to help support graduate students and others involved in research programs conducted by the several fish and wildlife cooperative units established at land grant colleges throughout the country. This is a very useful opportunity that we heretofore have not been able to take advantage of.

In section 3, the law enforcement issue, I would only echo the general concern and importance we ascribe, as does the Department of Commerce, to the law enforcement provisions. We would recommend that all of section 3(a) be deleted from the bill, because as the language is presently constructed, would seriously limit our enforcement authority.

Section 4 of the bill provides authority for us to accept gifts and donations of real property and to accept voluntary uncompensated personal services. I think the latter, in particular, is a very important opportunity that we have heretofore foregone because we lack the authority to utilize volunteers. There are a great many people who are anxious to work in the national wildlife refuges, fish hatcheries, and with other fish and wildlife activities undertaken by our Service. We have not been able to use this kind of volunteer assistance because we lack the legal authority to use volunteers. This section would change that to the very great advantage of the Fish and Wildlife Service.

Section 4, along with sections 5 and 6, clarifies our land acquisition and management authorities and activities under the Fish and Wildlife Act of 1956, the Migratory Bird Conservation Act and the National Wildlife Refuge Administration Act. By making these amendments, we would be able to take easements on property, instead of fee title, in such a way that we could extend the effectiveness of the funds presently available to the Fish and Wildlife Service by being able to take a less-than-fee interest in certain lands, a distinct advantage to us in many areas.

This amendment, as outlined in section 5 to the Migratory Bird Conservation Act, would enable us to accept a lesser interest than total fee as a gift. As you are aware, Mr. Chairman, the Secretary can

accept gifts in total of land; that is, a total interest, but cannot accept a less-than-total interest as a gift. We have been offered these kinds of interests before and have not been able to accept them. We feel quite certain that there are many people who would be willing to donate certain interests less than fee, and this would be a distinct advantage to the Fish and Wildlife Service generally because it would stretch our funds.

Another dimension of this is very important, in my judgment, and that is the authority to take less-than-fee interests without obtaining within the Government's control the hunting rights on property. Let me explain very briefly that if it is possible for us to take an easement that does retain in the landowner's control the hunting rights, we would have a very real opportunity to assure that landowners who are interested in maintaining their lands as hunting property would not succumb to what is ultimately a pressing need to convert that land to an alternative use that virtually is of no benefit to fish or wildlife.

To say it another way, if we, under the provisions of this act, are able to offer the landowners the retention of his own hunting rights when he gives us an easement or we take an easement from him for a consideration, then we are quite certain that we will be able to preserve vast areas of land which are presently valuable to waterfowl largely because the owner wants to retain them as hunting property.

In your own State of Arkansas the winter refuge near Stuttgart is maintained by people interested in hunting. In the San Joaquin Valley of California virtually the only waterfowl habitat is maintained by private owners and hunting clubs.

Moving quickly to section 6, which would amend present legislation to allow the taking of migratory birds on more than 40 percent of a refuge at any one time under certain conditions, this is an important consideration, because under present law we are authorized to open only 40 percent of the total area of some refuges to waterfowl hunting. The remaining 60 percent must remain closed.

We are very concerned about the needs to open the entire area of a refuge to waterfowl hunting under certain rather specific circumstances; those being, among other things, circumstances in which birds concentrate to the degree that they present a hazard to themselves through the transmission of disease. Some years ago in South Dakota, we lost in excess of 40,000 birds in a very short period of time as a result of the sudden development of a plague among the waterfowl.

One of the virtues we see in the proposed amendment is that it would enable us to use hunting as a pressure to scatter and distribute birds. I think this is particularly important in these times when as habitat diminishes, for various reasons, and we find more and more concentration of birds. We need the widest array of tools possible to manage and distribute these birds when they become a hazard to themselves.

Section 7 of the bill is a truly technical housekeeping element that is designed to uncomplicate some complications that inadvertently came about in the date of the duck stamp is valid and the date of redemption by the Postal Service of unsold stamps. The change of the fiscal year of the Federal Government came in conflict with the statute that governs the printing and distribution of effective dates of the

Migratory Bird Hunting and Conservation Stamps Act. It is important for the convenience of administration that the language be changed so that the effective dates of the stamp are properly synchronized. It is a very complicated thing than can be easily resolved.

Finally, section 8 provides that revenues generated from the industrial complex at the Crab Orchard National Wildlife Refuge in Illinois be subject to the Refuge Revenue Sharing Act rather than deposited in the Treasury as general receipts. Crab Orchard is a most unique area in that it contains a major industrial site, a holdover from the days when that land was a military munitions depot. The Service, under an act of Congress, manages the industrial site from which there is generated considerable revenue, which is deposited in the Treasury. This would change that so receipts would be deposited into the Refuge Revenue Sharing Account and available for distribution to the counties, including the three counties in which Crab Orchard is located.

Mr. Chairman, there may be questions on this matter, and I would be delighted to answer them now or submit them in writing.

Senator HODGES. I think we may submit questions in writing.

Mr. GREENWALT. Finally, if I may go to the bill on the grasslands in the San Joaquin Valley, S. 691. The general thrust of this bill is to provide for the assurance in the future that the owners of the grasslands conservancy district in the heart of California's Central Valley, be assured of the availability of water to their part of the project at no charge so that that water can be utilized to maintain waterfowl habitats in the winter.

I might say that these more than 43,000 acres of land are immensely valuable as waterfowl wintering habitats and maintained by the owners of the various tracts as hunting areas in the winter and in the alternative season are used as grazing areas.

The general thrust of this bill would provide for the assurance into the future that the water rights available to the grasslands district would be used for waterfowl purposes even in the event the grasslands district ceased to exist or folded. It also provides that the conveyance works that are involved in the project would also go to the Secretary in that event.

But most importantly, it assures that these landowners, who have a very real interest in waterfowl and their continued well-being, would have an opportunity in the future to exercise their interest with minimum cost of them, the rationale being that their present expenditure, their present effort in behalf of waterfowl is a national service, in the sense that they do provide immensely valuable wintering habitat for a very large part of the population of migratory birds.

The act, I might say, also provides that the costs accruing to the Bureau of Reclamation to maintain the provision of water to this district would be reimbursed to the Central Valley project from surplus power revenue under the Federal reclamation laws.

Mr. Chairman, without trying to go into what is, as you might imagine, a complex issue in the grasslands of California, I reflect the administration's support of this bill, as amended, to include the provision for reimbursability through the power generation revenue.

Again, Mr. Chairman, if you have questions on this bill, I would be pleased to answer them.

Senator HODGES. There are questions and they will be submitted in writing. Thank you for the statements on all three of the bills. I appreciate your appearing here. Your full statements on each of the three will be put in the record.

Mr. GREENWALT. Thank you.

Senator HODGES. Thank you.

[The following is the response from the Department of the Interior to a request for comments on the bills being considered today:]

33-825 O - 78 - 3

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 14 1978

Honorable Jennings Randolph
Chairman, Committee on
Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to the request of your Committee for the views of this Department on S. 691, a bill "To provide for the preservation and enhancement of critical habitat for migratory waterfowl and other wetlands-dependent migratory birds of the Pacific Flyway in the Grasslands area of the San Joaquin Valley, California."

We recommend the enactment of S. 691, if it is amended as suggested herein.

Section 6 of the Act of August 27, 1954 (68 Stat. 879), referred to in this bill provides that, "The Secretary of the Interior is authorized to contract for the delivery of water to public organizations or agencies for use within the boundaries of such organizations or agencies for waterfowl purposes in the Grasslands area of the San Joaquin Valley. If and when available, such water shall be delivered from the Central Valley project at a charge not to exceed the prevailing charge for class 2 water." The amendment proposed in S. 691 to section 6 of the 1954 Act would accomplish several objectives, each of which would assist the maintenance of migratory waterfowl habitat in the San Joaquin Valley of California, one of the most important wintering areas for waterfowl in the Pacific Flyway and the Nation. Both the Fish and Wildlife Service and the Bureau of Reclamation would be involved in carrying out the provisions of S. 691 if it is enacted.

The Federal Government has been given primary responsibilities for the protection and maintenance of migratory birds, including, waterfowl, through Migratory Bird Treaties with Great Britain (for Canada), Mexico and Japan. Implicit in this responsibility is the protection and enhancement of habitat in sufficient quantities to provide for the requirements of North American Waterfowl populations throughout the year on the breeding, migratory and wintering grounds. It is not possible to place all the necessary habitat in public ownership; the majority of critical habitat must remain in private ownership. This requires suitable incentives to prevent the conversion of privately owned habitat to noncompatible uses.

The Central Valley of California, including the 46,000 acre Grasslands area of the San Joaquin Valley, is the most important wintering area for waterfowl in the Pacific Flyway. The Central Valley winters an average 65 percent of the total number of waterfowl wintering in the flyway. The Grasslands support approximately 50,000,000 waterfowl use days annually, or about 400,000 waterfowl, and this area is the last remaining habitat of its kind in the San Joaquin Valley. In view of its great importance to a major segment of the North American waterfowl population, preservation of the central Valley wetlands wintering habitat is one of the highest priorities of the Fish and Wildlife Service's National waterfowl habitat preservation program and is the highest priority area in the Pacific Flyway.

The Grasslands Water District landowners/operators currently manage their lands both as native pasture for livestock production and wetlands for wintering waterfowl. Unfortunately, higher land taxes and operating costs are forcing some operators to convert their land to other types of agriculture, such as cotton and sugar beets, because grazing is too marginal and insufficient economic return is realized. This trend toward more intensive land use in the San Joaquin Valley will inevitably result in further decline and eventual elimination of vital waterfowl wintering area unless suitable incentives are provided to the private sector to maintain their habitat. Such an incentive can be offered through providing a continued water supply to the Grasslands Water District and other Grasslands area water users at no cost to them - an incentive proposed in S. 691.

S. 691 will guarantee delivery of 3,500 acre-feet of water each fall and 4,000 acre-feet of water each summer, when available, and the water delivery system to accomplish such, to Federal waterfowl refuges in the valley. The Fish and Wildlife Service currently receives the amounts of water provided by the proposed legislation.

Under S. 691 the District would be required to modify the existing water delivery system to supply the San Luis National Wildlife Refuge with this water rather than Kesterson. This delivery system plus an assured water supply for continued operation of the San Luis Refuge, if the District should dissolve, would be a major benefit to water-

fowl management in the Pacific Flyway. In this area where water supplies are critical, combined with a shortage of Federal refuge development funds, continued water supplies to the refuges are essential to maintenance of waterfowl populations.

Another major benefit to be realized by the waterfowl resource from the enactment of S. 691 is that should the Grasslands Water District cease to exist or otherwise default on its responsibilities, the Secretary of the Interior would be required to continue to utilize the 50,000 acre-feet of water now used by the District for migratory waterfowl purposes. This water could be made available to existing refuges, new ones which may be purchased in the future, to State management areas, or to private landowners for the purpose of maintaining waterfowl habitat.

At the present time duck club lands within the Water District are owned by 155 individuals or corporations and are valued in excess of $30 million and have an annual operating expense of $600,000. Providing an incentive such as nonreimbursable water to private landowners to maintain critical waterfowl habitat is a desirable and more cost effective alternative for preserving sufficient habitat than is Federal acquisition which will likely be required should economic pressures continue to force Grasslands District members to convert their land to uses not compatible with waterfowl.

In view of the substantial benefits to migratory waterfowl resources of the Pacific Flyway on both private lands and Federal refuges provided by this proposed legislation, we recommend enactment of S. 691, if the amendment described below is made to the bill.

As S. 691 is now written, the cost of furnishing the water to the contracting parties would be nonreimbursable or nonreturnable under the Federal Reclamation laws. We recommend that the nonreimbursable portion of the bill be stricken. That would mean that the portion of the capital cost of the Central Valley Project allocated to furnishing water for waterfowl conservation purposes, pursuant to the Act of August 27, 1954 (68 Stat. 879), would continue to be considered reimbursable, as would the accumulated deficiency in net operating revenues over the Central Valley Project repayment period. The total aid required from power revenues would amount to about $18,790,000 for capital cost and about $9,800,000 for the accumulated deficiency in operating revenues. In this regard, we suggest an amendment by striking lines 7 through 9 on page 1 and lines 1 and 2 on page 2 and inserting in lieu thereof "the contracting

parties without charge: Provided, That, the cost of furnishing the water shall be reimbursable from Central Valley project surplus power revenues under the Federal Reclamation laws: Provided Further, That, in order for the delivery of such water to continue without charge:".

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

Sincerely,

Joan M. Davenport

Assistant SECRETARY

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 14 1978

Honorable Jennings Randolph
Chairman, Committee on
Environment & Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to the request of your Committee for the views of this Department on H.R. 2329 in the Senate, a bill "To improve the administration of fish and wildlife programs, and for other purposes."

We support the enactment of H.R. 2329.

H.R. 2329 would provide for improvements in the administration of various programs administered by the Fish and Wildlife Service for protection and enhancement of fish, wildlife and plants by: (1) amending the Fish and Wildlife Cooperative Units Act of September 2, 1960 (74 Stat. 733; 16 U.S.C. 753a-753b), to allow the use of Federal cooperative research and training unit funds to support graduate students in Service-sponsored research projects (section 2); (2) clarifying and strengthening the law enforcement program of the Service and the National Oceanic and Atmospheric Administration in order to provide more effective protection for fish, wildlife and plant resources (section 3); (3) amending the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j; 70 Stat 1119), as amended to (a) clearly allow the acquisition of interests in land and water, and (b) authorize the Secretary of the Interior to accept gifts or bequests of real or personal tangible or intangible property, and voluntary, uncompensated personal service in support of Service programs (section 4); (4) amending the Migratory Bird Conservation Act (16 U.S.C. 715-715r; 45 Stat. 1222), as amended to clarify the Secretary's authority to acquire by gift or devise an easement for the conservation of migratory birds, and further to provide for the acquisition of areas for inviolate sanctuary purposes and other purposes (section 5); (5) amending the National Wildlife Refuge Administration Act (16 U.S.C. 668dd-668ee; 80 Stat. 927), as amended to allow the Secretary to open more than 40 percent of a refuge to the taking of migratory birds if he finds that such taking would be beneficial to the species (section 6); (6) amending the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718-718h; 48 Stat. 452), as amended to provide a June 30 date

for redemption of the "duck stamp" by the Postal Service (section 7); and (7) amending the Crab Orchard National Wildlife Refuge Act of August 5, 1947 (16 U.S.C. 666f-666g; 61 Stat. 770) to make receipts from industrial complex leases subject to the Refuge Revenue Sharing Act (16 U.S.C. 715s; 49 Stat. 383), as amended (section 8).

Section 2 of the Fish and Wildlife Improvements Act of 1977, as H.R. 2329 is to be known, amends section 1 of the enabling Act for the Cooperative Fishery Unit and Cooperative Wildlife Research Unit program of the Fish and Wildlife Service. This is a cooperative program involving some 45 units at universities throughout the country. Program objectives are to: (1) conduct research basic to the management of fish and wildlife resources; (2) facilitate training of fish and wildlife personnel at the graduate level; (3) provide technical assistance to conservation agencies in fish and wildlife management programs; and (4) promote education in natural resources through demonstration, lectures and publications. The amendment contained in H.R. 2329 would provide that Service operational funds for the units can be used with the same degree of flexibility as those funds provided by other cooperators in the program.

Section 3 of H.R. 2329 provides a uniform comprehensive law enforcement authority for enforcement of fish and wildlife laws. Section 3(a)(1) provides basic authority for enforcement of all fish and wildlife programs. Its' provisions relating to search, seizure and arrest could fill a void in present separate authorizing statutes by clarifying an agent's enforcement authority to allow him to use all the powers presently permitted by law. However, we would recommend that this section be deleted and the remaining sections be redesignated accordingly. This section, as it presently exists, will severely restrict our law enforcement officers in the performance of their duty, as this provision allows them less authority than they have under existing law. Further, S. 1437, the Criminal Code Reform Act, if enacted as passed by the Senate, will provide the needed standardization.

Section 3(b) establishes a comprehensive program for fish and wildlife training, research and development. This program will coordinate State and Federal enforcement efforts through a common training and development program. We believe that State conservation agencies are a national resource in skill and manpower essential to the effective execution of national fish and wildlife policies. This program would formally establish close enforcement liaison with the State agencies.

Section 3(c) provides for cooperation with other Federal and State agencies in enforcement of Federal fish and wildlife laws. The provision would authorize the Secretary of the Interior to enter into agreements with other Federal and State agencies to obtain assistance and cooperation in the enforcement of fish and wildlife laws.

Section 3(d) provides authority for the Secretary to dispose of forfeited or abandoned property, and section 3(e) provides for the continuation of any enforcement agreements or delegations made prior to enactment of H.R. 2329.

Subsections (f) through (o) of section 3 amend various statutes in order to make fish and wildlife law enforcement provisions uniform.

Section 4 of H.R. 2329 amends the Fish and Wildlife Act of 1956 to clarify the Secretary's authority to acquire interests in land and water as well as to accept gifts and donations of real and personal property. The Secretary is also authorized to accept volunteer services in aid of the work of the Service.

Section 5 of H.R. 2329 amends the Migratory Bird Conservation Act to clarify the Secretary's authority to acquire by gift less than fee interest in lands and waters for migratory birds. The bill further provides for the acquisition of habitat other than for inviolate sanctuary purposes. There may be situations where migratory bird habitat may be protected by easement at little or no cost if the owner may continue to hunt. This amendment would permit the acquisition of those rights when protection of the habitat is essential, but the sanctuary provision is not. This could prevent future conversion of habitat for real estate development. It would probably have the most impact on hunting clubs and large estates that are now maintaining habitat at private expenses, but are under continuous pressure for conversion. In addition, there are a number of situations where proper management of migratory bird populations requires maximum flexibility to manipulate the various management tools available. A mandatory 60 percent closure is not always amenable to achieving this flexibility. The potential for large scale waterfowl mortality from communicable diseases such as Dutch duck plague (DVE) or other environmental catastrophes could be diminished by effectively reducing, when necessary, dense concentrations of waterfowl through control of hunting pressure. Hazing and other techniques are not always effective in reducing such concentrations. Manipulation of hunting pressure could also be used to prevent large concentrations from forming, which often occurs when sanctuary is provided and other necessary

requirements, such as food and open water, are present. Undesirable delays of traditional migration flows (shortstopping) could also be reduced by flexibility to open or close all or a portion of a refuge to migratory bird hunting.

Section 6 amends the National Wildlife Refuge System Administration Act to allow the opening of a sanctuary by more than 40 percent to taking of migratory birds if the Secretary finds that such taking would be beneficial to the species.

Section 7 amends the Migratory Hunting and Conservation Stamp Act to provide for a June 30 date of redemption of the "duck stamp" by the Postal Service. Because of the hunting season and for administrative efficiency, a July 30 year as the valid dates of the stamp and a June 30 date of redemption of the stamp is necessary. With changes in the Federal fiscal year reference to the stamp being valid "only during the fiscal year for which issued" required amendment by striking the word "fiscal". This was accomplished by P.L. 94-273, section 43. However, at the same time, but in different legislation (Wetlands Loan Act Extension) the Congress struck the June 30 expiration date and inserted "September of each fiscal year." As a result the dates between which the stamp is valid contradict the provision of June 30 expiration date and a further provision for a fiscal year period of validity. A remedy to this conflict is provided in the amendment contained in section 7 of H.R. 2329.

Section 8 of the bill provides that revenue generated on the Crab Orchard National Wildlife Refuge, Illinois, will be subject to the Refuge Revenue Sharing Act rather than deposited in the Treasury as general receipts. This amendment will make the revenues generated at Crab Orchard subject to the same requirements as are the revenues of other refuges in the system.

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

Sincerely,

Joan M. Davenport

Assistant SECRETARY

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 14 1978

Honorable Jennings Randolph
Chairman, Committee on
Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the views of this Department on H.R. 8394 in the Senate, a bill "To provide for payments to local governments based upon the acreage of the National Wildlife Refuge System which is within their boundaries."

We recommend against enactment of the bill unless it is amended as suggested herein.

The June 7, 1978, version of H.R. 8394 in the Senate provides that at the end of each fiscal year units of local government shall receive, with respect to lands that were acquired in fee by the United States and which are administered by the Secretary of the Interior through the Fish and Wildlife Service, whichever of the following amounts is greater: (a) 75 cents multiplied by the number of acres of fee land located within the boundaries of the governmental unit; (b) three-quarters of one percent of the fair market value of the fee land located within the boundaries of the governmental unit; or (c) 25 percent of the net receipts collected by the Secretary in connection with the operation and management of the fee area during such fiscal year. With respect to lands withdrawn from the public domain and administered by the Secretary of the Interior through the Fish and Wildlife Service, units of local government are to receive 25 percent of the net receipts collected by the Secretary in connection with the operation and management of the area during such fiscal year. Lands acquired in fee are to be appraised every 5 years in order to determine their fair market value; however, such appraisal shall not result in a reduction in payments to a unit of local government below the amount paid pursuant to the Refuge Revenue Sharing Act as in effect on September 30, 1977.

If the net receipts in the refuge revenue sharing fund for any fiscal year do not equal the aggregate amount of payments to be made to units of local government for such fiscal year, the bill authorizes appropriations of amounts necessary to make up the difference between

receipts and the amounts allocable to the units of local government. Other provisions of the bill eliminate the requirement that units of local government spend their payments under the Act for schools and roads, and add to the lands covered by the Refuge Revenue Sharing Act lands administered by the Secretary of the Interior which are not part of the National Wildlife Refuge System.

The Administration believes that the purposes of H.R. 8394 in the Senate can be more equitably addressed by including wildlife refuge lands under the so-called Payment in Lieu of Taxes Act passed in 1976 (31 U.S.C. 1601 et seq.). That Act sets up a system of payments for what the bill describes as "entitlement lands." These include National Park Service, National Forest Service, and Bureau of Land Management lands as well as lands dedicated to the use of water resources development, and dredge disposal areas under the jurisdiction of the Army Corps of Engineers. A unit of local government having entitlement lands within its boundaries receives the greater of 75 cents per acre of entitlement land within its boundaries, up to a population ceiling contained in the bill, less any revenue-sharing-type payment the unit received from the lands during the preceding fiscal year' or 10 cents an acre up to the same population ceiling.

We prefer extending the coverage of the Payment in Lieu of Taxes Act to wildlife refuge lands to enactment of H.R. 8394 in the Senate for several reasons. The concept of Federal in lieu of tax payments which are based on fair market value of acquired lands is a concept of potentially broad application. We believe that the implications of such a concept must be studied carefully before it is applied to fish and wildlife lands.

Moreover, the provision of H.R. 8394 in the Senate which authorizes appropriations to make up the difference between receipts and the amounts allocable to units of local government under the Refuge Revenue Sharing Act is objectionable since it turns a revenue sharing program into a direct entitlement program. We recognize that certain units of local government may experience a net decrease in total revenues if wildlife refuge lands are included within the coverage of the Payment in Lieu of Taxes Act. To compensate for this loss of revenue, we recommend a provision that, for a period of 5 years, the revenue received by a unit of local government under the Payment in Lieu of Taxes Act as amended shall not be less than the amount which the unit of local government would have received had wildlife refuge lands not been added to the payment in lieu of taxes base.

We support and recommend enactment of the provision in H.R. 8394 in the Senate which permits units of local government to use in lieu of

tax payments derived from wildlife refuge lands for any governmental purpose, not just for schools and roads.

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

Sincerely,

Joan M. Davenport

Assistant SECRETARY

Senator HODGES. Our next witness is Mr. Jim Claus.

Mr. Claus, if you don't have an extensive statement, it would be prefectly all right to read it. If it is extensive, the full statement could be put in the record.

STATEMENT OF JIM CLAUS, LANDOWNER, MERCED COUNTY, CALIF.

Mr. CLAUS. It is not very long. It has already been sent to Senator Culver.

I am here to support H.R. 2329 and S. 691, particularly H.R. 2329, because it would broaden the power of the Fish and Wildlife Service by allowing the funds that have been raised through the duck stamp revenues to be used to preserve wetlands areas as habitat for waterfowl.

I am concerned about this matter because my family owns land in the grasslands in Merced County. If the bill passes, it will guarantee our land can be used as a habitat for waterfowl. It is not going to require other than the duck stamp revenues, as I understand it, to preserve this. It doesn't cost the county anything. It keeps their tax base intact. It leaves the recreational opportunity to the area for hunting and to some degree fishing. That opportunity does include more than waterfowl.

Finally, it doesn't take anything away from the local landowners. In fact, it gives them an option how to keep their property. In short, as I understand the bill, it is in the best tradition of this kind of legislation. It doesn't take anything away from anyone, but it does give a high degree of flexibility to the government to use funds that they currently just don't have.

There are a lot of facts and figures. But I can tell you that in terms of the Pacific flyway, we are a major wintering habitat. There is plenty of breeding ground; they haven't changed that. But there are 10-million birds that are directly dependent on wintering habitats. Even in the time I have been in California—I originally came from Montana—I have seen a lot of that land being converted. It is just pretty evident to me with taxes and water costs and the pressure that is happening, you will see that habitat cut at least in half in the next 10 years, if not more.

Senator HODGES. Thank you very much for your statement. I, personally, live in the central flyway in Arkansas, an area which is a wintering ground for migratory waterfowl. We have seen the depletion there also. I agree with you. This sort of legislation is needed to encourage people who want to do so, to allow them the economic flexibility to do so.

Thank you for your remarks. If you have a statement or something that you would like to put in the record, we would be happy to receive it. Thank you.

[Mr. Claus' letter to Senator Culver follows:]

A / C MANAGEMENT
Real Property Management Services
Post Office Box 1252, Palo Alto, California 94302
Telephone: (415) 328-5242

August 11, 1978

Honorable John C. Culver
Chairman of the Subcommittee on Resource Protection
Senate Committee on Environment and Public Works
Room 4204 Dirksen Senate Office Building
Washington, D.C. 20510

ATTN: Kathy Korpon

The Honorable John C. Culver:

I am writing in support of passage of HR 2329 and S 691. HR 2329 would broaden the powers of the Fish and Wildlife Department of the U.S. Government, by allowing funds raised from the sale of Duck Stamps to be used to preserve a wetlands area which would act as a habitat for waterfowl.

I am concerned with this matter because my family owns land in the West Grasslands District of Merced County, California. If this bill were passed we would be certain that our land, as well as the lands surrounding it, would be preserved as a habitat for waterfowl, by allowing funds which are generated through the sale of Duck Stamps to be used to maintain this land in its natural state. This bill would not only allow for preservation of natural resources, it would also benefit hunters and others who can use this land as recreation. Local government will also benefit because its existing tax base will remain. Those who own land in the area will be able to continue to keep their holdings. In short, passage of this bill would be beneficial to the general public, local government, and local landowners.

Sincerely,

Jim Claus

Jim Claus

JC:jt

Senator HODGES. Our next witness will be Mr. Douglas Riggs.

Mr. Riggs, we will let you proceed. Senator Gravel is interested in being here, but has been delayed. We would like you to go ahead and proceed.

STATEMENT OF DOUGLAS A. RIGGS, SPECIAL COUNSEL TO THE GOVERNOR, STATE OF ALASKA

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

Mr. Chairman, my name is Douglas A. Riggs. I am special counsel to Gov. Jay S. Hammond, State of Alaska, and his representative in Washington, D.C. I have been requested by the Governor and his commissioner on natural resources to appear before you today on H.R. 8394.

Attached to my testimony, as an appendix, is the testimony given by Deputy Commissioner Frederick H. Boness, Alaska Department of Natural Resources, before the House Subcommittee on Fisheries and Wildlife on this bill. Since Commissioner Boness' testimony sets out in very clear language the legislative history and legal arguments on which the State of Alaska centers its opposition to H.R. 8394, I respectfully request that it be incorporated into the record as a statement on the State's position.

Senator HODGES. Fine, so ordered. [See p. 105.]

Mr. RIGGS. Thank you, Mr. Chairman.

It is not my intent to repeat the arguments set forth in Commissioner Boness' testimony, but I think it would be useful to indicate to the committee the factors which force the State of Alaska to strongly oppose this bill.

Although framed in terms of a bill relating to wildlife refuges, this bill is a not too subtle atttempt to change the method contained in the Alaska Statehood Act and in 30 U.S.C. section 191 for the allocation of revenues from mineral development. It is clear beyond doubt that the only sigificant consequence of this bill will be to cut off money now paid to the State of Alaska by the Federal Government in accordance with the Statehood Act and title 30. Instead, a small fraction of the present sums paid to the State would be paid to a local municipality and most of the money would be kept by the Federal Government.

The Department of the Interior has once already attempted such a unilateral change of allocation of revenue. However, U.S. District Court Chief Judge von der Heydt, in a decision issued on August 17, 1977, ruled that Interior's attempt to deprive Alaska of these revenues was unlawful. Notwithstanding the pending appeal before the ninth circuit, Interior is evidently seeking, by this bill, a result which it could not achieve at the bar.

The irony of Interior's attempt, through this bill, is that the passage of this bill will not alter the State's legal position as to its statutory claim to an allocation of revenue derived from the lease of reserved public lands in Alaska. The State believes that 30 U.S.C. section 191 is controlling. As such, the passage of this bill, in its present form, will simply generate another round of litigation between the State of Alaska and the Department of Interior. We would respectfully suggest that this result would not constitute a meaningful utilization of scarce tax dollars, either State or Federal.

We do not suggest that Congress cannot change, by appropriate action, the distribution of revenue derived from the leasing of public lands. However, we do believe that Congress should only act after careful review and analysis of the intent and ramification of the proposed change.

In addition, we do not believe that Congress should act in a manner which will have the effect of withdrawing a benefit to a State when such benefit was conferred as a part of that State's compact with the Union. We ask that H.R. 8394 be placed in its proper perspective. We have no quarrel with the concept of wildlife refuges. We have no quarrel with the concept of a migratory bird conservation fund. We have no quarrel with a county or borough receiving an allocation of revenue derived from the lease of acquired lands.

We do, however, have strong objection to and a quarrel with any attempt to deny to the State of Alaska revenue allocated by Congress under the Statehood Act and paid to the State from 1959 until 1975, when the Department of the Interior unilaterally ceased making the payments which then prompted the present lawsuit and this bill after Interior's defeat in the district court.

This bill has, also, another unfortunate ramification. It has pitted the State against a political subdivision, the Kenai Borough, and set up the Federal Government as the arbiter. This is especially unfortunate because the original considerations leading Congress to favor local entities when it established the revenue distribution scheme of 16 U.S.C. section 715(s) are not present.

The borough has not suffered a loss of taxable property in the moose range. Since that range was created from reserved lands, it was never on the tax roll. To provide an allocation to the borough on the basis of a refuge created from reserved lands would not promote the public policy behind 16 U.S.C. section 715(s) or this bill.

We believe the legislative history is clear. The purpose of 16 U.S.C. section 715(s) is to provide moneys to counties for the loss of otherwise taxable land for the purpose of creating refuges. In this case, an allocation to the borough on the basis of the moose range would not promote that policy, but rather would constitute a windfall to the borough with a concomitant loss and detriment to the other citizens in the State. Frankly, we believe that the allocation as set forth in 30 U.S.C. section 191 is to the benefit of both the State and the borough.

For the reasons I have mentioned above, as well as those discussed in the testitmony of Commissioner Boness, I urge this committee to either not report this bill, or if it should be reported, to adopt language which makes clear that this bill is not intended to modify the distribution of revenue required by 30 U.S.C. section 191 and the Alaska Statehood Act. Should the committee wish to pursue this latter course, I would be happy to suppy you with the language which we believe achieves this result.

I appreciate having an opportunity to appear before this committee. Thank you very much.

Senator HODGES. Thank you. Senator Gravel is not here at this time, but I do know that he would like to ask questions, so if you would be kind enough to stay, we would simply recess the hearing until he arrives.

It also might be helpful, if you have language, to submit that to the committee.

Mr. RIGGS. At this time I would prefer to submit it subsequent to the hearing.

Senator HODGES. You don't have it available?

Mr. RIGGS. No.

Senator HODGES. Thank you.

We will recess the hearing temporarily.

[Brief recess.]

Senator GRAVEL [presiding]. The hearing will come back to order.

We are very happy to have Mr. Riggs here. I am sorry I wasn't here for your opening statement. I wonder if you could resummarize the position the State of Alaska has taken.

Mr. RIGGS. Mr. Chairman, we are very opposed to this bill, H.R. 8394, for a variety of reasons. But two of the most important reasons center on the fact that, one, it has the effect of depriving the State of Alaska of a benefit which was conferred by Congress in 1959 at the time the State entered the Union. More specifically, under the Statehood Act, Congress decided that the revenues derived from lease of public lands, and particularly the reserved public lands, would be distributed according to a formula of 90 percent to the State and 10 percent to the Federal Government. The 10 percent, I understand, would be utilized for administrative costs.

The Department of Interior has honored that congressional mandate up until about 1975, when it unilaterally ceased making the annual payment to the State of Alaska. Those annual payments amounted to approximately $4 million a year.

As a result of the unilateral termination of those payments the State filed suit, and the issue was joined before Judge von der Heydt in the District Court of Alaska. Judge von der Heydt came down in favor of the State and said the State was entitled to receive that allocation, and it was unlawful for the Federal Government to make a termination of those payments.

Ostensibly, the termination was made under the provisions of title 16, section 715(s) of the United States Code, which is the particular section and title this particular bill would amend. We claim that we have a statutory right to the allocation of those revenues pursuant to title 30, which is the Mineral Leasing Act, and more specifically, section 191, which states very, very clearly that the State is entitled to a 90-percent allocation of those revenues. The matter is now pending before the ninth circuit.

Senator GRAVEL. How much money have they tied up or continued to make payments to the State?

Mr. RIGGS. The money is placed in an escrow account. And my understanding is approximately $6.5 million in that escrow account.

Senator GRAVEL. Also, this is money primarily from the Swanson River?

Mr. RIGGS. All from the Kenai, Mr. Chairman.

The other unfortunate ramification of this bill is that it has pitted the State against a political subdivision, the Kenai Borough.

However, it is my understanding that as of late last evening the Kneai Borough has changed the position it once held on this particular bill, and it now opposes the bill. So to that extent, the conflict that existed between the State and the Kenai Borough over this bill, I believe, has been ameliorated.

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And I understand there will be a statement forthcoming from Mayor Gilman concerning his position. But I think the thing that has to be emphasized is that the policy behind title 16, section 715(s) is to provide a mechanism to compensate those counties which lose land to wildlife refuges and, as a result, lose these parcels of land from the tax rolls.

In Alaska, as you know, Senator, the moose range as well as any other range or wildlife refuge that will be created will be created from reserved land, not acquired land. And as a result, the land will never be on a local tax roll.

And as a consequence there is really no need to provide a mechanism to an Alaskan borough as an inducement to make their land available for the purposes of title 16, that is, the creation of wildlife refuges.

The second very, very important reason is that this bill would have the effect of denying to the State and depriving to the citizenry of the State a benefit we all believe we received at the time we entered into the compact with the Union back in 1959.

Congress very intentionally, I believe, set up the allocation scheme of permitting 90 percent of all revenues derived from oil and gas leasing to be made available to the State as a means of providing an economic base for the State and providing the necessary financial foundation on which the State could grow and prosper.

I would respectfully suggest that this original commitment that Congress made to the State of Alaska should be honored.

Senator GRAVEL. Let me ask this: When we first secured statehood, we were denied access, I believe, to the water conservation fund based on a formula of land. And that is the reason why the Congress gave us a general portion with respect to the distribution of oil and gas revenues from Federal land.

Is that correct, as you understand it?

Mr. RIGGS. Yes.

Senator GRAVEL. Let's develop that. How does the water conservation fund work for all the other States?

Mr. RIGGS. I am not familiar with the details of that fund, Senator. I apologize for the lack of knowledge.

Senator GRAVEL. We will get that for the record. Maybe you could submit it for the record.

I think that will show the reason why an attempt to try and give us an economic base and not impair the economic viability of that fund to other States, and why we were given this special treatment.

And now to have this treatment altered, of course, would not be terribly desirable.

If you could develop that, we can put it in the record.

Mr. RIGGS. I would be more than happy to do so.

[The information follows:]

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

August 18, 1978

The Honorable Mike Gravel
U. S. Senate
31st Dirksen Building
Washington, D. C. 20510

Re: H.R. 8394, Pending Before the Senate Committee on Environment and Public Works, Subcommittee on Resource Protection

Dear Senator Gravel:

Pursuant to your request that the State of Alaska submit for the record additional information which may be helpful to the Committee in its consideration and deliberation of the provisions of H.R. 8394, we are happy to furnish a discussion of the interplay between Alaska's non-participation in the Reclamation Act of 1902 and the additional mineral lease revenue allocated to Alaska under its Statehood Act. As a means of providing a perspective on that interplay, we have taken the liberty of discussing the language adopted by the House Committee which we find inimical to the mineral lease revenue benefit conferred under the Statehood Act. We believe in the concept of wildife refuges -- as you are well aware, Alaska will probably become the wildlife refuge capital of the world -- but we strongly believe that a financial benefit given to the State, at the time of statehood, should not be taken away to fund conservation programs. We believe that the allocation formula conferred by Congress, in the Statehood Act, reflected an attempt to insure that the State of Alaska receives benefits comparable to the other western states and to insure its fiscal viability and growth.

The State of Alaska's objection to H.R. 8394 stands not on the fact that it contains the word "minerals", but the attempt to make "minerals" applicable to reserved lands and to modify an allocation of revenue under the Mineral Leasing Act which was conferred on the State by the Statehood Act. The authors of H.R. 8394, cognizant of Judge von der Heydt's decision (436 F.Supp. 288) in the summer of 1977, in which the government's argument was rejected that the mere addition of the word "minerals" was sufficient to impose a distribution scheme for the revenue derived from

oil and gas leases from reserved lands similar to acquired lands, drafted the bill to explicitly make "minerals" applicable to reserved lands and to effectuate an allocation scheme pursuant to the Refuge Revenue Sharing Act rather than the Mineral Leasing Act. This conclusion is confirmed by the language in the report filed by the House Committee on Merchant Marine and Fisheries to accompany H.R. 8394, to wit:

> The words "crude petroleum and natural gas" were added to insure that all oil and gas revenues from both acquired lands...and public domain lands...are distributed under the provisions of this act.
>
> ***
>
> The language has been added to insure that as of the date of the enactment of this act all oil and gas receipts from the Kenai National Moose Range are to be distributed under the terms of this act rather than the Mineral Leasing Act. House Rep. No. 95-1197, 95th Cong., 2d Sess. (1978).

It is this intent of the proposed bill which the State believes is offensive to prior Congressional action and inequitable in its application to Alaska.

The attempt to deprive the State of revenue derived from the leasing of public lands in Alaska under the provisions of the Refuge Revenue Sharing Act is in conflict with past Congressional action which conferred upon the State that benefit. The benefit arises in the context of the Alaska Statehood Act (Public Law 85-508), which was passed by Congress in 1958. Specifically, Section 28 of the Act provides:

> (a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U.S.C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."
>
> (b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920,

> as amended (30 U.S.C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

The legislative language as to the allocations to the State of Alaska of revenues derived from certain mineral leases is clear. In particular, Subsection (b) states that Alaska will receive an additional 52 1/2 per cent 1/ of revenue derived from leases under Section 191. This was to insure that the total benefits received by the State would be comparable to the other western states.

In contrast to the other western states which were agrarian and water-short and which derived a substantial benefit from the provisions of the Federal Reclamation Act of 1902 and the Fund therein, Alaska was neither agrarian nor water-short. As such, there was no need to extend the benefit of that Act to Alaska, nor for Alaska to pay into the Fund because it would not derive any benefit. However, Congress provided a substitute benefit to the State - an additional allocation of revenue derived from the lease of public domain lands. The Congressional intention is clear. The House report language states:

> A second provision in section 28 amends the Mineral Leasing Act of 1920, as amended, by granting 52 1/2 per cent per annum of the net proceeds realized from coal, phosphates, oil, oil shale, and sodium on the public domain in Alaska shall be paid to the State of Alaska for disposition by the legislature thereof.
>
> The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that in the 17 Western States, 52 1/2 per cent of the oil- and gas-lease revenues goes into the Reclamation Fund; 37 1/2 per cent is returned to the respective States, and the remaining 10 per cent is retained by the Federal Government for administration purposes. 1958 U. S. Code Cong. & Ad. News 2940. (Emphasis added).

To deprive the State of Alaska of revenue derived from the lease of reserved lands would constitute an inequitable result because the State of Alaska would receive a zero benefit, but its 17 sister states would nonetheless receive the benefit of the Reclamation Act. This consequence is clear when one contrasts a western state with Alaska under

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1/ The State is entitled to a total of 90 per cent, to wit: 52 1/2 per cent is allocated under Subsection (b) of Section 28 of the Statehood Act and 37 1/2 per cent, as previously allocated to all states and the Territory of Alaska, under 30 U.S.C. § 191.

the proposed Refuge Revenue Sharing bill: assume a western state containing a refuge created from reserved land and an allocation of 37 1/2 per cent (now 50 per cent per Pub. L. 94-377) from revenues derived from oil and gas leases on the land and the applicability of the proposed bill, the western state would receive zero dollars but would continue to receive substantial benefits under the Reclamation Act and its Fund. Applying the same assumption to Alaska, it would receive nothing -- no benefit from either the Reclamation Act or Fund -- nor any revenue. There is no justification for this inequitable consequence.

Another reason Congress gave Alaska an additional allocation rather than participation in the Reclamation Act program was that Alaska needed the money. The State had little or limited development of its basic industries. It was thought that by providing an allocation to the State of the mineral lease revenues, the development of the oil and gas industry would grow and improve the chance for the fiscal survival of the State. See 1958 U. S. Code Cong. & Ad. News 2939-40.

We trust that this additional information will prove helpful to the Committee. It appears that the thrust of denying Alaska its allocation of mineral lease revenues is a vehicle by which other conservation programs of the Fish and Wildlife Service can be funded. It is hoped that Congress could effectuate a remedy for those programs which would not have the effect of denying to the State of Alaska a benefit which was conferred under its Statehood Act. Congress should be loath to change or retract a benefit on which the citizens of Alaska relied in joining the Union. Finally, we are hopeful that Congress, cognizant of the inequity that would result between Alaska and its sister western states in depriving Alaska of its allocation of mineral revenue from reserved lands, will not approve any bill that would make that inequity a reality.

Sincerely,

Douglas A. Riggs
Special Counsel to the Governor

DAR:mlh

Senator GRAVEL. Are there any other States that have a similar treatment with respect to oil and gas revenues?

Mr. RIGGS. Senator, it is my understanding that there may be only one other wildlife refuge in the United States that was created from reserved land on which there is the development or the potential development of oil and gas. And I believe that refuge is in the State of Louisiana.

It is clear that the impact on revenues derived from the reserved land refuges will occur only in the State of Alaska. As you are well aware, there is legislation being discussed to create many refuges in Alaska, and all would be created from reserved land.

Senator GRAVEL. OK, I have no further questions. The hearing is adjourned.

[Whereupon at 10:40 a.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[The bills, S. 691, H.R. 2329, and H.R. 8394, prepared statements submitted by today's witnesses, and statements and letters submitted by others follow:]

95TH CONGRESS
1ST SESSION

S. 691

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10 (legislative day, FEBRUARY 1), 1977

Mr. CRANSTON introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for the preservation and enhancement of critical habitat for migratory waterfowl and other wetlands-dependent migratory birds of the Pacific flyway in the grasslands area of the San Joaquin Valley, California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of August 27, 1954 (68 Stat. 879), is amended by deleting the last sentence of section 6 and inserting in lieu thereof the following: "If and when available, such water shall be delivered from the Central Valley project to the contracting entity, and the cost of furnishing the water shall not be reimbursable or returnable under the Federal reclamation laws: *Provided,* That, in order for the delivery of such

water to continue on a nonreimbursable or nonreturnable basis—

"(a) the public organizations or agencies contracting with the Secretary of the Interior, excluding the State of California, shall deliver annually to the United States Fish and Wildlife Service (hereinafter referred to as the 'Service'), at no cost to the United States, not less than three thousand five hundred acre-feet of water during the period October 1 through November 30, inclusive, and not less than four thousand acre-feet of water during the period May 1 through September 30, inclusive, if available: *Provided*, That such amounts of water and times of delivery may be changed upon approval of the Secretary of the Interior;

"(b) the public organizations or agencies, excluding the State of California, shall construct, operate, and maintain any water conveyance facilities necessary to deliver the water referred to in section 6(a) of this Act to a point or points within the boundaries of such public organization or agency as designated by the Service, or to such points as may be mutually agreed upon by the public organization or agency and the Service. The Service shall be responsible for delivering the water from such point or points to appropriate locations within lands under its jurisdiction;

"(c) any contract entered into by the Secretary of the Interior and any public organization or agency pursuant to this Act shall provide that in the event the public organization or agency for any reason fails to carry out the obligations imposed upon it by said contract or by this Act, the rights of use of any facilities referred to in subsection (b), and the rights to all water contracted for by the organization or agency pursuant to this Act shall revert to the Secretary of the Interior for migratory waterfowl purposes in accordance with the laws of the State of California; and

"(d) in accordance with existing or future contracts, the use of lands located within the boundaries of the public organizations or agencies shall be restricted by covenants requiring that such lands be used only for the purpose of waterfowl and wildlife habitat conservation or other uses as may be mutually agreed upon by the public organizations or agencies and the Service.".

SEC. 2. The Act of August 27, 1954 (68 Stat. 879), is further amended by adding at the end thereof the following new section:

"SEC. 8. The Secretary is hereby authorized to negotiate amendments to existing contracts to conform said contracts to the provisions of this Act.".

95TH CONGRESS
2D SESSION

H. R. 2329

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 1978

Read twice and referred to the Committee on Environment and Public Works

AN ACT

To improve the administration of fish and wildlife programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fish and Wildlife Improvement Act of 1977".

SEC. 2. FISH AND WILDLIFE COOPERATIVE UNITS ASSISTANCE.

The first section of the Act of September 2, 1960 (74 Stat. 733; 16 U.S.C. 753a) is amended—

(1) by striking out "technical personnel" and inserting in lieu thereof "scientific personnel"; and

(2) by inserting immediately after "respective units," the following: "to the provision of assistance (including reasonable financial compensation) for the work of researchers on fish and wildlife ecology and resource management projects funded under this subsection".

SEC. 3. ENFORCEMENT AUTHORITY FOR THE PROTECTION OF FISH AND WILDLIFE RESOURCES.

(a) (1) AUTHORITIES FOR DESIGNATED PERSONNEL.—In addition to any other authority conferred by law, any officer or employee of the United States Fish and Wildlife Service who is designated by the Secretary of the Interior, or any officer or employee of the National Oceanic and Atmospheric Administration who is designated by the Secretary of Commerce, to enforce any Federal law relating to fish or wildlife may, in the performance of such law enforcement duties, exercise such of the following authorities as each such Secretary, after written notice to the United States Attorney General, may deem appropriate:

(A) Carry firearms.

(B) Secure, execute, and serve any order, warrant, subpena, or other process, which is issued under the authority of the United States.

(C) Search without warrant any person, place, or conveyance where there is reasonable grounds to believe

that a person has committed or is attempting to commit an offense in his presence or view.

(D) Seize without warrant any evidentiary item where there is reasonable grounds to believe that a person has committed or is attempting to commit an offense in his presence or view.

(E) Offer and pay rewards for services or information which may lead to the apprehension of violators of such laws.

(F) Make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such laws.

(G) Upon the request of any law enforcement agency of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands, assist such agency in the enforcement of State or local laws and regulations relating to fish or wildlife.

(H) Make an arrest with or without a warrant—

(i) for any offense against the United States if such officer or employee has reasonable grounds to believe that the person to be arrested is committing an offense in his presence or view, or

(ii) for any felony under the laws of the United States if such officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

Nothing in this paragraph shall be construed as authorizing any such officer or employee to initiate or pursue any subsequent investigation of any violation which is not related to fish or wildlife matters.

(2) The Secretary of the Interior and the Secretary of Commerce shall each designate, through publication in the Federal Register, those laws under his jurisdiction which he determines the purpose of which to be the protection or conservation of any fish or wildlife. Any law so designated shall be a "Federal law relating to fish or wildlife" for the purposes of paragraph (1).

(b) LAW ENFORCEMENT TRAINING PROGRAM.—(1) In order to provide for and encourage training, research, and development for the purpose of improving fish and wildlife law enforcement and developing new methods for the prevention, detection, and reduction of violation of fish and wildlife laws, and the apprehension of violators of such laws, the Secretary of the Interior and the Secretary of Commerce may each—

(A) establish and conduct national training pro-

grams to provide, at the request of any State, training for State fish and wildlife law enforcement personnel;

(B) develop new or improved approaches, techniques, systems, equipment, and service to improve and strengthen fish and wildlife law enforcement; and

(C) assist in conducting, at the request of any appropriate State official, local or regional training programs for the training of State fish and wildlife law enforcement personnel.

Such training programs shall be conducted to the maximum extent practicable through established programs.

(2) There are authorized to be appropriated beginning with fiscal year 1978 such funds as may be necessary to carry out the purposes of subsection (b), and the Secretary of the Interior and the Secretary of Commerce may each require reimbursement from the States for expenditures made pursuant to subsections (b) (1) (A) and (C).

(c) LAW ENFORCEMENT COOPERATIVE AGREEMENT.—Notwithstanding any other provision of law, the Secretary of the Interior and the Secretary of Commerce may each utilize by agreement, with or without reimbursement, the personnel, services and facilities of any other Federal or State agency to the extent he deems it necessary and appropriate for effective enforcement of any Federal or State

laws on lands, waters, or interests therein under his jurisdiction which are administered or managed for fish and wildlife purposes and for enforcement of any laws administered by him relating to fish and wildlife. Persons so designated by either Secretary, who are not employees of another Federal agency—

(1) shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, competitive examination, rates of compensation, and Federal employee benefits, but may be considered eligible for compensation for work injuries under subchapter III of chapter 81 of title 5, United States Code;

(2) shall be considered to be investigative or law enforcement officers of the United States for the purposes of the tort claim provisions of title 28, United States Code;

(3) may, to the extent specified by either Secretary, search, seize, arrest, and exercise any other law enforcement functions or authorities under Federal laws relating to fish and wildlife, where such authorities are made applicable by this or any other law to employees, officers, or other persons designated or employed by either Secretary; and

(4) shall be considered to be officers or employees

of the Department of the Interior or the Department of Commerce, as the case may be, within the meaning of sections 111 and 1114 of title 18, United States Code.

(d) DISPOSAL OF ABANDONED OR FORFEITED PROPERTY.—Notwithstanding any other provision of law, all fish, wildlife, plants, or any other items abandoned or forfeited to the United States under any laws administered by the Secretary of the Interior or the Secretary of Commerce relating to fish, wildlife, or plants, shall be disposed of by either Secretary in such a manner as he deems appropriate (including, but not limited to, loan, gift, sale, or destruction).

(e) DISCLAIMER.—Nothing in this section shall be construed to invalidate any law enforcement agreement or delegation made by the Secretary of the Interior or the Secretary of Commerce with respect to fish and wildlife matters prior to the date of enactment of this Act.

(f) REFUGE RECREATION ACT.—Section 4 of the Act of September 28, 1962 (76 Stat. 654, 16 U.S.C. 460k–3), is amended by adding at the end thereof the following new sentence: "The provision of this Act and any such regulation shall be enforced by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior.".

(g) BALD EAGLE PROTECTION ACT.—The first sen-

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tence of section 3(a) of the Act of June 8, 1940 (54 Stat. 251, 16 U.S.C. 668(a)), is amended to read as follows: "The Provisions of this Act and any permit or regulation prescribed under the authority of this Act shall be enforced by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior.".

(h) NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT.—Section (4) (f) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(f)) is amended to read as follows: "The provisions of this Act and any regulation prescribed under the authority of this Act shall be enforced by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the Secretary, in accordance with law.".

(i) BEAR RIVER MIGRATORY BIRD REFUGE.—(1) The first sentence of section 6(a) of the Act of April 23, 1928 (45 Stat. 449, 16 U.S.C. 690e), is amended to read as follows: "The provisions of this Act and any regulation prescribed under the authority of this Act shall be enforced

by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior.".

(2) Section 6(b) of such Act is amended by striking at the end thereof the term "and disposed of as directed by the court having jurisdiction." and inserting in lieu thereof the term "and disposed of as directed by the Secretary of the Interior, in accordance with law."

(j) UPPER MISSISSIPPI RIVER WILD LIFE AND FISH REFUGE ACT.—The first sentence of section 8(a) of the Upper Mississippi River Wild Life and Fish Refuge Act (16 U.S.C. 727) is amended to read as follows: "The provisions of this Act and any regulation prescribed under the authority of this Act shall be enforced by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior.".

(k) FISH AND WILDLIFE ACT OF 1956.—The first two sentences of section 13(d) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(d)) are amended to read as follows: "The Secretary of the Interior shall promulgate such regulations as he deems necessary and appropriate to carry out the enforcement of this section. The provisions of this section and any regulations promulgated thereunder shall be enforced by any officer or employee of the United

States Fish and Wildlife Service designated by the Secretary of the Interior.".

(l) MIGRATORY BIRD TREATY ACT.—Section 5 of the Migratory Bird Treaty Act (16 U.S.C. 706) is amended to read as follows:

"SEC. 5. The provisions of this Act and any regulation prescribed under the authority of this Act shall be enforced by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior. Any judge of any court established under the laws of the United States and United States magistrates may, within their respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulation prescribed thereunder shall, when found, be seized and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulation prescribed thereunder, shall be forfeited to the United States and disposed of by the

Secretary of the Interior in such manner as he deems appropriate.".

(m) MIGRATORY BIRD HUNTING AND CONSERVATION STAMP ACT.—Section 6 of the Act of March 16, 1934 (48 Stat. 452, 16 U.S.C. 718f) is amended to read as follows:

"SEC. 6. The provisions of this Act shall be enforced by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior. Any judge of any court established under the laws of the United States, and any United States magistrate, may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all cases involving violations of this Act. Any bird or part thereof taken or possessed contrary to this Act shall, when seized, be disposed of by the Secretary in accordance with law.".

(n) BLACK BASS ACT.—Section 6(a) of the Act of May 20, 1926 (46 Stat. 846, 16 U.S.C. 852d(a)), is amended by inserting immediately after "Act" in the first sentence thereof the following: ", in addition to any other authority provided by law,".

(o) TITLE 18.—(1) Section 43(c)(2) of title 18, United States Code, is amended by striking out "authority" in the first sentence and inserting in lieu thereof the following: "authority, in addition to any other authority provided by law relating to search and seizure,".

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(2) Sections 3054 and 3112 of such title 18 are each amended by inserting immediately after the first reference to "customs" in the first sentence thereof the following: ", in addition to any other authority provided by law,".

(3) Section 1114 of such title 18 is amended by inserting immediately before "or of the Department of Labor" the following: ", the Department of Commerce,".

SEC. 4. FISH AND WILDLIFE ACT OF 1956.

Section 7 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f) is amended—

(1) by striking out paragraphs (4) and (5), and inserting in lieu thereof the following:

"(4) take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources including, but not limited to, research, development of existing facilities, and acquisition by purchase or exchange of land and water, or interests therein.";

(2) by inserting "and" immediately after the semicolon at the end of paragraph (3); and

(3) by adding at the end thereof the following two new subsections:

"(b) (1) In furtherance of the purposes of this Act, the Secretary of the Interior is authorized to accept any gifts, devises, or bequests of real and personal property, or pro-

ceeds therefrom, or interests therein, for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude, if such terms are deemed by the Secretary to be in accordance with law and compatible with the purpose for which acceptance is sought.

"(2) Any gifts and bequests of money and proceeds from the sales of other property received as gifts or bequests pursuant to this subsection shall be deposited in a separate account in the Treasury and shall be disbursed upon order of the Secretary for the benefit of programs administered by the United States Fish and Wildlife Service.

"(3) For the purpose of Federal income, estate, and gift taxes, property, or proceeds therefrom, or interests therein, accepted under this subsection shall be considered as a gift or bequest to the United States.

"(c) (1) The Secretary of the Interior and the Secretary of Commerce may each recruit, train, and accept, without regard to the provisions of title 5, United States Code, the services of individuals without compensation as volunteers for, or in aid of programs conducted by either Secretary through the United States Fish and Wildlife Service or the National Oceanic and Atmospheric Administration.

"(2) The Secretary of the Interior and the Secretary of Commerce are each authorized to provide for incidental expenses such as transportation, uniforms, lodging, and subsistence of such volunteers.

"(3) Except as otherwise provided in this subsection, a volunteer shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relative to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

"(4) For the purpose of the tort claim provisions of title 28 of the United States Code, a volunteer under this subsection shall be considered a Federal employee.

"(5) For the purposes of subchapter I of chapter 81 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, volunteers under this subsection shall be deemed employees of the United States within the meaning of the term 'employees' as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply.

"(6) There are authorized to be appropriated to carry out this subsection $100,000 for the Secretary of the Interior

and $50,000 for the Secretary of Commerce for each of the fiscal years 1978, 1979, and 1980.".

SEC. 5. MIGRATORY BIRD CONSERVATION ACT.

Section 5 of the Migratory Bird Conservation Act (16 U.S.C. 715d) is amended to read as follows:

"SEC. 5. The Secretary of the Interior may—

"(1) purchase or rent such areas or interests therein as have been approved for purchase or rental by the Commission at the price or prices fixed by the Commission; and

"(2) acquire, by gift or devise, any area or interests therein;

which he determines to be suitable for use as an inviolate sanctuary, or for any other management purpose, for migratory birds. The Secretary may pay, when deemed necessary by him and from moneys authorized to be appropriated for the purposes of this Act (A) the purchase or rental price of any such area or interest therein, and (B) the expenses incident to the location, examination, survey, and acquisition of title (including options) of any such area or interest therein. No lands acquired, held, or used by the United States for

military purposes shall be subject to any provisions of this Act.".

SEC. 6. NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966.

Section 4(d) (1) (A) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd (d) (1) (A)) is amended by striking out "; and" at the end thereof and inserting in lieu thereof "unless the Secretary finds that the taking of any species of migratory game birds in more than 40 percent of such area would be beneficial to the species; and".

SEC. 7. MIGRATORY BIRD HUNTING AND CONSERVATION STAMP ACT.

Section 2 of the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718b) is amended by striking out "September" in the sixth sentence thereof and inserting in lieu thereof "June".

SEC. 8. CRAB ORCHARD NATIONAL WILDLIFE REFUGE.

The second sentence of section 2 of the Act of August 5, 1947 (61 Stat. 770; 16 U.S.C. 666g), is amended to read as follows: "Such lands as have been or may hereafter be determined to be chiefly valuable for industrial purposes shall be leased for such purposes at such time and under

such terms and conditions as the Secretary of the Interior shall prescribe. All moneys received or collected in connection with such leases shall be subject to the provisions of the Act of June 15, 1935, as amended (49 Stat. 383; 16 U.S.C. 715s).".

Passed the House of Representatives January 19, 1978.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

95TH CONGRESS
2D SESSION

H. R. 8394

IN THE SENATE OF THE UNITED STATES

JUNE 7 (legislative day, MAY 17), 1978
Read twice and referred to the Committee on Environment and Public Works

AN ACT

To provide for payments to local governments based upon the acreage of the National Wildlife Refuge System which is within their boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 401 of the Act of June 15, 1935 (commonly referred to as the "Refuge Revenue Sharing Act", 16 U.S.C. 715s) is amended as follows:

(1) Subsection (a) is amended—

(A) by striking out in the first sentence thereof "(a) Beginning with the next fiscal year" and all that follows thereafter down through "shall be covered" and inserting in lieu thereof the following:

"(a) All revenues received during each fiscal year by the Secretary in connection with the operation and management of fee areas and reserve areas from—

"(1) the sale or disposition of animals, salmonoid carcasses, products of the soil (including, but not limited to, timber, hay, and grass), minerals (including, but not limited to, crude petroleum and natural gas), shells, sand, and gravel;

"(2) leases for public accommodations or facilities incidental to, but not in conflict with, the major purposes of such areas; and

"(3) other privileges;

shall be covered".; and

(B) by striking out the third sentence thereof.

(2) Subsection (b) is amended by inserting "and revenue-sharing" immediately after "revenue-producing"; and by striking out "set forth in subsection (a)".

(3) Subsections (c), (d), (e), (f), and (g) are amended to read as follows:

"(c) (1) The Secretary shall pay out of the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any fee area whichever of the following amounts is greater:

"(A) An amount equal to the product of 75 cents

multiplied by the total acreage of that portion of the fee area which is located within such county.

"(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county.

"(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount each such county is entitled to shall be the amount which bears to such 25 per centum the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

"(2) The Secretary shall pay out of the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any reserve area an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such reserve area during such fiscal year; but if a reserve area is located in two or more counties, the amount each such county is entitled to shall be the

amount which bears to such 25 per centum the same ratio as that portion of the reserve area acreage which is within such county bears to the total acreage of such reserve area.

"(3) For purposes of this section, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands shall each be treated as a county.

"(4) (A) For purposes of determining the fair market value of fee areas under paragraph (1) (B), the Secretary shall—

"(i) appraise before September 30, 1978, all fee areas for which payments under this section were not authorized for fiscal years occurring before October 1, 1977; and

"(ii) appraise all other fee areas, within five years after the date of the 1978 amendment to this subsection, in the order in which such areas were first established by the Service.

After initial appraisal under clause (i) or (ii), each fee area shall thereafter be reappraised by the Secretary at least once during each five-year period occurring after the date of the initial appraisal. Until any fee area referred to in clause (ii) is initially appraised under this subparagraph, the fair market value of such area shall be deemed to be that adjusted cost of the area which was used to determine payments under this subsection for fiscal year 1977; and in no case may the

amount of any payment to any local government under paragraph (1) (B) with respect to any fee area be less than the amount paid under paragraph (2) (A) of this subsection (as in effect on September 30, 1977) with respect to such area.

"(B) The Secretary shall make the determinations required under this subsection in such manner as the Secretary considers to be equitable and in the public interest. All such determinations shall be final and conclusive.

"(5) (A) Each county which receives payments under paragraphs (1) and (2) with respect to any fee area or reserve area shall distribute, under guidelines established by the Secretary, such payments on a proportional basis to those units of local government (including, but not limited to, school districts and the county itself in appropriate cases) which have incurred the loss or reduction of real property tax revenues by reason of the existence of such area. In any case in which a unit of local government other than the county acts as the collecting and distributing agency for real property taxes, the payments under paragraphs (1) and (2) shall be made to such other unit which shall distribute the payments in accordance with the guidelines.

"(B) The Secretary may prescribe regulations under which payments under this paragraph may be made to

units of local government in cases in which subparagraph (A) will not effect the purposes of this paragraph.

"(C) Payments received by units of local government under this subsection may be used by such units for any governmental purpose.

"(d) If the net receipts in the fund which are attributable to revenue collections for any fiscal year do not equal the aggregate amount of payments required to be made for such fiscal year under subsection (c) to counties, there are authorized to be appropriated to the fund an amount equal to the difference between the total amount of net receipts and such aggregate amount of payments.

"(e) If the net receipts in the fund which are attributable to revenue collections for any fiscal year exceed the aggregate amount of payments required to be made for such fiscal year under subsection (c) to counties, the amount of such excess shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges under the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715–715r).

"(f) The Secretary shall carry out any revenue producing activity referred to in subsection (a) (1), (2), and (3) within any fee area or reserve area subject to such terms, conditions, or regulations, including sales in the open markets, as the Secretary determines to be in the best interest

of the United States. The Secretary may, in accordance with such regulations as the Secretary may prescribe, dispose of animals which are surplus to any such area by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propagation purposes, and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife.

"(g) As used in this section—

"(1) The term 'Secretary' means the Secretary of the Interior.

"(2) The term 'fee area' means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

"(3) The term 'reserve area' means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

"(4) The term 'Service' means the United States Fish and Wildlife Service."

(4) Such section is amended by adding at the end thereof the following new subsection:

"(h) In administering the Act of October 20, 1976 (Public Law 94–565, 31 U.S.C. 1601–1607), for fiscal years occurring after September 30, 1978—

"(1) reserve areas shall be deemed to be entitlement lands for purposes of section 6 (a) of such Act; and

"(2) payments received by any unit of local government pursuant to subsection (c) (2) shall be deemed to be payments under a provision of law specified in section 4 of such Act.".

(b) Title IV of such Act of June 15, 1935, is amended by amending the center heading immediately preceding section 401 thereof to read as follows:

"TITLE IV—PARTICIPATION OF LOCAL GOVERNMENTS IN REVENUE FROM AREAS ADMINISTERED BY THE UNITED STATES FISH AND WILDLIFE SERVICES".

SEC. 2. The amendments made by this Act shall apply with respect to payments made to counties under title IV of the Act of June 15, 1935, for the fiscal year ending September 30, 1979, and for fiscal years thereafter; except that the amendments made to such title IV which amend section 401 (a) and (g), add paragraph (4) to section 401 (c), and amend the title heading shall take effect on the date of the enactment of this Act.

Passed the House of Representatives June 6, 1978.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

AUGUST 15, 1978

REMARKS OF CONGRESSMAN WILLIAM A. STEIGER OF WISCONSIN
ON THE PROPOSED REFUGE REVENUE SHARING ACT OF 1978 (H.R. 8394)
BEFORE THE SUBCOMMITTEE ON RESOURCE PROTECTION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, UNITED STATES SENATE

Mr. Chairman, I very much appreciate having the opportunity to appear before the Subcommittee this morning in support of the proposed Refuge Revenue Sharing Act of 1978, H.R. 8394. I am keenly aware of the heavy workload which has been placed on your Committee in this Congress, and I am very gratified that you have kindly made time available for the consideration of this measure.

I just as deeply regret that the bill's co-sponsor, Mr. Bo Ginn, my good friend and colleague from Georgia, is unable to be here this morning. I therefore appear on his behalf, as well as my own.

Mr. Chairman, this bill (H.R. 8394) extends the existing payments-in-lieu of taxes concept to our National Wildlife Refuge Lands System. It is designed to provide equitable compensation to local units of government on the same basis that local governments are now compensated for Federal lands in National Parks, National Forests, our Wilderness Lands, areas administered by the Bureau of Land Management, and water resource lands associated with the Army Corps of Engineers and the Bureau of Reclamation.

When Congress enacted the payments-in-lieu of taxes concept through the vehicle of Public Law 94-565 two years ago, I was delighted to see Congress acting in good faith on the recommendations of the Public Land Law Review Commission. In its Report to the President and the Congress, the Commission made a compelling argument that the Federal government should compensate local

governments for the tax immunity of their Federal lands. The Commission strongly emphasized the obligation of the United States to make certain that the burden of its public lands is spread among all the people of the Nation, and is not borne only by those governments in whose areas the lands are located.

At the same time, I was dismayed that Public Law 94-565 excluded our National Wildlife Refuge Lands from this compensatory payments program. H.R. 8394 is intended to remedy that exclusion, which resulted primarily from technical and legal problems.

Our National Wildlife Refuge System comprises a great treasure of natural resources. The System was established when Gifford Pinchot and President Theodore Roosevelt designated our first refuge at Pelican Island, Florida in 1903. The drought-stricken decade of the 'thirties added its own momentum to the growth of the system. Today, in the midst of our own generation's "conservation ethic" we are now confronted with a special responsibility to revise and update the laws which govern our Wildlife Refuge System. This is especially true if we are to make continued progress in conserving our natural resources and extending our wildlife habitat acquisition programs which are an integral part of the Wildlife Refuge System.

When units of local government contain lands owned by the Federal government, they are deprived of the property taxes these lands would otherwise generate. Under Federal ownership, these lands are immune from taxation. Affected local governments suffer under a double strain in these circumstances. Revenues fall, and the presence of Federal lands often leads to increased demand for local government services. Law enforcement, sanitation, rescue services, and fire

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protection are only some of the services local governments must provide whether the land is Federally-owned or not. And the full array of these services must be provided from a reduced tax base.

I appreciate that local units of government are currently receiving payments under the existing Refuge Revenue Sharing Act of 1935, as amended. But the current payments are entirely inadequate. Payments at present are limited to the sharing of net receipts from sales generated by the Refuge Lands themselves. During the past two years, payments to local units of government have been reduced by more than 25 percent because revenues have failed to keep pace with entitlements. In fact, the Fish and Wildlife Service now estimates this Fund will be exhausted by 1983, unless efforts are now made to update the existing law. H.R. 8394 provides an authorization for appropriations to counteract any shortfall between receipts collected from refuges, and payments due local jurisdictions.

This bill further provides a new mechanism for the re-appraisal of refuge land by the Fish and Wildlife Service every five years, rather than relying on the USDA agricultural land index averages which are not reflective of the true value of the land removed from local tax rolls.

H.R. 8394 also removes the restriction that payments must be used by local jurisdictions only for roads and schools. In addition, counties also will be required to pass on a proportional share of the payments to the local governments which have incurred the loss or reduction of real property tax revenues.

It is important to note that this bill applies to refuge lands that have been acquired by the Federal government, and not to public domain lands which have never been on the local tax rolls. The domain lands will be subject to

the basic payments made under Public Law 94-565.

For acquired lands, counties would receive the greater of 75 cents per acre, three-fourths of one percent of the fair market value of the land, as determined by the Secretary of the Interior under the new appraisal mechanism, or 25 percent of the net receipts collected by the Secretary from the area.

If receipts from wildlife refuges continue on the level of the past few years, it is estimated that the additional cost to the Treasury will increase from $3.5 million in Fiscal 1979 to $14.6 million in Fiscal 1983. However, if receipts increase, as we may expect if oil and gas development continues on our refuge lands, there may well be no additional cost to the Treasury under this proposed revision.

H.R. 8394 provides an urgently needed remedy. A county containing a National Wildlife Refuge experiences the same double strain that a county containing a National Park or National Forest experiences. It makes no difference to a county now unable to provide needed services, into which classification of Interior Department lands the Federal areas fall. Equally important, local governments containing wildlife refuges also feel the second strain, that of increased demand for local government services.

We believe that the needs can be met, and equity attained, by the adoption of H.R. 8394.

STATEMENT OF LYNN A. GREENWALT, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, SUBCOMMITTEE ON RESOURCE PROTECTION, ON S. 691, A BILL "TO PROVIDE FOR THE PRESERVATION AND ENHANCEMENT OF CRITICAL HABITAT FOR MIGRATORY WATERFOWL AND OTHER WETLANDS-DEPENDENT BIRDS IN THE PACIFIC FLYWAY IN THE GRASSLANDS AREA OF THE SAN JOAQUIN VALLEY, CALIFORNIA", August 15, 1978.

S. 691 provides an economic incentive to private landowners in the grasslands area of the San Joaquin Valley, California, to maintain critical waterfowl wintering habitat by furnishing water at no cost while also improving the Fish and Wildlife Service's capability to manage at least one of its key National Wildlife Refuges in the Valley. The Administration supports the objectives of S. 691 and recommends its enactment with an amendment to make the cost of furnishing water reimbursable from the Central Valley Project surplus power revenues. Language to accomplish this amendment is contained in the Department's report which I believe you have received.

Mr. Chairman, It is neither economically feasible nor in the national interest to place all the necessary migratory bird habitat in public ownership. A great majority of significant habitat must remain in the private sector. This requires suitable incentives to prevent the conversion of privately owned habitat to noncompatible uses. As I previously suggested in discussing H.R. 2329, this can sometimes be accomplished by Federal easements to maintain compatible land use patterns. Other methods are also available such as that contained in S. 691. This bill provides an incentive in the form of insuring a continuous water supply to members of the Grasslands Water District and the State of California.

Both the Fish and Wildlife Service and the Bureau of Reclamation would be involved in carrying out the provisions of S. 691 if it is enacted. The water supply would come from the Bureau of Reclamation's Central Valley Project and the wildlife management aspects of the proposal would be handled by the Fish and Wildlife Service.

The Central Valley of California, which includes the 98,000-acre grasslands area of the San Joaquin Valley, is the most important wintering area for waterfowl in the Pacific Flyway. The Central Valley provides wintering habitat for about 60 percent of the total number of waterfowl in the flyway. This amounts to over five million ducks, geese, swans and coots in most years. The grasslands area is the last remaining habitat of its kind in the San Joaquin Valley. In view of the great importance of this area to waterfowl, its preservation is one of the highest priorities of the Fish and Wildlife Service's overall waterfowl habitat preservation program. It is, in fact, the highest priority area in the Pacific Flyway. Loss of this habitat would result in major declines in waterfowl numbers in this flyway.

Waterfowl losses to disease in the Pacific Flyway are among the most severe in North America. In 1975 at least 45,000 waterfowl died from cholera and botulism in the Central Valley, including some 5,000 whistling swans, or about 10 percent of the entire population of swans wintering in the State. Annual waterfowl mortality from diseases in the Central Valley reached as high as 140,000 in the early 1970's. The heavy losses in the Pacific Flyway are due, to a great extent, to habitat loss and the

resultant excessive concentration of waterfowl on remaining habitat. Further loss of the remaining marshes could have devastating impacts on the waterfowl resource.

The Central Valley was once nearly covered by large, natural marshes. However, as a result of continuous drainage and conversion to high intensity land uses, the natural marsh area of the valley has been reduced to only about 15 percent of its former size. The remaining wetland areas are essentially islands of habitat surrounded and threatened by large-scale agricultural development. Intensive management of this remaining wetland habitat by State and Federal wildlife agencies and private hunting clubs is one of the most important factors sustaining wintering waterfowl in the flyway. An estimate 60 percent of this habitat is controlled by private landowners such as the members of the 46,000-acre Grasslands Water District of the San Joaquin Valley. The Grasslands Water District members currently manage their lands both as native pasture for livestock production and wetlands for wintering waterfowl. Unfortunately, higher land taxes and operating costs are forcing some operators to convert their land to other types of agriculture, such as cotton and sugar beets.

During the last 5 years, 11 duck clubs in the Grasslands Water District have gone out of business and their lands have been converted to other uses no longer of value to waterfowl. This amounted to nearly 2,500 acres, or about 5 percent of the total acreage in the District.

This trend, if not reversed, will result in eventual elimination of vital waterfowl wintering habitat. Federal acquisition of the land for waterfowl refuge purposes would be one way of stopping this trend, but at considerable expense and even this would not insure adequate water supplies. Another alternative would be the provision of suitable Federal incentives to the private sector to maintain their habitat. Such an incentive can be offered through insuring a continued water supply to the Grasslands Water District and other grasslands area water users at no cost to them.

Dependable water supplies are critical to preserving the integrity of the grasslands as waterfowl habitat. The importance of water and of the grasslands to Pacific Flyway waterfowl populations and other wildlife was recognized with the reauthorization of the Bureau of Reclamation's Central Valley Project by the Act of August 27, 1954, for the purpose of developing and furnishing water supplies for waterfowl management. Section 6 of that Act provides that the Secretary of the Interior may contract for the delivery of water to public organizations or agencies for waterfowl purposes in the grasslands area of the San Joaquin Valley at a rate not to exceed the charge for class 2 water, presently $1.50 per acre-foot. The amendment proposed in S. 691 to section 6 of the 1954 Act would accomplish several objectives, each of which would assist in the maintenance of migratory waterfowl habitat in the San Joaquin Valley of California, and ultimately benefit waterfowl utilized for recreation by people throughout the Pacific Flyway.

The principal benefit to waterfowl from this bill will be through providing the Grasslands Water District water at no cost to them and reimbursable to the Central Valley Project from surplus power revenues under the Federal reclamation laws. In return for no cost water, the Grasslands Water District would be required to deliver each year, at no cost to the Fish and Wildlife Service, at least 3,500 acre-feet of water during the fall and, if available, no less than 4,000 acre-feet of water during the summer for management of Federal wildlife refuges in the vicinity. This amount of water is currently delivered to Service lands under existing contracts. The bill provides for the continuation of this arrangement. In addition, the District would be required to construct, operate and maintain any water conveyance facility necessary to deliver water to these refuges or other point mutually agreed upon by the Service and the District.

The bill also provides that in the event the Grasslands Water District fails to carry out its obligations, the rights of use of any facilities constructed and the rights to all water contracted for by the District shall revert to the Secretary of the Interior for migratory waterfowl purposes. The amount of water currently contracted for under the 1954 Act is 53,500 acre-feet by the Grasslands Water District and 12,000 acre-feet by the State of California.

In order for the Grasslands Water District to receive water at no cost, the use of lands within its boundaries must be restricted by convenants

requiring that, in accordance with existing of future contracts, such lands be used only for the purpose of waterfowl and wildlife habitat conservation or other uses as mutually agreed upon by the Service and the organization.

A major benefit to be realized by the waterfowl resource under the proposed legislation is that, should the Grasslands Water District cease to exist or otherwise default on its responsibilities, the Secretary of the Interior would be required to continue to utilize the 53,500 acre-feet of water now used by the District for migratory waterfowl purposes. This water could be made available to existing refuges, new ones which may be purchased in the future, to State management areas, or to private landowners for the purpose of maintaining waterfowl habitat at the discretion of the Secretary.

At the present time duck club lands within the district are owned by 155 individuals or corporations and are valued in excess of $30 million and have an annual operating expense of $600,000. Providing an incentive such as no cost water to private landowners to maintain critical waterfowl habitat is a desirable and more cost effective alternative for preserving sufficient habitat than is direct Federal acquisition which will likely be required should economic pressures continue to force Grasslands District members to convert their land to uses not compatible with waterfowl.

In view of the substantial benefits to migratory waterfowl resources of the Pacific Flyway on both private lands and Federal refuges provided by this legislation, we recommend its enactment if amended as suggested.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you might have. Thank you.

STATEMENT OF LYNN A. GREENWALT, DIRECTOR, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE, ENVIRONMENT AND PUBLIC WORKS COMMITTEE, SUBCOMMITTEE ON RESOURCE PROTECTION, ON H.R. 2329, A BILL "TO IMPROVE ADMINISTRATION OF FISH AND WILDLIFE PROGRAMS, August 15, 1978.

I appreciate this opportunity to appear here today to discuss H.R. 2329 a bill to improve the administration of various fish and wildlife programs. We recommend enactment of this bill with amendments.

With your permission, I want to take this opportunity to describe the provisions of this legislation, the amendments that were made during full House consideration and our suggested changes.

The first section of H.R. 2329 directs that the bill be referred to as the "Fish and Wildlife Improvements Act of 1977", a fitting title, as most provisions are administrative or "housekeeping" in nature.

Section 2 of the bill amends the Fish and Wildlife Cooperative Units Act to allow the use of Federal cooperative research and training funds to support researchers in Fish and Wildlife Service sponsored research projects. The existing Act, limits Service participation to the assignment of scientific personnel, supply of equipment and payment of incidental expenses.

The Cooperative Fishery Unit and Cooperative Wildlife Research Unit program currently consists of 47 units involving 29 participating universities throughout the country. The program conducts research into fish and wildlife resource management, facilitates the training of fish and wildlife personnel, provides technical assistance to

conservation agencies, and promotes education in natural resources through demonstrations, lectures and publications.

The amendment in H.R. 2329 would expand our participation in the program by allowing Fish and Wildlife Service base monies to be used more directly to perform research functions of specific benefit to us. This would put us on par with the other cooperators in the program. We feel that the amendment would have a strong and beneficial impact on the unit program. Both graduate students and research technicians could be used to perform needed research in fish and wildlife ecology and resource management.

This amendment would allow the Fish and Wildlife Service to be more flexible with its base monies and to be more involved with fish and wildlife research projects within its direct areas of concern. It would also improve our ability to coordinate the efforts of several units on research problems of regional or national significance. The Service's role as national coordinator of these programs would be enhanced.

Mr. Chairman, section 3 of H.R. 2329 establishes a much needed uniform comprehensive law enforcement authority for the Service. Our law enforcement officers are responsible for the enforcement of more than a dozen fish and wildlife statutes, each with differing enforcement authorities. This variety of authority raises obvious problems for Federal enforcement personnel who have to keep in mind the authorities for different statues and for the public who must comply with the statutes.

In addition, there is considerable overlapping protection provided by some of these statutes. For example, the bald eagle--our national emblem--is protected by the Bald Eagle Act of 1940. Two subspecies of the bald eagle are also listed as an endangered species and therefore receive protection under the Endangered Species Act of 1973. Since the eagle is a migratory bird, the provisions of the Migratory Bird Treaty Act are also applicable. If an aircraft has been used illegally to take or harass an eagle, the airborne hunting provisions of the Fish and Wildlife Act of 1956 have also been violated. With the exception of the Bald Eagle Act and the airborne hunting provisions, the enforcement authority is different under each of these statutes. Obviously prosecution of violations become very difficult in situations where differing authorities apply.

Section 3(a)(1) of the bill was designed to fill the void in present separate authorizing statutes by clarifying a fish and wildlife agent's authority to use all of the powers presently permitted by law. The provision in this section related to search, seizure and arrest was amended on the House floor. As amended, it would severely restrict our law enforcement officers in the performance of their duties. Rather than risk the loss of existing authority, we recommend that all of section 3(a) be deleted from H.R. 2329. The Criminal Code Reform Act, S. 1437, if enacted, will provide the standardization we are seeking. That bill has passed the Senate.

The remaining enforcement provisions in section 3 of H.R. 2329 are non-controversial and would provide much needed administrative

efficiencies. For example, section 3(d) provides authority to dispose of forfeited or abandoned property.

Forefeited property has become a real concern to us over the past decade. Numerous fish and wildlife laws provide for forefeiture of property illegally held, but only patch work authority for the disposition of such property. We presently have approximately $2.5 million worth of property in various forms of storage. We lack adequate storage facilities, especially for perishable products, and we lack specific authority to dispose of such forfeited property.

In some cases disposal of forfeited property under the surplus and excess property statutes administered by the General Services Administration is not appropriate. Under Federal surplus and excess property statutes, we may be compelled to sell the property at public auction or to allocate property excess to the programmatic needs of the Department to other agencies. After several years of negotiations, the General Services Administration has advised us that the only solution they can see is legislation.

We need specific authority to dispose of this property when it cannot be devoted to official use and when allocation or sale would be contrary to law or sound public policy. The provision in H.R. 2329 would allow such property as appropriate to be loaned to public or private scientific institutions or individuals in order to promote scientific knowledge, research or to educate the public in the interests of conservation. Perishable edible goods could be donated to such

institutions as orphanages, homes for the aged or prisons. Other property could be destroyed at the discretion of the Secretary or referred to the General Services Administration for public sale or other appropriate disposition under Federal surplus and excess property statutes when such action would be consistent with applicable law and policy.

Another important provision in section 3 is the authority related to cooperation with other Federal and State agencies in enforcement of Federal fish and wildlife laws, and enforcement of all Federal, State and local laws on fish and wildlife service lands. There are presently numerous laws inconsistently providing for cooperation with other agency personnel for enforcement of discrete programs. While we have been utilizing "deputies" for some 75 years under various statutes, our authority is neither uniform nor clear. Nowhere is the status of non-Federal personnel established for purposes of such laws as the Federal Tort Claims Act, Federal assault and murder statutes, or Federal employee benefit programs. Moreover, we do not have flexibility to select the enforcement powers or laws which are delegated to other personnel. The provision in H.R. 2329 will clarify these authorities and will help us to further professionalize the Federal fish and wildlife law enforcement services.

Section 4 of H.R. 2329 amends the Fish and Wildlife Act of 1956 to provide authority for the Fish and Wildlife Service to accept gifts and donations of real and personal property as well as voluntary

uncompensated personal services. The latter provision also applies to the National Oceanic and Atmospheric Administration.

Because of the growing awareness and concern over the need to conserve and enhance our natural resources, many individual citizens and groups have expressed a strong desire to donate their energies to environmental protection, outdoor recreation improvement and fish and wildlife conservation. Volunteer workers has always been a traditional value of American life. It has already contributed much toward the improvement of conditions in our cities, neighborhoods, parks and recreation areas. Volunteer workers representing all segments of our population are today working in the fields of health, education, cultural affairs and social work. Their work could provide a needed supplement to the Service's already overcommitted career work force and would also act to further disseminate environmental awareness throughout the country. At the same time it would provide meaningful opportunities for dedicated individuals.

Unfortunately, because of a lack of disability coverage and tort claim, and the inability to provide simple amenities such as lunch and transportation, the Service has been forced to turn down hundreds of offers for volunteer service each year.

An estimated 1,000 workers could be utilized in a variety of programs in over 100 national wildlife refuges, fish hatcheries, and in our field offices. Some of the anticipated activities for the volunteers would be the presentation of slide programs and nature talks, wildlife population surveys, visitor use and attitude surveys, biological and

technical data collection, and the preparation of fish and wildlife exhibits at refuge information centers. It is expected that the skills of these volunteers would be those which are often unavailable to the regular staff, such as special writing ability, photographic skill, and the ability to work with and stimulate young people. High school and college students, retired business and professional people, craftsmen and naturalists could all be utilized by the Service without competing with the jobs of career workers.

Section 4 coupled with section 5 and 6 of H.R. 2329 clarifies our land acquisiton and management activities under the Fish and Wildlife Act of 1956, the Migratory Bird Conservation Act, and the National Wildlife Refuge Administration Act.

With regard to the Fish and Wildlife Act of 1956, section 7 of the law limits our land acquisition authority to the acquisition of refuge lands. A provision in section 4 of the bill clarifies that acquisition applies to both fish and wildlife and that easements and other less than fee interests are appropriate.

One of the amendments to the Migratory Bird Conservation Act in section 5 will also clarify our land acquisition authority. As presently written, the Act authorizes the purchase or rental in fee title or in lesser interest areas for migratory bird refuges. It does not allow the acceptance of a lesser interest as a gift. There are situations where this may be desirable. H.R. 2329 also contains an amendment to the Migratory Bird

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Conservation Act which would allow the acquisition of habitat for other than inviolate sanctuary purposes.

For the past several years the Fish and Wildlife Service has been developing new objectives, priorities and policies for its land acquisition programs for migratory birds. The Service proposes to acquire, through fee title and easement purchase, approximately 1.9 million acres of waterfowl habitat, primarily wetlands, during the next 10 to 15 years. This proposal does not reflect total habitat needs, just the most critical of the more than 15 million acres of wetlands of great importance to waterfowl. In order to accomplish this goal within existing fiscal constraints, purchase of easements or other less than fee interests is an essential part of the proposed program. The Service has the authority to acquire less than fee interests in land for migratory birds. However, due to the inviolate sanctuary provisions of the Migratory Bird Conservation Act and limitations imposed by the National Wildlife Refuge Administration Act, hunting rights must be purchased on all such acquisitions.

The inability to acquire wetland preservation easements without obtaining hunting rights threatens critical wintering habitat in the Central Valley of California where some 65 percent of the entire Pacific Flyway waterfowl spend the winter. An estimated 90 percent of the natural wetland habitat in the Valley has already been destroyed. While the construction of reservoirs and intensive management of the remaining wetlands by State and Federal agencies and private hunting clubs mitigates some of this loss, any significant loss in the future is expected to seriously jeopardize

Pacific Flyway waterfowl, aggravating the already critical situation of overcrowding birds on refuges, disease outbreaks that kill large numbers of waterfowl and crop depredation problems. Hunting clubs presently control about 60 percent of the remaining prime habitat in the Central Valley. Because of cost factors, hunting clubs which now provide the wintering habitat are under pressure to convert their land to other uses not compatible with waterfowl. Economic incentives in the form of easements can perpetuate this habitat, but only if the hunting rights are retained by landowners. In this area cessation or reduction of hunting is not critical to the welfare of the resource; preservation of the habitat is. The Fish and Wildlife Service's ability to preserve the Central Valley habitat hinges almost entirely upon acquisiton of wetland preservation easements without acquiring the hunting rights. Landowners and the county governments oppose fee acquisition and the closing of additional areas to hunting. In order to obtain the required approval from the Governor, acquisition of easements without hunting rights will be necessary.

If we do not have the flexibility to purchase easements without hunting rights, our wetlands preservation efforts will be seriously impaired nationwide since the use of easements will not be confined to the Central Valley of California. We propose to purchase easements in the lower Mississippi River Delta where habitat preservation as opposed to management, is the major objective. Easements provide a cost-effective method of achieving that objective. Private hunting clubs hold critical wetland habitat throughout the nation.

Without suitable economic alternatives, these properties are being drained or converted to more profitable uses. The wetland preservation easement is an economic alternative which can permanently preserve this resource.

With regard to the amendment to the National Wildlife Refuge Administration Act in section 6, the legislation provides authority to allow taking of migratory birds on more than 40 percent of a refuge at any one time under certain conditions. Originally, the legislation called for a finding to be made that the opening of an area "would be beneficial to the proper management of" the species. An amendment on the floor of the House struck "proper management of". In other words, the Secretary would have authority to open more than 40 percent of an area, purchased as inviolate sanctuary, to the taking of migratory birds if a finding is made that such action "would be beneficial to the species". We have no objection to this modification.

There are several situations where it would be beneficial to the species to abrogate the 60 percent closure requirements. The potential for large scale waterfowl mortality from communicable diseases such as Dutch duck plague (DVE) or other environmental catastrophes could be diminished by effectively reducing, when necessary, dense concentrations of waterfowl through control of hunting pressure. Hazing and other techniques are not always effective in reducing such concentration. Undesirable delays of traditional migration flows (shortstopping) could also be reduced by flexibility to open or close all or a portion of a refuge to migratory bird hunting.

Section 7 of the bill would amend the Migratory Bird Hunting and Conservation Stamp Act to resolve a technical problem related to a conflict in the date the "duck stamp" is valid and the date of stamp redemption by the Postal Service. Because of the hunting season framework, and for administrative efficiency, a July 1 through June 30 year as the valid dates of the stamp, and a June 30 stamp redemption date is necessary. With changes in the Federal fiscal year, reference to the stamp being valid "only during the fiscal year for which issued" required amendment by striking the work "fiscal". This was accomplished by P.L. 94-273, section 43. However, at the same time, but in different legislation--the Wetlands Loan Act extension--the June 30 expiration date was struck and "September 30 of each fiscal year" inserted in lieu thereof. As a result, the dates between which the stamp is valid contradict the provision of a June 30 expiration date and further provision for a fiscal year period of validity. The amendment in section 7 of H.R. 2329 will remedy the situation.

The final section in the bill provides for revenues generated from the industrial complex at the Crab Orchard National Wildlife Refuge in Illinois to be subject to the Refuge Revenue Sharing Act rather than deposited in the Treasury as general receipts.

Crab Orchard was originally acquired by the United States as part of the Illinois Ordinance Plant administered by the War Department and the Crab Orchard Land Utilization Project acquired by the Resettlement Administration

Secretary of the Interior by the Act of August 5, 1947. The refuge presently consists of approximately 43,000 acres of land in Williamson, Jackson and Union Counties.

The Crab Orchard Refuge industrial complex authorized by the August 1947 Act presently comprises 2,300 acres of the refuge. Approximately 1.5 million square feet of floor space are occupied by industrial tenants who use the space for industrial production, warehouse storage and two technical schools. Refuge personnel issue about 55 leases each year.

Receipts from the leases have amounted to over $2 million since fiscal year 1971. This money is deposited in the United States Treasury and becomes part of the general funds of the Federal Government. Because of the requirements of the Act, these receipts are not available to the Fish and Wildlife Service to defray expenses incurred in the administration of the industrial complex, nor are they available for potential revenue sharing payments to Williamson County.

Considerable expense is involved in administering the industrial complex. The refuge provides such things as fire and police protection, sewage treatment and maintenance of access routes. Funding and manpower resources which should be available for wildlife management and environmental education are being used by the Service for administration of the industrial complex.

With the amendment provided in section 8 of H.R. 2329 the Service will be able to defray its expenses for administration of the industrial

complex from the revenues collected, and the remaining receipts, if any, will be incorporated into the formula used to determine the revenue sharing payment to the county.

It should be noted that this provision in H.R. 2329 probably will not lead to any additional payments to the counties. Under existing law, the county receives the greater of 25 percent of the revenue remaining after expenses or three-fourths of one percent of the original cost of the land adjusted to reflect current value. We anticipate that the expenses of administering the industrial complex would be such that 25 percent of the net receipts will be less than payments based on adjusted cost. The Service will therefore be the major beneficiary of this amendment in that funds will be available specifically for administration of the industrial complex. Improving the administration of the complex will in turn benefit the industrial tenants.

The problem related to the revenue payments to counties is one that other counties with refuges also face. I will go into that problem in more detail next in discussing H.R. 8394. Let me first conclude my comments on h.R. 2329 by stating that enactment of this bill is not absolutely essential to continued operation of fish and wildlife programs. Enactment will, however, result in much needed administrative efficiencies and effectiveness, and the provisions related to acquisiton of easements and retention of hunting rights by the landowner may result in substantial savings in Federal expenditures for habitat preservation.

We almost achieved enactment of this legislation in the 94th Congress. The only reason we do not have the authorities today is that the House passed version was amended by the Senate the day before the Congress ended; inadequate time for the technical differences to be resolved. I hope that this time next year I can be providing you with a progress report on implementation of the authorities in H.R. 2329, rather than again urging its enactment.

Thank you, Mr. Chairman. I would be pleased to answer any questions you might have.

Testimony of Frederick H. Boness
Deputy Commissioner
Department of Natural Resources
State of Alaska

before the

House Committee on Merchant Marine and Fisheries
Subcommittee on Fisheries and Wildlife
Conservation and the Environment
on H. R. 8394

March 20, 1978

Mr. Chairman, members of the Committee, on behalf of Governor Hammond I would like to thank you for delaying action on H. R. 8394 last week so that I might appear before you to present this testimony. H. R. 8394 is significant legislation for Alaska, and indeed for all states in which oil or gas is, or might be, produced from federal lands.

As you are well aware, prior to 1964, Section 401 of the Act of June 15, 1935, did not address itself to revenues derived from oil or gas production on wildlife refuges. In 1964, a restructuring of Section 401 (codified as 16 U.S.C. S 715s) occurred for the purpose of better distribuing revenues to all counties in which wildlife refuges are located and to ensure that in the case of lands acquired by the U.S. Government for refuge purposes, counties would receive a minimum payment, notwithstanding the amount of revenues generated from the acquired lands. During this restructuring of Section 401 the word "minerals" was added to the list of items, such as animals, timber, hay, grass, sand, gravel, etc., enumerated in Section 401. The reason for the addition of the word "minerals" is not explained in the legislative history of the 1964 amendment to Section 401. A review of both the House and Senate hearings and reports yields only a few references to oil or gas revenues and no specific discussion of the addition of the word "minerals".

However, the addition of the word had little practical effect between 1964 and 1975. Oil and gas revenue from wildlife refuges made up of acquired lands continued to be distributed after 1964 just as it had been prior to 1964. Similarly, oil and gas revenue from wildlife refuges reserved from the public domain, (including the Kenai Moose Range, located in Alaska), continued to be distributed after 1964 just as it had been prior to 1964. Then in 1975, the Department of Interior and the comptroller concluded that the addition of the word "minerals" to Section 401 (which occured in 1964) required a change in distribution of revenues from reserved wildlife refuges, including the Kenai Moose Range. Thereafter the Federal Government has withheld payments to Alaska. Alaska filed suit challenging this interpretation of Section 401 and Alaska's position was sustained in U.S. District Court. The case is now on appeal to the U.S. Ninth Circuit Court of Appeals. H. R. 8394, if enacted as presently drafted, will reverse the conclusion of the District Court and deprive Alaska, and perhaps other states as well, of future revenues from reserved wildlife refuges.

In order to understand fully the significance of H. R. 8394, it is necessary to consider 1) the purpose of Section 401 as originally enacted, 2) the purpose of the 1964 amendment to Section 401, and 3) the federal scheme for oil and gas leasing on federal lands. Let me start with the last point first.

Although leasing of federal lands for oil and gas was done prior to 1920, there existed from time to time doubt about the authority under which such leasing was conducted. Consequently, Congress enacted the Mineral Leasing Act of 1920, which specifically authorized the leasing of all federal public domain lands for oil and gas unless such lands are withdrawn from oil and gas leasing. That Act, as you know, provided a comprehensive system for such leasing, including, Section 35 of the Act, which prescribes a method for distributing bonuses, rentals and royalties. Under Section 35 a portion of the revenue is to be distributed to the state in which the oil or gas deposit is located, a portion is placed in the Reclamation Fund (except in the case of Alaska, where that portion is paid directly to the State) and the remainder is paid into the U.S. Treasury general account. Section 35 is still the law today being codified as 30 U.S.C. S 191.

While the Mineral Leasing Act of 1920 was certainly a big step forward in clarifying the authority of the Secretary of Interior to lease federal lands, it was not long before questions arose concerning the Secretary's authority to lease lands acquired by the Federal Government. This question was finally settled by Congress with enactment of the Mineral Leasing Act for Acquired Lands of 1947. This Act adopted much of the procedure and methodology already developed by the Department of Interior under the Mineral Leasing Act of 1920. It did not, however, adopt the same revenue distribution scheme. Instead that Act required that the revenues be distributed pursuant to the method prescribed by Congress as part of the law governing acquisition of the land. Thus, pursuant to the Mineral Leasing Act for Acquired Land, revenues derived from oil or gas production on a wildlife refuge created from acquired lands are distributed according to Section 401 of the Act of June 15, 1935. This provision of the Mineral Leasing Act for Acquired Lands is codified at 30 U.S.C. S 355.

In summary, all revenues from oil or gas production on all federal lands are distributed pursuant either to the Mineral Leasing Act of 1920, or the Mineral Leasing Act for Acquired Lands of 1947.

I would now like to turn to the second item, that being the original purpose of Section 401. I am certain it would be presumptuous of me to attempt to inform this Committee in much detail of the purposes of either the Act of June 15, 1935, or of Section 401 of that Act. I would, however, like to stress to the Committee that my reading of the Act, its legislative history and Section 401 as originally enacted indicate to me that Congress' basic objective was the protection of habitat for migratory birds and that Section 401 was conceived as a way of making a portion of the revenue commonly derived from wildlife refuges available to counties in which such habitat was sought to be acquired by the Federal Government. It does not seem to me, and I have been unable to find any good evidence to the contrary, that Congress intended or perceived itself to be addressing matters relating to oil and gas at the time of passage of the Act of June 15, 1935. (The only evidence to the contrary is an August 5, 1946, Opinion of the Solicitor, U.S. Department of Interior wherein he asserts - without explanation or support in the legislative history - that certain of the language of Section 401 was intended to authorize oil and gas leasing in wildlife refuges.)

I, therefore, believe it fair to conclude that Congress did not intend by the Act of June 15, 1935, to address matters relating to oil and gas production, including, especially, distribution of revenue from such production.

The final item I would like to address is the matter of the 1964 amendment to Section 401. Again I expect members of this Committee are far more knowledgeable than I on the specific reasons for that amendment. There are, however, certain perspectives which can be obtained from a reading of the House and Senate hearings and conference reports relating to that amendment and I would like to review briefly for you those points. First, it seems clear to me the basic reason for condideration of an amendment was that the Department of Interior had been unable to acquire land in the upper midwest because local communities had resisted purchase of such land. Under Section 401, as originally enacted, the revenues returned to the community simply were not adequate to compensate for the loss of such lands from the tax rolls. The Governors of these states were, therefore, finding it necessary to veto proposed purchases. The basic objective, of the 1964 amendment therefore, was to find a way to ensure counties more certain and substantial revenue if land in their country was acquired by the Federal Government.

Second, the Department of Interior and other witnesses appearing before Congress emphasized that the amendments being proposed would not affect distribution of revenues from wildlife refuges reserved from public domain lands because in those instances the land had never been on the local tax rolls and there was, therefore, no need to alter distribution of revenues from reserved wildlife refuges.

Third, there was little discussion of oil and gas revenues derived from wildlife refuges, but what did occur only related to revenues from a wildlife refuge located in Louisiana (which is an acquired wildlife refuge). In fact, the calculation presented the House and Senate committees showing how the proposed amendment would affect revenue distribution indicated that revenues derived from oil or gas production on reserved wildlife refuges which at that time were distributed under the Mineral Leasing Act of 1920, would not be distributed any differently as a result of the amendment.

Fourth, there is no direct explanation in either the hearings or reports on the reason for adding the word "minerals".

Fifth, the 1964 amendment to Section 401 (as finally adopted), gave counties in which acquired wildlife refuges were located the alternative of receiving either 25% of net receipts or a payment based on the value of the land, and that the purpose of this choice was to prevent counties, such as the parishes in Louisiana, from having revenues diminished, (which would have been the case, had a system based only on the value of the land been adopted).

The District Court in Alaska, when presented with the considerations I have just discussed, namely the mechanism for leasing federal lands, the purpose of Section 401 as originally enacted and as amended in 1964, concluded, as I believe it had to, that the word "minerals" when added to Section 401 was intended only to confirm distribution of revenues under the Mineral Leasing Act for Acquired Lands.

The significance of H. R. 8394 is that it expressly requires that oil and gas revenues from reserved, as well as acquired, wildlife refuges be distributed according to the method established in Section 401. This will cause several changes: 1) A direct conflict will exist between Section 35 of the Mineral Leasing Act of 1920 and Section 401. Each prescribes a method for distributing revenues and the methods are mutually exclusive.

2) Section 401 which up to now has focused upon facilitating the acquisition of waterfowl habitat by ensuring adequate distribution of revenue to counties and providing a method for distributing revenue commonly derived from all refuges is suddenly focused upon distribution of oil and gas revenues, a purpose which causes others to pale in comparison.
3) H. R. 8394 provides no protection whatsoever for Alaska and other states which are presently receiving oil and gas revenue payments under the Mineral Leasing Act of 1920. Money which Alaska is receiving (and perhaps other states also are, or will, receive) is totally cut off, a portion of it is instead paid to a local government and the greatest percentage is redistributed to the Federal Government or counties in other states. This result is far more drastic than the action taken by Congress in 1964. At that time the change proposed by the Department of Interior was modified by Congress to ensure that those counties already receiving revenue from oil and gas production would not see that revenue diminished.

In concluding, I respectfully urge to this Committee that H. R. 8394 be amended to avoid the conflict now inherent in this bill and the Mineral Leasing Act of 1920, by deletion of the reference to the word "minerals" on page 8, line 9. In making this request I wish to point out that such amendment will not diminish the revenues available to the Fish and wildlife service since oil and gas revenues on acquired wildlife refuges will still be available under the Mineral Leasing Act for Acquired Lands.

I wish to thank you for this opportunity to testify.

KENAI PENINSULA BOROUGH
BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

DON GILMAN
MAYOR

August 14, 1978

4851

Honorable Mike Gravel
Committee on Environment & Public Works
3121 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Gravel, Chairman & Members of the Committee:

The Kenai Peninsula Borough testified on HR 8394 in the hearings of the Committee on Merchant Marine & Fisheries on March 20, 1978. The purpose of this message is to restate the Borough's position regarding the proposed legislation. First of all, we agree with the House Committee's statement in its Committee Report that HR 8394 should not be considered as resolving the question presented in Kenai Peninsula Borough versus Andrus, the litigation now pending in the Federal Courts for Alaska. We understand the Committee's statement that HR 8394 would provide that as of the date of enactment of HR 8394, all oil and gas receipts from the Kenai National Moose Range would be distributed under the terms of the Refuge Revenue Sharing Act rather than the Mineral Leasing Act. In litigating the issues in the Andrus case the Kenai Peninsula Borough did not intend to encourage or support a congressional legislative policy for the future, as is proposed in HR 8394, which would deprive the State of Alaska of the 52 1/2% of oil and mineral revenues guaranteed to the State under the Alaska Statehood Act. The Borough does support an amendment of the Payment in Lieu of Taxes Act (Public Law 94-565) to provide for payments to local government units on the basis of National Wildlife Refuge system lands within the local government unit; but the Borough is of the opinion that that amendment should be included in the Payment in Lieu of Taxes Act and not carried over into HR 8394.

The Borough reiterates its stand from its testimony in the Merchant Marine & Fisheries Committee of the House of Representatives on March 20 (pages 25 through 35 of the transcript) where it proposed that Section 16 USC 715(s)(c)(1) should provide distribution of oil and gas revenues from the Kenai National Moose Range as follows:

a. 65% of the State of Alaska
b. 20% to the borough in which it is situated, any reserve area administered by the Fish & Wildlife Service
c. 15% to the United States for distribution as now provided in 16 USC §715(s)a.

The borough does not support the 75-25% formula of HR 8394 because it violates the Alaska Statehood Act and eliminates the State from any share of the revenues under 16 USC §715. In the event that the Committee does not accept our compromise amendment to the distribution formula, the Borough respectfully requests that the Kenai National Moose Range be excluded from any impact by HR 8394 until the issues are resolved in the Kenai Peninsula Borough versus Andrus litigation. The entire State of Alaska should be excepted from any amendment of 16 USC 715 until the D-2 lands issue is resolved by the Congress in connection with its present deliberations under the Alaska Native Claims Act.

Sincerely,

Donald E Gilman

Donald E. Gilman, Mayor
Kenai Peninsula Borough

DEG:mw

KENAI PENINSULA BOROUGH
BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

DON GILMAN
MAYOR

August 16, 1978

Honorable Mike Gravel
United States Senate
3121 Dirksen Senate Office Bldg.
Washington, D. C. 20510

Re: HR 8394
Senate Version

Dear Senator Gravel:

In reviewing my letter of August 14, 1978, in which I outlined the position of the Kenai Peninsula Borough on HR 8394, I find one point that requires clarification. In that letter it was stated that the proposed legislation would violate the Alaska Statehood Act. We did not then nor do we now claim that the proposed legislation is in legal violation of the Statehood Act. We do claim that in light of the pending D-2 legislation HR 8394 by its operation would be contrary to the spirit of the Statehood Act.

The proposed D-2 legislation would create numerous additional wildlife refuges in Alaska. Thus what was non-refuge public domain at statehood and subject to the Mineral Leasing Act will become refuge land subject to HR 8394. We do not believe the framers of the Statehood Act intended such a significant inroad on the right of the state to receive 90% of the mineral revenue derived from the then existing non-refuge public domain. Nevertheless, in light of the proposed D-2 legislation this will be the result if HR 8394 passes in its present form.

It therefore becomes even more crucial that my suggestion made at the House hearings on HR 8394 be adopted. At those hearings we proposed that the distribution in Alaska from wildlife refuges be as follows:

65% to the State;
20% to the Boroughs;
15% to the United States.

This formula would protect the interests of all governmental entities in wildlife refuge revenues and at the same time be consistent with the spirit of the Statehood Act, the Mineral Leasing Act and the Refuge Revenue Sharing Act.

Yours very truly,

Donald E. Gilman

Donald E. Gilman, Mayor
Kenai Peninsula Borough

DEG/tb

western union **Telegram**

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CHAIRMAN AND MEMBERS OF THE COMMITTEE
KENAI PENINSULA BOROUGH TESTIFIED ON HR8394 IN HEARINGS OF COMMITTEE
ON MERCHANT MARINE AND FISHERIES MARCH 20, 1978. PURPOSE OF MESSAGE T-
O
RESTATE BOROUGHS POSITION REGARDING PROPOSED LEGISLATION. WE AGREE
WITH HOUSE COMMITTEES STATEMENT IN COMMITTEE REPORT THAT HR8394 SHOUL-
D
NOT BE CONSIDERED AS RESOLVING QUESTION IN KENAI PENINSULA BOROUGH
VERUS ANDRUS, LITIGATION NOW PENDING IN FEDERAL COURTS FOR ALASKA. WE
UNDERSTAND COMMITTEE S STATEMENT THAT HR8394

SF-1201 (R5-69)

western union **Telegram**

WOULD PROVIDE AFTER ENACTMENT THAT ALL OIL NAD GAS RECEIPTS FROM
K NAI NATIONAL MOOSE RANGE WOULD BE DISTRIBUTED UNDER TERMS OF REFUGE
REVENUE SHARING ACT RATHER THAN MINERAL LEASING ACT. IN LITIGATING
ISSUES IN ANDRUS CASE KENAI PENINSULA BOROUGH DID NOT INTEND TO
ENCOURAGE OR SUPPORT A CONGRESSIONAL LEGISLATIVE POLICY FOR THE
FUTURE, AS IS PROPOSED IN HR8394, WHICH WOULD DEPRIVE STATE OF
ALASKA OF THE 52 1/2 PERCENT OF OIL AND MINERAL REVENUES GUARANTEED
TO THE STATE UNDER THE ALASKA STATEHOOD ACT. BOROUGH DOES SUPPORT
AN AMENDMENT OF PAYMENT IN LIEU OF TAXES ACT (PUBLIC LAW 94-565) TO
PROVIDE FOR PAYMENTS TO LOCAL GOVERNMENT UNITS ON BASIS OF NATIONAL
WILDLIFE REFUGE SYSTEM LANDS WITHIN LOCAL GOVERNMENT UNIT, BUT
BOROUGH IS OF OPINION THAT THAT AMENDMENT SHOULD BE INCLUDED IN
PAYMENT IN LIEU OF TAXES ACT AND NOT CARRIED OVER INTO HR8394.
BOROUGH REITERATES STAND IN TESTIMONY IN MERCHANT MARINE AND

SF-1201 (R5-69)

western union **Telegram**

FISHERIES COMMITTEE OF HOUSE OF REPRESENTATIVES ON MARCH 20 (PAGES 25 THROUGH 35 OF TRANSCRIPT) WHERE IT PROPOSED THAT SECTION 16 USC715 SHOULD PROVIDE DISTRIBUTION OF OIL AND GAS REVENUES FROM KENAI NATIONAL MOOSE RANGE

65 PER CENT TO STATE OF ALASKA

20 PER CENT TO BOROUGH

15 PER CENT TO UNITED STATESM

THE BOROUGH DOES NOT SUPPORT 75-25 PER CENT FORUMULA OF HR8394 BECAUSE IT VIOLATES ALASKA STATEHOOD ACT AND ELIMINATES STATE FROM ANY

SHARE OF THE REVENUES UNDER 16 USC 715. IN EVENT COMMITTEE DOES NOT ACCEPT OUR COMPROMISE AMENDMENT TO DISTRIBUTION FORMULA, BOROUGH RESPECTFULLY REQUESTS THAT KENAI NATIONAL MOOSE RANGE BE EXCLUDED FROM ANY IMPACT BY HR8394 UNTIL ISSUES ARE RESOLVED IN KENAI

SF-1201 (R5-69)

western union **Telegram**

PENINSULA BOROUGH VERSUS ANDRUS LITIGATION, AND BECAUSE ENTIRE STATE OF ALASKA SHOULD BE EXCEPTED FROM ANY AMENDMENT OF 16 USC715 UNTIL D-2

LANDS ISSUE IS RESOLVED BY CONGRESS IN CONNECTION WITH ITS PRESENT DELIBERATIONS UNDER ALASKA NATIVE CLAIMS ACT.

DONALD E GILMAN, MAYOR

Statement by:

National Association of Counties

Offices • 1735 New York Avenue N.W., Washington, D.C. 20006 • Telephone (202) 785-9577

Bernard F. Hillenbrand, Executive Director

Presented By

MAYOR PATRICK L. STANDING
City of Virginia Beach, Virginia

Before

THE SENATE ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON RESOURCE PROTECTION

on H.R. 8394

To Provide a Payment-in-lieu of Taxes Program
for Wildlife Refuges

August 15, 1978

Washington, D. C.

STATEMENT OF PATRICK L. STANDING, MAYOR OF THE CITY OF VIRGINIA BEACH, VIRGINIA, BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE ON RESOURCE PROTECTION ON H.R. 8394, AUGUST 15, 1978, WASHINGTON, D. C.

MR. CHAIRMAN:

THE NATIONAL ASSOCIATION OF COUNTIES *(NACo) IS PLEASED THAT THE SUBCOMMITTEE ON RESOURCE PROTECTION IS HOLDING THESE HEARINGS ON LEGISLATION TO PROVIDE A PAYMENT-IN-LIEU OF TAXES PROGRAM WHICH WOULD INCLUDE AS ENTITLEMENT LANDS THE ACREAGE OF THE NATIONAL WILDLIFE REFUGE SYSTEM.

NACo REAFFIRMS ITS SUPPORT FOR H.R. 8394, AS AMENDED TO DATE. THIS LEGISLATION, SPONSORED BY REP. WILLIAM STEIGER (R-WISC.) AND REP. BO GINN (D-GA.), PASSED THE HOUSE IN JUNE OF THIS YEAR. IT PROVIDES PAYMENTS TO COUNTIES BASED UPON AN ACREAGE AND POPULATION FORMULA FOR LANDS WITHIN THE NATIONAL WILDLIFE REFUGE SYSTEM.

THIS BILL IS DESIGNED TO REVISE THE WILDLIFE REFUGE REVENUE SHARING SYSTEM WHICH WAS INITIALLY ENACTED BY CONGRESS IN 1935, AND IT IS INTENDED TO CORRECT INEQUITIES IN THE SYSTEM WHICH HAVE DEVELOPED OVER THE YEARS.

IN 1976, THE CONGRESS PASSED AND THE PRESIDENT SIGNED NACo SPONSORED LEGISLATION (PL 94-565) TO PROVIDE PAYMENTS-IN-LIEU OF TAXES TO LOCAL JURISDICTIONS FOR NATIONAL PARK, NATIONAL FOREST, AND BUREAU OF LAND MANAGEMENT LANDS, IN ORDER TO PARTIALLY COMPENSATE COUNTY GOVENRMENTS FOR THE TAX IMMUNITY OF FEDERAL LANDS. HOWEVER, PL 94-565 MADE NO ADJUSTMENT IN RECEIPTS TO LOCAL JURISDICTIONS FOR LANDS INCORPORATED IN THE NATIONAL WILDLIFE REFUGE SYSTEM, AND H.R. 8394 PROPOSES TO MAKE THAT OVERDUE ADJUSTMENT.

UNDER PROVISIONS OF H.R. 8394 A COUNTY CONTAINING FISH AND WILDLIFE REFUGE ACREAGE WOULD RECEIVE AN ANNUAL PAYMENT OF THE GREATER AMOUNT OF A) 75¢ PER ACRE,

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*The National Association of Counties is the only national orgainzation representing county government in America. Its membership includes urban, suburban, and rural counties joined together for the common purpose of strengthening county government to meet the needs of all Americans. By virtue of a county's membership, all its elected and appointed officials become participants in an organization dedicated to the following goals: improving county government; serving as the national spokesman for county government; acting as a liaison between the nation's counties and other levels of government; and, achieving public understanding of the role of counties in the federal system.

B) 3/4 OF 1% OF MARKET VALUE, OR C) 25% OF FEDERAL OIL AND GAS LEASES ON WILDLIFE REFUGES. H.R. 8394 APPLIES ONLY TO REFUGE LAND THAT WAS ACQUIRED BY THE U.S., AND NOT TO PUBLIC DOMAIN LANDS WHICH WOULD BE SUBJECT TO THE BASIC PAYMENTS UNDER PL 94-565. THE BILL ALSO CALLS FOR THE REAPPRAISAL OF REFUGE LAND BY THE FISH AND WILDLIFE SERVICE EVERY FIVE YEARS, RATHER THAN RELYING ON THE AGRICULTURAL INDEX AVERAGES WHICH ARE NOT REFLECTIVE OF THE TRUE VALUE OF THE LAND REMOVED FROM LOCAL TAX DIGESTS. IT ALSO PROVIDES AN AUTHORIZATION FOR APPROPRIATIONS TO COUNTERACT ANY SHORTFALL BETWEEN RECEIPTS COLLECTED FROM REFUGES AND PAYMENTS DUE LOCAL JURISDICTIONS AND REMOVES THE RESTRICTION THAT PAYMENTS MAY BE USED BY LOCAL JURISDICTIONS ONLY FOR ROADS AND SCHOOLS. COUNTIES RECEIVING PAYMENTS ARE REQUIRED TO PASS ON A PROPORTIONAL SHARE OF THE PAYMENTS TO THE LOCAL GOVERNMENTS WHICH HAVE INCURRED THE LOSS OR REDUCTION OF REAL PROPERTY TAX REVENUES.

BASICALLY, THE BILL WILL INSURE THAT LOCAL JURISDICTIONS WHO SUFFER LOSS OF ECONOMIC BENEFITS FROM THE ESTABLISHMENT OF IMPORTANT WILDLIFE REFUGES WILL RECEIVE FAIR COMPENSATION FOR THE REMOVAL OF LANDS FROM THEIR TAX ROLLS. IT IS ESTIMATED THAT THE ADDITIONAL COST OF THE PROGRAM WILL INCREASE FROM $3.5 MILLION IN FY 1979 TO $14.6 MILLION IN FY 1983. HOWEVER, IF OIL AND GAS LEASING RECEIPTS INCREASE, AS CAN BE EXPECTED IF OIL AND GAS DEVELOPMENT ON REFUGE LANDS CONTINUES, THESE FUNDS MAY BE SUFFICIENT TO COVER THE COST OF THE PROGRAM WITH NO ADDITIONAL APPROPRIATION NECESSARY.

WE BELIEVE H.R. 8394 IS CONSISTENT WITH THE FINDINGS OF THE PUBLIC LAND LAW REVIEW COMMISSION WHO FOUND THAT COUNTIES MUST STILL FINANCE FULL LOCAL GOVERNMENT SERVICES COUNTYWIDE, SUCH AS LAW ENFORCEMENT, ROAD MAINTENANCE, HEALTH SERVICES, ETC., DESPITE A RESTRICTED TAX BASE CAUSED BY THE TAX IMMUNITY OF FEDERALLY OWNED LANDS.

WE ALSO BELIEVE THE PROPOSED LEGISLATION IS COMPATIBLE WITH THE PAYMENTS-IN-LIEU PROVISIONS IN TITLE IV OF THE MIGRATORY BIRD HUNTING STAMP ACT OF 1934, AND COMPATIBLE WITH PL 94-565, REFERRED TO AS THE PAYMENTS-IN-LIEU OF TAXES ACT OF 1976.

NACo URGES ADOPTION OF H.R. 8394 WITHOUT FURTHER AMENDMENT. THANK YOU FOR THE OPPORTUNITY TO EXPRESS THE VIEWS OF THE NATIONAL ASSOCIATION OF COUNTIES.

STATEMENT OF BRENDA ITTA,
WASHINGTON REPRESENTATIVE
OF THE NORTH SLOPE BOROUGH OF ALASKA,
BEFORE THE
SUBCOMMITTEE ON RESOURCE PROTECTION
OF THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON H.R. 8394
THE REFUGE REVENUE SHARING ACT OF 1978

The North Slope Borough appreciates this opportunity to supplement the record with additional comments on the important issue of allocation of revenues from oil and gas production on wildlife refuges.

The North Slope Borough, a municipal corporation under Alaska law, comprises over 88,218 square miles. The Arctic National Wildlife Refuge covers 13,906 square miles of the Borough's lands. As members of this Subcommittee are aware, the North Slope Borough, and the towns, villages and communities located therein, have already been impacted by substantial oil and gas production at Prudhoe Bay. There is great potential for additional oil and gas production in the Borough.

Two of the most promising areas, the Marsh Fork Anticline and the Barter Island-Kaktovik Village area, are within the Arctic National Wildlife Refuge. While there has been continuing debate over whether oil and gas exploration in the Arctic National Wildlife Refuge should be accelerated or restricted, one thing is quite clear: the Village of Kaktovik, the only permanent community in the area, will be required to bear the brunt of the social, economic, environmental, and

other problems associated with any kind of development. Moreover, because the Village is located on Refuge lands, the Village has no subsurface estate, and will receive no oil or gas revenues associated with the development. Consequently, the sharing of revenues pursuant to the legislation under consideration by this Subcommittee will be a crucial factor in the future of the Village and the surrounding areas.

Although we interpret the Refuge Revenue Sharing Act differently, the Federal courts thus far have held that under the law as it presently exists, the Borough would have no right to any Federal government revenues derived from oil and gas production in the Arctic National Wildlife Refuge, regardless of the social, economic and environmental impacts on the Borough. This would occur despite the fact that in the Refuge Revenue Sharing Act, Congress has adopted a national policy of distributing the revenues of refuge areas to local governments to compensate for the impact of that revenue production; certainly the impact of any development within the Arctic National Wildlife Refuge would be borne directly by the North Slope Borough and its residents.

Under the law as it presently exists, distribution of the oil and gas revenues on the Arctic National Wildlife Refuge would be distributed pursuant to the Mineral Leasing Act, which would direct 90% of the revenues to the State of Alaska. There is no provision in that Act, and consequently no guarantee for the North Slope Borough, that any of those revenues should

flow to the Borough to compensate it for the additional governmental costs associated with oil and gas exploration, development and production. Although oil and gas production revenues from refuges created from acquired lands is distributed according to the Refuge Revenue Sharing Act, different treatment is afforded to those revenues where the refuge was created out of reserved lands; no revenues are provided to a county having such a refuge within its boundaries. While such a county receives 25% of revenues from other resources, oil and gas production revenues go solely to the State.

H.R. 8394 would correct this situation. All revenues produced on wildlife refuges, whether from oil and gas production or other resources, would be subject to the Refuge Revenue Sharing allocation formulas set forth in 16 U.S.C. 715s(c). Although the allocation formula differs depending whether revenues were derived from refuges created out of reserved lands or acquired lands, there would no longer be any different treatment based on the resource which generated the revenues.

The present omission of local governments from sharing in the revenue from oil and gas production on wildlife refuges created out of reserved public lands can only be considered an oversight: the practice is totally inconsistent with established Congressional policy. The impact of mineral production on a local government is no less real, costly, or of environmental

concern because the land upon which the production takes place was reserved rather than acquired.

The Arctic National Wildlife Refuge will almost certainly have oil and gas exploration and production activity. That activity will result in pressure on governmental services and have significant social and environmental impacts. The problems are particularly acute in the North Slope Borough where the Arctic environment makes costs substantially higher and the problems more severe. Consequently the Borough certainly deserves at least the same treatment as a county in any other State.

Adoption of H.R. 8394 would ensure that 25% of the revenues flow to the Borough to compensate it for the governmental costs associated with oil and gas production. If the bill is not enacted, 90% of those revenues would go to the State of Alaska with no guarantee that there would be any subsequent distribution to the borough. Even if some distribution occurs, there is no reason for using the State as a conduit; it merely increases costs and provides an opportunity for unequal allocation of revenues.

The North Slope Borough is not unsympathetic to the concerns of the State of Alaska over the impact of the bill. Congress in the past recognized that the enormous federal land holdings in Alaska created a unique situation and gave Alaska an additional 50% of the revenues from mineral production in the State beyond the amount provided all other States. However,

as passed by the House of Representatives, H.R. 8394 would result in the State of Alaska receiving no revenues from oil and gas production on refuge lands.

This legislation is directed towards solving a number of problems with the Refuge Revenue Sharing Act, which includes insuring counties with reserved-land refuges receive the same treatment with respect to oil and gas production revenues as counties having acquired-land refuges; the additional impact of terminating revenues to the State of Alaska is inadvertent. Consequently there is no need for the legislation to eliminate totally the special consideration given to Alaska in the distribution of oil and gas revenues.

At the same time, we see no reason for counties in Alaska to be treated differently than any other counties. The North Slope Borough was not in existence when the original allocation scheme of oil and gas revenues was adopted for the State of Alaska. Now that it exists as a viable, local government, it should be given the same percentage distribution as any other county. Once that allocation is made we see no reason that some or all of the remaining revenues should not be allocated to the State in recognition that the reasons for the Congressional policy adopted years ago to compensate Alaska for its unique problems are still valid today.

Moreover, guaranteeing a portion of the revenues to the boroughs of Alaska would carry out the purposes of the Refuge Revenue Sharing Act yet not be inconsistent with the State of

Alaska's interests. The same amount of money would be going into the State. It is important that the boroughs be guaranteed a portion so they will have greater certainty regarding future revenues and can plan better for the provision of governmental services.

With respect to mineral production from the Arctic National Wildlife Refuge, the State of Alaska has only an expectation of revenues: there is no oil and gas production now so this would in no way disrupt the State's present financial programs and planning. The State of Alaska would still be receiving a substantial amount of revenue, and more than any other State. Thus, while this approach would ensure equal treatment for local governments in Alaska and other States, it would not significantly impact the State's revenues.

Finally, it would insure that residents living in the unit of local government impacted by exploration, development and production of oil and gas receive revenues proportionate to the level of production and developmental activity. This basic decision of equity should not be left to the force of political pressures generated within the State legislature. Alaska law supports and encourages the establishment of local governmental units such as the North Slope Borough. The State should thus support this additional mechanism to assist the Borough in providing governmental services.

The views of the citizens of the North Slope Borough on this legislation can be summarized as follows:

(1) We recomend that oil and gas production be included in the types of revenue-producing activities on wildlife refuges which revenues will be shared pursuant to the Refuge Revenue Sharing Act.

(2) We recommend that the State of Alaska be guaranteed a portion of the oil and gas revenues remaining after 25% of those revenues have been distributed to units of the local government.

(3) We recommend that in all other respects the legislation be enacted as passed by the House of Representatives.

As a native resident of the Village of Barrow and the North Slope, I am acutely aware of the impact of oil and gas production on our land and our social structures. As a representative of the North Slope Borough government, I am also aware of the pressures of such production on government services. This legislation is urgently needed to correct the anomalous situation now existing between the Mineral Leasing Act and the Refuge Revenue Sharing Act, and to give governments such as the North Slope Borough the same rights as other counties. The concerns of the State of Alaska should be considered but they should in no way serve to hold up or prevent adoption of this legislation and assure a fair portion of oil and gas production revenues goes to the counties in which it takes place.

Brenda Itta
Washington Representative
North Slope Borough

August 18, 1978

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