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LAND CLAIMS IN RIVERSIDE COUNTY, CALIFORNIA, AND EXTENSION OF THE TOIYABE NATIONAL FOREST IN NEVADA

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2590

A BILL TO AMEND CERTAIN PROVISIONS OF LAW RELATING TO LAND CLAIMS BY THE UNITED STATES IN RIVERSIDE COUNTY, CALIFORNIA, BASED UPON THE ACCRETION OR AVULSION AND FOR OTHER PURPOSES

S. 2774

A BILL TO EXTEND THE BOUNDARIES OF THE TOIYABE NATIONAL FOREST IN NEVADA, AND FOR OTHER PURPOSES

H.R. 7101

AN ACT TO AMEND CERTAIN PROVISIONS OF LAW RELATING TO LAND CLAIMS BY THE UNITED STATES IN RIVERSIDE COUNTY, CALIFORNIA, BASED UPON THE ACCRETION OR AVULSION, AND FOR OTHER PURPOSES

AUGUST 1, 1978

Publication No. 95–169

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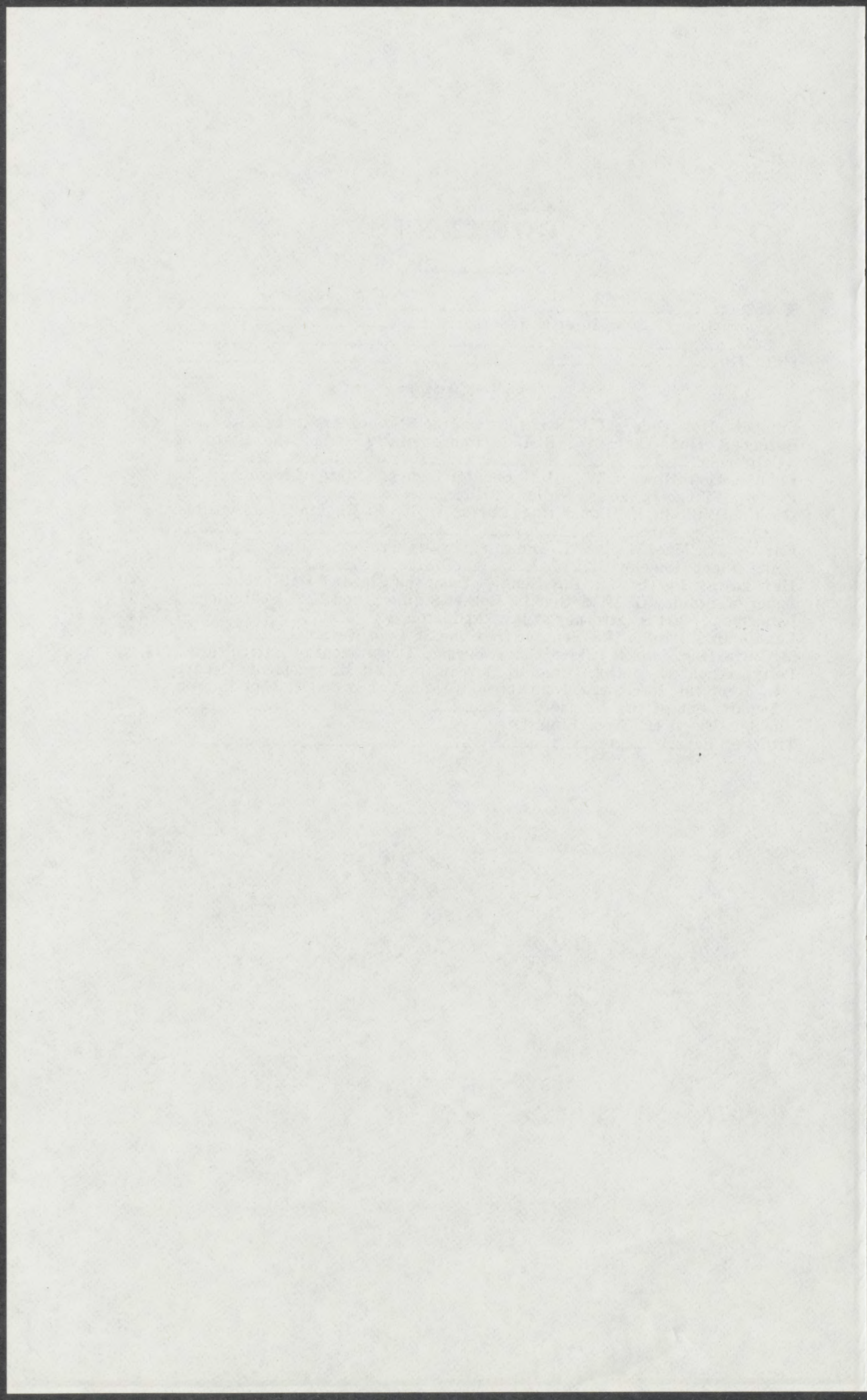


LAND CLAIMS IN RIVERSIDE COUNTY, CALIFORNIA, AND EXTENSION OF THE TOIYABLE NATIONAL FOREST IN NEVADA

TUESDAY, AUGUST 1, 1978

U.S. Senate,
Subcommittee on Public Lands and Resources,
of the Committee on Energy and Natural Resources,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 3110, Dirksen Office Building, Hon. Dale Bumpers, presiding.

Present: Senators Bumpers, Hansen, McClure, and Laxalt.

Also present: R. D. Folsom, counsel.

OPENING STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator Bumpers. The subcommittee will come to order. Today's hearing involves two separate subjects, and thus will be divided into two parts.

The first part of the hearing is devoted to S. 2590, a bill to waive the Federal doctrine of sovereign immunity concerning claims to certain tracts of land along the Colorado River in Riverside County, Calif.

In 1970, Congress enacted Public Law 91–505, allowing the landowners along a certain portion of the Colorado River to raise equitable defenses against the United States if they met six separate, specific requirements. S. 2590 amends the 1970 act granting the waiver of sovereign immunity to two additional landowners. The Federal Government's waiver of sovereign immunity allows such defenses as accretion and laches to be raised by the landowners.

The second part of today's hearing concerns S. 2774, a bill to extend the boundaries of the Toiyabe National Forest in Nevada.

Without objection, the bills and Department report will be placed in the record at this point.

[The bills and report follows:]

95TH CONGRESS
2D SESSION

S. 2590

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 6), 1978

MR. CRANSTON (for himself and Mr. HAYAKAWA) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend certain provisions of law relating to land claims by the United States in Riverside County, California, based upon the accretion or avulsion and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first section of the Act of October 23, 1970, entitled
4 "An Act to render the assertion of land claims by the
5 United States based upon accretion or avulsion subject to
6 legal and equitable defenses to which private persons assert-
7 ing such claims would be subject" (84 Stat. 1106; Public
8 Law 91-505) is amended by striking out "13.17" and
9 inserting in lieu thereof "13.19".

II

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 31 1978

Honorable Henry M. Jackson
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your request for the views of this Department on S. 2590 as amended on June 26, 1978 (Amendment No. 3078, Congressional Record, S. 9770-1), a bill "To amend certain provisions of law relating to land claims by the United States in Riverside, California, based upon the accretion or avulsion, and for other purposes."

We oppose enactment of this bill.

S. 2590 as introduced would extend the application of the Act of October 23, 1970, to lands along the lower Colorado River between river points 13.17 and 13.19, a distance of about one-half mile. The Act of October 23, 1970, waived the Federal government's claim of sovereign immunity by providing that private owners of land between boundary points 13.00 and 13.17 could assert legal and equitable defenses against the United States when the Federal government claimed title to that land if the owners satisfied six requirements set forth in the Act. As amended on June 26, 1978, S. 2590 would further extend the application of the Act of October 23, 1970, to lands along the lower Colorado River between river points 13.19 and 14.00.

Sovereign immunity is crucial to the efficient and effective management of the public lands for which this Department has primary responsibility. Without it, the United States would have the enormous task and incalculable expense of policing continuously more than three-quarters of a billion acres in order to prevent trespassers from establishing claims based on their occupancy without notices to vacate. This would be almost impossible.

When it reported on the Act of October 23, 1970, the Senate Committee on Interior and Insular Affairs specifically stated that it was not establishing a precedent of waiving the defenses of the United States.

> "In compliance with the objections in the President's second veto message and the request in the report of the Department of the Interior, this committee wishes

to make it clear that this is a unique situation that needs a unique solution and that it is not establishing a precedent of waiving the doctrine of sovereign immunity in cases where claims are made against property of the United States." (S. Rept. 91-1290, p. 5)

The lands between river points 13.17 and 13.19 which are the subject of S. 2590 as introduced are presently the subject of litigation (United States v. Eugene O. Ehlers, et al., Civil No. 68-1634, C.D. Cal.). We believe that the proper forum for resolution of the claims of these property owners is the courts, not the Congress.

Futhermore, we oppose enactment of S. 2590 as introduced since the land in question is excellently suited for public recreational use. Interstate 10 already provides southern California with access to the area. Development of plans for utilization of the land for recreation has been deferred, however, until occupancies along the river are terminated.

We believe that the reasons against enactment of S. 2590 are even stronger with respect to the lands between river points 13.19 and 14.00 which would be added by the June 26, 1978, amendment to S. 2590. These lands, generally referred to as "Harvey's Fishing Hole," comprise about 28 acres. They are highly suitable for public recreation, but not permanent occupancy. The factual situation with respect to the lands in Harvey's Fishing Hole is quite different than that surrounding the other lands covered by S. 2590. The lands which would be covered by the bill as introduced and the lands covered by the Act of October 23, 1970, all involve the effect of the so-called Raab, Hauser, Comer and Casad cuts, man made changes resulting in avulsion of the bed of the river. The Harvey's Fishing Hole matter arises out of a completely different occurrence involving natural accretion.

In addition, the actions of the Colorado River which constitute the basis for the position of the Government on the facts in the Harvey's Fishing Hole matter are the same as those already adjudicated in favor of the United States in the case of Beaver v. United States, 350 F.2d 4(1965), cert. den. 383 U.S. 937(1966). The Beaver case involved claims based on the same chain of title as that of the claimants at Harvey's Fishing Hole.

More importantly, in a trespass suit brought against the "Harvey's" claimants by the United States in United States v. Iva Mae Harvey, et al. the Government has already prevailed. In this case, even though the court permitted these claimants to assert the equitable defense of estoppel, a jury requested by the defendants found for the Government on all issues under litigation. Title to the lands in dispute was

declared to be in the United States. Not only was ejectment of the defendants ordered, but the jury awarded damages to the United States of over $42,000. The case is now on appeal.

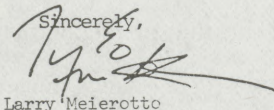
Finally, we doubt that enactment of the amendment to S. 2590 would benefit the Harvey's Fishing Hole claimants, since we believe that they could not satisfy the conditions in the October 23, 1970, Act. Specifically, our current information indicates that the claimants cannot meet the second criterion in the 1970 Act, since the United States owns the contiguous uplands. Also, it is our understanding that since 1967 the only taxes paid have been on improvements, thus preventing fulfillment of the fourth criterion in the 1970 Act. Moreover, many individuals have bought property in Harvey's Fishing Hole since the government initiated action to resolve these occupancies; these individuals cannot, we believe, meet the sixth criterion in the 1970 Act.

In summary, the inclusion of the 28 acre Harvey's Fishing Hole tract in the current legislation would provide only false hope to the residents of Harvey's Fishing Hole and continued judicial delay before the eventual return of this land to Federal control.

We believe that proper forum for all of the individuals covered by S. 2590 is the courts. Thus, we oppose extension of the privilege granted by the 1970 law to cover occupants from river points 13.17 to 13.19. Moreover there is absolutely no basis for extending the scope of this bill to river point 14.00 and we strongly oppose that amendment.

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,



Larry Meierotto
Deputy Assistant SECRETARY

95TH CONGRESS
2D SESSION

S. 2774

IN THE SENATE OF THE UNITED STATES

MARCH 21 (legislative day, FEBRUARY 6), 1978

Mr. LAXALT introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That to aid in the protection and management of the
4 various resources of the lands, including the protection, im-
5 provement, and maintenance of the watershed, wildlife,
6 recreation, and natural environment values thereof, situated
7 in the Lake Tahoe Basin, and to promote the management
8 and protection of such lands under principles of multiple
9 use and sustained yield, the boundaries of the Toiyabe
10 National Forest are hereby extended to include the area
11 described in section 2 hereof. Subject to any valid claims

1 now existing and hereafter maintained, any lands of the
2 United States within such area are hereby added to such
3 National Forest and shall be subject to laws and regulations
4 applicable to the National Forests.

5 SEC. 2. This Act shall be applicable to the following
6 described lands:

7 MOUNT DIABLO MERIDIAN, NEVADA

8 Township 13 north, range 18 east: Section 3, lots 3
9 and 4, southeast quarter northwest quarter; section 9,
10 lots 1 and 2; section 10, lots 2 and 3, northeast quarter
11 southwest quarter, south half southwest quarter; section
12 14, southeast quarter southeast quarter; section 15,
13 lots 1, 2, and 3, southwest quarter southwest quarter,
14 east half west half, east half; section 16, lots 1 and 2;
15 section 22, lots 2, 3, and 4, east half northwest quarter,
16 east half; section 23, east half northeast quarter, north-
17 west quarter northwest quarter, south half northwest
18 quarter, south half; section 24, south half northeast
19 quarter, northeast quarter southwest quarter, south half
20 southwest quarter, southeast quarter; sections 26, 27,
21 and 35, all that portion lying within the State of Nevada.

22 Township 13 north, range 19 east: Section 19,
23 all.

24 Township 14 north, range 18 east: Section 3, lots
25 3, 4, and 5, northeast quarter southwest quarter, north-
26 west quarter southeast quarter, southeast quarter south-

1 east quarter; section 4, lot 3; section 10, lots 1, 2, 3,
2 4, and 5, northeast quarter northeast quarter, southeast
3 quarter southeast quarter; section 11, southwest quarter
4 northwest quarter, west half southwest quarter; sec-
5 tion 15, lots 1, 2, 3, and 4, west half northeast quarter,
6 southeast quarter southeast quarter; section 22, lot 1,
7 east half northeast quarter; section 27, lots 1, 2, 3,
8 and 4, northeast quarter northeast quarter, south half
9 northeast quarter, southeast quarter; section 34, lots 1,
10 2, 3, and 4, south half northwest quarter southwest
11 quarter northeast quarter, southwest quarter southwest
12 quarter northeast quarter; section 35, northwest quarter
13 northwest quarter.
14 The area described aggregates 5,649.38 acres, more
15 or less.
16 SEC. 3. Funds appropriated and available for acquisi-
17 tion of lands, waters, and interests therein, in the National
18 Forest System pursuant to section 6 of the Act of Septem-
19 ber 3, 1964 (78 Stat. 903), shall be available for the ac-
20 quisition of any lands, waters, and interests therein, within
21 the area described in section 2 of this Act. In addition, the
22 Act of August 5, 1970 (Public Law 91-372) is hereby
23 amended to remove the limitation on expenditures of $12,-
24 500,000 as it applies to the area described in the Act of
25 August 5, 1970 (84 Stat. 694).

95th CONGRESS
2d Session

H. R. 7101

IN THE SENATE OF THE UNITED STATES

April 12 (legislative day, February 6), 1978

Read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend certain provisions of law relating to land claims by the United States in Riverside County, California, based upon the accretion or avulsion, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first section of the Act of October 23, 1970, entitled
4 "An Act to render the assertion of land claims by the United
5 States based upon accretion or avulsion subject to legal and
6 equitable defenses to which private persons asserting such
7 claims would be subject" (84 Stat. 1106; Public Law 91-
8 505) is amended by striking out "13.17" and inserting in
9 lieu thereof "13.19".

Passed the House of Representatives April 11, 1978.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

II

Senator BUMPERS. The first witness on S. 2590 is Congressman Burgener, and I understand he has gone to answer a quorum call, and our next witness is Arnold Petty, Acting Associate Director of BLM, and so Mr. Petty, you will be our first witness.

Mr. PETTY. I would like to have Ms. Vance, Ann Vance from the Solicitor's Office accompany me.

Senator BUMPERS. Fine. Just a moment. Senator McClure.

Senator McCLURE. I have no statement. Thank you, Mr. Chairman.

Mr. PETTY. The gentleman with the map is Mr. Roger Barron.

STATEMENT OF ARNOLD E. PETTY, ACTING DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY ANN VANCE AND ROBERT BARRON, DEPARTMENT OF THE INTERIOR

Mr. PETTY. Mr. Chairman, I am pleased to appear before you this morning to present the Department's view on S. 2590. S. 2590 as introduced would extend the application of the act of October 23, 1970, to lands along the lower Colorado River between river points 13.17 and 13.19, a distance of about one-half mile.

Amendment No. 3078, introduced on June 26, would extend the bill to river point 14. This would include within the provisions of the 1970 act an additional 28 acres of land located further downstream. The 1970 act to which S. 2590 refers was private relief legislation that provided that private persons claiming land between river points 13 and 13.17 could assert legal and equitable defenses against the United States when the Federal Government claimed title to the land, if the owners satisfied six criteria set forth in the act. The effect of S. 2590 is to permit additional claimants to utilize the special benefits of the 1970 act. We strongly recommend that S. 2590 not be enacted.

The 1970 act in effect eroded the sovereign immunity of the United States because it permitted claimants to assert against the United States all legal and equitable defenses such as the statute of limitations and adverse possession available against private parties under the laws of the State where the property was located.

It is our view that sovereign immunity is crucial to the efficient and effective management of the public lands for which we have primary responsibility. Without it, the United States would have the enormous task and incalculable expense of policing continuously more than three quarters of 1 billion acres in order to prevent trespassers from establishing claims based on occupancy without notice to vacate. Such a task would be almost impossible, and could not be supported on a large scale from the viewpoint of cost efficiency.

For these reasons, we believe that the current system which avoids this costly process is in the public interest. We cannot support further erosion of the principles on which the system is founded.

With respect to the specific claimants that would receive the benefits of S. 2590, as amended, by amendment No. 3078, there are distinct categories of claimants involved. One category involves land between river points 13.17 and 19.19. These lands have been affected by manmade changes resulting in avulsion of the bed of the Colorado River, and are the subject of litigation to determine ownership of the property. They consist of about 340 acres of agricultural lands.

The claims of the beneficiaries are based on the allegation that the lands in dispute were accreted to lands patented to them or their predecessors. The United States claims title to the land as public land that was separated from other public land by evulsion.

The private claimants assert equities similar to those criteria enunciated in the 1970 act. While the alleged equities appear similar to those recognized in the 1970 act, we note that these lands were originally included in but were eliminated from bills leading to passage of the 1970 act during the course of the consideration.

Further and more importantly, while we recognize that once, in the 1970 act, the Congress legislated legal and equitable defenses could be asserted against the United States, thus deviating from the doctrine of sovereign immunity, we believe that deviation should not be extended to any other cases. As a matter of fact, the Senate Interior and Insular Affairs Committee specifically stated in its report on H.R. 15405 in the 91st Congress——

Senators BUMPERS. I'm sorry. Would you pull the microphone closer to you?

Mr. PETTY. Certainly.

Senator BUMPERS. Our sound system here is terrible.

Mr. PETTY. As a matter of fact, the Senate Interior and Insular Affairs Committee specifically stated in its report on H.R. 15405 in the 91st Congress that later became the 1970 act, that it was not establishing a precedent of waiving the doctrine of sovereign immunity in cases where claims were made against property of the United States. We urge that that position be adopted by the Congress, and that no encroachment be made on the doctrine of sovereign immunity.

In addition, we believe that it would be inequitable to grant these claimants special relief since other occupants of land along the river have either litigated in accordance with the law, or they have recognized Federal ownership and have agreed to pay rent for future use.

Finally, this land is well suited for public recreational use. Interstate 10 already provides southern California with access to the area. Development of plans for utilization of the land for recreation has been deferred, however, until occupancies along the river are terminated.

We are also particularly opposed to broadening the 1970 act to cover the second category of lands, from river points 13.19 through 14. These lands are generally referred to as Harvey's Fishing Hole and comprise about 28 acres. They are highly suitable for public recreation, but of doubtful value for permanent occupancy. Unlike the first category of lands which were affected by man-made cuts in the river, the claims involving the lands comprising Harvey's Fishing Hole arise from natural accretion.

Briefly, Harvey's fishing hole purportedly comprises a legal subdivision in Arizona. While lands bearing that description were included in the patent issued by the United States in 1914, it is the position of the United States that the lands were washed away by erosion and were replaced by accretions for Federal lands in California. The accretive process was completed by 1936, and the lands are subject to withdrawals for reclamation purposes.

The actions of the Colorado River which constitute the basis for the position of the Government on the facts in this matter are the same

as those already adjudicated in favor of the United States in the case of Beaver against the United States in 1966. This case was appealed to the Supreme Court, and the Supreme Court refused to review the decision of the court of appeals.

The *Beaver* case involved claims based on the same chain of title as that of the claimants in Harvey's Fishing Hole.

More importantly, in a trespass suit brought against the Harvey's claimants by the United States entitled *United States* against *Iva Mae Harvey*, et al., the Government has already prevailed. In this case, decided in 1976, even though the court permitted these claimants to assert the equitable defense of estoppel, a jury requested by the defendants found for the Goverment on all issues under litigation.

Mr. Chairman, I would like to submit for the record a copy of that decision, if I may.

Senator BUMPERS. By all means. Is there objection? Without objection.

[The decision and related documents follow:]

UNITED STATES DISTRICT COURT—SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 72-277-T

UNITED STATES OF AMERICA, PLAINTIFF.

v.

IVA MAY HARVEY, A WIDOW, ET AL., DEFENDANTS.

(MEMORANDUM AND ORDER DENYING MOTIONS FOR JUDGMENT NOTWITHSTANDING VERDICT AND FOR NEW TRIAL.)

Defendants' motion for judgment notwithstanding verdict, and for new trial came on for hearing January 10, 1977. The court, having considered the evidence adduced at trial, the memoranda submitted in support of the motions, and the argument of counsel, concludes that all motions must be denied in all respects.

On November 23, 1976, the jury returned a general verdict for the United States of America, along with answers to nine special interrogatories. The verdict and the answers to the interrogatories reflect the jury's conclusions that the described land, known as Harvey's Fishing Hole, was formed by the process of accretion and thus entitling the United States to possession of such accreted land; that the government was not estopped from asserting its right to possession; and that the government should be compensated in an amount equal to the reasonable rental value of the respective parcels occupied by the defendants.

In the motions pending, defendants raise evidenciary and instructional errors. In addition they challenge the sufficiency of the evidence to support the jury's findings on the questions of accretion-avulsion estoppel, and damages.

When deciding a motion for judgment *n.o.v.*, the court must view the evidence in a light most favorable to the prevailing party. The court may not weigh or evaluate credibility. So viewed, to grant such a motion, the court must be able to conclude the evidence presented by the prevailing party is insufficient to support the verdict as a matter of law. The presence of substantial evidence is sufficient to withstand the motion. 5A Moore, *Fed. Practice* ¶ 50.07[2]; 9 Wright, Miller & Cooper, *Fed. Practice & Procedure* §§ 2524–2529, 2537; F.R.Civ.P., Rule 50. Defendants have met all prerequisities required by Rule 50(b) enabling the court to hear the motion.

Rule 59(a), F.R.Civ.P., authorizes a motion for new trial. Of such a motion, the Supreme Court states: "The motion for a new trial may invoke the discretion of the court in so far as it is bottomed on the claim that the verdict is against the weight of the evidence, that the damages are excessive, or that, for other reasons, the trial was not fair to the party moving; and may raise questions of law arising out of alleged substantial errors in admission or rejection of

evidence or instructions to the jury." *Montgomery Ward & Co.* v. *Duncan*, 311 U.S. 243, 251 (1940).

In deciding whether the weight of the evidence is against the verdict, the court is not required to view the evidence most favorably to the prevailing party. Instead, the court may weigh the evidence, giving full respect to the findings of the jury. If from the entire evidence, the court is left with the firm conviction a mistake has occurred, it may, in its discretion, grant a new trial. The court, however, cannot set aside a verdict simply because it might have reached a conclusion different from that of the jury on the same evidence; more must appear. *Beveridge Distributors, Inc.* v. *Olympic Brewing Co.*, 440 F.2d 21 (9th Cir. 1971), *cert. denied*, 403 U.S. 906 (1971); *see generally* 6A Moore, *Fed. Practice* ¶ 59.08[5]; 9 Wright, Miller & Cooper, *Fed. Practice & Procedures* § 2806.

Similarly, the question of whether a jury's assessment of damages is excessive, is a matter addressed to the sound discretion of the court. Again, the court is to avoid substituting its judgment for that of the jury, unless it appears the particular award of damages is unconscionable or grossly excessive. 6A Moore, *Fed. Practice* ¶ 59.08[6].

Initially, defendants challenge the sufficiency of evidence to support the jury's finding that the land known as Harvey's Fishing Hole was formed by the process of accretion. Suffice it to say that both plaintiff and defendants offered extensive, sharply contradicting expert testimony on the question of avulsion and accretion. Plaintiff's witnesses all testified Harvey's Fishing Hole was formed by the process of accretion; defendants' witnesses testified to the contrary. The court concludes substantial evidence for the jury's finding is present, and denies the motion for judgment *n.o.v.* on this ground. The evidence was evenly balanced, clearly presenting a question for the jury; the weight evidence does not preponderate in favor of defendants.

Secondly, defendants challenge the sufficiency of the evidence to support the jury's negative answers to Special Interrogatories numbered 3, 6, and 7, each of which relate to one of the five elements of estoppel. To have prevailed on the affirmative defense of equitable estoppel, the defendants had the burden of priving all five elements, which in turn required affirmative answers to Special Interrogatories numbers 3, 4, 5, 6, and 7.

Special Interrogatory No. 3 sought a finding whether the government engaged in affirmative conduct which amounted to a representation of material facts. The jury answered in the negative. The defendants contend the uncontradicted evidence showed that the government, through its agents, made certain representations to the effect that it had no intention of claiming Harvey's Fishing Hole. The record does not support the contention. As an example, it appears from the testimony of Melvin Crosby, Special Assistant to the District Manager of the Lower Colorado River Land Use Office, Department of Interior, that defendants were generally advised of the government's claims to the land as early as 1962. It also appears from his testimony that Iva May, Kindred and Don Harvey were told by Crosby that the government intended to claim the land under the doctrine of accretion in January 1963. Crosby's testimony alone is substantial evidence supporting the jury's finding. While it is true that Crosby's testimony may be deemed contradictory in some respects, the fact remains, his testimony, if believed by the jury, supports the finding.

Special Interrogatory No. 6 sought a finding whether defendants were ignorant of the true facts concerning the government's claim to Harvey's Fishing Hole. The jury answered in the negative, finding that the defendants were not in fact ignorant of the government's claims. There is ample evidence to support this finding. Again, using Crosby's testimony as an example, it is clear that the Harveys, who subdivided and marketed the land, had knowledge that the government disputed title to the land, and that it intended to claim it under an accretion theory. It is also clear that defendants were aware that the Colorado River had moved or changed its course at various times antedating defendants' occupation of Harvey's Fishing Hole. The jury's finding is supported by substantial evidence.

Special Interrogatory No. 7 sought a finding whether the defendants relied upon the conduct of the government to their injury. The jury answered in the negative. Defendants' contention on this point is premised on the court's acceptance of their argument as to Special Interrogatories numbered 3 and 6. Since the court has rejected those arguments, and no additional arguments are made, defendants' position as to Special Interrogatory No. 7 is untenable.

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Thus, it appears each of the contested findings is supported by substantial evidence. While on some points the evidence might be deemed less than overwhelming, the court is not convinced the conclusions reached by the jury are such that warrant the granting of a new trial. The court is not convinced a mistake has occurred, and accordingly declines to exercise its discretion in favor of granting a new trial.

Thirdly, defendants seek a new trial on the issue of damages. The jury, in Special Interrogatories numbered 8 and 9, concluded the government was entitled to an award of damages. The jury specified the exact sum attributable to each defendant. Defendants first contend that since the government did not formally claim the land known as Harvey's Fishing Hole until 1967, it is unconscionable that any award for damages for the period of 1960 to 1967 be allowed to stand. While the government's evidence did reflect calculations dating from 1960, the jury awarded an amount far less than that claimed by the government. Thus, it is possible that the jury took into account the factors argued by defendants. In any event, the evidence on the issue of damages introduced by the government was virtually uncontradicted. It cannot, therefore, be said that the weight of the evidence preponderates in favor of the defendants.

The second point raised by defendants on this issue, is that the sum of the individual itemized damages listed in Special Interrogatory No. 9, does not equal the amount entered in the general verdict. That is, the sum of the items listed on Special Interrogatory No. 9 is $41,842.85, whereas the amount entered on the general verdict is $42,451.04, or a discrepancy of $608.19. Defendants contend this requires the granting of a new trial. The contention is not well taken for two reasons. First, the jury was told by the court it was to itemize damages as to each defendant, if they reached the issue, in the answer to Special Interrogatory No. 9. The jury was then told it need not total the itemizations, and that it could leave the general damages portion of the general verdict in favor of plaintiff blank. The reason for the instruction was simply to avoid what has occurred: a mathematical computation error. In any event, individual judgments have been issued upon the amounts set out in Special Interrogatory No. 9.

Secondly, the court may in its discretion elect to follow the more specific answers of a jury which are contained in special interrogatories, 6A Moore, *Fed. Practice* ¶ 59.08[4], at 59-141, where the latter are inconsistent with the jury's general verdict. Here, in light of the court's instructions to the jury, the court elects to authorize judgments for the amounts itemized in the Special Interrogatory No. 9. Accordingly, defendants' motions as to the questions of damages are denied.

Lastly, wholly apart from the sufficiency of evidence contentions, defendants advance arguments that various evidenciary rulings and instructional errors require the court to grant a new trial. The court has reviewed these contentions and concludes none of the contentions requires the granting of a new trial.

Accordingly, for the foregoing reasons,

IT IS ORDERED that defendants' motions for judgment *n.o.v.* and for new trial be and the same are hereby denied in all respects.

Dated: January 14, 1977.

Howard B. Turrentine,
U.S. District Judge.

United States District Court—Southern District of California

Civil No. 72-277—Verdict

United States of America

vs.

Iva May Harvey, Et Al.

We, the Jury in the above entitled matter, find in favor of the Plaintiff, United States of America, and damages are assessed in the amount of $42,451.04.

Dated: November 23, 1976, San Diego, California.

Charles E. Bolling,
Foreperson of the Jury.

UNITED STATES DISTRICT COURT—SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 72-277-T

UNITED STATES OF AMERICA, PLAINTIFF

v.

IVA MAY HARVEY, ET AL., DEFENDANTS

SPECIAL INTERROGATORIES

We, the jury, answer the following interrogatories submitted to us: (Please answer "yes" or "no.")

1. Do you find the land now known as "Harvey's Fishing Hole" to have been formed by the process of accretion?

Answer. Yes.

2. Do you find the land now known as "Harvey's Fishing Hole" to have been formed by the process of avulsion?

Answer. No.

Only if the answer to question No. 1 is "yes" and the answer to question No. 2 is "no" then you must answer the following questions.

3. Do you find the government, through its agents, to have engaged in affirmative conduct amounting to either a representation or concealment of material facts?

Answer. No.

4. Do you find the government, through its agents, to have had knowledge—actual or imputed—of the facts surrounding the defendants' title claims to "Harvey's Fishing Hole" at the time of its conduct?

Answer. Yes.

5. Do you find the government, through its agents, to have intended its conduct to be acted upon by the defendants?

Answer. Yes.

6. Do you find the defendants to have been ignorant of the facts concerning the government's claim to "Harvey's Fishing Hole" at the time when the conduct of the government was done and at the time when it was acted upon by the defendants?

Answer. No.

7. Do you find that the defendants relied upon the conduct of the government to their injury?

Answer. No.

If any one of questions 3 through 7 is answered "no" then you must answer the following questions.

UNITED STATES DISTRICT COURT—SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, PLAINTIFF,

v.

IVA MAY HARVEY, A WIDOW, ET AL., DEFENDANTS

Civil No. 72-277-T—Order Re Counterclaims

The above-titled matter came on regularly for trial on the defendant's counterclaims on November 9, 1976. Trial on the counterclaims was conducted to the court on November 9, 10, 11, 12, 16, 17 and 18, 1976. The court, having heard the evidence offered by the plaintiff and by the counterclaimants and having considered the pleadings, memoranda and arguments of counsel, and being fully advised in the premises, hereby makes the following:

FINDINGS OF FACT

1. The land which is the subject of this action described as—

Township 9 South, Range 22 East, San Bernardino Meridian, Section 9: Portions of Lots 1, 2, 5 and 6, also known as Harvey's Fishing Hole and Sportmen's Paradise,

was formed by the process of accretion.

2. The above-described real property which is the subject of this action, did not arrive in its present position by the process of avulsion.

3. When the above-described land was formed as accretion land, it was formed as accretion to lands owned by the plaintiff, United States of America.

4. Between November 10, 1952, the date on which the Southwest Quarter of the Northwest Quarter (SW ¼ NW ¼), of Section 21, Township 1 North, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, was conveyed to Kindred E. and Iva May Harvey, and July 17, 1972, the date of the filing of the complaint in this action, agents of the plaintiff, United States of America, communicated with several of the counterclaimants relative to the claim of the United States to title to the land which is the subject of this action.

5. At no time did any agent of the plaintiff, United States of America, engage in affirmative conduct which amounted to either a misrepresentation of facts or a concealment of material facts relating to the claim of the United States to title to the land which is the subject of this action.

6. All of the defendants and counterclaimants have, from time to time, occupied a part of the land which is the subject of this action.

7. At the time the defendants entered and began occupancy of the land which is the subject of this action, described in paragraph 1 hereof, the counterclaimants knew that the plaintiff, United States of America, claimed that title to the said lands was in the United States.

8. At no time did any of the defendants and counterclaimants rely upon the conduct of agents of the plaintiff, United States of America, to their detriment.

Wherefore, the court makes the following:

CONCLUSIONS OF LAW

A. The plaintiff, United States of America, is not estopped from asserting its right to exclusive possession of the real property which is the subject of this action.

B. Based upon the finding that the subject land was formed by accretion and not by avulsion and upon the finding that the subject land was formed as accretion to lands owned by the plaintiff, United States of America, the plaintiff, United States of America is, and, at all times pertinent hereto, was, the sole fee owner of the subject land and thus defendants were not and are not now entitled to have title quieted in them.

C. Based upon the finding that the subject land was formed by the process of accretion, the center of the main channel of the Colorado River has, at all times pertinent herein, been the boundary between the states of Arizona and California in the vicinity of the subject land.

D. The claim of the counterclaimants to lands described as the Southwest Quarter of the Northwest Quarter (SW ¼ NW ¼), Section 21, Township 1 North, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, arising out of United States Homestead patent 381486 does not give the counterclaimants any claim to right, title or interest in and to the land which is the subject of this action.

E. The plaintiff, United States of America, has not engaged in conduct amounting to leaches.

F. Therefore, the counterclaims of the defendants and counterclaimants and each of them are denied in their entirety.

Dated: January 15, 1977.

Howard B. Turrentine,
U.S. District Judge.

In The United States District Court—Southern District of California

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Honorabld Howard B. Turrentine, Judge Presiding

Case No. 72–277–T—Civil Jury Trial

United States of America, Plaintiff,

vs.

Iva May Harvey, Defendant.

Reporter's transcript of proceedings on appeal, San Diego, Calif., Tuesday, November 23, 1976. Reported by: Marie L. Stull, Official Court Reporter.

APPEARANCES

For the Government: Terry J. Knoepp, U.S. attorney. By: Michael Quinton, Assistant U.S. attorney, 940 Front Street, San Diego, Calif. 92189.

For the Defendants: Duncan, Brown, Weinberg & Palmer. By: Jay R. Weill, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006. McCann & Shebley. By: Floyd H. Shebley, William D. Mc Cann, 311 California Street, Suite 606, San Francisco, Calif. 94104. Marinos & Styn. By: Ronald L. Styn, 111 Elm Street, San Diego, Calif. 92101.

San Diego, California, Tuesday, November 23, 1976, 4:15 p.m.

(The following proceedings were had in open court in the presence of the jury:)

The Court. The Court notes the presence of the jury an all counsel.

Ladies and gentlemen, have you reached a verdict in this case?

The Foreperson. Yes, your Honor.

The Court. Would you hand the verdict to Mr. Edwards, please.

Mr. Clerk, would you read the verdict through Question 8, and I wish to make then, further inquiry of the jury. Just to Question 8.

The Clerk. "United States District Court, Southern District of California, United States of America, Plaintiff, vs. Iva May Harvey, et al. Case No. 72–277. Special interrogatories.

"We, the jury, answering the following interrogatories submitted to us:

"1. Do you find the land now known as "Harvey's Fishing Hole" to have been formed by the process of accretion?

"Answer: Yes.

"2. Do you find the land now known as "Harvey's Fishing Hole" to have been formed by the process of avulsion?

"Answer: No.

"3. Do you find the Government, through its agents, to have engaged in affirmative conduct amounting to either a representation or concealment of material facts?

"Answer: No.

"4. Do you find the Government, through its agents, to have had knowledge, actual or imputed, of the facts surrounding the defendants' title claims to "Harvey's Fishing Hole" at the time of its conduct?

"Answer: Yes.

"5. Do you find the Government, through its agents, to have intended its conduct to be acted upon by the defendants?

"Answer: Yes.

"6. Do you find the defendants to have been ignorant of the facts concerning the Government's claim to "Harvey's Fishing Hole" at the time when the conduct of the Government was done and at the time when it was acted upon by the defendants?

"Answer: No.

"7. Do you find that the defendants relied upon the conduct of the Government to their injury?

"Answer: No.

"8. Do you find that any of the defendants are liable to the plaintiff, United States of America, for reasonable rental value for occupying land within "Harvey's Fishing Hole"?

"Answer: Yes."

The COURT. May I have that?

Ladies and gentlemen of the jury, let's take, for example—Do you find the Brookins on here, Mr. Clerk?

Mr. QUINTON. No. 76, your Honor.

The COURT. Number what?

Mr. QUINTON. No. 76.

The COURT. For example, we will—the Brookins, we will—Strike that, go back to the Allreds, what number is that?

Mr. QUINTON. Robert Brookins is 75, your Honor.

The COURT. All right. Referring to Parcel 75, Robert and Barbara Brookins, I note, on Lines 23 and 4, are Robert Brookins, 154.66 and Barbara 154.66, that the total damages, as to the Brookins, would be $309 and change, or 154.66, Mr. Foreperson?

The FOREPERSON. Yes, the line item would be such, the name giving the amount would be for that name, and I assume them to be a husband and wife, would be a total of their two lines.

The COURT. Very well. That answers the question.

Read the verdict.

(Names and amounts reported but not transcribed herein.)

The CLERK. Ladies and gentlemen of the jury, is this verdict as presented and read the verdict of each of you, so say you all?

(All jurors answered in the affirmative.)

The COURT. Read the general verdict, Mr. Clerk.

The CLERK. "United States District Court, Southern District of California, United States of America, vs. Iva May Harvey, et al., Civil No. 72–277 verdict.

"We, the jury in the above-entitled matter, find in favor of the plaintiff, United States of America, and damages are assessed in the amount of $42,451.04.

"Dated November 23, 1976. San Diego, California. Signed Charles E. Ballinger, Foreperson."

Ladies and gentlemen of the jury, is this verdict, as presented and read, the verdict of each of you, so say you all?

(All jurors answered in the affirmative.)

The COURT. Counsel, do you desire the jury polled as to the special interrogatories?

(All Defense Attorneys: Yes, your Honor.)

(Jury polled, all answered in the affirmative.)

The CLERK. The jury has been polled, your Honor.

The COURT. Has the jury been satisfactorily polled counsel?

Mr. SHEBLEY. Yes. your Honor.

The COURT. Very well. Ladies and gentlemen of the jury, I wish to thank you for your services in this matter. It's been a difficult case, I know it's been a most difficult case for you as jurors to rule.

Thank you. You will be excused from further jury service.

Mr. Edwards, will you show the jury out, and may the record contain court's exhibits 1, 2, 3, 4, 5, and 6, filed by the foreman of the jury, as explanatory of their verdict.

Counsel, while the verdict was being read I set the following dates for the usual motions, judgment notwithstanding and for motion for a new trial. The motion will be heard on January 10 at 10:30, defendants' papers to be filed with the court on or before the 13th of December. Plaintiff's answer, thereto to be filed on or before the 27th of December.

Yes, Mr. Quinton, the 27th.

The CLERK. Your Honor, what was the date for the motion?

The COURT. The hearing will be 10:30 on the 10th of January, and that can be extended, counsel, if you run into problems getting transcripts and so forth. I'll be flexible on that date.

I take it, Mr. Quinton, that the Government will leave the status quo pending final determination of this lawsuit, without necessary order from this court?

Mr. QUINTON. Yes, your Honor, I have talked to Mr. Bruce about that, your Honor, he has assured me that nothing will change——

The COURT. Until the lawsuit has become final.

Mr. QUINTON. Yes, your Honor.

The COURT. Very well.

Ladies and gentlemen, I again wish to thank you, I know it's quite an emotional experience, but believe you all—I can understand—and if you had a com-

plaint, when the verdict was being read, that you took it, and I thank you very much. Goodnight.

Mr. McCANN. Your Honor?

The COURT. Yes.

Mr. McCANN. On behalf of all our clients and all counsel here assembled, we would like to thank your Honor and his staff for treating us so well. Thank you.

The COURT. Thank you.

Any other questions or problems?

Goodnight.

[Evening adjournment.]

Mr. PETTY. Title to the lands in dispute was declared to be in the United States. Not only was ejectment of the defendants directed, but damages of over $42,000 were awarded to the United States against the defendants. The case is now on appeal.

Thus the situation involving the lands between river points 13.19 and 14 is considerably different. The Harvey's Fishing Hole claims are based on an entirely different question involving the movement of the river, and this question has been decided in favor of the United States.

In addition, we have considerable doubt that the claimants could meet the criteria in the 1970 act, for instance, the second criterion in the 1970 act is that the lands adjacent to which the United States seeks title or ownership are not necessary to provide riparian frontage to other lands owned by the United States. Our current information indicates that the occupants of Harvey's Fishing Hole could not meet this criterion because the United States owns the contiguous land.

It is our understanding that since 1967 only taxes on improvements have been paid, thus preventing fulfillment of the criterion 4, which requires the claimant to pay real property taxes on the disputed lands.

I understand, Mr. Chairman, that very recently, within possibly the last 3 months, that some of the claimants, a few of the claimants at least, are paying the full property tax. Prior to that, they were paying possessory interest.

In addition, many of the individuals have bought property since the Government initiated action to resolve these occupancies in 1961, and have notified occupants in 1966 in a program that received wide publicity. Therefore, we do not believe that many of the claimants meet the sixth criteria that a reasonably prudent man would have believed that when he acquired title to the real property in question, he had obtained title free of the likelihood of any claim by Federal or State Government or private party.

Finally, we believe the Government has been fair to the Harvey's claimants and that enactment of S. 2590 would be unfair to other persons occupying the lands contiguous to Harvey's Fishing Hole who settled with the United States and received 15-year permits. Such permits were offered to Harvey's occupants, but were refused.

In summary, we believe that the inclusion of this 28-acre tract in this bill would only provide false hope to the residents and continued judicial delay before the eventual return of this land to Federal control. If the occupants could qualify, and they were permitted to assert such defenses as the existing private legislation provides, the Federal Government might be prevented from presenting a case which at the insistence of the occupants, has already gone to a jury and which the

occupants did not win, even when given the benefit of the estoppel defense.

We believe the proper forum for all of the individuals covered by S. 2590 is the courts. Thus we oppose extention of the privilege granted by the 1970 law to cover occupants from river points 13.17 to 13.19. We find absolutely no basis for extending the scope of this bill to river point 14, and oppose such extension.

We note that failure to enact this legislation in no way affects the capacity of the claimants to present a case on its merits and to prevail if such is the finding of the court.

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

Senator BUMPERS. Mr. Petty, with your indulgence, I would like for you and your colleagues to retire for just a moment and then come back for questioning, and meanwhile let Senator Hayakawa, who has just arrived, make a statement, and then we will come back to you for questioning.

Is that OK?

Mr. PETTY. We will be happy to.

Senator BUMPERS. Senator Hayakawa, we welcome you to the committee this morning, and we are very pleased that you came.

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

Senator HAYAKAWA. Thank you, Mr. Chairman. Mr. Chairman, members of the committee, I would like to thank you for this opportunity to appear before this committee. I would also like to welcome the people who have come from California who have come to testify at this hearing.

I have cosponsored S. 2590, which is a bill to amend certain provisions of law relating to the land claims by the United States along the Colorado River, based on accretion or avulsion in Riverside County.

I have also cosponsored amendment No. 3078, which relates to land claims by the United States along the Colorado River, based on accretion or avulsion in Imperial County.

This legislation waives the sovereign immunity of the Federal Government; by amending Public Law 91–505, the people who live within the boundaries mentioned in this legislation and who live on land now claimed by the Federal Government would have the right to go to court and fight for the right to this land.

These people would have to meet six criteria set by Public Law 91–505.

As you are aware, legislation similar to S. 2590 already passed the House this session of Congress. It is my hope that the members of this committee will act on this legislation and will also include the area further downstream known as Harvey's Fishing Hole. All those whose land is included in this legislation would have to meet the six criteria, and all of them would have the same opportunity to take their case to the courts in the same fashion.

I am grateful for this opportunity to share my views.

Senator BUMPERS. Senator Hayakawa, I understand that you are

due on the floor, and so we will excuse you with our gratitude to you for coming up to share those thoughts.

Senator HAYAKAWA. Thank you, Mr. Chairman.

Senator BUMPERS. Thank you for coming. Mr. Petty, if you would please return with your colleagues for questioning—you stated in your testimony that the lands here under consideration were specifically excluded in the bill in 1970, is that correct?

Mr. PETTY. That is correct, sir.

Senator BUMPERS. Do you have a committee report language dealing with that, on the grounds for the exclusion of this property? This land had been included originally in the first bill?

Mr. PETTY. Yes, sir. We can furnish that. Mr. Chairman, the report does not give the grounds on which the land is excluded, but they were originally in the bill, and they were later taken out.

Senator BUMPERS. Perhaps we can find some discussion in the committee report.[1] We have to fish out the report I guess, but perhaps we could find some language there which would indicate the thinking of the committee at that time. It might be very instructive to us.

Let me ask you just one other question, and that is that as far as Harvey's Fishing Hole is concerned, it is fairly persuasive that that case has been in court and that the Government has won it even in front of a jury.

By the same token, of course, it is not totally persuasive because I have seen times when the United States has prevailed, and I thought wrongly. I used to be a trial lawyer, and I felt this prevailed sometimes wrongly.

Mr. PETTY. Once in a while, we do prevail, yes, sir.

Senator BUMPERS. But if they have to meet the criteria set out in S. 2590, you indicated in your testimony you don't believe they can meet those tests, and from some of the things you stated here, that perhaps they cannot, but based on my briefing prior to coming to this committee and from what I know about this case, I really have been concerned about people who bought property there in good faith, and I don't want the United States to be a party to inequities, and yet I understand BLM's position that they don't want this to become a pattern which you are going to have to deal with consistently, so let me ask you just two other questions.

How much land is involved in S. 2590?

Mr. PETTY. There are about 360 acres from point 13.17 to 13.19.

Senator BUMPERS. Most of that has already been taken care of in 1970, has it not? There is not 340 acres still left?

Mr. PETTY. I believe it is, sir—340 acres from 13.17 to 13.19.

Senator BUMPERS. And 27 acres in Harvey's Fishing Hole?

Mr. PETTY. Between 27 and 28; it is almost 28.

Senator BUMPERS. How many landowners are involved in the first tract?

Mr. PETTY. I think it is only two. That is agricultural land.

Senator BUMPERS. How many people are involved in Harvey's Fishing Hole?

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[1] Due to the voluminus nature of the material the report was retained in the committee file.

Mr. PETTY. I think we could safely say there are over 150. There are a large number at Harvey's Fishing Hole.

Senator BUMPERS. You stated in your testimony that the land here was suitable for recreational purposes, and you just stated that it was agricultural.

Mr. PETTY. No. There are two pieces of land. Between 13.17 and 13.19 is agricultural. That piece going down to Harvey's Fishing Hole is primarily recreational.

Senator BUMPERS. Is that the part you were referring to, Harvey's Fishing Hole, as suitable for recreation?

Mr. PETTY. Yes, sir.

Senator McCLURE. I think the statement, if I may, indicated that the other was suitable for recreational development?

Mr. PETTY. Yes, sir.

Senator McCLURE. Is that correct?

Mr. PETTY. We would like to develop that whole section for recreation.

Senator McCLURE. It is agricultural now?

Mr. PETTY. It is agricultural now.

Senator BUMPERS. I was going to say the statements you made dealt with at least one tract in S. 2590. You said this land is excellently suited for public recreational use.

Mr. PETTY. Yes, sir.

Senator BUMPERS. Senator Hansen.

Senator HANSEN. Let me defer to Senator McClure, if I may, Mr. Chairman.

Senator McCLURE. Mr. Chairman, I'm sure we are focusing on some specific problems and not general philosophy now; isn't the first part of the statement dealing with the philosophy of whether or not there is going to be a waiver of sovereign immunity?

Mr. PETTY. Yes, sir.

Senator McCLURE. As a matter of fact, I find myself strongly in disagreement with the Government on this issue, and have for a long, long while. We permit the Federal Government to cause and to indulge in inequities that we would never permit between any other two parties in the United States.

Now, I recognize that there are difficulties in policing the public lands, but you have got enough policemen. You have got one on every square foot except perhaps in Alaska. I have watched it over the years, and you have dozens where you used to have one, and I don't think there is any land out there that you are not pretty familiar with; that is, whether somebody is on it and claiming it as their own.

Mr. PETTY. Mr. Chairman, there are sections of public lands that we can't get a Bureau employee on in a 5-year period.

Senator McCLURE. Is that because they don't have roads on them?

Mr. PETTY. We have got them both on horses and in four-wheel drive. I don't recall the figure, but it is one employee to, I can't recall; we have got 5,619 employees for 450 million acres.

Senator McCLURE. That is supposed to impress me?

Mr. PETTY. Yes, sir.

Senator McCLURE. You could get over it quite a little better with fewer people if they got in their pickups, but that is another problem.

Mr. PETTY. Yes, sir.

Senator McClure. All I am trying to indicate to you is in my State, and BLM manages one-third of my State, there isn't any of that BLM land out there that you are not familiar with as to whether or not somebody is living on it, or has it fenced, or is cultivating it, or has a cabin on it. There isn't any of that land that isn't subject to the knowledge of whether or not there are active claims against that land.

I think for you to urge otherwise would be to say that your people are incompetent. I am not familiar with every one of the 50 States as I am with my own, but I know that they are capable of knowing whether or not there are adverse claims being filed there, or people who are asserting a claim.

The second point is that again I don't know what the law is in every State, but one of the criteria in the privilege bill is also a law in my State, and that is that people have paid taxes on it and certainly the BLM can be aware of whether or not people are paying taxes on land that is claimed by the BLM. That requires a little more work than you have now done because that has to be ascertained through county records rather than through the State land office, but it is not impossible to know.

Mr. Petty. Not impossible, but very difficult.

Senator McClure. Why is it difficult?

Mr. Petty. With the number of employees we have, to try to go through the tax rolls in all the counties and local governments would be virtually impossible to do.

Senator McClure. Again, all county assessors, and in my State there are 44 of them, have platbooks. Every one of the platbooks shows where the property is located and whose taxes are being paid. I could put one employee in the county courthouse and in 1 week know.

Mr. Petty. Perhaps so, sir. It has also been my experience that it is not difficult to pay taxes personally. It is pretty easy to pay personal property taxes.

Senator Hansen. Not in California they tell me.

Mr. Petty. Is that right, sir? I live in Virginia. I know Virginia will take all you have.

Senator McClure. It is easy, but there has to be a tract of land and an assessment upon which that tax is paid. If there is an assessment, then you can pay the taxes, but it is pretty hard to pay the taxes unless it is on the roll somewhere.

Senator Bumpers. He is trying to tell you he doesn't like BLM, Mr. Petty.

Senator McClure. That is not true. I like BLM guardedly, but I don't like everything about the BLM. I like our Federal Government, but that doesn't mean that I like everything that it does.

Mr. Petty. I appreciate that, Senator McClure. We have had a lot of discussions.

Senator McClure. I have seen some injustices practiced in the name of sovereign immunity. We have had some questions in Idaho that involve the Federal Government, and people are cheated out of land that was theirs, cheated by their own Government. I have got one there in the city of Idaho Falls that sits on a lava bluff. That lava bluff is, I don't know how long it has been there. I suppose 50,000 years maybe. The Federal Government claims it is accreted land.

Now, is there any justice in that? No. Just power; not justice.

power; and we are supposed to be in a country that believes in justice and tries to enforce it against everyone else except our own Government. The general philosophy is one that I can't accept—that is, saying because it is convenient to Government—because it is easier for Government—that it necessarily becomes an appropriate policy.

Mr. PETTY. Senator McClure, you know the Government is constituted of the taxpayers, and just how much can the taxpayer go to protect his land? That is really what we are asking. It is almost inconceivable to me that the taxpayers of the 50 States could be expected or would be willing to pay the cost of protecting this land in the same way that a private individual would be. In any event, this bill would not only waive immunity to certain defenses, but it would do so without prior notice. Under the concept advanced in S. 2590, the Government, although it relied on the doctrine of sovereign immunity to these defenses up until the present, does not have a grace period whereby it may dispute the title. This is the case even though the Government clearly would have pursued the matter earlier except for such reliance. Such a result is not "equitable" to the United States and to the public who own these lands.

Senator MCCLURE. Well, it is inconceivable to me that the taxpayers want injustice levied upon some of their other citizens in order to avoid the expense.

Now, we in criminal law say we will turn the criminal loose rather than convict him if he is innocent. We will take the chance, even if he is guilty, of turning him loose rather than convict him because that is necessary for justice.

We expect the taxpayers in all 50 States to pay the bill for that kind of a policy, and yet we take his land and say tough luck.

Mr. PETTY. Senator McClure, all that we are saying is that these people are perfectly free to take their case to the court. The failure to enact this legislation will not remove from them the opportunity of going to court.

Senator MCCLURE. Sure; they can go to court and hire the attorneys and pay some fees, but it isn't going to do them any good because you raise the doctrine of sovereign immunity.

Mr. PETTY. We have had a trial by jury.

Senator MCCLURE. That is in one case. I am not talking about that particular case. As a matter of fact, I think it says, too, that that case is on appeal; is it not?

Mr. PETTY. Yes, sir. It is on appeal.

Senator MCCLURE. As I understand it, if that is true, the jury verdict is persuasive, but not necessarily final, and you wish to make it final.

I am a little disturbed, too, by your statement in which you say that if everyone else has settled with the United States in taking 15-year permits, that then to give these people what is legally and justly theirs otherwise would be unfair.

I am not saying I have concluded this is legal and just. I don't mean to say that.

Mr. PETTY. I was just getting ready to take exception with that.

Senator MCCLURE. But if as a matter of fact it is to assert because the Government has been able to extort the lands away from others, that that would be unfair to recognize their claim; I said that in the most

abrasive way possible, because that is a possibility. I don't know whether it is true, but I have seen many people who accepted the restricted occupancy of Federal lands because they had no choice, not because they didn't think they had the claim, but because they had no way of beating the Government. Because the Government was going to raise the doctrine of sovereign immunity, and their attorneys would tell them you don't have any chance in court. Therefore, regardless of whether or not you think you are right, you better take what you can get because that is all you are going to get.

Now then, to say that because some have taken that as evidence of the injustice to allow others to assert their claim, strikes me as being patently unfair.

Mr. PETTY. A great majority accepted that, sir, and I have to assume that the great majority then recognize the legal status.

Senator McCLURE. The legal status in the sense that they didn't have a chance to win.

Mr. PETTY. They recognize that they didn't have a chance to win, that the Government did in fact own the land.

Senator McCLURE. That may or may not be true. Now I raise that point because I am not sure that that is evidence of that fact. I have seen too many citizens who got pushed around by Government that settled for something less than their full rights because they had no real opportunity to assert their rights.

Unless Senator Bumpers' impression that I don't like the BLM has come through too clearly, I say this, it isn't BLM in this instance. It is governmental policy. BLM, the Forest Service, any other agencies that own land and then assert the claim of the kings against the serfs, that is something I find should be, in my own view, should be applied very carefully rather than broadly.

You claim in the one instance that the land in Arizona was washed away, and at the same time, if I read this correctly, at the same time, there was a gradual accretion on the California bank.

Mr. PETTY. That is correct, sir.

Senator McCLURE. Under the law, wouldn't that accretion on the California bank be the ownership of the abutting landowners in California?

Mr. BARRON. That is correct, sir.

Senator McCLURE. It would not be the property of the people who had formerly owned the land on the Arizona side, but it would become the property of the people who lived on the land and held patent to the land on the California side?

Mr. BARRON. That is correct, sir.

Senator McCLURE. And the Government would recognize such a claim?

Mr. BARRON. That is correct.

Senator BUMPERS. That is the one thing about this thing I have never understood. That is common law I assume, common law in every State in the country that abutting landowners get accreted lands, and I have never quite understood what the Government's claim to this land is.

Mr. PETTY. We are the abutting landowner. The land accreted to the public lands.

Senator BUMPERS. Well, the Government land is in Arizona, isn't it?
Mr. PETTY. No—California.
Senator BUMPERS. That shows you how far off I am.
Mr. PETTY. It is pretty hard to tell just where California starts and Arizona ends sometimes.
Senator BUMPERS. That was true in Harvey's Fishing Hole?
Mr. PETTY. Yes.
Senator MCCLURE. Now the other one, you assert the land was the result of avulsion. Was that a manmade change in the channel?
Mr. PETTY. Yes, sir.
Senator MCCLURE. Was there a dredging of the channel or was it the result of the changed water flow?
Mr. PETTY. It was the cuts that the Bureau of Reclamation made up in that stream.
Senator MCCLURE. They channelized the river?
Mr. PETTY. And caused the sudden movement of soil, the avulsion.
Senator MCCLURE. It was a sudden movement of the soil, or a sudden movement of the stream?
Mr. PETTY. It was a movement of the soil. The soil moved and that was avulsion. Of course, the soil moved because the stream flow increased.
Senator MCCLURE. And you are claiming that the channelization that caused the, what would otherwise have been a slow process called accretion, was a rapid process and called avulsion, and that the U.S. claim is based upon that claim in fact?
Mr. PETTY. That is correct.
Senator MCCLURE. As well as the bar of the other side, the bar of sovereign immunity?
Mr. PETTY. Yes, sir. With respect to the lands between river points 13.17 and 13.19, the movement of the soil to form the channels was artificial or done by men and machinery. Channelization or artifical changes in the location of the bed of a river are considered avulsive in nature. Land ownership in the areas affected by the avulsion becomes fixed as of the date of the avulsive act. The soil did not move because the stream flow increased but because it was physically removed by men and machinery.
The Casad and Comer cuts were not done by the Bureau of Reclamation or the Corps of Engineers but by the Palo Verde Irrigation District.
Senator MCCLURE. You have suggested that the land is, although in agricultural use now, is excellently suited for public recreational use.
Mr. PETTY. Yes, sir.
Senator MCCLURE. What is the nature of the land? What would you do for recreational use?
Mr. PETTY. If you are familiar with that country down there along that river, it receives just a tremendous impact of people particularly coming out of southern California for recreational use—boating, camping, hiking. You have got the desert right there that creates quite a contrast. It is just a tremendous recreational place.
Senator MCCLURE. How do you plan to use it? Do you mean the land will be recreational land just because it is there?
Mr. PETTY. We will put some developed areas in there.

Senator McClure. What kind of developed areas do you suggest?

Mr. Petty. I am not familiar with the exact plans for that area, but there would be probably in the nature of camping facilities.

Senator McClure. Are there other camping facilities in the area?

Mr. Petty. There are quite a few along the Colorado River, yes, sir.

Senator McClure. How many acres of public lands are there?

Mr. Petty. Along the Colorado River? I don't know.

Senator McClure. In that area; is there substantial public ownership?

Mr. Petty. There is substantial public ownership, but the problems are along the river. Water attracts the people.

Senator McClure. Is there public ownership along the Colorado River in that region?

Mr. Petty. In several places, yes, sir.

Senator McClure. Do you have any idea how much?

Mr. Petty. No, sir, I do not.

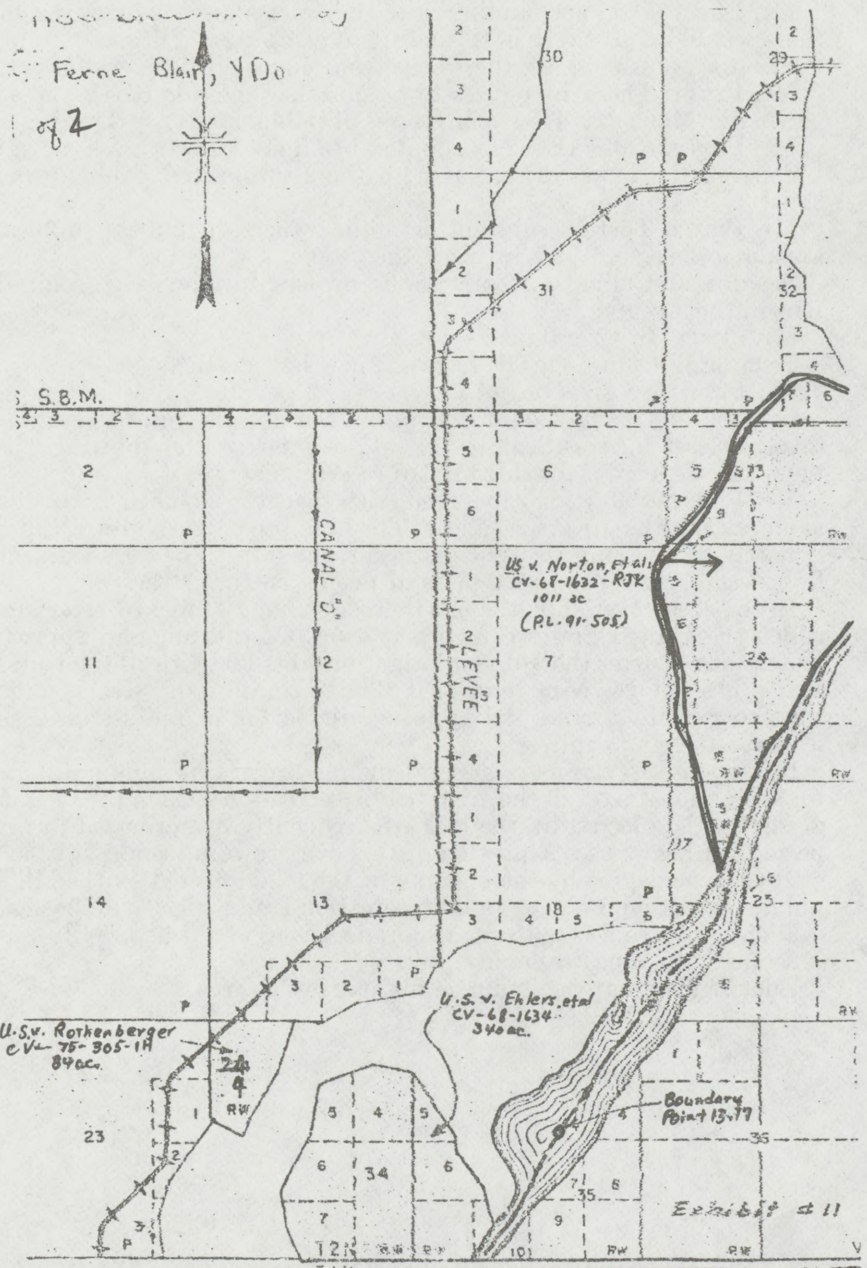
Senator McClure. Could you provide it for the record because I think at least for this Senator I would be interested in knowing what the public demand is for that kind of recreational use?

Mr. Petty. Public demand even with the sites included in this bill is more than the area can handle. The area becomes so crowded, particularly on the long weekends—Easter, the Fourth of July weekend, Labor Day, that it is just a mass of people on that river.

In the area covered by the bill there are about 3 miles of riverfront which the United States contends it owns. Of this amount, approximately one-quarter thereof is in litigation where the title of the United States has not yet been confirmed. The balance of the area is under lease to private parties and is not available for public use until the leases on the land expire.

In response to the more general inquiry regarding public demand for recreational sites in the area, public recreation sites in the vicinity of the lands affected by the bill are frequently overcrowded during periods of heavy use. A portion of this overcrowding could be alleviated to some degree by the opening of the land affected by the bill to public recreation use. Any public recreation land which could be made available to give access to the Colorado River would be heavily used as soon as it became available.

Enclosed is a map depicting land status in this area.



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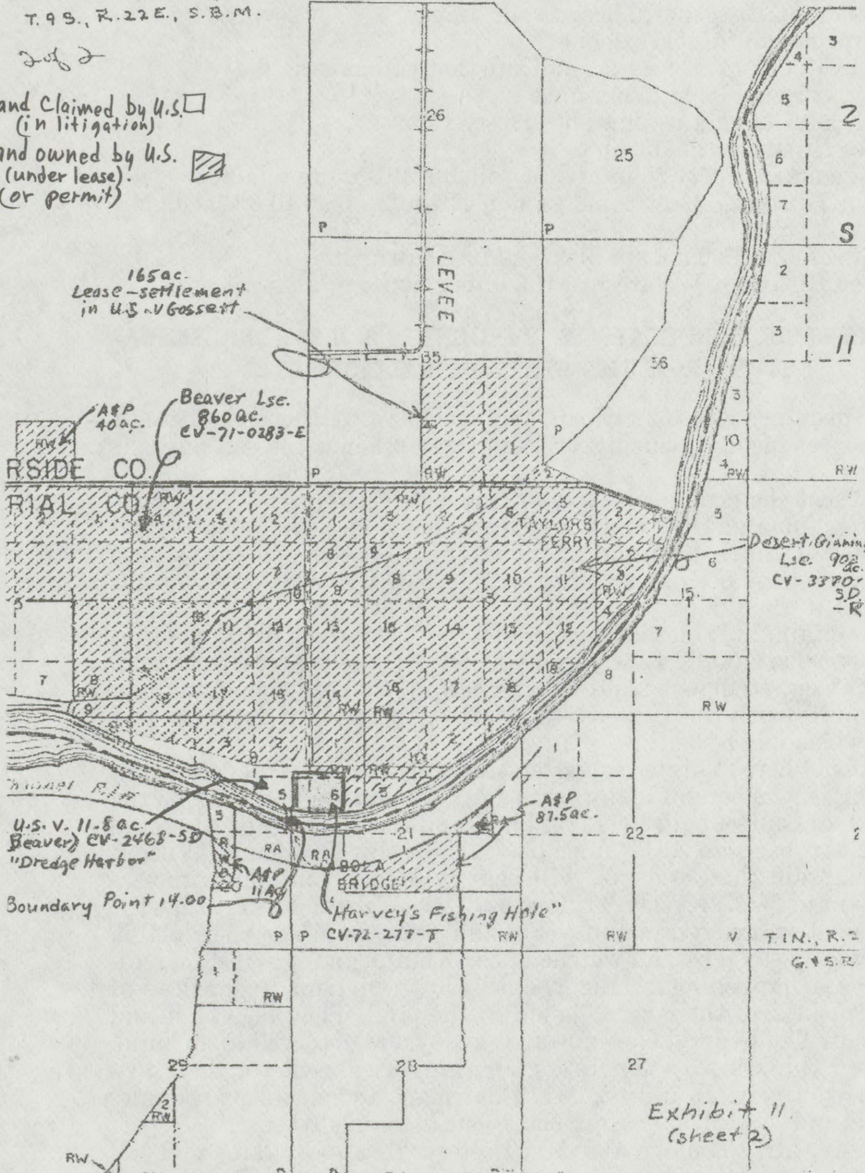

Senator McClure. I have no doubt of that. They keep spilling over to Idaho and that causes some problems on some of the lands you manage in Idaho.

Mr. Petty. The Birds of Prey area hasn't begun to approach what the Colorado River is running against.

Senator McClure. And we hope it never does. If it does, it will have lost its reason to be.

Congressman Burgener, I heard your beeper.

Mr. Burgener. I'm sorry about that.

Senator McClure. Does that indicate that you have a vote?

Mr. Burgener. I have 15 minutes.

Senator McClure. Do you want to testify now?

Senator Bumpers. That's fine.

Mr. Burgener. Sorry to interrupt you, but it is quite related.

Senator Bumpers. How come we don't have beepers like that in the Senate?

Mr. Burgener. You may be blessed, Mr. Chairman.

Senator Bumpers. We are just the upper house in name only.

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

Mr. Burgener. Mr. Chairman and members of the committee, I deeply regret inconveniencing you and these other witnesses, but it is related.

I represent the people who live in Harvey's Fishing Hole, and Senators Cranston and Hayakawa have introduced an amendment which is No. 3078 to this S. 2590, and we request help for these people because I think they have been grieviously wronged by the U.S. Government, that is as it should be.

We maintain that if it sets a precedent, that is indeed a precedent that is long overdue. Public Law 91-505, which I guess we seek to amend, sets forth very stringent requirements before private litigants to land title disputes with the United States can assert certain defenses, and that is as it should be be.

We are not here to protect squatters, Mr. Chairman and Senators, but homeowners who bought many years ago and paid for and built on the land and, of course, paid the taxes on it, and there is a long title chain going clear back to 1914 initially granted by President Wilson.

We maintain that, and you will hear in detail from our witnesses later who are Mrs. Beverly Trulove and Mr. Wilmer Foster, that the Government waited years and years and years to assert their claim. They actually stood by and watched people build, and it is just incredible what is happening to the people who own land, regardless of what happened to the river. They own the land. They bought it and paid for it. The Federal Govenment stood by and observed them build, and now I think is even suggesting charging them rent for their own land retroactively. It indeed, Mr. Chairman, and members, boggles the mind, and so we deeply appreciate your listening to them.

As I say, Mrs. Trulove and Mr. Foster will appear later and tell you in detail exactly what is about to happen to them. We hope not, and my purpose was to indicate my very strong support, representing them. I represent Imperial County, San Diego, and part of Riverside

County, and I could not help but be impressed by Senator McClure's observations about what Government can and sometimes does do to people, that we would never permit in private practice, and I thank you very much for your time.

Senator BUMPERS. Thank you, Congressman. In deference to your vote, I am willing to forgo questions.

Senator McCLURE. I have no questions. I would like to observe, though, that having worked with Congressman Burgener for many years, I recognize how dedicated and how sincere he is, and just the fact that you take the time to come over and express yourself as you have is impressive, at least to me.

Mr. BURGENER. Thank you very much. It is a matter of deep conviction. This must be my favorite committee. It is the only one I ever testify before. It does cover the Interior Department, the Bureau of Lands, and that appears to be where the problems are.

Thank you very much.

Senator BUMPERS. Thank you, Congressman. Senator McClure, would you yield for a question to Mr. Petty? A while ago I asked you about the ownership of the contiguous or adjoining lands, and you said the United States was the adjoining landowner, but you are the adjoining landowner only through avulsion, are you not? In other words, if I can draw you a word picture right quick—is this not true?

Mr. PETTY. No, sir.

Senator BUMPERS. You own land on the Arizona side, do you not?

Mr. PETTY. Yes, sir.

Senator BUMPERS. Not only the California side; do you own the land that adjoins this land on the California side?

Mr. PETTY. Yes, sir. That is public domain land, as far as I know.

Ms. VANCE. That is Harvey's Fishing Hole.

Senator BUMPERS. I am not talking about Harvey's Fishing Hole.

Ms. VANCE. Because it is, as I understand it, it becomes Federal land. It was Federal land that avulsed.

Senator BUMPERS. Everybody understands what we are talking about. The river, some time after 1920, the river moved back, and it is the land on the opposite side of the river, from Government lands now that you are claiming, and you are claiming it through avulsion, and you are claiming, you are saying that avulsion occurred as a manmade act, rather than a natural event, is that correct?

Mr. PETTY. That is correct, sir, with respect to the lands between river points 13.17 and 13.19.

Senator BUMPERS. Now was that point argued in the Supreme Court decision?

Mr. PETTY. No; the Supreme Court decision relates to the other situation covered by the bill.

Senator BUMPERS. Wait a minute. That was the Harvey's case?

Ms. VANCE. With respect to the lands between river points 13.17 and 13.19, that has not gone to a final decision before the district court. They are holding that decision.

Senator BUMPERS. My impression is that you are really on sort of slender ground on the bill itself, on S. 2590. Now Harvey's Fishing Hole might be in a separate category.

Mr. PETTY. We agree there is a certain distinction, and we try and make that distinction in this testimony.

Senator BUMPERS. The very opposite occurred on Harvey's Fishing Hole land?

Ms. VANCE. Yes.

Senator BUMPERS. But quite frankly, I don't believe the Government is on too good a ground as far as this land is concerned. I will tell you one thing. I wouldn't lose this case before a jury of 12 people.

Senator MCCLURE. Do you have aerial photographs of this area or maps of the area that show a progression? I would like to see some photographs of the land which you claim by avulsion.

Mr. BARRON. I can demonstrate on the map, Senator. The river was originally over here, and this piece was in Arizona, roughly an area like that.

When the river was cut, the Casad cut was made. This locked in titles on that piece of land.

Senator MCCLURE. Was the river cut by the Bureau?

Mr. BARRON. The river was cut with a manmade cut.

Senator MCCLURE. That didn't change the State line, did it?

Mr. BARRON. Later, of course, the State boundary brought this as a result, this land. This land was public land because it was public land in Arizona at the time the cut was made. It would still remain public land, even though it resided in California.

Senator MCCLURE. Was the State boundary adjusted between the two States as a mutual agreement between the two States?

Mr. BARRON. Yes, sir.

Senator MCCLURE. By what act?

Mr. BARRON. I can't quote the act. It was the 1966 decision of the Supreme Court.

Senator BUMPERS. It was agreed by both California and Arizona that would become California land?

Mr. BARRON. The boundary was agreed on that this would be the boundary between Arizona and California by a compact.

Senator BUMPERS. If that were not BLM land, that land would now belong to California, would it not?

Mr. BARRON. It was public land before the cut was made. Therefore, it still remains public land.

Senator BUMPERS. I understand that, but if that were not public land, if that were not BLM lands, and that same situation occurred, the contiguous landowners would own that land if they lived in California because it is California land?

Mr. BARRON. Under the doctrin of avulsion, the person does not follow the water line. He is locked in on his title. His boundaries do not change as a result of avulsive acts. He is locked in on that particular area. I assume that this land was, if there were private owners, but this land was acquired by the Corps of Engineers or Reclamation, whoever built this cut. They purchased this piece to put this cut in here.

Senator MCCLURE. Did they cut through dry land or did they enlarge a high water channel?

Mr. BARRON. Pretty much through dry land, to my memory. There had been a previous history of the river in that general area, but the river had fluctuated back over a wide range.

Senator MCCLURE. When did they do that?

Mr. BARRON. My memory escapes me as to the date of the cut. It was in the 1920's. I could check my dates, though.

Senator McClure. I wonder if we could have for the record either the legislative or the administrative histories of the discussions concerning that, the cut and the effect that it would have on the State boundary and upon landownership? Would that be possible to furnish to the committee?

Mr. Petty. We can furnish a statement to that effect, yes, sir.[1] The boundary was changed, as I recall, through a compact between the State of California and the State of Arizona. Wasn't that correct?

Mr. Barron. That is right.

Senator McClure. Was that compact approved by the Federal Government?

Mr. Petty. Yes.

Senator McClure. Did that compact say anything about landownership?

Mr. Petty. I don't recall what is in that compact; sir.

Senator McClure. Would you furnish a copy of that compact for us as well?

Mr. Barron. The compact did say that the boundaries would be fixed, but, as I recall, I don't think it was binding on either State. California has since attested to the fact that was not a title boundary, but a political boundary.

Senator McClure. What did the boundary commission do?

Mr. Barron. They made the fact it is now the boundary and shall remain where it was fixed by the boundary commission.

Senator McClure. Excuse me. I didn't understand that. I said what did the boundary commission do?

Mr. Barron. They made a report which was submitted to the Supreme Court. The Supreme Court approved it.

Senator McClure. What did the boundary commission say was the effect of the cut upon private landownership?

Mr. Barron. They don't go into that very deeply. They do not mention the landownership. They merely say that the boundary is fixed as a result of a compact between the States. They do not go into landownership.

Senator McClure. I thought you had indicated that the compact indicated the boundary commission would fix the landownership or make a recommendation concerning that.

Mr. Barron. I said it has been interpreted as it is. Whether it is a political fixing or was it a land title fixing has not been resolved to my knowledge.

Senator McClure. You will furnish those documents for the record.[1] What was the character of the land that formerly was in Arizona, now in California as a result of this? Was it low-lying land that was periodically flooded, or was it somewhat higher land that hadn't been flooded for a long while?

Mr. Barron. There is a tremendous history, sir, ranging—of the river—actually over better than a mile back and forth in a northwesterly, southeasterly direction, so it was all bottom land, flood plain type of land.

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[1] Due to the voluminous nature of the material the document was retained in the committee file.

Senator McClure. I understand that, but immediately before the cut was made, what had been the immediate history prior to that time?

Mr. Barron. There had been a history that was changing constantly.

Senator McClure. I recognize that, but again, just before the cut was made, what was the character of the land?

Mr. Barron. I don't know that; sir.

Senator McClure. Do you have any records that would indicate what the character of the land was immediately before the cut was made?

Mr. Petty. I am basing it now upon the three or four times I have been in that area, but it was low lying area which the river moved back and forth across, and would have been primarily good for agricultural use because there was very little grazing there.

Senator McClure. But the question is whether or not it was, was it a sandbar on the bank of the river that was periodically flooded, or was it high land upon which there was vegetation, high enough so that vegetation did establish itself and grew upon that land?

Mr. Petty. Vegetation was established in there, but that river moved tremendous distances back and forth and cut new channels constantly. In between the river movements, there would be low brush type vegetation on it.

Senator McClure. As I recall, it has been a long time since I was in court on one of these cases, but the court looks to see whether vegetation had established itself on that land, and you have indicated that it had.

Mr. Petty. But the age of the vegetation is primarily a means of establishing the length of time. This would be all relatively young vegetation. It was constantly being washed out.

Senator McClure. Constantly? You mean annually?

Mr. Petty. I couldn't say that, sir. Frequently, but I cannot say annual.

Senator McClure. If I understand, on the Harvey's Fishing Hole, that land goes back to a 1914 chain of title?

Mr. Petty. The claimants allege they obtained title through a 1914 act, and trace it back to that. As I recall, that is in Arizona. They trace it back through an Arizona title.

Senator McClure. Which side of the river is it on now, the disputed land?

Mr. Petty. California.

Senator McClure. It is on the California side, but they are claiming under Arizona title?

Mr. Petty. Yes, sir.

Senator McClure. Or the title was originally in Arizona; when did they first start taking aerial photographs in this area?

Mr. Barron. I would say probably the earliest would be 1937. That is about the era of the first aerial photographs.

Senator McClure. Could you provide for us the aerial photographs that have been taken in this area since—I know that they have been taken periodically. I would like to take a look at them.

Mr. Barron. Yes, sir.[1]

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

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[1] Retained in committee files.

Senator BUMPERS. Thank you very much. I'm sorry, Cliff. I didn't realize you had come in.

Senator HANSEN. Mr. Petty, you have made a good case that the considerations in the Harvey's Fishing Hole case are very different from the 1970 act. I wonder myself if the 13.17 to 13.19 tract falls under the same considerations as the 1970 act.

My question is, can you show us why the case for river points 13.17 to 13.19 is any different than the case of the 1970 act for river points 13.00 and 13.17?

Mr. PETTY. I will have to base a little of this on memory, sir. The situation is virtually the same between 13.17 and 13.19. Those lands cover the 1970 act, but the difference is that when the President—as I recall, it was the President's report, maybe it was the committee report, recommending the 1970 act, it was on the basis that this would enable those claimants to go to court and lay all the facts on the table, get everything out, develop their case, and this was done.

Senator HANSEN. So as far as the river itself is concerned, you are not asserting that there is aside from that any difference in these two situations?

Mr. PETTY. It is my understanding that the land between 13.17 and 13.19 is just like the land that was covered in the 1970 act. That is my understanding.

Senator HANSEN. You stated that the river from 13.17 to 13.19 is usable for recreation. I understand that the shore line there has been covered with concrete riprap. Is that right?

Mr. PETTY. Not to my knowledge.

Senator HANSEN. I see somebody nodding their head behind you, which I suspect may indicate they don't share your view.

Mr. PETTY. It could be covered. That wouldn't stop the recreational activity.

Senator HANSEN. My question was is it correct that there is concrete riprap there, and I thought your response was not to your knowledge.

Mr. PETTY. I really don't know, sir.

Senator HANSEN. Would concrete riprap along the levy, and I suspect that may not be a levy, but——

Mr. PETTY. A river bank.

Senator HANSEN. A river bank—obviously if it is there, and I suspect it is, the concrete riprap would have been placed there to prevent further movement of the river.

Mr. PETTY. Yes; to stabilize the bank.

Senator HANSEN. Would that, in your opinion, not diminish the recreational value of the area?

Mr. PETTY. It might diminish it, but we have recreational activity going on on banks where we do have this riprap. You can still make access to the river. You can still use a lot of that land. It does not restrict the use of the land adjacent to it, for example, for recreational purposes.

Senator HANSEN. Well, I guess that is a value judgment that you would make. I happen to be familiar with some of the levies through Jackson Hole, and we have some big riprap there, and I must say that it doesn't encourage ready access to and from the river where there are big boaters. At least I don't see many people doing it.

Mr. PETTY. I wouldn't want to put my boat down over that riprap.

Senator HANSEN. I think you might have trouble.

Mr. PETTY. I think you can still build boat ramps.

Senator HANSEN. Yes. That is true. I have no further questions, Mr. Chairman.

Senator LAXALT. I have no questions.

Senator McCLURE. One question if I could; I was trying to find it here and I didn't find it. There was some statement as I recall concerning the fact there were changes of ownership, and the parties were on those, of the Federal claim. Was that with respect to all of the tracts or just in Harvey's Fishing Hole?

Ms. VANCE. Just Harvey's Fishing Hole.

Senator McCLURE. When did this dispute first erupt, after 1960, about 1960, 1966?

Ms. VANCE. It was about 1960 when they were clearing up trespassers along it.

Mr. PETTY. It came to the Secretary of the Interior's attention back in the late 1950's. Secretary Udall established in 1959 an Office in Yuma to try to determine how much trespassing was going on and to see if he couldn't end it or keep it from getting any worse than it was. That occurred about 1961, and the Office was established at least by 1961.

Senator McCLURE. How many of the titles that are in existence now changed hands since that time?

Mr. PETTY. I couldn't quote the number, but there have been a good number of them.

Senator McCLURE. Could you provide it for the record, a listing of those who claim title based upon an ownership prior to that time? Excuse me. Let me restate that because it was imprecise. How many of them have changed ownerships since that time?

Mr. PETTY. Since 1961?

Senator McCLURE. Yes; since there was a public awareness of the claims, and I obviously am more concerned about people who were there for a long while and had no reason to know that the Government was claiming, than those that arrived more recently who had reason to know that the Government was claiming.

Ms. VANCE. The court decree will also mention that, Senator, in the Harvey's Fishing Hole litigation.

Our records indicate that between February 1961 and the time trial, the ownership of 86 of 96 tracts changed. Two that have not changed are for community facilities—a ramp and a water company.

Senator McCLURE. OK. Thank you.

Mr. PETTY. I think since February of 1961, the deeds have actually had a provision in there alerting the people that the tract was subject to claim.

Ms. VANCE. And apparently it is paragraph No. 5 of that deed that states that.

Senator McCLURE. In every instance?

Ms. VANCE. Apparently so; again, you would have to go to the land records to deal with that, to make sure that every one of these claimants, that that was a provision. Many of these people were not able to get title insurance because of that.

Senator McCLURE. Since 1961, is that right?

Ms. VANCE. Yes.

[Subsequent to the hearing, the Department of the Interior submitted the following information for the record:]

The contents of deeds between the Harveys and purchasers from them or subsequent sellers and purchasers are not available to us. However, it is known that notice of adverse claims based upon accretion or movements of the Colorado River was provided to all purchasers in subdivision reports. Donald Harvey testified at the trial that all purchasers received copies of the final subdivision report.

The date of that final subdivision report was February 20, 1961. Other previous purchasers also received a similar subdivision report containing the same provisions, including a notice of adverse claims based upon accretion and movements of the Colorado River.

Enclosed is a copy of a preliminary title report dated April 27, 1960, issued to Mr. Kindred Harvey. Paragraphs 7 and 8 of this preliminary title report indicate that the land is subject to the above-mentioned adverse claims.

PRELIMINARY TITLE REPORT

issued by
ARIZONA TITLE GUARANTEE & TRUST COMPANY
74 West Second Street
Yuma, Arizona
PHONE SU-3-4477

RECEIVED
APR 28 1960
DIV. OF REAL ESTATE
LOS ANGELES

Order No. 24297
Written by JEM/11

Amount $
Premium $ 100.00

TO K. HARVEY

AS OF April 13, 1960 at 7:30 o'clock A. M. the ARIZONA TITLE GUARANTEE & TRUST COMPANY has caused to be examined the title to the following described property, situate in Yuma County, Arizona, to-wit:

The Southwest quarter of the Northwest quarter (SW¼NW¼) of Section Twenty-one (21), Township One (1) North, Range Twenty-three (23) West, Gila and Salt River Base and Meridian, Yuma County, Arizona, according to the official plat of said land approved by the Surveyor-General on November 3, 1903.

EXCEPTING THEREFROM all that portion thereof lying outside of the boundaries of Harvey's Fishing Hole Subdivision as said Subdivision is shown on the map thereof filed October 3, 1956 in Book 3 of Plats, page 192.

AND ALSO EXCEPTING THEREFROM all that portion thereof lying outside of the boundaries of Harvey's Fishing Hole Subdivision as said Subdivision is shown on the "Revised Map as Constructed" filed February 23, 1960 in Book 4 of Plats, page 26.

Based upon such examination and upon the payment and release of the liens and the filing for record of instruments and the compliance with the other requirements all as set forth on the back hereof (all of which must be approved by this Company) and upon payment of all charges and disbursements, the ARIZONA TITLE GUARANTEE & TRUST COMPANY will issue its regular form of SPECIAL REPORT

Policy of Title Insurance on the property and in the amount above set forth, (provided nothing affecting the title adversely shall arise subsequent to the date hereof and prior to the issuance of said Policy of Title Insurance), showing the record title to said property to be vested in

W. E. CANTRELL and MARIE L. CANTRELL, as to all that portion of the within described property which lies within the boundaries of Lots 21, 50, 81 and 83, according to the plat of Harvey's Fishing Hole Subdivision recorded in the office of the County Recorder, Yuma County, Arizona, in Book 4 of Plats, page 26. (Continued)

SUBJECT TO the usual printed conditions, stipulations and exceptions contained in the regular form of said Policy, and also SUBJECT TO the following specific encumbrances, reservations and exceptions:

1. General and Special County taxes for 1959, a lien due and payable. (2nd half) Affects that portion of the within described property as is shown as Lot 41 according to the plat of Harvey's Fishing Hole Subdivision recorded in the office of the County Recorder, Yuma County, Arizona, in Book 4 of Plats, page 26.

2. General and Special County taxes for 1960, a lien not yet payable.

3. Reservations in The United States of America Patent dated January 30, 1914 and recorded November 3, 1952 in Docket 66, page 293, to-wit: "And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals, constructed by the authority of The United States."

4. Any charges due the County of Yuma and State of Arizona by reason of the failure to assess that portion of the within described property shown as Lots "A" and Lot "B" on the plat of Harvey's

ARIZONA TITLE GUARANTEE & TRUST COMPANY

OVER

By [signature]
James E. Murray Examiner
4/27/60

NOTE—This is not a Title Policy. Unless the Title Policy contemplated be issued within thirty days from the date of this Report the Order and this Report are automatically cancelled and 75% of the premium indicated hereon is due and payable.

Exhibit #3

Fishing Hole Subdivision, according to the plat recorded in the office of the County Recorder, Yuma County, Arizona, in Book 3 of Plats, page 192.

5. Easements for streets and public utilities as shown on plat of Harvey's Fishing Hole filed October 3, 1956 in Book 3 of Plats, page 192 and as filed February 23, 1960 in Book 4 of Plats, page 26.

6. The effect of plats of Harvey's Fishing Hole filed October 3, 1956 in Book 3 of Plats, page 192, and filed on February 23, 1960 in Book 4 of Plats, page 26.

7. Any liability should it be found that the property herein insured or any part thereof is not within the State of Arizona, or that the property or any part thereof is claimed by any Agency or individual to be within the State of California.

8. The effect of any change in the course of the Colorado River affecting the original boundary line of the land herein described, and the effect of any change in the course of said river, heretofore or hereafter occurring, affecting the boundary lines of the land herein described, and/or the location of the banks of said river, and any defect in, or failure of title resulting therefrom.

9. Conditions, covenants and restrictions contained in Declaration of Restrictions recorded February 23, 1960 in Docket 276, page 358.

10. The interest of P. E. Kirkpatrick and Dorothy A. Kirkpatrick, husband and wife; and Leroy Kirkpatrick and Mary E. Kirkpatrick, husband and wife, as indicated by Deed recorded November 28, 1959 in Docket 275, page 425. Affects all of the within described property which lies within the boundaries of Lot 28, according to the plat of Harvey's Fishing Hole Subdivision, recorded in the office of the County Recorder, Yuma County, Arizona, in Book 3 of Plats, page 192.

11. The interest of Donald G. McCoy and Nona O. McCoy, husband and wife; and P. E. Kirkpatrick and Dorothy A. Kirkpatrick, husband and wife, as disclosed by Quit Claim Deed recorded December 3, 1959 in Docket 269, page 454. Affects all of the within described property which lies within the boundaries of Lot 86, according to the plat of Harvey's Fishing Hole Subdivision, recorded in the office of the County Recorder, Yuma County, Arizona, in Book 3 of Plats, page 192.

12. The effect of the non-joinder of P. E. Kirkpatrick and Mary E. Kirkpatrick, husband and wife; and Donald G. McCoy and Nona O. McCoy, husband and wife, in the ratification and confirmation of the dedication and filing of the revised plat of Harvey's Fishing Hole Subdivision recorded February 23, 1960, in Book 4 of Plats, page 26.

13. The interest of Maude H. Conklin, Leo E. Conklin, Leo Chase, Eileen I. Chase, Joseph Mintus, Shirley Mintus (Shirley Thomas), Geraldine M. George, William H. George, Edna Galloway, Gladys M. Martin, Watt Martin, Mary M. Parsons, William J. Parsons, Donald G. McCoy, Nona McCoy, Henry E. West, Carolyn K. West, Donald F. Stafford, Frances S. Stafford, ____________ Beem, Cody Beem, A. E. Morgan, Florence G. Morgan, Robert B. Myers, Betty A. Myers, Julian D. Wilson, Rowene Wilson, James S. Thomas, Hilma M. Thomas, as disclosed by instrument recorded February 23, 1960 in Docket 276, page 358.

14. The non-joinder of parties named in Exception No. 13, and any other parties claiming interest in the within described property on February 23, 1960, in the ratification and confirmation of the dedication and filing of the Revised Plat of Harvey's Fishing Hole Subdivision, recorded February 23, 1960 in Book 4 of Plats, page 26.

15. A mortgage dated January 6, 1959, executed by W. E. Cantrell and Marie L. Cantrell, husband and wife, to Anna M. Verd, a widow, to secure the indebtedness of $4,800.00 and any other amounts payable under the terms thereof, recorded January 22, 1959 in Docket 243, page 355. (Describes Lot 41 according to plat of Harvey's Fishing

Exhibit #3
(Sheet 2)

Hole Subdivision, recorded in the office of the County Recorder, Yuma County, Arizona, in Book 3 of Plats, page 192.)

Vesting Cont'd:

HENRY J. YOPPE and LEOTA E. YOPPE, husband and wife, as Joint Tenants, as to all that portion of the within described property which lies within the boundaries of Lot 26, according to the plat of Harvey's Fishing Hole Subdivision, recorded in the office of the County Recorder, Yuma County, Arizona, in Book 4 of Plats, page 26.

HARRY L. IMLER and MARY E. IMLER, husband and wife, as Joint Tenants, as to all that portion of the within described property which lies within the boundaries of Lot 29-A, according to the plat of Harvey's Fishing Hole Subdivision, recorded in the officeof the County Recorder, Yuma County, Arizona, in Book 4 of Plats, page 26.

KINDRED E. HARVEY and IVA MAY HARVEY, husband and wife, as to the remainder.

TAX INFORMATION

1959 Assessment No. 7161 in the amount of $7.98 - both halves paid

Real Property only - $180.00 - Covers Lots 1 to 18 inclusive

1959 Assessment No. 7162 in the amount of $1.33 - both halves paid

Real Property only - $30.00 - Covers Lots 19 and 20

1959 Assessment No. 7163 in the amount of $3.10 - both halves paid

Real Property only - $70.00 - Covers Lots 21 to 25 inclusive, 27 and 28

1959 Assessment No. 7164 in the amount of $1.33 - both halves paid

Real Property only - $30.00 - Covers Lot 29

1959 Assessment No. 7165 in the amount of $1.33 - both halves paid

Real Property only - $30.00 - Covers Lots 30 and 31

1959 Assessment No. 7166 in the amount of $1.33 - both halves paid

Real Property only - $30.00 - Covers Lot 32

(Continued on Reverse Side)

Exhibit #3
(Sheet 3)

1959 Assessment No. 7167 in the amount of $ .88 - both halves paid

Real Property only - $20.00 - Covers Lots 33 and 34

1959 Assessment No. 7168 in the amount of $1.33 - both halves paid

Real Property only - $30.00 - Covers Lot 35

1959 Assessment No. 7169 in the amount of $2.21 - both halves paid

Real Property only - $50.00 - Covers Lots 36 to 40 inclusive

1959 Assessment No. 7170 in the amount of $1.10 - both halves paid

Real Property only - $25.00 - Covers Lot 42

1959 Assessment No. 7171 in the amount of $14.63 - both halves paid

Real Property only - $330.00 - Covers Lots 43 to 75 inclusive

1959 Assessment No. 7172 in the amount of $1.77 - both halves paid

Real Property only - $40.00 - Covers SW½NW½ Sec.21, T 1 N, R 23 W, less River and less Harvey's Fishing Hole Subd. and less tr 70' x 300' in SE corner - Covers more than within described property)

1959 Assessment No. 2775 in the amount of $58.99 - 1st half paid
2nd half open

Real Property	$ 10.00
Improvements	1,170.00
Personal	150.00
Total Valuation	$1,330.00

1959 Assessment No. 20452 in the amount of $39.03 - both halves paid

Real Property	$ 10.00
Improvements	720.00
Personal	150.00
Total Valuation	$880.00

Exhibit #3
(sheet 4)

Official File Copy
Rec'd. APR 17 1964
LCRLUO
AR 64-4-17
MSC misc 4-17
VES

Whittier,
April 12,

Land Use Office
Star Dust Hotel
Yuma, Arizona

We are planning to purchase property which I understand is in Arizona although it is on the California side of the Colorado River. It is in a development called "Sportsman's Paradise". The present owner informs us this is the only deeded land on the river (in this area) and that we can obtain clear title to it. Could you please advise us where and how we can check on the title for this property.

Also if you know of any other available lot where we might build a home on the river we would appreciate this information.

We were referred to your office by an acquaintance in the Department of Fish and Game.

Thank you for any information, we are anxiously awaiting your reply.

Ralph W. Brookins

R W Brookins

602 So. Milliken Ave.
Whittier, California 90602

SURNAME	DATE

May 6, 1964

Mr. Ralph W. Brookins
602 South Milliken Avenue
Whittier, California 90602

Dear Mr. Brookins:

We sincerely regret the delay in answering your inquiry concerning land ownership along the Colorado River. Your letter dated April 12, 1964, was received April 17, 1964, but our workload has made it impossible to answer sooner.

The area in which you expressed interest is shown on the Bureau of Land Management survey plats as being in T. 9 S., R. 22 E., S.B.M., California. Status reports furnished this office by the Bureau of Land Management show the subject land to be Federally-owned.

In view of these facts, it may be well, before acquiring any property in this area, to have title research made by a title insurance company.

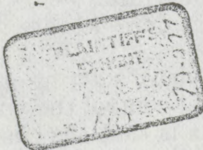
The Chamber of Commerce of Yuma, Arizona, or Blythe, California, can supply you with a list of reputable real estate dealers who handle properties for sale along the Colorado River.

If we may be of any further assistance, please write.

Sincerely yours,

Melvin S. Crosby
Acting Administrator

VS:b



Senator BUMPERS. We are running way behind on our time. We have Senator Laxalt's bill left for hearing, so I would excuse you with that.

Our next panel is with Mr. W. S. Gookin, Mr. Robert Stafford, Mr. Stanley Lagerlof, and Mr. L. A. Schindler. We are at your disposal, however you choose to proceed. I am going to have to ask you because of the limitations on time, if you will just summarize whatever you wish to say, and we will have a few questions.

Mr. LAGERLOF. We will make it as short as we can. My name is Stanley Lagerlof.

Senator BUMPERS. I think you are going to win. One of the failings of the Congress is we can never take yes for an answer, and I am appealing to you that you do.

Mr. LAGERLOF. The parties should rest now. I think we might.

Senator BUMPERS. Are you an attorney?

Mr. LAGERLOF. Yes. I am appearing, however, as a landowner and in the sense that I am trustee of Eugene Ehlers and am responsible to protect his farm for his family, and we are trying to prevent the Government's taking it over.

STATEMENTS OF STANLEY C. LAGERLOF, W. S. GOOKIN, ROBERT STAFFORD, AND L. A. SCHINDLER

Mr. LAGERLOF. Basically we would like to clear up some confusions that resulted from the testimony of the representatives from the Department of the Interior. Again, the 13.17 to 13.19 group, Mr. Schindler and I are the two owners involved, and the land involved is all agricultural in nature.

In spite of the statements or considerations that are talked about in recreational use, the amount of land that has been claimed by the Federal Government that borders on the river in negligible. All the acres are farm land, and it has been that way for 30 years, since Mr. Ehlers has leveled it, took care of it, drained it and put it into productive land.

The Government's assumption, and I think it might be helpful, there is a package before you and it has a foldout which gives this reproduction of that, and that shows you in 1930 mosaic the area that we are talking about, and out of that, the Bureau of Land Management picked——

Mr. STAFFORD. After page 35.

Mr. LAGERLOF. Picked what they consider is the channel of the Colorado River in 1922, to give you some idea.

Senator McCLURE. You choose that date because that was the date of the survey, was it?

Mr. LAGERLOF. No. That was the date, starting at that time, that the channel cuts were made to try and control the river, and they say that, the position of the Government is that the channel was located where we say it was in 1922, that any changes from that point on were avulsive in nature, and therefore, we continue to own the accredited portion on the California side due to our ownership of the land on the Arizona side.

Senator BUMPERS. That is the Government's argument?

Mr. LAGERLOF. That is the Government's argument. That is the basis of their claim. It is not that this was public land, a flat statement that

this was public land at the time the cuts were made. This is public land only on the assumption that the river bend as it moved westward was a motion by accretion. If you take a look at that area in front of you, you can pick a channel and pick a year and we can't identify a channel by year, but that river flooded every spring. It came out of the Grand Canyon and opened up into this flat valley and just spread all over the place, as you can see from the areas of deposits for the various years that were involved.

Senator McClure. Can you point on your exhibit to the lands that are in question, the areas in question? I could follow you a little better.

Mr. Lagerlof. There is another exhibit in the material.

Mr. Stafford. The very next map will show you pretty precisely. It just follows the photograph you are looking at, Senator, and there is a page and the black spots are identified as the lands in question, the whole bill of 19–505.

Mr. Gookin. Basically this is one of the cuts or one of the areas. This is another one. This is the so-called Casad cut area. This is the Hauser cut, the Comer, and this is the Hauser. The Raab is off the photograph.

Senator Bumpers. Iet me clarify one point. The Casad cut down the south of that area photo, how far south is it from the land in question?

Mr. Lagerlof. I'm sorry. I'm not sure I understand.

Senator Bumpers. The Casad cut, he just identified that. Do it again for us.

Mr. Lagerlof. The Casad cut is involved in the land in dispute.

Senator Bumpers. He is pointing to an area down in the south part of that photo, and the land involved is up the top part of the photo.

Mr. Gookin. No, sir. The land involved is here.

Senator Bumpers. Is that the land we are involved in here? All right. That is what I had understood. That is what the confusion was, so the Casad cut was the cut that resulted in this land being where it is?

Mr. Lagerlof. Let's put it this way. The river motion put the land in a position. The Casad cut, according to the Government, was successful and, therefore, cut off the Casad bend, and at that time left the properties in the Federal Government on the assumption that the title to the Government moved westward by accretive action.

The answer is nobody knows. There is no evidence for it, and I can quote you from a report in the hearings on H.R. 10256, which became 19–505, and this is testimony of Mr. Gunn, the chief engineer of the Bureau of Land Management. He said, "We have taken the position that there was little or no movement of the river eastward between 1922 and 1930."

What he is saying is that the area that they have determined is—well, that is their boundary line of the land that they claim. I am not saying this very well, but he also said that, well, it is a matter of relativity. We have no doubt that evidenced where the river was exactly in 1922, but they used an aerial photograph, and Mr. Gookin can advise you more clearly as to how they came around to fixing the boundaries of the area that they do claim, but basically what we are saying is that the Government's claim is based on certain assumed facts that there is no evidence on, and to you, Senator McClure, we

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say this is the problem that we face. The Government has certain presumptions in its favor of accretion as against avulsion. It has certain presumptions in its favor with respect to the correctness of its surveys, and then it has on top of that the doctrine of sovereign immunity to defend against anything that you try to defend against them in their claims, so these are the problems that we face here, is the basic assumption that the Bureau and the Federal Government has that this was their land, that they came across from Arizona into California, and that when the cut was made, it was successful and that, therefore, they retained title to it, even though the only evidence they have is a 1930 aerial.

They have no evidence as to what happened to the river between the time of the cut and the time of 1930 as to whether it moved back and forth and how it moved during that period of time and whether all of the motions of the river might be considered avulsive by the nature of its flood pattern annually. These are factual determinations on which we have no evidence. They have no evidence, but they have the benefit of presumptions.

That is the sum and substance of the position that we occupy here, and that is why we are asking for your help in seeking relief from these assertions of the Government.

Now, one other thing, and I think it is so well stated——

Senator McClure. Could I ask one question? Whatever was on the Arizona side of the river before the cuts was Government land?

Mr. Lagerlof. That is correct.

Senator McClure. Was public domain; the only question is where was the river before the cuts were made because it was, you would concede, and it would be clear by the record that the public domain extended to the river wherever the river existed before the cuts?

Mr. Stafford. On the Arizona side.

Senator McClure. On the Arizona side.

Senator Bumpers. You can talk a long time about it, but summing it up, you admit, all parties admit, that prior to 1922, this was BLM land. Now we all recognize that the river changed. It was Arizona land and it was BLM land. It was public domain.

You don't admit that?

Mr. Lagerlof. Oh, no.

Senator Bumpers. Prior to 1922?

Mr. Lagerlof. No; because the only way it is Government land prior to 1922—that is, the area of the Casad Bend or these other bends—was on the assumption that the motion of the river westward from its normal channel was acretive in nature.

Now, the normal channel of the river is against the bluffs on this side of the river. There are bluffs, and this is the flood plain. It would spill out here and spread all over the place, but this is the basic channel, and that is what ultimately it was controlled by, the closure of Hoover Dam, and this is what is now the boundary line between the two States so that the Government has to go on the assumption that any motion of this to the westward where they would then expand their boundary line of their Arizona property was an accretive motion and not an avulsive motion.

Senator Bumpers. I would agree with the Government on that.

Mr. Lagerlof. When you take a look at this——

Mr. STAFFORD. Stan, why don't we let the engineer talk about this? I think he knows better about it, and it might be helpful if you could ask Mr. Gookin.

Mr. GOOKIN. My name is William S. Gookin. I am a consulting engineer from Scottsdale, Ariz. I have spent most of my professional life on the Colorado River. I have appeared before this committee on numerous occasions. I appeared during all of the hearings on, that led to the passage of 19–505.

I have a statement before you which is rather lengthy and is preceded by a six-page statement which is my testimony, but in view of the shortness of time, I will summarize my testimony.

Senator BUMPERS. That will be made a part of the record.

Mr. GOOKIN. I think the most important thing appears in my testimony, and that is that the Department of Interior's claim is founded upon three assumptions. Each of these assumptions is, in my professional judgment, erroneous; and I have studied this problem since 1962, this particular problem.

The Department assumes that prior to 1922 the Colorado River moved only by accretion, and that it moved westward, certain lands.

Senator MCCLURE. Would you yield just a moment so that all of us can understand what you mean by the term? Accretion is that process by which the land gradually builds up by the deposit of materials along the bank of a river?

Mr. GOOKIN. That is correct.

Senator MCCLURE. When you say it moved slowly by accretion, the channel gradually shifted and the lands on one side built up as it was eroding away on the other side?

Mr. GOOKIN. That is correct, sir.

Senator MCCLURE. As distinguished from the avulsion, which is a sudden or quick change in the course of the river?

Mr. GOOKIN. That is correct, sir, and if prior to 1922 there had been an avulsive movement, and in my opinion there were many, that avulsive movement or movements, the first avulsive movement would have fixed the boundary as of the time of the avulsion, but the Department assumes no, that the river moved slowly and imperceptibly at all times prior to 1922 in this area, and that is it moved westward, certain lands accreted to federally owned lands on the Arizona side of the river.

The basic nature of the Colorado River rendered this contention factually and hydrologically unsound. The Colorado River before the construction of Hoover Dam flooded each and every spring. It, at times, became several miles wide even, and flowed in many channels and usually when it receded, the river would be in a different channel than when the flood started. That was just the very nature of the animal.

No. 2, the Department assumes that the contested lands were separated from the Arizona side by the manmade avulsion, hence the river was diverted through the Casad cut. Now the Casad cut was made in 1922 and 1923 by the Palo Verde Mutual Water Co. It was not made by the Federal Government. It was made by very primitive equipment by today's standards, and we have eyewitness testimony, contemporaneous engineering reports and photographs.

Senator HANSEN. If I may interrupt there just a moment, in order

better to understand what you are saying, when you describe the act that the Corps of Engineers or whoever made the cut——

Mr. GOOKIN. No. It was Palo Verde Mutual Water Co. It was not the Corps of Engineers. It was not the Federal Government.

Senator HANSEN. Whoever it was, was that action of avulsion—a-v-u-l-s-i-o-n?

Mr. GOOKIN. No. It would have been had the cuts functioned to serve the purpose for which they were intended, but with the equipment that was available, the Palo Verde Mutual Water Co. could only dig a cut 40 to 50 feet wide and 6 feet deep in soft, wet river sandy material. They could only pile the material immediately on the bank of the cut.

Now, when the next succeeding floods came down, they were in the neighborhood of 100,000 cubic feet per second or more, and you couldn't get 100,000 cubic feet per second through a cut 6 feet deep and 40 to 50 feet wide, so the next flood washed the material back into the cut. The cuts were sealed.

Now, subsequently the river was diverted or moved to the west, to the east by tripods and gradually by working with revetments and so forth trying to move it gradually to the eastward to keep it away from the levees of what was then the Palo Verde Mutual Water Co., and subsequently became the Palo Verde Irrigation District.

Now the Department asserts that the left bank of the Colorado River as it existed in 1924——

Senator HANSEN. If I could interrupt, when you speak of the left bank, you are looking downstream?

Mr. GOOKIN. I am looking downstream.

Mr. STAFFORD. The Arizona side.

Mr. GOOKIN. And so the Department says that the Arizona side of the Colorado River as it existed in 1924 can be accurately delineated from an aerial photograph taken in 1930. The science of aerial photography does not permit time dating of a channel shown on an aerial photograph with the single exception of a channel in the river. The channel of the river is flowing in at the time the photograph was taken.

Now you have on the tripod an aerial photograph taken in 1930. It is the earliest known aerial photograph of this particular area taken looking directly down. We have some aerial photographs that were taken from a plane with an ordinary camera, and we have displayed those in previous hearings, but we have in your packet here testimony from a Mr. Marvin Gast, who is an expert in photogrammetry, and he sustains the assertion that you can't time date a channel at the time other than the channel in which the river is flowing.

Now I think that that probably pretty well summarizes the essence of my testimony. There has been the question raised as to why these lands were left out originally. I was present throughout all of the hearings. There was at the time, there were personality conflicts between some of the landowners in the various areas, and in the final bill there was particular concern by the Federal Government that if the river point 13.19 were used, it might inadvertently encompass land that was known as Gossett land owned by Mr. Gossett, and then in litigation, that case has since been settled, and there is no involvement with Gossett land.

However, the landowners in the Casad cut were not represented at the final hearings, and the northern landowners who were here were not willing to jeopardize the entire bill which affected them on behalf of the landowners who were not present and not participating in the effort.

Senator BUMPERS. Mr. Gookin, we have a vote on right now and we will return in just a moment. I have told Senator Laxalt that we will, as soon as we excuse this panel, if it is agreeable to you and Senator Hansen, Jim, he just has one witness, that is Chief McGuire, and I think he favors it, and we can dispose of hearing on his bill very shortly after we come back, and then if you have questions for this panel, you may ask them.

[The prepared statement of Mr. Gookin follows:]

STATEMENT OF WILLIAM S. GOOKIN, CONSULTING ENGINEER, W. S. GOOKIN & ASSOCIATES, SCOTTSDALE, ARIZ.

Mr. Chairman and members of the subcommittee, my name is William S. Gookin. I am a consulting engineer, principal of the firm of W. S. Gookin & Associates, headquartered in Scottsdale, Arizona. Most of my professional life has been spent in working with the Colorado River Basin. I have appeared before this Committee on several occasions on the series of bills which ultimately became Public Law 91–505, and on other matters. I am appearing today in support of S. 2590 on behalf of Mr. L. A. Schindler and the Estate of Mr. E. O. Ehlers.

After having analyzed S. 2590, and the history and hydrology of that section of the Colorado River with which it deals, I have reached certain conclusions which I have set forth in a prepared statement. I realize that the Committee does not have time to hear the full text of my statement, and I would, therefore, like to request permission to submit my statement for the record, and to briefly summarize it for the benefit of the members of the Committee.

S. 2590 deals with lands in the Palo Verde Irrigation District in Riverside County, California, adjacent to a short reach of the Colorado River approximately 1½ miles in length. It is in effect a southerly extension of Public Law 91–505. The need for this legislation arises from the fact that the Federal Government has laid claim to 345 acres in the Palo Verde Irrigation District, which have for many years been occupied and farmed by individuals who have always considered, and still believe that they are the owners of the land in question.

The Department of the Interior's claim is founded upon three assumptions, which in my professional judgment are erroneous. They are:

(1) The Department assumes that prior to 1922 the Colorado River moved slowly by accretion, and that as the river moved westward certain lands accreted to Federally owned land on the Arizona side of the river. The basic nature of the Colorado River renders this contention factually and hydrologically unsound.

(2) The Department assumes that the contested lands were separated from the Arizona side by man-made avulsion when the river was diverted through the Casad Pilot Cut. Eyewitness testimony, contemporaneous engineering reports and photographs establish that these cuts never functioned as intended.

(3) The Department asserts that the left bank of the Colorado River as it existed in 1924 can be accurately delineated from an aerial photograph taken in 1930. The science of aerial photogrametry does not permit the time dating of any channel shown in an aerial photograph with the single exception of the channel the river is flowing in at the time the photograph is taken.

To briefly illustrate why I feel so strongly about the Departmental position, I would like to call the Committee's attention to Exhibit 1, which is an aerial photograph taken in 1930. The Department claims to have located the east bank of the River as it existed seven years prior to the date of the photo. The Department does not acknowledge that this photograph clearly shows evidence of numerous avulsive movements of the River.

Exhibit No. 10 is a composite of the United States Geological Survey Quadrangle Sheets in the 1970's with two acetate overlays. The first acetate overlay depicts in crosshatching those lands south of the Ehrenberg Bridge and above River Point 13.19, to which the Government has laid claim by virtue of the same alleged circumstances to which claim is made to the lands which would be

affected by S. 2590. The lands shown in black are those lands which lie within limits defined in Public Law 91–505. The lands shown in red are those which would be encompassed by S. 2590.

The second overlay depicts the property of Mr. Schindler and the Estate of Mr. Ehlers, and the relationship of those properties to the area encompassed by S. 2590.

Unfortunately, the Department waited more than 40 years after the alleged events occurred to claim these lands for the Federal Government. The matter has not yet been resolved, and now 55 years have elapsed since the alleged events transpired.

The difficulty of proving events that have transpired more than 50 years ago is manifest. The Statutes of Limitation prohibit the imposition of this task upon private parties in litigation which does not involve the Sovereign. However, when an individual must litigate against the unlimited financial resources of the Federal Government, the Government by virtue of the Doctrine of Sovereign Immunity can claim immunity from all pleadings of equity, including statutes of limitation, laches, equitable estoppel and adverse possession. The land owners feel that in this instances instead of using this doctrine as a shield, the Government is using it as a sword to deprive the landowners of vested rights in property.

S. 2590 has been amended to conform to Public Law 91–505, which covers the area immediately to the north of the Casad Pilot Cut. S. 2590 would not grant the lands in question to the claimants, it would merely permit them to plead their equity if, and only if, they have met the six requirements which are provided as preconditions before they can benefit from the relief provided. These conditions require the landowners to demonstrate:

(1) That the claim of the United States is based on accretion or avulsion.

(2) The land that is claimed is not necessary to provide riparian frontage to contiguous lands owned by the United States.

(3) The facts upon which the United States bases its claim occurred more than 40 years ago.

(4) The landowner has paid real property taxes on the same basis as other owners of comparable fee lands.

(5) That the landowners demonstrate chain of title deriving from the state, or federal government, or political agency or subdivision of those governing.

(6) That a reasonable prudent man would have believed that when he acquired title to the lands in question, he had acquired title free of the likelihood of any claim by the United States Government, any state, or any private person.

In combination these six tests will insure that only those claimants with required equities will benefit from the bill.

INTRODUCTION

I am licensed to practice in ten southwestern states as a civil engineer. I am the principal of a firm of consulting engineers headquartered in Scottsdale, Arizona. My professional experience includes employment by (1) The United States Geological Survey, measuring stream flows in Arizona; (2) The United States Bureau of Reclamation for thirteen and one half years planning for development of water resources, primarily those of the Lower Colorado River Basin; (3) The State of Arizona as Chief Engineer in the Arizona v. California Supreme Court litigation over the rights to use the Colorado River water; (4) The Arizona Boundary Commission as Chief Engineer for the State of Arizona in determining the Arizona-California State Boundary; and (5) The State of Arizona as State Water Engineer throughout the efforts to secure Congressional authorization of the Lower Colorado River Basin Project. I was intimately involved in the activities surrounding the passage of P. L. 91–505 which S. 2590 seeks to amend.

I represent Mr. L. A. Schindler and the estate of Mr. E. O. Ehlers from the Palo Verde Irrigation District. For several decades these individuals and their predecessors in interest have owned and farmed certain District lands. The lands in question are located in Section 24, T. 8 S., R. 22 E., San Bernardino Meridian, and Section 19, T. 8 S, R. 23 E. San Bernardino Meridian.

Taxes and assessments on these lands have been paid regularly to the Palo Verde Irrigation District and to Riverside County, California. These farmers have made valuable improvements on this land; have used these lands as security for Government loans and met all of the obligations and exercised all the prerogatives of rightful owners which they sincerely believed and still believe themselves to be.

In 1962, the Department of the Interior claimed 345 acres of the Schindler and Ehlers land without explanation as to the basis of that claim.

The landowners had no idea upon what grounds their lands were claimed. As directed by the Department of the Interior, they went to the Lower Colorado River Land Use Office in Yuma, Arizona. They were told that the Lower Colorado Land Use Office did not know why the Department of the Interior claimed the land. These employees only knew that a claim was being asserted by the Department and suggested that the landowners renounce their ownership and sign a lease. It was only after extensive inquiry that the landowners found the Department of the Interior based its claim on three premises, each essential to the claim:

(1) Prior to 1922, the Colorado River moved by accretion and never avulsed.

(2) In 1922 and 1923, a pilot cut known as the Casad Cut caused the river to move to the east by avulsion, thereby fixing the western boundary of Government owned land at the east bank of the Colorado River as it existed at the time the cut was made.

(3) The east bank of the Colorado River as it existed at the time the cut was made can be located from an aerial photograph taken in 1930.

TYPES OF RIVER CHANNEL MOVEMENT

Before discussing the validity of the claim, it is desirable to examine the mechanics and effects of channel changes. There are three fundamental types of river channel movement. The most common type of river channel movement is accretive movement. Curtis M. Brown, H. Frederick Landgraf and Francois D. Uzes define accretion in Boundary Control and Legal Principles as an:

"Increase by external addition; enlargement; the act of growing to a thing. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river, stream, lake, or tidewater, either by accumulation of material or recession of water, the process is called accretion and the end result is called accretions. The process of land formation is also called alluvion and the land itself is called alluvium." (P. 344).

In layman's terms, an accretive movement is often defined as one that occurs so slowly that a person standing on the river bank would be unlikely to observe it. This usually comes in the form of a river gradually eroding materials away from one bank and slowing depositing this material on a downstream river bed or junction where a change in the velocity of the flow occurs.

The second type of river movement is avulsive. Brown, et al, provide the following definition:

"The sudden and perceptible separation of land by violent action of water. A stream suddenly adopting a new channel and dividing a parcel into two parcels. Title usually follows the old channel; however, the statute of limitations may specify how soon a person must claim the portion cut off. In California it is one year after the necessity to act." (P. 345).

The third type of river movements are those caused by the activities of man. These movements can be treated either avulsive or accretive depending upon the circumstances.

The significance of determining the type of river movement is that the manner in which a river changes its course affects the ownership of the river bed of the stream and riparian lands on both banks.

Generally speaking, if a river moves by accretive movements, then the ownership changes as the river moves. However, if the river moves by avulsive movements, then title usually resides in the old river bed rather than the new location.

In the case of interference by man, the case becomes somewhat more complex. However, generally it is held that the perpetrator of the river change may not benefit from the change which he causes, however, other landowners may do so. This is an oversimplification and there are many additional doctrines which apply to specific cases.

One fundamental principle must be remembered in determining if a river movement is accretive or avulsive, either man-made or natural. That principle is shown in the text entitled, "The Legal Elements of Boundaries and Adjacent Properties," by Ray Hamilton Skelton, when he says:

"The presumption is always in favor of accretions as against avulsion." (P. 343)

"The Manual of Surveying Instructions," dated 1973, published by the U.S. Department of the Interior, Bureau of Reclamation, Section 7–73, on page 172, substantiates as follows:

"An avulsive change cannot be assumed to have occurred without positive evidence. When no such showing can be made, it must be presumed that the changes have been caused by gradual erosion and accretion."

GOVERNMENT ASSUMPTIONS

1. Did the river ever avulse prior to 1922?

The presumption that all movements of the River were accretive prior to 1922 is not consistent with the basic nature of the River in the Palo Verde Valley. In 1965, three years after the land under discussion was claimed by the Department of the Interior, the Bureau of Reclamation of the Department of the Interior issued a report entitled "Draft Report, Comprehensive Plan, Colorado River Channelization, Parker Division." On page 7 the Bureau of Reclamation discussed the basic nature of the Colorado River as follows:

"*History of river channel changes:* Prior to the construction of storage dams on the Colorado River, the regimen of the lower river from the present site of Hoover Dam to the Gulf of California was typical of a river carrying a heavy sediment load over an alluvial bed. In the first 300 miles, the lower Colorado River flows through many miles of comparatively narrow canyons which restrict the movement of the river. However, the canyons are interrupted by several large valleys including the Mohave, Parker, Palo Verde, and Cibola Valleys, and within these valleys the river was free to follow its natural pattern. The river moved back and forth across the valley bottoms, usually slowly by accretion, but at other times abruptly by avulsions. The numerous sloughs and traces of old channels, still visible all across the valley bottoms, are the traces of channel changes that have occurred in comparatively recent times."

In 1967, five years after the Department of the Interior claimed this land in question, the Bureau of Reclamation issued their "Report on Comprehensive Plan, Colorado River Channelization, Parker Division." On page 5 of that Report the Colorado River is described as follows:

"*History of river channel changes:* Prior to the construction of storage dams on the Colorado River, the regimen of the lower river from the present site of Hoover Dam to the Gulf of California was typical of a river carrying a heavy sediment load over an alluvial bed. The river shifted back and forth across the valley usually slowly by accretion but at other times abruptly by avulsions. The numerous sloughs and traces of old channels still visible across the valleys, are the traces of channel changes that have occurred in comparatively recent times."

The extent of these "sloughs and traces of old channels" can be seen on Exhibit 1 which is an aerial photo mosaic photographed by the Fairchild Aerial Survey Company in 1930. A portion of this mosaic is attached to this statement. This mosaic is a copy of the photograph the Government used as a basis for its claim.

The lands in question are located in a valley bordered both to the east and west by mesas and, during the course of geological time, the meanderings of the river have extended from mesa to mesa. Prior to and for decades after the coming of the settlers, the river meandered at will and changed its course frequently. The spring runoff of the Upper Colorado River Basin flooded portions of the Palo Verde Valley every year. Usually, when these floods receded, the river occupied a new channel or channels.

In 1903, the U.S. Reclamation Services submitted its First Annual Report which was printed as House Document No. 79, 57th Congress, 2nd Session. In describing the Colorado River, this Report contains the following statement:

"Lieut. E. Bergland, who examined the Lower Colorado River in 1876, states that during stages of high water the river changes its channel to a considerable extent . . ."

In the Annual Report of the Chief of Engineers, U.S. Army, Lt. A. H. Payson, in describing the obstacles to navigation of the Colorado River, states:

"Previous knowledge of the channel is of no avail, and the pilot judges the course of the river at each moment on the appearance of the water surface, shape of the bars, direction of the drift, and other slight indications significant alone to his experienced eyes."

On July 15, 1902, Mr. David D. Caldwell, Law Clerk, Department of Justice, wrote to the Attorney General of the United States and stated, with reference to the Colorado River,

". . . one of the peculiarities of the Colorado River, . . . (is) its shifting channel."

In 1913, Mr. Clarence C. Clarke, Chief Engineer of the Palo Verde Mutual Water Company, wrote an article which was published in the Transactions of the American Society of Civil Engineers in which he stated:

"The Lower Colorado has no fixed channel because of the character of the soil which is a deposit of silt, readily eroded. The current swings back and forth, cutting the banks and changing the meander line, and an apparently insignificant obstruction sometimes causes shifting of the channel for miles. A sudden shift of the channel from one bank to the other may leave a canal intake dry and put an irrigation system out of business. It may cut across a tongue of land, changing a wide bend into a tangent and forming a new bend lower down."

The very nature of the Colorado River prior to its control by Hoover Dam was that of a stream prone to evulsive movement. Despite this, the Department took the position that there is a legal theory that all river movements must be assumed accretive unless proven to be avulsive. The Department, therefore, contended that unless the landowners document specific avulsions proving exactly when they occurred and exactly where the river was before the evulsion and where it was after the avulsion, any claim of avulsion must be summarily rejected.

It is obviously difficult if not impossible to provide such documentation for events which took place more than fifty-five years ago. Unfortunately, no one was particularly interested in the exact location of the low water channels of the river following each flood, largely because the local people were well aware that regardless of where the river banks were at any given moment, these banks were subject to radical change within a mattter of days or even hours. As a consequence, no effort was made to keep a chronological history of the river's migrations prior to the closure of Hoover Dam. True, some surveys of varying degrees of accuracy were made for various purposes. Naturally, the accuracy of these surveys in large part depended upon the purpose the survey was designed to serve. A graphic depiction of the meanderings of the centerline of the river as revealed by various surveys from 1858 to 1930 is presented as Exhibit 2 to illustrate the magnitude of the changes and the land now claimed by the Government.

It is significant that in the area of the Government's claim to the Schindler and Ehlers property, the surveys group on the east side and tend to group on the west side of the claimed area. There is no record of any channel bisecting the Government's claim. This lends strong support to the theory that the River avulsed around the property rather than accreting across it.

2. Did the Casad Cut cause an avulsive change?

In the spring of 1922, a very serious flood occurred which inundated 60,000 acres of land and destroyed the crops and homes. In May 1922, the Chief of Engineers of the War Department assigned a Colonel Deakyne and Major Ardery to make an on-the-spot inspection to determine the damages caused by this flood and to recommend relief measures. Colonel Deakyne and Major Ardery reported in a telegram dated May 27, 1922, which is attached hereto and designated as Exhibit 3. In their report, they suggested that certain pilot cuts be dug in an effort to channelize the river.

Previously, the farmers and landowners along the banks of the Colorado River had tried to control the river by means of levees. Unfortunately, they had neither the financial ability nor the construction equipment needed to build and maintain adequate levees.

Following the flood of 1922, the Palo Verde Mutual Water Company hired a consulting engineering firm by the name of Perry and Finkle to design works to provide flood protection and gravity distribution of irrigation water. Under date of September 5, 1922, Perry and Finkle submitted a report in which they recommended, among other things, construction of pilot cuts at the Raab, Hauser, Comer, and Casad bends in the Colorado River. A copy of that report is attached hereto as Exhibit 4. These pilot cuts augmented by certain improvements of the levee system, were designed, in theory, to accomplish the same purpose as Colonel Deakyne outlined in his plan.

During the period 1922 through 1925, a contracting firm headed by one Mr. Thompson completed these pilots cuts.

These pilot cuts were from 40 to 50 feet in width and from 6 to 10 feet in depth. They were never intended to carry more than a few hundred second feet of water. The theory was that these pilot cuts would erode, scour out, and deepen, thus

diverting the river and forming a channel where the pilot cuts had been initiated. Due to the limitation of the equipment available, the spoil dirt excavated from the pilot cuts was placed too close to the edge. As a result, the material caved down into the pilot cuts, choked them and prevented the anticipated scouring action which had been counted upon the enlarge the pilot cuts. Valiant attempts on the part of the local forces to keep these pilot cuts functioning resulted in failure.

Mr. Louis G. Castner, of Blythe, California, who arrived in Palo Verde Valley in the latter part of 1916, and who worked on the river during the period in which the pilot cuts were made, testified on numerous occasions, before various Committees of Congress, and other bodies, on the efficacy of the pilot cuts under discussion. One example of the testimony which he gave is contained on Page 89 of the printed hearings before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs—House of Representatives—Ninetieth Congress, Second Session on H.R. 10256, held on May 2 and 3, 1968. On that page there appears the following quotation from Mr. Castner's statement:

"We tried everything to control it. Several cuts were made to try to reroute the flow of the river but they never did the job. The cuts were usually made through sand bars which were left above the river level in a location that the river moved from. We were trying to put the river back into old channels. The cuts soon filled and we could not keep them open enough to carry more than a small percentage of the total river."

Mr. Castner presented similar testimony before the Public Land Law Review Committee on February 17, 1967, at Palm Springs, California, and before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs on S-3104, the House of Representatives on July 18, 1966, among others.

Mr. Castner's statements are corroborated by an affidavit by Mr. J. E. Marlow, dated October 21, 1965, who also worked on the pilot cuts, and this statement was incorporated in the record of the hearings before the Committee on Interior and Insular Affairs of the Subcommittee on Public Lands of the House of Representatives, H.R. 13955, H.R. 14334 and H.R. 14339, dated July 18, 1966. In that affidavit, Mr. Marlow states:

"From my own personal knowledge I know that numerous attempts have been made to dig cuts to move the river away from the levees on the California side of the River. I am personally familiar with the areas that are locally known as the Raab Cut Area, the Hauser Cut Area, the Comer Cout Area, the Casad Cut Area and the Beaver Bend Cut Area. Although some cuts were dug in those areas, none of these cuts were ever successful. We did not have the type of equipment then that the Bureau of Reclamation has now and as a result the cuts were too small and silted up so that the river never flowed through these except for very small flows."

Mr. Marlow's affidavit is attached as Exhibit 5.

3. Can the 1922 location of the river be established?

On September 15, 1960, the Bureau of Land Management issued instructions to a survey team ordering examination, resurveys and extensions of surveys for certain lands along the Arizona side of the Colorado River. This survey team learned that three pilot cuts had been attempted in the reach of the river south of the Ehrenburg Bridge during the "1919 to 1924" period. They reported on January 13, 1961, that at the time of the aforementioned cuts, no apparent surveys were made by the irrigation district, or state or federal governments. They further reported that they were unable to find any evidence of the location of the river at the time the pilot cuts were made and sought instructions as to how to locate the left bank of the river as it existed some 40 years prior to the survey.

Under date of January 17, 1961, the surveyors were instructed, "In the absence of other tangible or record evidence, the meanders of the left bank of the Colorado River, . . . as originally surveyed by Kimmel in 1917, will be considered and held as the best available evidence of that left bank . . ."

No mention was made of the Raab pilot cut in these instructions. Had it been mentioned, the fallacy of the instructions would have been emphasized since the 1917 line lay far to the east of the Raab pilot cut, which was dug in an effort to induce the river to move eastward. Exhibit 6, attached, depicts the east bank of the Colorado River as it existed in 1917.

Surveys continued under these instructions and at least one Bureau of Land Management plat made under these instructions was approved and adopted.

On October 27, 1961, a new set of supplemental special instructions was issued. The significant portion of these instructions reads:

"Following further study and review of available historical mapping, together with aerial photography of the general vicinity (Fairchild Aerial surveys—1930), it now has been concluded that the portion of the left bank of the several cut-off bends, as they existed at the time of the named channel cuts, can be determined therefrom in a more true and representative manner than the adoption of the 1917 recorded meanders, as the best available evidence of the river's position, as directed by the supplemental special instructions of January 17, 1961. In this regard these instructions supersede those supplemental instructions."

It should be noted that these instructions do not contend that the left bank of the river can be accurately determined from the 1930 photograph. They merely say that the left bank can be determined from the 1930 photograph" . . . in a more true and representative manner than the adoption of the 1917 recorded meanders . . ."

The river channel as surveyed in 1917 and adopted pursuant to the instructions of January 17, 1961, was materially different from that which was selected by the Bureau of Land Management Survey team from the 1930 aerial photograph. In some instances, the difference resulting from this change in instructions was in excess of two miles. Accordingly, the earlier surveys were cancelled and new surveys completed under the October 27, 1961, instructions.

The arbitrary adoption of the location of the river as it existed in 1924 from a photograph taken in 1930 is, to say the least, capricious. I have brought a print of that photograph so you may see the numerous channels, both active and inactive, that appear in that photograph. This print has been designated as Exhibit 1. I am convinced that of the many channels shown on the 1930 photograph, the only channel that can be time dated is the one in which the river is flowing at the time the photograph was taken.

I sought the opinion of Mr. Marvin Gast, a disinterested expert eminently qualified in the field of photointerpretation. I had never met Mr. Gast before and he had no acquaintance or connection with any of the principals in this case and no prior knowledge of the problem. Since Mr. Gast was employed by the Federal Government, he received no compensation of any sort for the extensive services he rendered us.

Attached hereto as Exhibits 7 and 8 respectively are a brief summary of Mr. Gast's qualifications and his professional opinion. Mr. Gast states in part:

"In my professional opinion, it is not practicable to determine reliably from the 1930 photography the channels through which the river was flowing at any specific time prior to the date the photographs were taken."

The capriciousness of using the 1930 photographs for locating the river bank as it existed at the time the cuts were made was borne out in the Hearings Before the Subcommittee on Public Land of the Committee on Interior and Insular Affairs of the House of Representatives on May 3, 1968. At that time, Mr. Clark Gumm, Chief Casdastral Engineer, Bureau of Land Management Department of the Interior, testified in opposition to H.R. 10256. This was a bill introduced into the 90th Congress to accomplish the same objectives as the bill now before the Subcommittee.

As reported on page 43 of the printed transcript of that hearing, the following conversation took place between Mr. Gumm and the Honorable John V. Tunney, Congressman from California:

"Mr. GUMM. Well, it is a matter of relativity. We have no definite evidence where the river was exactly in 1923.

"Mr. TUNNEY. Well, if the cuts worked, the river had to move eastward.

"Mr. GUMM. Well, as I say, we had no direct evidence that where the actual banks of the river were in 1923. As a matter of experience, we think there was little or no accretion here, because as soon as the channel started to function, the new channel, this would relieve the main bed of the river from the action of the river, or much of action of the river."

The full text of the pertinent portions of the transcript from which the foregoing quotation is excerpted is attached as attached as Exhibit 9.

Exhaustive research has been conducted in an effort to determine the facts and sequence of events regarding the movement of the river during the period in question. In the course of this research, every available map, photograph, engineering report, and other exhibit we have been able to locate has been examined and thoroughly evaluated. With one exception, we have found no evidence of documentation which supports the Bureau's contention that the three aforementioned pilot cuts resulted in avulsive movement of the Colorado River. That exception is a statement which appears in the First Annual Report of the Palo

Verde Irrigation District dated October 1926. This Report was written more than two years after the event, by author or authors unknown with motives concerning which we can only speculate upon and based upon evidence we can only guess at. On the other hand, the preponderance of evidence, including photographs taken in 1927, points to the fact that the pilot cuts never worked and that the river moved eastward in an accretive manner and now occupies a channel which still lies west of the pilot cuts.

Although S. 2590 does not deal with the Raab Cut, I believe it is relevant to note that in 1958, in order to get a permit to subdivide a parcel of land in the area now claimed by the Government west of the alleged Raab Cut, the State of California required a letter from the United States Government stating that the Government did not have any legal interest in the land. The Department of the Interior, Bureau of Reclamation, in a letter dated November 6, 1958, written to the Planning Director, County of Riverside, Riverside, California, stated: "There are no lands in that vicinity that belong to the United States."

A copy of that letter is appended as Exhibit 12.

The Government has elected to abrogate this comment on the Raab Cut area and "that vicinity" on the grounds that the United States Government is not responsible for commitments made by its employees.

4. Summary

The factual uncertainties were also emphasized by the Arizona-California Boundary Commissions appointed by the State Legislatures to determine the boundary line between the two States.

After extensive investigation by numerous experts, the Boundary Commissions issued a Joint Summary Report dated December 29, 1954, which stated:

". . . exhaustive studies have been made in an attempt to retrace the history of the meanderings of the stream since 1850, and to determine the causes therefor and the resultant effects on the location of the boundary."

"All known available maps have been assembled, as well as several that were uncovered, the existence of which was not of record. Historical research has been extensive. Examinations have been made of meteorological and hydrographic records. These data have not developed to be sufficiently comprehensive or accurate to make determination of the evulsive nature of the changes in the location of the channel except for a comparatively few cases. It does not appear to be clearly demonstrable to what extent these (man-made) changes in regiment of the river are reflected into specific meanderings."

On page 59 of the same report it states:

"For the above reasons the joint Commissions agreed not to define a boundary on the theory of retracement."

Recognizing the impossibility of establishment by retracement, the two Commissions elected to pick the centerline of the river as it existed in 1962 in that portion of the Palo Verde Valley with which we are concerned.

LEGISLATIVE HISTORY OF PUBLIC LAW 91–505

When the landowners opposite the Raab, Hauser, Comer, and Casad Pilot Cuts first became aware of the government claims, they agreed that these claims were so inequitable a defense should be organized. Initially, efforts were made a sharing of the costs of that defense.

Largely because of personality conflicts, the efforts at unification faltered and throughout the effort the landowners opposite the Casad Cut were alternately included and excluded and proposed remedial legislation. It ultimately developed that the landowners opposite the Raab, Hauser, Comer and Casad Pilot Cuts were unable to reach a mutually acceptable cost sharing arrangement. Therefore, while the northern landowners were not opposed to relief for the Ehlers and Schindlers, they were not disposed to jeopardize their own interests on behalf of Ehlers and Schindler.

After numerous consultations with Interior Officials and at their suggestions, the landowners sought legislative relief. Senator Hayden, joined by Senators Kuchel, Fannin, and Murphy, introduced Senate Bill S. 3104. Congressmen Tunney and Udall introduced identical bills bearing numbers H.R. 13955 and 14339. As introduced, these bills would have afforded relief to the Ehlers and Schindlers.

Both Houses passed H.R. 13955 as amended, and as amended the bill would have provided relief to Ehlers and Schindler.

On November 14, 1966, the President vetoed the bill. The President had been incorrectly advised that the landowners were in the same status as the so-called "squatters," of which there are in fact a large number in other areas along the river. The hearings clearly established that the landowners are in a category apart from the "one thousand other occupants". Congressional passage of the bill attests to the conviction of those who heard the testimony.

There followed numerous meetings of the Congressional Representatives with the landowners. All were bewildered by the veto and the misrepresentations made to the President.

On May 16, 1967, Mr. Hayden, for himself, Mr. Fannin, Mr. Kuchel and Mr. Murphy, introduced S. 1790. This bill was designed to provide that in the defense of the lawsuit brought by the United States, the landowners would be authorized to use legal equitable defense which would be available against a private party.

On May 23, 1967, Mr. Tunney, for himself, Mr. Lipscomb, Mr. Rhodes and Mr. Steiger, introduced H.R. 10256 which was identical to S. 1790. As introduced the bills provided relief for the Ehlers and Schindlers.

This bill was designed to meet the objections of the President in his Veto Message to the preceding Congress, in that it would have permitted the landowners to build the record which the President had stated should be built but which in the absence of enabling legislation could not be presented to the Court.

In addition the bill was amended to eliminate the Imperial County area and in the process eliminated the coverage of the Ehler property and a portion, but not all, of the Schindler property.

On October 25, 1968, the President vetoed H.R. 10256. The reason for the veto was that the bill would establish an undesirable precedent. He grouped the landowners covered by H.R. 10256 with "* * * many hundreds of trespassers on public lands along the Colorado River * * *" and expressed apprehension that differential treatment would be inequitable. The President reiterated his suggestion that the Congress defer action until "a complete record has been assembled" but failed to recognize the "complete record" could not be assembled by the Court in the absence of legislation of the general type passed by the Congress and which his Veto Message negated.

During the 91st Congress, identical bills, S. 3292, cosponsored by Senators Cranston, Fannin, Goldwater and Murphy, and H.R. 15405, cosponsored by Representatives Lipscomb, Rhodes, Steiger, Tunney and Udall were introduced. These bills were similar in principle to H.R. 10256 in that they would permit the parties to the dispute to proceed with litigation in court with the provision that the private parties be permitted to plead their equities. However, the new bills provided six rigorous tests which must be met before the landowners could avail themselves of the relief provided by the bills. As introduced these bills had no real limitations and would have provided relief for Ehlers and Schindlers.

The Senate passed the bill and the House Committee on Interior and Insular Affairs, without additional hearings, considered H.R. 15405 in executive session.

Following the recommendation of the Department of Justice, the Office of Management, and the Department of the Interior, the Committee again amended the legislation to only go from 13.0 to 13.17.

The Department of Interior particularly wanted to exclude certain property then involved in litigation known as the "Gossett Case", then pending in the United States District Court, Federal District of California as Case No. 64–1758–HW. The Gossett property was located in Section 35, Township 8 South, Range 22 East, San Bernardino Meridian. Had the Department of Interior moved the boundaries of the bill to river point 13.19 some of the lands involved in the Gossett Case might have been covered by the bill.

The Gossett Case fell in a different category than that of the Ehlers' and Schindlers'. Since the passage of P.L. 91–505, the Gossett Case has been resolved and the problem raised by the Gossett Case is removed.

The Department of the Interior recommended that H.R. 15405 be limited to that land situated in Riverside County between River Points 13.00 and 13.17. The southern limit of River Point 13.17 was well to the south of the Comer Pilot Cut and imposed no jeopardy to the landowners who had united in the formation of an Association to protect their rights. Neither the Ehlers nor the Schindlers were members of that Association at the time and neither were represented at the hearings. The members of the Association were willing to concede to the limits suggested by the Department of Interior's letter of July 28, 1970 to Chairman Aspinall.

Limiting the applicability of the Bill to River Point 13.17 the effect of excluding the entirety of the Ehlers' property and a narrow strip on the southern edge of the Schindler property, H.R. 15405 as amended was passed and signed into law on October 23, 1970 as Public Law 91-505.

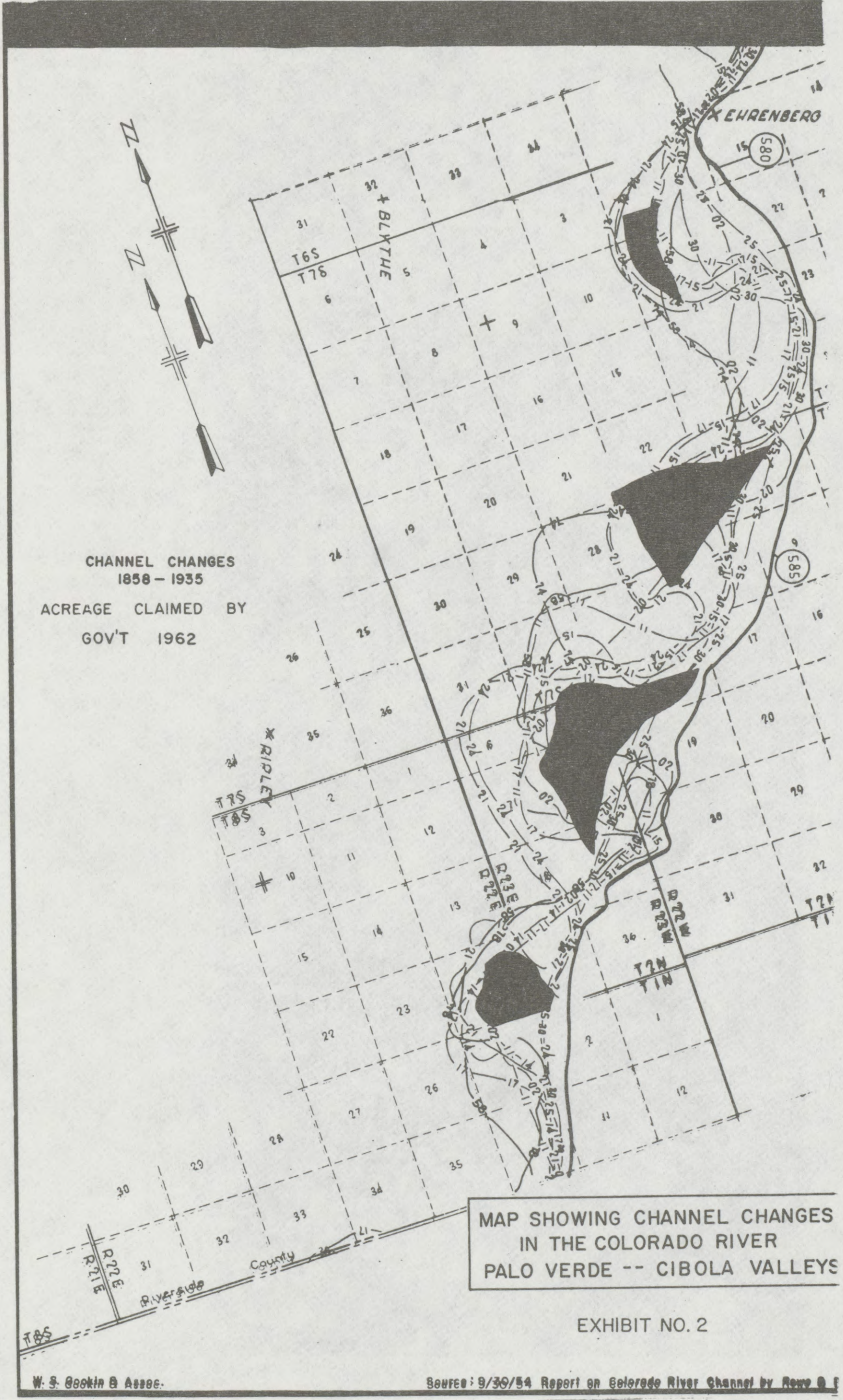
NATURE OF THE LEGISLATION

The legislation before you would provide an extension of P.L. 91-505 to encompass the areas shown on Exhibit 10. The nature of this legislation would be to allow Mr. Schindler and Mr. Ehlers' Estate to plead their equities before the Court if they can meet six stringent requirements. These requirements are:

1. The claim against the landowners must be predicated on the basis of accretion or avulsion.
2. The United States must be seeking to acquire land that is not necessary to provide riparian frontage to other contiguous lands owned by the United States.
3. The claim for accretion or avulsion must be based on events that occurred more than 40 years prior to the effective date of the act.
4. The defendant must have paid property taxes on the disputed lands.
5. The defendant must show a Chain of Title dated back to an original grant from either a state or federal government, or political subdivision thereof.
6. A reasonable prudent man would have believed that when he acquired title to the property there was no likelihood of any claim by any other party.

The effect of these restrictions combined with the geographic limitations is to limit the applicability of legislation only to those people who are in Riverside County south of the Ehrenberg Bridge within three miles of the Colorado River, who are facing a claim from the United States based upon accretions and avulsions that occurred a long time past and that this legislation would only aid those people who acquired title in good faith and over an extended period of time have operated and maintained their property in the belief that it was their own.

MOSAIC OF FAIRCHILD
AERIAL SURVEY
-1930
EXHIBIT NO. 1
0
1/2
MILES



EHRENBERG
BLYTHE
RIPLEY
T6S
T7S
T8S
T2N
T1N
R22E
R23E
R21E
CHANNEL CHANGES
1858 – 1935
ACREAGE CLAIMED BY
GOV'T 1962
Riverside
County
MAP SHOWING CHANNEL CHANGES
IN THE COLORADO RIVER
PALO VERDE -- CIBOLA VALLEYS
EXHIBIT NO. 2
W. S. Gookin & Assoc.
Source: 9/30/54 Report on Colorado River Channel by Rowe &

[Telegram]

BLYTHE, CALIF., *May 27, 1922.*

Re Exhibit No. 3.

CHIEF OF ENGINEERS,
Washington, D.C.:

After personal inspection of flood conditions in Palo Verde Valley resulting from break in levee at Hauser Bend on May twelfth, we find that break has widened to thirteen hundred feet and carries most of river discharge which passes through lower third of valley and returns to river at south end. Total area of valley 90,000 acres, of which 35,000 are under cultivation. Population of valley 5,000. 30,000 acres inundated, of which 10,000 are cultivated and include towns of Palo Verde, Rannels and Ripley. Depth inundated towns about four feet. No loss of life. Refugees being sent away or adequately cared for by local interests and Red Cross.

Damage consists of loss of crops scouring channels obliterating and filling ditches loss of small percentage of livestock damage to farming implements buildings stacked hay roads bridges probably aggregative $1,000,000.

Levee crest at break was 9 feet above water surface and river has fallen one foot since but now again rising. Reliable information indicates river will continue rising till about June fifteenth reaching flood height probbaly 5 feet above present water surface and flood discharge of 175,000 second feet as compared with 57,000 obtaining May twelfth.

Situation calls for three items of work: First, construction of defensive dike across valley to prevent further spread of inundation; second, closing of break in levee; third, providing cutoff two miles long across Hauser Bend close to bluffs on Arizona side.

No railroad on levee and hauling along levee top impracticable. Surrounding country under water and stone or other material to close break unavailable. Nearest railroad over two miles from break and country difficult. No suitable floating plant within reach. Closing break before low water following June flood considered impracticable. Work of holding Raab Bend north of Hauser Bend considered proper for local interests to undertake. A possible break at Raab Bend will not materially increase flooded area provided defensive dike across valley is maintained. Such dike now largely exists in form of ditch banks which can be strengthened and extended at small expense and is considered proper work for local interests.

Bonded indebtedness for levee water and drainage systems is over one and three-quarter million dollars. Local interests claim inability to raise further funds. Estimated cost of closing levee break is $50,000. Levee funds on hand include money obligated on existing contract made before occurrence of break for constructing levee loop under way but uncompleted at time of break. This loop would close gap if constructed according to original plans. Plans may be modified but funds available for contract work will be substantially sufficient for closing break after June flood subsidies.

If cutoff across Hauser Bend opposite break can be made immediately during rising river large part of flow can probably be diverted through cut and away from levee break. Fall between ends of cutoff is 6 feet and strip along proposed cut is partly cleared and ground surface now averages 3 feet above water surface. Initial cut can be blasted and river scour is expected to complete cut. Cutoff would be partly along a former old channel. Local interests are hampered in efforts to make cutoff by threatened injunction for Arizona authorities. Land at cutoff site is sand bar overgrown with young trees and brush and undeveloped and subject to inundation. Estimated cost of carrying out plans for diverting river across this bend by blasting initial cut and doing incidental work is $40,000.

DEAKYNE AND ARDERY.

(Exhibit No. 4)

REPORT TO BOARD OF DIRECTORS, PALO VERDE JOINT LEVEE DISTRICT, BLYTHE, CALIF.

(By C. N. Perry and F. C. Finkle, Consulting Engineers)

Gentlemen: You have requested us to study the levee and river control system along the Colorado River in Palo Verde Valley and to make recommendations and

furnish estimates of cost for its repair and future maintenance. Having completed this work, we now beg to report as follows:

PALO VERDE LEVEE SYSTEM

The first protection levees in Palo Verde Valley were built by the Palo Verde Mutual Water Company from time to time, as cultivation progressed in the valley. These original levees were earth embankments constructed for the most part with teams and scrapers.

As the cultivated area increased, the problem became too large to be handled in this way, and in 1914 the Palo Verde joint levee district was organized. Soon after its organization, the district voted bonds in the sum, approximately, of $1,250,000 and, with the proceeds derived from the sale of these bonds, took over the existing levees and proceeded to complete them in accordance with a new and comprehensive plan. The engineer selected by the district adopted, as his design, substantially the same type of earth levee originally constructed, but laid a track on it and faced the river slope with rock. To accomplish this he selcted a quarry site, opened up the quarry, purchased the necessary equipment for it, constructed a camp at the site of the quarry and laid track from it to the levee. This work was partly accomplished during the years 1919 and 1920. By the time the proceeds of the sale of the bonds had been exhausted, but 80 per cent of the earthworks had been completed and but 8 per cent of the levee had been provided with a railroad and revetted with rock. A quarry had been opened, but the rock thus far uncovered was too soft and broke too fine for the purpose for which it was to be used. A railroad track to the quarry had been laid and camp buildings partly completed. About this time the flood discharge of the Colorado began to menace the rock faced levee along Olive Lake Bend. The rock was too small and readily yielded to the force of the river current. The levee, at this point, was saved by making the Olive Lake cut-off, through which the river now flows. By that time, it having been demonstrated that the rock revetment was too light and the quarry material unsuitable, and, engineering estimates having been made, which showed that a rock levee of the type selected, while it would be successful if properly constructed, would require an investment far in excess of what the Palo Verde Valley could stand, the decision was reached in 1920 to make no further use of the railroad and quarry.

ALTERNATIVE TO THE ROCK-FACED LEVEE

The board of directors of the levee district having definitely abandoned the plan of tracking the levee and blanketing it with rock, the only alternative remaining was a return to the unrevetted type of earth levee first adopted by the water company. That meant that the training of the channel would, in the future, constitute an important factor in the problem. No stream, with the characteristics of the Colorado, was ever known to maintain a permanent channel through a wide alluvial valley such as the Palo Verde without being artifically controlled. In the case of the Palo Verde Valley this is doubly true, due to the proximity of the high gravelly mesa on the Arizona side, from which, during cloudbursts and even in heavy rains, deposits of gravel are washed down into the bed of the river, forcing the current to form bends and erode the soft, friable soil on the California side of the river.

COMPARISON OF LEVEE TYPES

In the light of the facts and circumstances above related, the problem presented to us embodies two phases, restoration of the levees which have been cut out by the river during the present year and control of the river to prevent similar breaks in the future. As we have stated above, the decision to abandon the plan of laying track on the levee and rock-facing it for its entire length was reached because of the inability of the levee district to bear the heavy cost involved in such construction. There is no argument against a properly constructed rock-faced levee on which a railroad track is maintained other than that of cost. It is true that, in the event of a serious attack by the river, it will be necessary to add rock to the levee at points threatened, but, with a track on the levee, with suitable equipment and a supply of rock ready in advance, the river can be met and fought on more or less equal terms, and, finally, when sufficient rock has been dumped along the face, the levee will become practically "fool-proof".

CAUSE OF THE BREAKS IN THE PALO VERDEE LEVEE

The outstanding point, in this connection, is that the management of the levee district, although they had decided against the plan of the rock-blanketed levee, nevertheless, through lack of experience or through wilful neglect, failed to provide the necessary equipment and material for channel control. This failure resulted in the three breaks in the levee system which occurred last May and June and which caused 30,000 acres of land to be flooded, over five thousand acres of growing crops to be destroyed and great damage to be done to buildings, personal property and stock in the town of Ripley and on the ranches within the flooded area. The total direct loss exceeded $1,000,000, while the indirect losses will probably amount to as much more and it must be clearly realized that, unless these breaks are repaired and the river channel rectified before the next flood season, the losses which will then occur cannot be estimated.

COMPARISON BETWEEN THE LENGTH OF LEVEE DESTROYED AND THE LENGTH OF SHOO-FLY NECESSARY TO REPLACE IT

From actual surveys made by your engineers, it appears that the aggregate length of the levee destroyed at Raab, Hauser and Casad bends amounts to approximately 7000 feet. To replace this however, new construction, aggregating 21,000 feet in length, is required. The reason for this increase in length is due to the fact that the river, in its operation of side-cutting the levee, has placed upon you the necessity of falling back in some places as much as one-half mile, with the consequent increase in length. This difference is most marked in the case of the Raab Bend, where, to replace a length of destroyed levee amounting to 4000 feet, the shoo-fly necessary must be 17,600 feet long. We think it proper at this time to draw your attention to the fact that the Raab Bend, which last spring could have been protected by an expenditure of possibly $10,000, will now require, to remedy the conditions existing at that point, approximately twenty times that amount. In point of fact the neglect of last spring is responsible for about one-half of the total expense with which you are now confronted.

RECOMMENDATIONS

We now pass to the program we wish to submit for your consideration covering the repairs to and future operation of your levee system. For convenience, we have made these recommendations in sequence, down stream from the intake.

RIVER PROTECTION ABOVE EHRENBURG FERRY

This work will consist of putting in retards on both sides of the river, where the current is exhibiting a tendency to cut the banks. The amount of work involved is comparatively small, and if carried out without any unnecessary delay, will involve no heavy expenditure. No serious side-cutting has yet occurred, but, in several places, a start has been made, which, if left uncurbed, will later perhaps develop into a serious situation. The cost of the necessary operations between the intake and Ehrenburg Ferry we estimate as $9200. This properly is an item of maintenance and should be provided for in your annual budget.

CLOSING THE BREAK AT RAAB BEND

We find that this will require a shoo-fly levee, 17,600 feet in length, involving the purchase of 121.2 acres of land for right-of-way, the clearing of sixteen acres of land and the moving of 447,950 cubic yards of earth. We believe that we can secure the land necessary for right-of-way for from $75 to $100 per acre and that the clearing can be contracted for $100 per acre, while the earth can be moved for 22 cents per cubic yard. Based on these figures, we estimate the maximum cost of construction of the Raab shoo-fly to be $112,269. In this connection we call your attention to the fact that by making a minor change in the location of the shoo-fly it will be possible to take advantage of the proposed location of the extension of the East Side drain using the material excavated from this drain for a portion of the shoo-fly thereby saving approximately $13,000.

We particularly call your attention to the fact that our recommendations as to the future handling of the river at Raab Bend go further than the mere advocacy of replacing that part of the levee washed out during June of this year. The river

for some time past, has given unmistakable evidence of its desire to develop this bend and attack the levee. The Ehrenburg channel, which in former years was used by the steamboats plying on the river, has been choked by sand and gravel, washed down from the Ehrenburg mesa, and the gravel bar which now exists across the head of this channel offers effective resistance to any tendency of the river to reopen it. On the contrary, the effect of this bar is to force the current further and further to the west and against your levee. To correct this, we recommend that the Ehrenburg channel be reopened and the river forced to flow through it. Unless this is done, we believe that it will be but a short time before the river will again be in the valley. Surveys, recently made by our engineers, show this involves the clearing of 126.3 acres of land and the excavation of 247,220 cubic yards of material. Basing our estimate on unit prices of $50 per acre for clearing and grubbing and 30 cents per cubic yard for excavation, we find that the cost of reopening this channel will amount to $80,481. These figures are based on a channel fifty feet in width. We had favored a channel of twice that width, but, for reasons of cost, have decided in favor of the narrower cut, and believe that, while your maintenance expense will be somewhat increased, nevertheless if extraordinary care be exercised through the first flood season, the fifty-foot channel will serve the purpose. In addition to this amount, we have provided for retards and for the diversion jetty to turn the river into this channel, the sum of $3,000.

COMPLETION OF THE HAUSER SHOO-FLY

The contract for this piece of work was let in January 1922 to P. B. Engh. His work was interrupted by the floods of May and June, but he is now preparing his equipment and will, in the immediate future, resume operations and complete it in accordance with the original specifications. No comment on this seems necessary except to say that, as in the case of the Raab Shoo-fly, so in this case, the construction of the shoo-fly alone, by no means solves the problem of protection. The river for many years, has been developing an acute bend to the west. The present shoo-fly, now partially completed, is the fourth to be built, the first having been constructed in 1914. A reference to the old government map of 1856 shows that the channel of the Colorado was, at that time, about three-fourths of a mile still further west than the shoo-fly now under construction, and, if it is decided that the levee must hold its ground and not fall back, it follows that the current of the river must be prevented from attacking it.

To accomplish this, we recommend the construction of the Hauser cut-off, which will turn the river against the Arizona bank, along the foot of the mesa. The area to be cleared and grubbed for this channel amounts to seventy-five acres and the yardage in excavation 195,700 cubic yards. We have estimated the cost of clearing at $100 per acre and the cost of the excavation at 30 cents per cubic yard. On this basis we have determined the cost of this cut-off to be $66,210. In addition to this sum, we have provided, for retards and diversion jetty to turn the river into this cut-off, the further sum of $3,000.

CHANNEL CORRECTION AT COMER BEND

As in the case of the Raab and Hauser bends, this bend is becoming more pronounced each year. The river, while it is now in dangerous proximity to the levee, has so far done no damage to it, but, if left uncontrolled, it is practically certain the next year will see the levee breached. We do not, however, feel justified in recommending the adoption of a cut-off, which has already been surveyed across this bend. The expense of such cut and the possibility of a recession of grade taking place have caused us rather to recommend that the levee be protected by installing the necessary number of retards and that the river be trained through the easterly of two channels now existing in this head, which said easterly channel is, at the present time, carrying approximately 25 per cent of the flow of the river. Our estimate of the cost of this training and the necessary retards, drift removals, etc., is $6,000.

CASAD SHOO-FLY

The shoo-fly was under construction at the time of the break last May. As in the case of the Hauser shoo-fly, the contractor, Mr. Engh, will complete it out of the funds now in possession of the district.

CASAD CUT-OFF

This cut-off is one which must certainly be made in advance of the next summer flood. The bend, at this point, has developed to such a degree that the river is endeavoring to make the cut-off unaided. However, it would be folly to leave it to the river and depend on the cut being made at the next high water. It might be thus made, but it is more probable that, before this cut were accomplished, the river would be through the levee and in the valley again. This cut-off involves the clearing of 98.2 acres and the excavation of 87,355 cubic yards of earth. Assuming that the clearing can be done for $100 per acre and the earthwork for 30 cents per cubic yard, we estimate that the cost of this new channel will be $36,026.50. To this we must add, for retards and jetty, an additional sum of $6,000. In addition to the cost of the improvements above noted, you must provide a sufficient sum in your annual budget to take care of perhaps one million additional retards, to be installed wherever necessary. This sum we estimate as $25,000.

POSSIBLE DANGER OF A RECESSION OF GRADE

In our visit to the valley we found that a number of people seemed apprehensive of the results of making any changes in the channel of the Colorado and a report published in the Blythe Herald of August 17 of this year calls attention to the apparent difference in gauges for like discharges for 1919 and the present year. The comparison therein contained has however no value, inasmuch as the total discharges of those two years, both as to amount and duration of high water, are in no wise comparable. Anyone familiar with the Colorado knows that, after a long sustained flood, the bed is scoured to a lower level than after a flood of small magnitude such as we experienced in 1919. We do not believe that there is any warrant for apprehension of ill effects resulting from the channel changes we have recommended, insofar as its causing any material lowering of the water surface at the intake. The following table will, we believe, be self-explanatory:

Year and peak period	Blythe gage	
	August	September
1917:		
23 days over 100,000 cusecs		
61 days over 50,000 cusecs	290 to 286	287 to 285.6.
1918:		
0 doays over 100,000 cusecs		
23 days over 50,000 cusecs	288 to 286	287 to 285.
1919:		
0 days over 100,000 cusecs		
10 days over 50,000 cuecs	287.5 to 286	287 to 286.
1920:		
10 days over 150,000 cusecs		
24 days over 100,000 cusecs		
57 days over 50,000 cusecs	287 to 285	285 to 283.
1921:		
6 days over 150,000 cusecs		
17 days over 100,000 cusecs		
50 days over 50,000 cusecs	286 to 285	287 to 284.
1922:		
15 days over 100,000 cusecs		
58 days over 50,000 cusecs	285.5 to 284.5	Incomplete.

From this table, popular belief to the contrary notwithstanding, you will notice that no serious recession of grade was caused by the cut through the bend of Olive Lake. This was made in 1920, nevertheless we find the guages in September 1921, substantially the same as in the same month of 1917, with the river conditions in those two years very similar. The apparently high gauge in August of 1917 was due to the long sustained peak which held up to 50,000 cusecs until after August 1. In the case of the Ehrenburg channel the shortening of the channel is negligible, this cut being rather a deflection of the channel to the Arizona side and away from Raab bend than a cut-off as that term is popularly understood.

ROAD ALONG LEVEE

We would urge that your maintenance operation include the keeping up at all times of a road on top of the levee for its entire length over which an automobile can travel at a reasonable rate of speed. We have made no provision for the

expense of this improvement, considering it a maintenance charge, and as such, to be provided for in your budget. We would however suggest as the most economical and efficient way of doing this that a gang of laborers under a capable foreman be maintained, placing two men at each two-mile interval, who would camp together and in whose camp would be maintained a telephone connecting with the headquarters of the foreman. That the territory assigned to them extend one mile each side of their camp or a greater distance, if the probability of danger to the levee be very remote. That such laborers, or patrolmen, be put to work about March 1 of each year and that their employment terminate when the crest of the summer flood has passed and the river is again safely within its banks. The duties of such patrolmen should combine the maintenance of the road along the levee, the clearing of such brush as interferes with the proper patrolling of it and, later, at the crest of the flood, the actual patrol. The greater part of the brush cleared can be used to put the road in shape so that, in case of emergency, men and material can be rushed to the point threatened. During the peak of the flood this force should be augmented by the addition of a night patrolman who, by means of a Ford car in which he would carry tools and emergency material, could patrol the entire levee and look out for such points as might need attention. By the plan outlined, he would never be further than one mile from two patrolmen, who would be subject to call at all times.

THE RIVER FORCE

This force should be under a general foreman, who should be furnished a power boat, of light draft and power adequate to make at least six miles an hour against a current of eight miles an hour, and which should be capable of transporting twelve men or their equivalent weight in material. His organization and equipment should consist of one snag boat, properly manned, and two scow drivers with the necessary crews. Such organization can be swelled at any time the necessity for so doing makes itself apparent. The pile-drivers will, of course, be used for the construction of such jetties as may be necessary, while the snag boat will be used for removing drift and snags from the main channel and for the construction of the necessary retards as well as in aiding in the building of the jetties above mentioned. The snag boat should be furnished with a scow tender on which brush, etc., can be transported. We recommend the purchase of the following equipment:

Item	Cost
One patrol boat (probable cost)	$3,000
One snag boat	30,000
One tender	1,500
Two scows for pile-drivers	3,000
One pile-driver, tower and hoist	3,000
Two small boats, one for each driver	200
Total	40,700

We would suggest however that at as early a date as possible, you arrange to finance the purchase of an additional snag-boat and scow tender.

We recommend the establishment of a central storehouse on the levee at the point where the levee foreman makes his headquarters, in which, during high water period, could be kept a supply of sacks, wire, shovels, axes, cable and mushroom anchors and a limited supply of lumber of the dimensions likely to be needed in emergency work. All such tools and material to be charged against the foreman and to be accounted for by him at the close of the flood period.

The retards referred to above may be divided into two classes, first such as are obviously necessary at the present time and will be put in at as early a date as possible, and, second, such as may at a later period be deemed necessary to counteract a later developed tendency of the channel to erode the levee. The anchorage for the first class will consist of four foot lengths of pipe dropped over the jet pipe and jetted down into the bed of the river preferably below the limit of the scour. To these pipes will be attached three-quarter inch galvanized wire rope of a length to reach above the surface of the river. The ends of such cables will be made fast to another cable of like size and to it will be attached lengths of higher cable to which we will fasten trees and brush. For these retards, if found satisfactory, four-foot lengths of rail may be substituted for the pipe. The anchorage for the second class of retards will consist of reinforced concrete anchors of the "mushroom" type with an "I" beam or "T" rail stem of such weight

and length as to right the anchor when it is dropped into the river. A sufficient number of these anchors must be carried in stock to cover all probable demands.

SUMMARY OF COST OF IMPROVEMENTS AND PURCHASES OF EQUIPMENT RECOMMENDED OTHER THAN ITEMS DESCRIBED AS MAINTENANCE

Item	Cost
Shoo-fly at Raab bend, less saving through drainage work	$99,269
Opening Ehrenburg channel	80,481
Jetty and retards at this point	3,000
Sauser cut-off	66,210
Jetty and retards at this point	3,000
Channel correction at Comer bend	6,000
Casad cut-off	36,026
Retards and petty at this point	6,000
Store house on levee	3,000
River equipment, as itemized above	40,700
Reinforced concrete anchors	2,000
Subtotal	345,666
Engineering, superintendence, etc	34,569
Total	380,255

The basis on which our estimates are made is that of the probable price at which the work could be let, which of course includes the contractor's profit.

We wish, in conclusion, to call your attention to the fact that our recommendations do not include the adoption of any "sovereign remedy" for resisting the attacks which, in the future, may have to be sustained by your levee. It might have been possible, had the finances of your district been unlimited, to have laid out a program which, within reason, would have rendered the levee impregnable to any assault by the river. The program we have mapped out has taken into consideration the limit of expenditure which, at this time, your district can reasonably afford. We have reduced the initial expenditure to the lowest point consistent with prudence, but it must be understood that this reduction carries with it the necessity for increased vigilance on the part of those entrusted with the maintenance of the levee. One or two such retards as we have recommended, installed at the right time, will obviate the necessity for very much more extensive work a week later. The details of the program to be followed cannot, at this time, be laid down in a "hard and fast" manner. Each change in the channel conditions will call for individual treatment and, while the general method to be followed may at this time be laid down, the application of that method must be left to the intelligence of the engineer in charge on the ground.

Respectfully submitted,

C. N. PERRY,
F. C. FINKLE,
Consulting Engineers.

LOS ANGELES, CALIF., *September 5, 1922.*

EXHIBIT No. 5

Blythe, Califor...
October 21, 1965

To Whom it May Concern:

This is to certify that I first moved to the Palo Verde Valley near Blythe, California in 1904 and have been a resident of this area since that time.

Ever since I first moved into this area I have engaged in or been associated with farming dependent upon the Colorado River as a source of irrigation water. For that reason I have been concerned with the River and its movements and location. I have served as a member of the Board of Directors of the Palo Verde Irrigation District for approximately 7 1/2 years. Moreover, until this year I have been engaged in cattle ranching and in that business I have had occasion to travel up and down the river very frequently. I have seen the river during floods and during dry seasons.

From my own personal knowledge I know that numerous attempts have been made to dig cuts to move the river away from the levees on the California side of the River. I am personally familiar with the areas that are locally known as the Raab Cut Area, the Hauser Cut Area, the Comer Cut Area, the Casad Cut Area and the Beaver Bend Cut Area. Although some cuts were dug in those areas, none of these cuts were ever successful. We did not have the type of equipment then that the Bureau of Reclamation has now and as a result the cuts were too small and silted up so that the river never flowed through these except for very small flows.

It is true that some tripods have been installed that were successful in protecting the banks and in some cases did cause the river to move but where this was done the movement of the river was gradual.

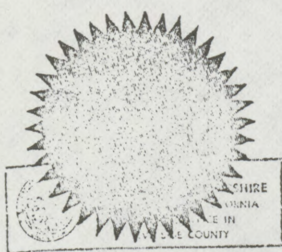
During flood times I have seen the river flowing in many channels from the foot of the east Mesa to the levee and in 1912 and again in 1922 break the levee. There were always many channels between the foot of the east Mesa and the levee but most of these were high water channels and did not carry the main flow of the river during low water.

Yours very truly,

Jack E Marlowe

J. E. Marlowe

STATE OF California
County of Riverside } ss.

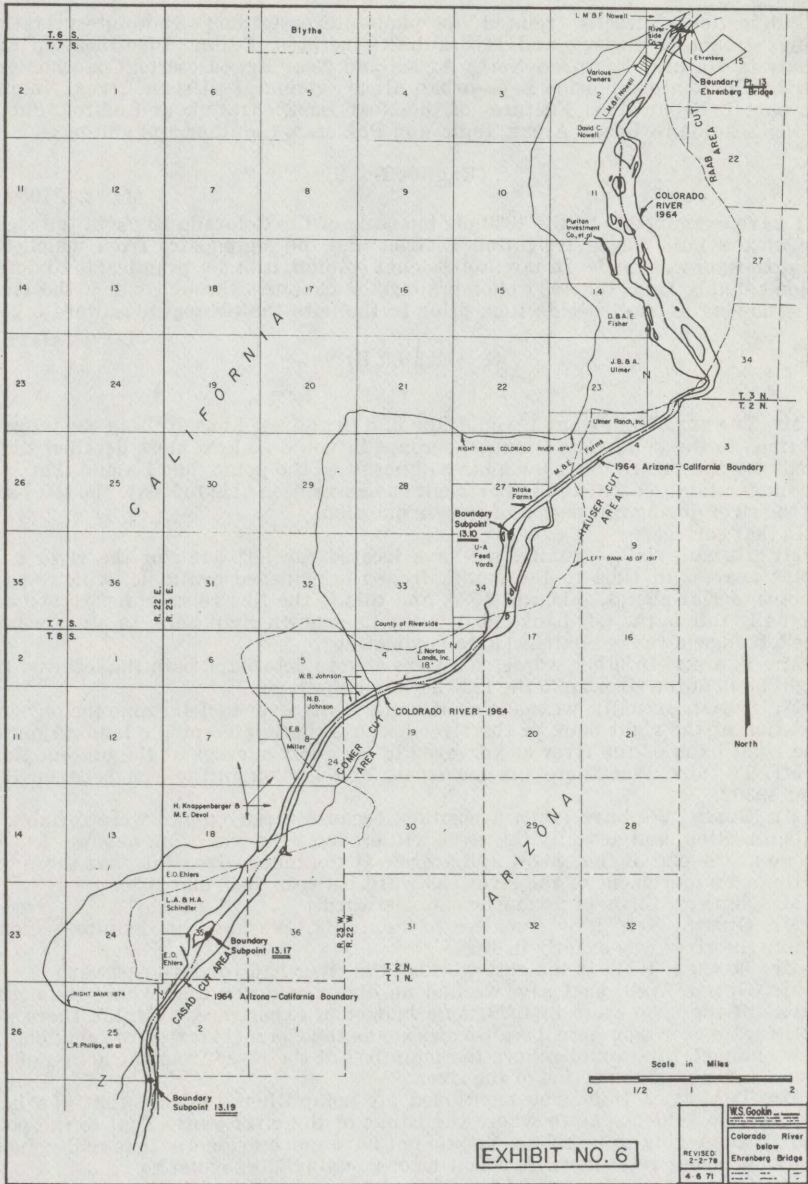


ON THIS 21st day of October, 19 65, before me, Maynor Fay Shropshire a Notary Public in and for said County and State, personally appeared J. E. Marlowe, known to me, to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Maynor Fay Shropshire
MAYNOR FAY SHROPSHIRE Notary Public in and for said County and State.
Expires Jan. 4, 1969

ACKNOWLEDGMENT — GENERAL — WOLCOTTS FORM 221   60640



(Exhibit No. 7)

MARVIN GAST

Education: M.S. in geography, University of Chicago.

Professional experience: 15 years (1951 to present) as a geographer with the U.S. Government in grades GS–7 through GS–14. Photointerpretation was an essential part of every position.

Publications directly related to photointerpretation: Photointerpretation Key, Stream Hydrology and Hydraulic Structures, Editor. Identification and Analysis, Natural Features, North Africa and Near East Deserts, Coauthor and editor. Photointerpretation key—urban areas: volume I—Urban Areas; volume II, part I, Urban Area Features of the Near East, coauthor and editor. Photographic Guide to Urban Areas, India and Pakistan, coauthor and editor.

(Exhibit No. 8)

MAY 24, 1966.

I have examined both the 1930 photomosaic of the Colorado River in the vicinity of the Palo Verde Irrigation District and the stereopairs from which the photomosaic was made. In my professional opinion, it is not practicable to determine reliably from the 1930 photography the channels through which the river was flowing at any specific time prior to the date the photographs were taken.

MARVIN GAST.

(Exhibit 9)

* * * * * * *

Mr. TUNNEY. Well, what I would like him to address himself to, in the interest of time, to the point that I made—perhaps he could make a more detailed statement for the record, but now address himself to the point that I made that it is my understanding that the Department has never been able to locate the left bank of the river during this period of time in question.

Is that correct?

Mr. GUMM. Well, actually, we have located the left bank of the river at a point nearest in time to the cutoff, from the evidence available, which is the photos, aerial photos, taken in 1930, and this is the line represented right here. Actually this is the left bank. That is the line shown right here. In other words, the left edge of the red-hatched area [indicating].

Mr. TUNNEY. In other words, you were able to determine both the left and the right bank of the river from the 1930 aerial photographs?

Mr. GUMM. Actually, we made no attempt whatsoever to determine the physical location of the right bank of the river because there is no public land adjoining the right bank of the river as surveyed in the early surveys at the present time.

Mr. TUNNEY. Was there any movement of the river to the east between 1923 and 1930?

Mr. GUMM. We have taken a position, because these oxbows were forming in this direction, and actually the river will erode at the end of an oxbow—I mean erode at the end of the oxbow and accrete at the inner edge of it, that there was little or no movement of the river eastward between 1923 and 1930.

Mr. TUNNEY. Little or no movement, eastward.

Mr. GUMM. Well, it is a matter of relativity. We have no definite evidence where the river was exactly in 1923.

Mr. TUNNEY. Well, if the cuts worked, the river had to move eastward.

Mr. GUMM. Well, as I say, we had no direct evidence that where the actual banks of the river were in 1923. As a matter of experience, we think there was little or no accretion here, because as soon as the channel started to function, the new channel, this would relieve the main bed of the river from the action of the river, or much of the action of the river.

Mr. TUNNEY. I think you mentioned my point when you said that you have little or no evidence as to where the banks of the river were. That is the point that I was trying to establish. You do not have much evidence. It is really guesswork. It comes right down to a matter of guessing, does it not?

Mr. GUMM. I think not. We have to rely, in many cases on the best available evidence, and here we have evidence only 7 years after the cuts in 1923 and 1924—less than 7 years. And, as I say, when the new channel started to function, it is normal that there would be little or no erosion or accretion in the old or abandoned bed.

Mr. TUNNEY. But if the river moved back from the west to the east, it obviously was going to be scouring that left bank that had been formed in 1923. Is that not true?

Mr. GUMM. Well, there is no evidence that we can find that the river did move back to the east after the cuts began to function.

Mr. REINECKE. Did it move to the west?

Mr. GUMM. Pardon?

Mr. REINECKE. Did it move to the west after those cuts?

Mr. GUMM. This, we do not know. And, as I said, we are not interested in the right bank of the river, because there is no public land along the right bank of the river.

Mr. REINECKE. Well, true; did the left bank move further to the west?

Mr. GUMM. Well, here, again, as I said before, this would be an abnormal circumstance, because there was very little water running in this old abandoned channel after the new cuts began to function, and there would be, of course, very little erosion or accretion in the abandoned bed.

Mr. REINECKE. Then, you feel there was very little movement of any kind after the cuts?

Mr. GUMM. That is right. After the cuts began to function, there would be little or no erosion or accretion in there.

Mr. TUNNEY. Of course, that conflicts with the testimony that we had last year which indicated that the tetrahedrons were located in along the levee for the purpose of getting the river to move back toward the east and to protect the levee, and there was testimony that these tetrahedrons worked. Now, did you read the testimony last year before the Senate?

Mr. GUMM. Yes.

Mr. TUNNEY. And what is your opinion of the testimony?

Mr. GUMM. Well, this could have been an effort on the part of the irrigation district to further slow down any erosion that might still be occurring before these cuts began to really function.

Mr. TUNNEY. In other words, you are saying that in floodtimes, between 1923 and we will say 1930, in floodtime when we had maybe 200,000 second-feet of water coming down the Colorado River, that those cuts channeled all the water from the Colorado?

Mr. GUMM. Oh, I do not think that we made that statement at all, because when these abandoned beds are treated (and we had a long history of these in many other rivers—the Red River and others) there is usually a trickle of water that comes through them, and at very high flood stages they still will carry water. We are not saying this abandoned bed immediately became dry.

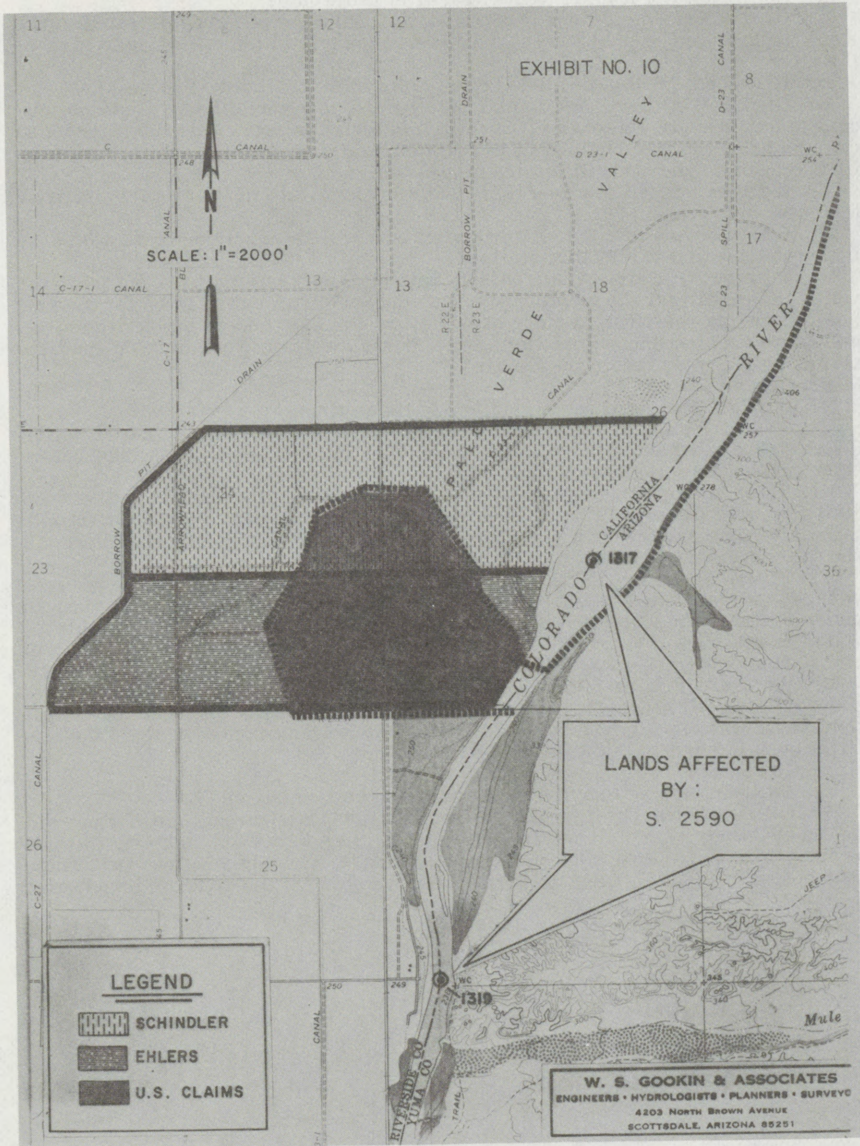
Mr. TUNNEY. I have seen pictures of the cuts, and I have seen pictures showing them to be filled with refuse of various sorts. I just cannot believe that those cuts could have carried the whole water supply of the Colorado River even in medieval flow, let alone in high flow.

Mr. GUMM. Well——

Mr. TUNNEY. Are you saying that it could; those cuts could?

Mr. GUMM. These cuts developed through the years, even though they did not immediately carry all of the water when they began to function, they do so now, and they have done so for many years. The actual time that these cuts began to function fully, to carry their full flow of the river, is immaterial.

* * * * * * *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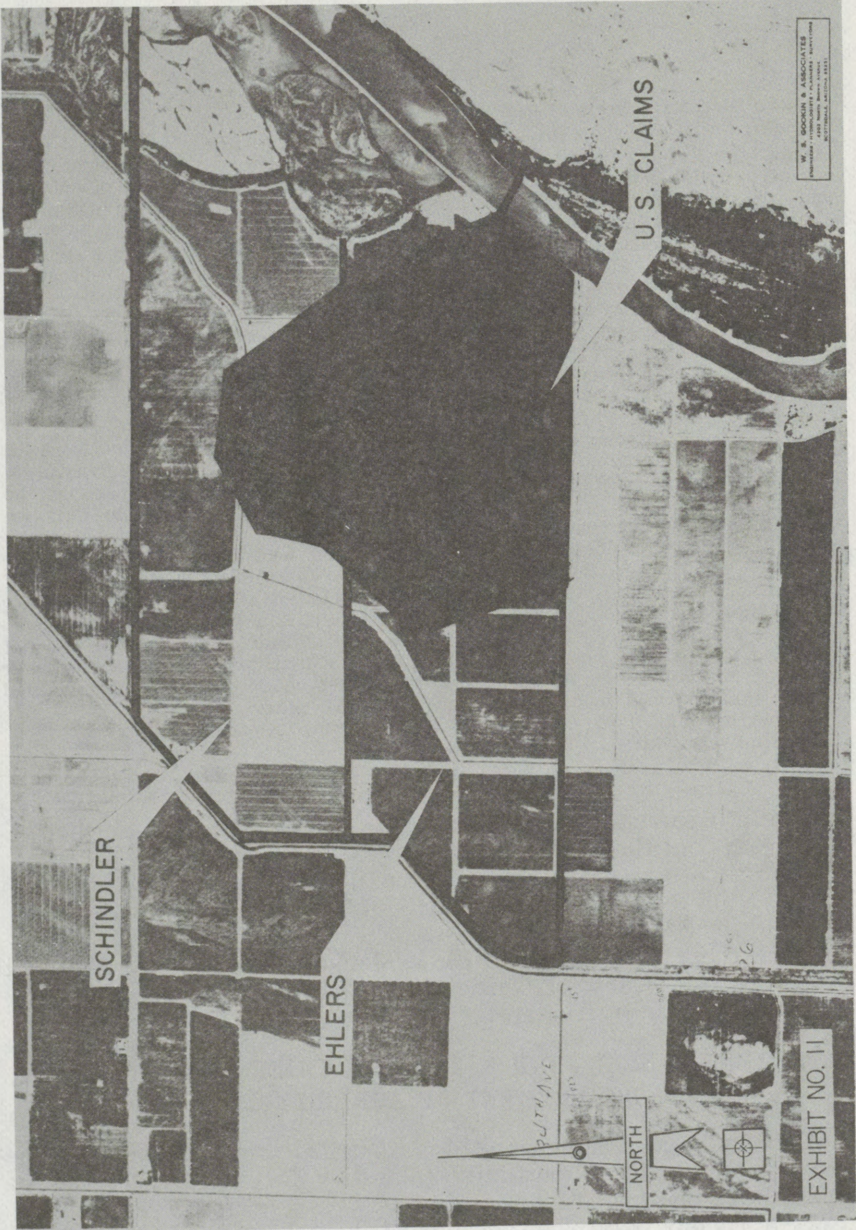
LEGEND
SCHINDLER
EHLERS
U.S. CLAIMS
W. S. GOOKIN & ASSOCIATES
ENGINEERS • HYDROLOGISTS • PLANNERS • SURVEYO
4203 NORTH BROWN AVENUE
SCOTTSDALE, ARIZONA 85251
Mule


U.S. CLAIMS
SCHINDLER
EHLERS
NORTH
EXHIBIT NO. 11
W. S. GOOKIN & ASSOCIATES

(Exhibit 12)

U.S. Department of the Interior,
Bureau of Reclamation,
Boulder City, Nev., November 6, 1958.

Mr. Tyler ______,
Planning Director, County of Riverside,
Riverside, Calif.

Dear Mr. ______: We have reviewed the map enclosed with the letter from your office dated October 31, 1958, with respect to the desirability of developing homesites on the right bank of the Colorado River below Ehrenberg bridge for a distance of about four miles.

There are no lands in that vicinity that belong to the United States. According to our records, all the land to be occupied by the proposed development would be state-owned land. Therefore, we have no comment with respect to unauthorized occupancy of Federal land.

The entire develoment as shown on the map submitted for our review would be subject to inundation by floods of record on the Colorado River at and below Parker Dam. The frequency of such flooding is not high, but it is possible that floods can occur which would do considerable damage to any improvements on the land that is proposed for development.

The Bureau of Reclamation is contemplating channel rectification work in the Colorado River channel from the Palo Verde Diversion Dam downstream to the lower end of Cibola Valley. Our plans for the particular reach of the river in question are not formulated completely, but it is possible that we would do some channel rectification in the reach of the river involved, thereby moving the main river channel away from the present location.

There is evidence in the reach of the river in question of bank erosion, and unless that is repaired, the banks can be expected to continue to scour away during high flow periods. The Bureau of Reclamation is charged with maintaining a suitable river channel for the lower Colorado River, and we do not intend to make bank repairs to protect private developments along the river if in our opinion the bank protection would not be necessary to the channel rectification proposed in our forthcoming over-all plan.

I hope that the above comments will assist you in your decision.

Sincerely yours,

A. L. Mitchell,
Acting Regional Director.

Senator Bumpers. If you will excuse us, we will be back shortly.

[Whereupon, the hearing was in recess.]

Senator Bumpers. We will proceed now to the consideration of S. 2774, a bill to extend the boundaries of the Toiyabe National Forest in Nevada by Senator Laxalt.

Our witness this morning is Chief McGuire, Chief of the National Forest Service. Chief McGuire, welcome to the committee, and we are anxious to hear from you.

STATEMENT OF HON. JOHN R. McGUIRE, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. McGuire. Thank you, Mr. Chairman and members of the committee, for this opportunity to testify for the Department of Agriculture on this bill.

My testimony is rather brief, but I believe I can summarize it still further. The bill would extend the boundaries of the Toiyabe National Forest in Nevada, and addresses other purposes.

The administration opposes the boundary extension except for a small change in the Zephyr Cove area, which I will explain. However, the administration does support the provision in section 3 of

the bill to remove the limitation on expenditures which is contained in the act of August 5, 1970.

A major part of lands within the Lake Tahoe Basin are now national forest lands. Since 1968, the Forest Service has acquired approximately 35,000 acres of land from private owners in a number of key tracts within the basin so that nearly two thirds of the basin is now in Federal ownership. The States of California and Nevada have also acquired lands in the basin.

The boundary was extended in 1970. The extension act contained a $12 million ceiling on acquisition. We support the provision in S. 2774 which would remove this dollar limitation on acquisition.

A small portion of the Whittell Estate property in the Zephyr Cove area is outside of the 1970 boundary extension. We recommend that the boundary of the forest be extended to include the entire Whittell Estate property. I have a map before you, Mr. Chairman, which shows the estate property in red and that part of the property which is outside the present forest boundary is that small area in the southwest corner.

Senator BUMPERS. Is the part in gray there the national forest?

Mr. MCGUIRE. Yes, sir, and the existing boundary is the black line. That concludes my testimony, Mr. Chairman.

Senator BUMPERS. Senator Laxalt.

Senator LAXALT. Thank you, Mr. Chairman. First of all, I thank you, Chief, for your support of the legislation. I would like at this time to include within the record, Mr. Chairman, a statement of my own, and a supportive statement on the part of Senator Cannon of the State of Nevada.

Senator BUMPERS. Without objection.

Senator LAXALT. I have letters from the National Parks and Conservation Association, the League To Save Lake Tahoe, and the Sierra Club in support of the legislation. So Chief, you have a lot of company supporting the legislation.

Mr. MCGUIRE. Yes, sir.

Senator BUMPERS. I also have a statement that I will submit for the record, unless there is objection, from the National Audubon Society favoring this legislation.

[The information follows:]

STATEMENT OF HON. PAUL LAXALT, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, thank you for the opportunity to submit testimony in support of S. 2774. As you are aware, this legislation would amend Public Law 91-397, known as the Bible Act, to remove the funding limitation and to expand the existing Toiyabe National Forest in my home state, Nevada.

Mr. Chairman, Lake Tahoe is one of the world's largest alpine lakes and is internationally known for its unique scenic and recreational resources. However, in spite of development controls and public acquisitions, continued development is still threatening the Lake Tahoe Basin environment. To preserve the ecology of the Lake Tahoe Basin, it has been a Federal policy to seek an optimum public land ownership pattern to provide increased public access and use of lands for outdoor recreation to protect scenic and open space values, and to protect critical watersheds and fish and wildlife habitat. However, at this time, special legislation is needed for the Nevada portion of the Tahoe Basin to extend the Toiyabe National Forest boundaries and to amend the dollar limitation of the Act of August 5, 1970, Public Law 91-372.

This law, as amended, extended the boundaries of the Toiyabe National Forest to include approximately 12,920 acres along the Nevada side of Lake Tahoe

in order to aid in the protection and management of the resources of the area under principles of multiple use and sustained yield. In addition, there was a ceiling of $12,500,000 placed upon acquisition costs within the boundary extension. A total of $9,389,817 has been expended by the Forest Service within the Bible Boundary, but there is an estimated $9,200,000 worth of property that remains to be purchased within the boundaries. Thus, the remaining available limitation of $3,110,183 from Public Law 91–372 will be inadequate to cover the acquisition of the remaining private lands within the Bible boundaries that have been identified as providing significant public benefits.

Additionally, Mr. Chairman, there are other private lands outside the Bible boundaries that are highly desirable for recreation use by the public. These key private parcels include properties where sale for development purposes is likely, as well as properties not threatened by development, but highly desirable for recreational purposes. Mr. Chairman, if these lands were ultimately to be developed it would create additional adverse environmental impacts on the Tahoe Basin and would unquestionably reduce the use and enjoyment of the existing public lands.

But, because these lands lay outside the current National Forest boundaries, there is the question as to the Forest Service authority for acquisition. S. 2774 would expand the Toiyabe National Forest Boundaries, which, in my view, is the ideal solution.

Since the limitation of Public Law 91–372 (Bible Act) will severely restrict the ability of the Forest Service from acquiring private lands that will provide significant public benefits, I encourage the committee to support this legislation to enlarge the Toiyabe National Forest boundary and remove the existing funding limitation of $12.5 million. This action will greatly increase the recreation opportunities in the Lake Tahoe Basin as well as significantly reduce the risk of environmental degradation due to development.

Thank you, Mr. Chairman, for the opportunity to present testimony in support of this legislation.

Statement of Hon. Howard W. Cannon, a U.S. Senator From the State of Nevada

Mr. Chairman and Members of the Committee, I appreciate this opportunity to express my support for S. 2774, a bill to expand the boundaries of the Toiyabe National Forest at Lake Tahoe and increase the limit on the fund for land acquisition in the Tahoe basin.

This bill would extend the boundary of the Toiyabe National Forest to include some 5,649 acres of privately owned land located on the eastern shore between the State line and the existing Forest boundary. The major portion of this land includes remnants of the Whittell estate.

In addition to extending these boundaries, the bill would remove the present expenditure ceiling for the area. With removal of the present $12.5 million limitation, priorities for purchase in this area could be considered along with other Forest Service acquisitions

This bill will have a beneficial impact on efforts being made to preserve the scenic and ecological values of the basin. I hope the Committee will extend the boundary extension to the full extent provided by the bill as the option for obtaining all these properties should remain open to the Forest Service. I commend the bill to the review of the Committee in the interest of preserving one of the most delightful portions of our nation's scenic heritage.

Thank you.

National Parks & Conservation Association,
Washington, D.C., July 28, 1978.

The President,
The White House,
Washington, D.C.

Dear Mr. President: Lake Tahoe in Nevada was one of the most beautiful lakes in America until the speculators and the gamblers took it over.

Much of the shoreline has been built up since that time, but a great deal of it can still be saved if the U.S. Forest Service can be authorized to acquire a reasonable amount of land and the necessary appropriations can be made.

The National Parks and Conservation Association wishes to join with a number of other major conservation organizations in urging you to do everything you can to help protect the remaining natural country around Lake Tahoe.

This lake is an area of national significance and well deserves federal protection and financial assistance.

Specifically, we recommend Administration support for S. 2774, which would authorize and appropriate funds for U.S. Forest Service acquisition in Zephyr Cove at Lake Tahoe. The Senate Subcommittee on Energy and Natural Resources will be holding a hearing on this legislation on Tuesday, August 1, and your favorable intervention might be decisive.

Faithfully yours,

ANTHONY WAYNE SMITH,
President and General Counsel.

LEAGUE TO SAVE LAKE TAHOE,
South Lake Tahoe, Calif., July 28, 1978.

Senator DALE BUMPERS,
Chairman, Subcommittee on Public Lands and Resources, Dirksen Senate Office Building Washington, D.C.

DEAR SENATOR BUMPERS: The League to Save Lake Tahoe supports the passage of S–2774 (Laxalt), amending Public Law 91–372, known as the Bible Act, to remove funding and acreage limitations and expanding the existing Toiyabe National Forest boundaries in the Tahoe Basin portion of the State of Nevada.

S–2774, in our estimation, will increase public scenic and recreational opportunities as well as reduce the risk of environmental degradation stemming from increased private land development.

We urge your support of this important and timely legislation.

Sincerely,

JAMES W. BRUNER, Jr.,
Executive Director.

NATIONAL AUDUBON SOCIETY,
Washington, D.C., July 31, 1978.

Hon. DALE BUMPERS,
Chairman, Subcommittee on Public Lands and Resources, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR BUMPERS: The National Audubon Society is strongly in favor of S. 2774—a bill which would amend Public Law 91–372 (the Bible Act) and provide for increased authorization and boundary extension authority for the Forest Service to acquire lands to round out the national forests in Nevada. We urge you to support this legislation because it would provide protection to the Zephyr Cove area, an important and aesthetically attractive in-holding at Lake Tahoe in Nevada. The legislation has the support of Senator Laxalt and the conservation community in general.

Thank you for your assistance in assuring the passage of this very important conservation legislation.

Sincerely,

MICHAEL D. ZAGATA, Ph. D.,
Director of Federal Relations.

SIERRA CLUB,
Reno, Nev., July 26, 1978.

Senator DALE BUMPERS,
Chairman, Subcommittee on Energy and Natural Resources,
Senate Public Lands Committee.

DEAR SENATOR BUMPERS: We wish to express our strong support for S. 2774 which will extend the boundaries of Toiyabe National Forest on the East Shore of Lake Tahoe and enable the Forest Service to acquire vacant land available at Zephyr Cove, including beach front land. We understand that this bill will also remove the dollar limit on how much the Forest Service can spend to acquire this land.

If the Lake Tahoe region is not to be totally developed and the quality of this unique scenic area is to remain unspoiled, some of the land around the lake must be acquired by public agencies at a fair value. Lake Tahoe is a national treasure and needs to be preserved for the use of all.

We hope that this bill can be expedited quickly by your committee and sent to the full Senate for approval so that the land can be acquired as soon as possible.

Thank you for your consideration of this important legislation.

Sincerely yours,

MARJORIE SILL,
Conservation Secretary.

STATE OF NEVADA,
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
OFFICE OF THE DIRECTOR,
Carson City, Nev., February 9, 1978.

Hon. PAUL LAXALT,
U.S. Senate, Russell Office Building,
Washington, D.C.

DEAR SENATOR LAXALT: The U.S. Forest Service proposal as outlined in their October 13, 1977 letter to you has been reviewed by this department.

To protect the environmental integrity of the Tahoe Basin and insure adequate public access, it is desirable that additional key lands be acquired. As you are aware, Nevada has led the way by obtaining lands for park and recreation purposes with the acquisition of the Whittell property in the 1960's. Additional property had been identified by the state for future acquisition. However, purchase funds have not been available at the state level.

The Forest Service proposal, which includes most of the lands identified by the State of Nevada, is consistent with the long-range acquisition program outlined by the Tahoe Regional Planning Agency as part of their planning program. This program was developed in 1972 as part of the Agency's General Plan in concert with the Federal, State and local governments active in the basin.

Since the limitations of Public Law 91–362 (Bible Act) will severely restrict the ability of the Forest Service from acquiring the identified lands, we would encourage you to support legislation that would enlarge the National Forest boundary, and remove the existing funding limitations from $12 million.

If you have any questions or desire additional information, please do not hesitate to contact us.

Sincerely,

NORMAN HALL, *Director.*

Senator LAXALT. Chief McGuire, you are familiar with the steps that the States of Nevada and California are initiating to acquire the so-called Jennings and Kalhe properties. So that the members of the committee will understand, these are properties which have been licensed for casino development that are unconstructed. During the last year we concluded that one of the ways we could effectively create a moratorium on this kind of expansion was to provide the necessary funding to acquire these two properties.

Senator Cranston and I have been working actively on this together with the appropriate representatives of Nevada and California. We are making a submission today for a $25 million appropriation for the acquisition of these properties. Geographically, these should go within the boundaries of the Toiyabe National Forest.

Has there been some policy determination by the administration to the contrary?

Mr. MCGUIRE. The administration's view at this time, Senator Laxalt, is the boundary should not be extended. Therefore, the casino sites should not be acquired.

Now we realize that the House has passed the 1979 appropriations bill providing one-half of the $25 million required. Without specifically appropriated funds or this extension, we would not have authority in our present laws.

Senator LAXALT. I understand that. That is the reason why we are having this hearing today on this authorizing legislation.

Is the Forest Service opposed to the acquisition of these properties?

Mr. MCGUIRE. The Forest Service proposed within the administration that boundary be extended. However, after consideration within the administration, it was decided that the cost would be too high, and it would be better not to proceed.

Senator LAXALT. The administration is opposing the acquisition?

Mr. McGUIRE. The administration is opposing the extension of the boundary except for that one corner of the Whittell tract, which means it would oppose the acquisition of the casino sites.

Senator LAXALT. By the administration, you mean whom, Chief?

Mr. McGUIRE. Well, I mean people in the Office of Management and Budget, and since the people in the Department of Agriculture have gone along with it, I can also assume that that position is supportive there as well.

Senator LAXALT. So if I understand the situation correctly, the administration now has taken the position to divorce the Forest Service from the acquisition of the prospective casino sites, is that correct?

Mr. McGUIRE. We would have no authority to acquire those sites unless the boundary were extended.

Senator LAXALT. That is the purpose of this line of questioning. It is true that under existing law that you would have no authority to acquire those sites or any other properties outside the border without specific legislation authorizing those acquisitions.

Mr. McGUIRE. That is correct.

Senator LAXALT. Does the Forest Service or the administration have any policy in respect to enlarging the boundary otherwise? If you were to receive a substantial gift of ground or whatever, would you be precluded under existing law from accepting that within the Forest Service?

Mr. McGUIRE. I think our view and also the administration's view would be that we would come back, depending on the merit of such proposals.

Senator LAXALT. On a case-by-case basis?

Mr. McGUIRE. On a case-by-case basis.

Senator LAXALT. I might say this, Mr. Chairman, we have had a good working relationship with the Forest Service. I think we are probably at the two-thirds acquisition level in the area. When I was Governor of Nevada, we acquired most of the Whittell property under the State structure, so I think overall we are doing rather well.

Mr. Chairman, I introduced this legislation to provide the authority to the Forest Service to obtain these additional properties, if they should become obtainable. The Chief is probably squarely in the middle on the policy decision about the casino site acquisitions.

Mr. McGUIRE. That's right, sir.

Senator LAXALT. The record should indicate that there is no mandate of any specific acquisition under the provision of S. 2774.

Mr. McGUIRE. That is correct.

Senator LAXALT. So even if we do extend the boundaries of the Toiyabe with this bill, that would not require the Forest Service to enter into acquisition activities. It would still be a matter of negotiation.

Mr. McGUIRE. That is right.

Senator LAXALT. I think that's all I have, Mr. Chairman.

Senator BUMPERS. Chief McGuire, the act of 1970 extended the Toiyabe National Forest boundary to include 12,920 acres of private lands.

How much of that has been acquired to date?

Mr. McGuire. Since 1970, Mr. Chairman, we have acquired 8,252 acres.

Senator Bumpers. Have you already, was that $1.5 million authorized? Was it appropriated?

Mr. McGuire. I think the appropriations were not specific.

Senator Bumpers. You just had a $12.5 million limit.

Mr. McGuire. $9,223,289 has been spent to date, leaving a balance of the authorization of $3,276,000.

Senator Bumpers. That is not sufficient to buy the rest of that land?

Mr. McGuire. That is not sufficient to buy either the rest of the land or this particular parcel known as the Whittell Estate property.

Senator Bumpers. Tell me the status. I am not sure what part the Whittell property plays in this whole thing. That part in red, that is the Whittell Estate land?

Mr. McGuire. Yes, sir.

Senator Bumpers. It is available for purchase by the Government?

Mr. McGuire. That is correct.

Senator Laxalt. What remains of it; we have acquired within the basin almost all the rest of it over the past years.

Senator Bumpers. Is the Whittell property within the extended boundary of 1970?

Mr. McGuire. All except the small portion in the southwest corner.

Senator Bumpers. Can you point out there the part that is embraced by Senator Laxalt's bill? Is that the Whittell property, I assume, is all within your bill?

Senator Laxalt. Yes.

Senator Bumpers. But there is some additional land besides that?

Senator Laxalt. Yes.

Senator Bumpers. Could you point out the additional lands on that map that Senator Laxalt's bill would include?

Mr. McGuire. The pointer will follow the line.

Senator Bumpers. Just that area right in there?

Mr. McGuire. The Senator's bill would carry the forest boundary to the lakeshore in the green area and would carry it down to the State line to the south.

Senator Bumpers. All right. Now, you agree with all his bill except the two so-called casino sites?

Mr. McGuire. No, sir. We agree with the provisions of his bill regarding the authorization ceiling and the use of the Land and Water Conservation Funds, but we object to the extension of the boundary to any areas beyond that little piece of the Whittell property.

Senator Bumpers. All right. Now, everything else is within that extension of 1970, is that correct? A good portion of the Whittell section is within that area that was extended in 1970?

Mr. McGuire. That is correct.

Senator Bumpers. That parcel that he mentioned awhile ago, you object to extending the boundaries to that?

Mr. McGuire. We favor that. Our difference is that in the Senator's bill he wishes to include all of the green area just in terms of authorization, extending the boundary of the forest.

The administration's view is that an extension of that magnitude is not desirable at this time, and that if there is an extension, it should be limited to the very small piece in red.

Senator BUMPERS. I see. Where are the casino sites that he has referred to here?

Mr. MCGUIRE. The pointer will show where they are located.

Senator BUMPERS. How big a tract are those?

Mr. MCGUIRE. They are, I believe, two tracts. One is 25 and the other is 20 acres.

Senator BUMPERS. Who presently owns that land?

Mr. MCGUIRE. We have been referring to them as the Kalhe and Jennings tracts.

Senator BUMPERS. Why do you refer to them as casino sites? Does that mean they are possible gambling sites?

Mr. MCGUIRE. Yes, sir, because the owners of those sites have made public their plans for development, and have applied for the necessary permits.

Senator LAXALT. And received them.

Mr. MCGUIRE. And received them, and they have begun some construction, at least on one of the sites.

Senator BUMPERS. Is there any particular reason for including those two, Paul?

Senator LAXALT. Yes. We have a very serious traffic and pollution problem there with the existing situation, and as a matter of policy, we on the Nevada side have come to the conclusion that enough is enough in terms of casino development.

Senator BUMPERS. There is enough there now to relieve everybody of whatever money they come with?

Senator LAXALT. A fairly good job, but I have felt for some time that, as to these sites that have been unconstructed but licensed, and believe me, that having a license to operate a gaming establishment at Tahoe is a very valuable asset, that the Forest Service should purchase these properties which would literally create a freeze on further gambling development on the Nevada side of the basin, with perhaps some reasonable expansion of existing establishments. This is something we have been working on, the two delegations from Nevada and California, for a period of time.

Senator BUMPERS. What is OMB's objection to including those sites?

Mr. MCGUIRE. Basically, the feeling is that the amount of money involved here, $25 million, while it is not appropriated by this bill, nevertheless might be more easily appropriated if the boundary were extended and the authority were provided to spend that appropriation, so the objection is one of heading off additional Government expenditures.

Senator BUMPERS. The purchase of those two sites would be rather prohibitive, wouldn't it, Paul?

Senator LAXALT. We don't know. They are in the process of appraisal within the Chief's shop. We are dealing with a lot of unusual values in terms of expectancy of earnings almost without precedent in the rest of the country. They will end up being expensive, there is no doubt about that. However, I feel it is absolutely essential that in some fashion we get these properties into public ownership, and our working relationship with the Forest Service has been so beneficial in that area, that we felt an extension of the Toiyabe boundaries, and the authorization for acquisition of future properties would be in the

public interest. Apparently they are not in favor of this approach within the administration at this point.

May I ask one last question, so the record is complete here? Apparently OMB is opposed to this, and perhaps the Department of Agriculture, although you didn't specifically indicate that, on grounds of economy?

Mr. McGuire. On grounds of economy.

Senator Laxalt. If that is pulled out of the equation and we talk only in terms of management, you can manage this property, can't you, this additional property, if in time it were acquired? Is there any management problem for the Forest Service?

Mr. McGuire. The Whittell property?

Senator Laxalt. No. The complete boundary extension as provided by the provisions of S. 2774.

Mr. McGuire. No. I don't see any immediate management impact. I think as time goes on and the use of the area increases, not so much for gaming, but for recreational use of the lakeshore, that there would be some additional expense for managing the recreation that might occur.

Senator Laxalt. But it would be well within your capability if we give you the funding?

Mr. McGuire. Yes, sir.

Senator Laxalt. I wanted to make the record clear that this doesn't pose a problem for the Forest Service in management capability. Apparently the administration has come down on this as a matter of policy on the economics.

Mr. McGuire. That is correct.

Senator Bumpers. Thank you, Chief.

Senator Laxalt. Thank you very much, Chief.

[The prepared statement of Chief McGuire follows:]

Statement of Hon. John R. McGuire, Chief, Forest Service, Department of Agriculture

Mr. Chairman and members of the committee, thank you for this opportunity to testify for the Department of Agriculture on S. 2774, a bill "To extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes."

In general, we do not recommend an extension of the Toiyabe National Forest as proposed in S. 2774. We recommend only a small boundary extension in the Zephyr Cove area. We also support the provision in section 3 of S. 2774 to remove the limitation on expenditures contained in the Act of August 5, 1970.

S. 2774 would extend the boundary of the Toiyabe National Forest in Nevada to include about 5,649.38 acres of privately owned land located between the eastern shore of Lake Tahoe and the State line, and the existing National Forest boundary. The bill would authorize the expenditure of Land and Water Conservation Fund monies for the acquisition of lands and would remove the expenditure ceiling for the area by amending the Act of August 5, 1970 (84 Stat. 694).

The Federal Government has been supportive and involved in the development and implementation of plans developed by the Tahoe Regional Planning Agency under the Tahoe Regional Planning Compact of 1969. A longstanding issue in the Tahoe Basin has been land ownership. A major portion of the lands within the Basin are National Forest lands. Since 1968, the Forest Service has acquired approximately 35,000 acres of land from private owners in a number of key tracts within the Basin. Nearly two-thirds of the Basin is now in Federal ownership. The States of California and Nevada have also acquired lands in the Tahoe Basin for public use purposes.

We fully support their efforts and continue to support the acquisition of lands in a cooperative manner with both the States and the Federal Government assuming their appropriate role for the protection and management of the lands within the Basin.

The boundary of the Toiyabe National Forest was extended on August 5, 1970, by the enactment of Public Law 91-372 (84 Stat. 694). That extension involved approximately 12,920 acres of private land—some of which extended to the shoreline of Lake Tahoe. That Act contained a $12,500,000 ceiling on acquisition. We support the provision in section 3 of S. 2774 which would remove the $12,500,000 limitation. With the removal of the limitation, acquisition priorities in this area could be considered along with other agency land acquisition priorities.

A small portion of the Whittel estate property in the Zephyr Cove area is outside of the 1970 boundary extension of the Toiyabe National Forest. We recommend that the boundary of the Forest be extended to include the entire Whittel estate property.

Mr. Chairman and Members of the Committee, this concludes my testimony. I would be happy to respond to any questions you may have.

Senator BUMPERS. On the last panel that we had here, I understand that Mr. Stafford had something that he wished to add to what the panel has already said.

Mr. STAFFORD. Yes, Senator, just a quick matter. There were three questions that were asked by Members of the Senate who were here. Specifically, Senator Hansen asked about the recreational aspect of it and was asking a question about the riprap.

That bank averages 8 feet high all the way across, and riprap that big isn't something that you can walk down.

Senator BUMPERS. On the Arizona side?

Mr. STAFFORD. No. Where this property touches the river; this is a picture of the shape of the property, Senator. This is the only part that touches the river. It is riprapped clear from here to here, at an average of over 8 feet high.

For recreational purposes, it is essentially impossible to climb down over 8 feet of big rocks and do anything with it. It is farming land. It comes right up in the center of two farms. That is basically what it is, irrigated lands, and you need a way that the water can flow all the way across the land because of the fact that it has to be graded so well.

Senator BUMPERS. Do you irrigate from the river?

Mr. STAFFORD. No. We irrigate from the Palo Verde Irrigation District, which has its allocation of water from the river.

The other question I wanted to deal with is these are the cuts, the three or four cuts. The land involved here is in the southernmost of the cuts. This is the land which is in orange and green. There is no question about title. The claim made by the Federal Government is the darkened area, which comes up in the middle of the two farms again.

The lawsuits were filed on the same day, and they are sequential in number—32, 33, 34, 35. We are No. 34. The court has not heard this particular set of cases because it said to us, you guys are in exactly the same fix as everybody else. We would like to be able to deal with you in the same way that we deal with everybody else, and we will continue your cases until you have time to go to the Congress and see if you should not have been included in the initial bill.

The other question that was asked has to do with why we were eliminated from the original bill. The only people that were represented at the time of the original bill were people on these three cuts. This land was in the original bill.

The problem was that there is a piece of land over here named Gossett, and in order to allay the fear of the Department that this might also bring Gossett in—it is a completely different kind of case,

not on the river, a completely different situation not related to these defenses—at this time, because these people were not represented, it was accepted by the people who were before the Congress, that limit in the bill to 13.17, which is here. Actually, 13.17 leaves a good deal of Mr. Schindler's land in, but that is the reason it was taken out, not because they found any difference or any thought that there was something wrong about that particular piece of land, but simply in order to eliminate Gossett, they took it out.

Gossett has been tried, appealed, unsuccessfully, and it is no longer a living being.

I think those are the only questions that I wanted to make clear.

Senator BUMPERS. That is very helpful. That map is the best map. I wish you would have put that one up to begin with. It is much better.

Mr. STAFFORD. That map, Senator, is in the material which is before you, but it is sort of hidden.

Senator BUMPERS. It is a copy.

Mr. STAFFORD. It is a copy, and it is not very good.

Senator BUMPERS. This map, and the one you have on the easel now are excellent maps and give you a much better picture of the whole thing.

Thank you very much.

Mr. STAFFORD. We appreciate your time.

Senator BUMPERS. I know that this is extremely important to you. Nevertheless, we still appreciate your taking the time to come here all the way from California. It is an honor to have you here.

Mr. STAFFORD. Thank you.

Senator BUMPERS. Our next panel consists of Mrs. Beverly Trulove, Mr. Wilmer E. Foster, and Mrs. Iva Mae Harvey, and my notes indicate that Mr. Floyd Shebley and Mr. Karle Landstrom are also present.

Mr. SHEBLEY. That is correct, Mr. Chairman. I am Mr. Floyd Shebley. I represent Mrs. Trulove and Mr. Foster. I don't intend to speak. I submitted a written statement, and I will be delighted to answer questions.

Senator BUMPERS. Because of the time involved, I will admit all of these statements for the record, and I am going to ask each of you, if you will, to summarize. I assume that much of what you have to say would be duplicative of the preceding speakers' statements, but how you proceed is up to you, wherever you wish to start. I will leave that part to you. I ask you if you will simply summarize your views.

STATEMENTS OF IVA MAE HARVEY, WALLACE L. DUNCAN, BEVERLY TRULOVE, WILMER E. FOSTER, AND FLOYD SHEBLEY

Mr. DUNCAN. I represent Mrs. Harvey. I don't intend to make a statement, but I do want to clarify the record in one respect.

In the lengthy written statement that we prepared on behalf of Mrs. Harvey, of which we furnished 50 copies this morning, we omitted reference to No. 3078. I want it clear Mrs. Harvey is supporting both the amendment to the original 2590 and the amendment 3078. She is the original owner of the Harvey tract, and she is very much involved in the Harvey claim.

Senator BUMPERS. Mrs. Harvey, just for openers, how did it get its name, Harvey's Fishing Hole?

Mrs. HARVEY. Well, my husband was a farmer, and he hired a man to help us with the subdivision report, and that is the name he came up with. I tried to change the name after he made the original, and he said it would cost me $1,000 to make the change, and we weren't sufficiently prepared to make that change at that time, so I haven't liked it, so we changed the name just for the use of it as Sportsman's Paradise.

Senator BUMPERS. Go ahead with your statement, Mrs. Harvey.

Mrs. HARVEY. Mr. Chairman, members of the committee, I am Iva Mae Harvey, of Blythe, Calif. I am pleased to have this opportunity to appear in support of this proposed amendment No. 3078 amending the S. 2590, which has been cosponsored by Senators Cranston and Hayakawa.

The proposed amendment would provide certain legal and equitable relief to certain landowners, including myself, and certain members of the Harvey family.

By way of background, certain members of my family and I——

Senator BUMPERS. Let me interrupt you at this point. I have looked over your statement. If you read it, we are going to be here until about 2 o'clock.

Mrs. HARVEY. This is a shortened version of that, the lengthy statement.

Mr. DUNCAN. She has a summary here.

Senator BUMPERS. Go ahead.

Mrs. HARVEY. By way of background, certain members of my family and I are landowners on the contested land located near Cibola, and known as Harvey's Fishing Hole and Sportman's Paradise.

My late husband, myself, and members of our family were original owners dating back to 1952 of all of the contested property, title to which may be affected by the enactment of the proposed amendment of H.R. 7101, S. 2590, and this amendment.

The original tract located adjacent to the Colorado River was purchased by Mr. Harvey and myself in 1952 from the fee owners who at that time traced it, clear title to the property, then located in Yuma County, Ariz., back to the original homestead patent signed by President Woodrow Wilson on January 13, 1914, after a thorough and careful search of the county land records, which showed an unbroken chain of title back to the original conveyance from the United States.

In fact, our search of the land records showed that in the 1940's the United States purchased some 240 acres and 160 acres in separate transactions involving lands adjacent to ours. At the time of such purchases, the United States made no claim that the lands were accreted to federally owned lands.

Prior to the dependent resurvey of accretion land in 1960 (approved May 19, 1961) which finally determined that Harvey's Fishing Hole and the surrounding land on the California side of the Colorado River was, in fact accretion to Government-owned upland, the United States did purchase certain land in the vicinity of Harvey's Fishing Hole for the purpose of clearing title to lands which might be affected by the construction of the Imperial Dam and Reservoir. Litigation of the

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title would have been a lengthy process and would have had to await resurvey.

At that time, at the time of the purchase, the title was checked in the court and with the deed from the U.S. Government, we felt that we had sufficient title which wouldn't be challenged.

In 1951, prior to our purchase of the subject lands, the Department's own map showed that the lands at Harvey's Fishing Hole were patented lands in private ownership.

In view of the schedule of the members of the staff of this committee, I will not take time on the record of these hearings to outline and describe the chain of title which culminated in the purchase of the property in 1952. I have submitted for the consideration of the committee much more detailed, written statement, which I respectfully request to be incorporated into the record of these hearings.

Appended to my statement is a record of the title transactions respecting this property since 1914. Suffice it to say in summary that at that point, and indeed until the late 1960's, no one had any reason to doubt that the conveyance to Mr. Harvey and I carried a good and sufficient title.

Upon purchasing the subject lands, Mr. Harvey and I conceived the idea of developing a small resort and retirement community on the banks of the Colorado River which we have come to love so much. The implementation of the concept became our life's work during the later years of Mr. Harvey's life; with sincere dedication and investment of most of our life savings and resources, we watched at least portions of it unfold and materialize as development proceeded. Home sites sold. Houses were built, and recreational facilities developed, and the nucleus of a community began to take shape.

During the development stages, both of the States of Arizona and later California recognized the property in the Harvey family, and in the purchases derived their title and interest in the subject lands from us.

The title report showed our valid title was obtained from both the State of Arizona and the State of California. At all times, during the development stages and until the United States first claimed an interest in the subject lands in 1967, we paid our property taxes, first to Yuma County in Arizona, and after the 1966 Colorado River Boundary Treaty was ratified by Congress, we paid unsecured property taxes to Imperial County, Calif.

In further recognition of the valid titles held by the Harvey interests, the State of California in 1958 granted us a subdivision permit for the development of the recreational and residential subdivision. The permit was granted only after a thorough examination of title documents submitted in support of the permit application.

At all times following the purchase of the subject lands, we were in open notorious possession of the subject lands, and the development work and future plans for a community development were widely known. As development work continued, and building lots were sold, the activity of Harvey's Fishing Hole was frequently observed and ignored by representatives of the Bureau of Reclamation, the Bureau of Land Management, and other representatives of the U.S. Government.

[Subsequent to the hearing the following information was submitted for the record:]

The issue of whether the United States should be estopped from asserting title to the Harvey's Fishing Hole lands was fully litigated at trial and decided adversely to the defendants by the jury. The answers to the jury's special interrogatories specifically show that the jury found that neither the government nor any of its agents "engaged in affirmative conduct amounting to either a representation of concealment of material facts" with respect to the government claim to Harvey's Fishing Hole. The jury also found that the defendants were not "ignorant of the facts concerning the government's claim to 'Harvey's Fishing Hole.' "

Between 1960 and August, 1965, the United States was engaged in active litigation to contest the ownership of the parcel immediately adjacent and to the west of Harvey's Fishing Hole (United States v. 11.8 Acres, Civil No. 2468–SD, the Dredge Harbor Case). The issues involved in the litigation regarding title to the property immediately adjacent to Harvey's Fishing Hole were identical to those which were presented in Harvey's Fishing Hole. Following the affirmance on appeal of United States v. 11.8 Acres, the Lower Colorado River Land Use Office sought authorization to offer the occupants of Harvey's Fishing Hole permits to allow them to continue to occupy the land which they were claiming within Harvey's Fishing Hole for a period of 20 years. This authorization was not obtained until 1967. Prior to that time, the longest lease term which could have been offered was five years. Following the receipt of authorization to offer a 20 year permit, notices were sent out to the occupants of Harvey's Fishing Hole inviting them to sign a permit.

The charge that certain occupants of Harvey's Fishing Hole were provided assurances that the government did not seek to acquire or contest ownership of Harvey's Fishing Hole is false. A dependent resurvey of this land was conducted in 1960 and was approved on May 19, 1961. A copy of this "Dependent Resurvey and Survey of Accretion" is enclosed. Following the filing of this survey, the official position of the Department of the Interior has always been that this land is public land of the United States by virtue of the fact that it accreted to publicly-owned upland.

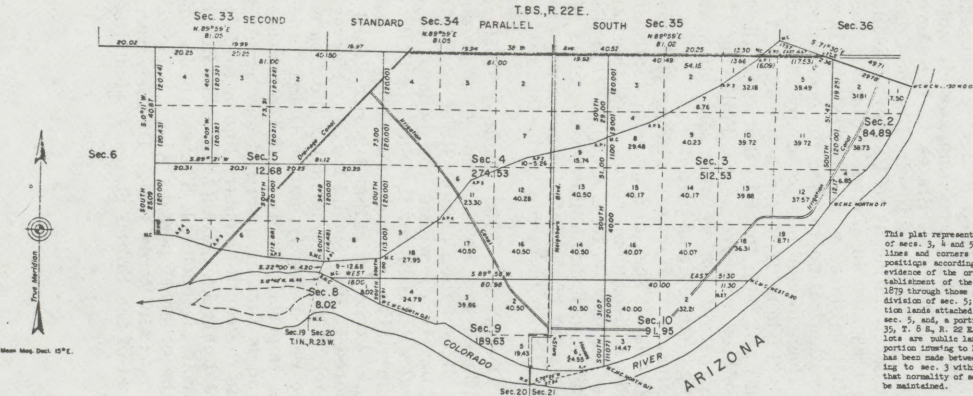
It should be noted that on December 5, 1950, Kindred E. Harvey and Iva May Harvey, and others, petitioned for the inclusion of approximately 2,610 acres of land on the California side of the Colorado River (including that land now known as Harvey's Fishing Hole) within the boundaries of the Palo Verde Water District, a political subdivision of the State of California. A copy of this petition was introduced at trial as government's exhibit 41 and is enclosed.

On January 12, 1951, the Palo Verde Irrigation District Board of Trustees, acting upon the petition of Kindred E. Harvey and Iva May Harvey, and others, voted to include the approximately 2,600 acres, including the area now known as Harvey's Fishing Hole, into the Palo Verde Irrigation District and described it as "some Government lands in Imperial County, near the southeast corner of the district boundary." The land is further described as "certain public lands of the United States adjacent to the south boundary line of said district. * * *"

A copy of the minutes of the January 12, 1951 meeting of the Board of Trustees (government's exhibit 43 at trial) is enclosed. These two documents clearly show that the Harveys, and the other 11 persons who petitioned to have the affected land included within the Palo Verde Water District, were aware that this land was in fact public land of the United States. It should be added that Mrs. Harvey so testified at trial.

TOWNSHIP 9 SOUTH, RANGE 22 EAST OF THE SAN BERNARDINO MERIDIAN, CALIFORNIA.

DEPENDENT RESURVEY AND SURVEY OF ACCRETION



This plat represents the dependent resurvey of secs. 3, 4 and 5, designed to restore the lines and corners thereof in their original positions according to the best available evidence of the original surveys; the reestablishment of the record meander line of 1879 through those sections; the limited subdivision of sec. 5; and the survey of accretion lands attached to secs. 3 and 4, Lot 8, sec. 5, and, a portion inuring to Lot 1, sec. 35, T. 8 S., R. 22 E., which said sections and lots are public lands. In respect to that portion inuring to Lot 1, sec. 35, no division has been made between 15 and that part inuring to sec. 3 within the township in order that normality of sectional subdivisions may be maintained.

The fractional township was originally subdivided by W. F. Benson, D. S., in 1879, as shown upon the official plat approved May 22, 1879. The limited dependent resurvey of the Second Standard Parallel South is more particularly described in the official record of the resurvey of T. 8 S., R. 22 E., surveyed concurrently with this work.

The position of the 1879 original record meander line of the right bank of the Colorado River is shown by an irregular line with numbered angle points. This line has been marked as a fixed and limiting boundary with the directions and lengths of the several courses adjusted to the record of the original survey. In the extension survey of the accreted area, division lines between public and patented lands have been extended from the reestablished record meander corner of secs. 35 and 36, T. 8 S., R. 22 E., and the special meander corner of the E 1/16 sec. line of sec. 5, on lines respectively normal to the center of the Colorado River and to the mean high water line thereof. Except as to new subdivisions as shown hereon, the lottings and areas are as shown upon the plat approved May 22, 1879.

The surveys were executed by Beverly W. Capell, Cadastral Surveyor, from March 31 to April 27, 1960, pursuant to supplemental special instructions for Group 459, California, dated March 25, 1960.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D.C. May 19, 1961

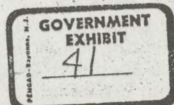
This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

[signature]

Cadastral Engineering Staff Officer

December 5, 1950



Palo Verde Water District
Blythe, California

Gentlemen:

We the undersigned do hereby state that we are engaged in the improvement of the following land:

Sections and Part of Sections 2, 3, 4, 8, 9, 10, and

NE$\frac{1}{4}$, and E$\frac{1}{2}$ of NW$\frac{1}{4}$ of Section 5, Township 9 South,

Range 22 East San Bernardino Base Meridian, Located

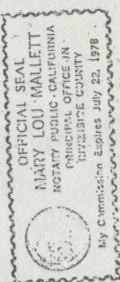
in Imperial County,

and request that this land be brought into the Palo Verde Water District and become subject to all rules and regulations for irrigation by said water district.

C. L. Stephens
Lydia A. Stephens
Kindred E. Harvey
Iva M. Harvey
Eugene C. Stephens — 1625 Bellford Pasa SY3-0637
Eldine Stephens
F. P. Kunz
Melba Kunz
Paul E. Richards
Norma T. Richardson
C. Stanley Carr
Ellen C. Carr
Robert E. Harvey

I hereby certify that this is a copy of the original document filed in the minutes of the adjourned meeting of the Palo Verde Irrigation District Board of Trustees held December 14, 1950.

Mary Lou Mallett
Notary



(SEAL)

Attorney Arvin B. Shaw, Jr. presented a written report on the meeting of the Executive Committee of the Irrigation Districts Association held in San Francisco on December 28, 1950, and Chairman Miller asked that the matter of attendance at the Irrigation Districts Association biennial meeting in March at Sacramento be brought up at the February 9, 1951 meeting.

It was moved by J. E. Marlowe, seconded by R. G. Eberhart and unanimously carried that the statement of the Irrigation Districts Association of California for the annual dues for 1951 be approved for payment.

It was moved by J. E. Marlowe, seconded by Don Underwood and unanimously carried that the statement of the Colorado River Association Six-Agency Fund dated November 10, 1950 be tabled to the February 9th meeting when all Board members are present.

Mr. C. L. Stephens appeared before the Board regarding the possibility of including some Government lands in Imperial County, near the southeast corner of the District boundary, within the District's boundary. Attorney Shaw stated that Section 46 of the District Act provides that such lands of the United States may be included by order or resolution of the Board without the filing of any position. Atlhough it was a borderline proposition, Attorney Shaw was of the opinion that it would be advisable that a notice of the proposed inclusion be given to the public and that a hearing be held before the Board makes any order of inclusion of this kind. In addition to the above application and petition it was moved by J. E. Marlowe, seconded by Walter Bollenbacher and unanimously carried that proceedings be initiated to include within the District all public lands in Township 9 South, Range 22 East, and the East half of Sections 1 and 12, Township 9 South, Range 21 East south and seat of the present District's boundary. It was moved by Don Underwood, seconded by R. C. Eberhart and unanimously carried that the following resolution be adopted, to-wit:

Whereas, C. L. Stephens, et al. filed with the Board of Trustees of Palo Verde Irrigation District at its meeting held December 14, 1950, a Petition, dated December 5, 1950, asking that certain public lands of the Untied States adjacent to the South boundary line of said District be included within said District, and said Board has duly considered the matter of said Petition;

Now, therefore, good cause appearing therefor, it is hereby ordered that the Assistant Secretary cause to be published and posted in accordance with the law a notice of hearing in substantially the form of which copy is filed in the minutes of this meeting, and constitutes pages 8 and 9 of this minute book, and that at its regular meeting to be held on February 9, 1951, said Board hold a hearing upon the matters specified in said notice and determine whether or not the land described in said notice shall be included within said District.

Mrs. HARVEY. Moreover, in 1961 or 1962, when the Department of Interior announced the development and implementation of a lower Colorado land use plan, representatives of the Harvey interest made numerous points of inquiry to officials of the Department of Interior who repeatedly indicated that our community and our development property interests were not affected in light of our clear attaching of the title.

We were repeatedly assured that the United States had no interest in acquiring our lands or contesting our ownership thereof. In 1960 when the Department of Interior filed the condemnation suit, an action involving lands adjacent to Harvey's Fishing Hole, later known as the *Beaver condemnation* case, we were assured by Government officials that this condemnation suit would have no effect on our lands.

Initially, the accretion issue and the issue respecting the title to the property was not opposed in the context of the condemnation suit. In 1963 when the accretion issue surfaced, we attempted to intervene in the Beaver litigation, and we were assured by the assistant U.S. attorney that the outcome of the *Beaver* case would have no effect on our property interests.

On the basis of these assurances, our motion for intervention was withdrawn. During the period from 1960 through 1967, Mr. Harvey and other members of the family repeatedly made inquiries of Departmental officials and officials of the title companies respecting rumors that the United States would assert title to the lands at Harvey's Fishing Hole. Each such inquiry was met with assurance that the title was valid, and that the United States would not assert such claims.

It was only after the conclusion of the Beaver litigation that the representatives of the United States began to question our title and to express any interest in acquiring the lands, and in 1967, asserting title to lands located in Harvey's Fishing Hole.

Even then it was not until 1972 that the United States took any affirmative action to assert title in ejectment proceedings against the current owners of lands in the community. Throughout the period of 1968 through 1972, Departmental officials did make statements and engage in activities which tended to undermine public confidence in our titles. Throughout the protracted litigation which followed and which is still pending in the U.S. Court of Appeals for the Ninth Circuit, we were thwarted by the applicable legal doctrines which we seek here to have Congress waive.

We are confident that the record before the U.S. district court would clearly have supported our position on a number of legal and equitable defenses which were either precluded or restricted under the doctrine of sovereign immunity.

Time does not permit a more detailed description of the heartbreak, expense and frustration which we have experienced over the last decade in defending our legal and equitable rights to our property and homes.

These details are, however, more fully presented together with the public documentation in the prepared comments filed with the committee. I respectfully invite the committee membership, members and staff, to give it a thorough, thoughtful consideration to this information and background. Upon such analysis, I am certain that fair minds will conclude that the property and homeowners of Harvey's Fishing Hole are fully worthy of the same legal and equitable considerations as our fellow landowners in Riverside County who obtained relief in Public Law 91–505, and those who are seeking relief in H.R. 7101.

In fact, of all of the affected landowners on the river, we submit that ours constitute a most compelling equity which should be recognized and result in the passage of the bill as amended.

We are confident that, given the opportunity through the enactment of the proposed amendment to S. 2509 and 3078, we can meet the stringent limitations set forth in this legislation.

I would like to say that by accretion, the Government has obtained the court proceedings against us, that we are sure that it is not accretion land because the ground is much higher in the area. The survey of 1902 and recently the land in our area is much higher than the old riverbed. You would have had to climb about 14 or 15 feet to get up and come into a channel. It doesn't come as accretion land, as the slow and imperceptible area, but it comes into a channel, and there were big trees that were in this area that we cleared off ourselves that couldn't possibly have been cleared off in 1948 on the surrounding area, that was in the area that would have been recreation. It took my son over 2 days with a "cat" to pull one special tree, and that was a large cottonwood. It was very high, very large, and that couldn't possibly have been accretion land.

We have had many engineers on our property that have stated that it could not possibly be accretion land, but the Department of Interior in their suit produced maps and a mosaic map of the 1930 river that was in flood stage at the time, and confused the jury, and then we had other land up the river that was in the area of the Bureau of Land Management or the Department of Interior which was unsecured property that was given to the Indians, and that has been secured, but they brought in the element and confused the jury with both those places until we lost in the suit.

[Subsequent to the hearing the following information was submitted for the record:]

All maps relied upon by the United States during trial were either official surveys of a public agency such as Palo Verde Irrigation District or were made by Federal entities such as the General Land Office of the Bureau of Reclamation. The 1930 Mosaic referred to was an aerial photo flown by Fairchild Aerial Surveys, Inc., under contract from the Bureau of Reclamation. It is now a part of the Bureau of Reclamation's official file. A reduced copy of the 1930 aerial mosaic is enclosed with this response. A greatly enlarged copy of this photograph was introduced at trial as government exhibit 1. The affected land, Harvey's Fishing Hole, is located just above the point indicated as river mile 596 and on the right (California) bank immediately adjacent to the number 596.

Senator BUMPERS. Mrs. Harvey, are there improvements on these lots that have been sold? You say you sold approximately 80 lots. Did people build homes on those lots?

Mrs. HARVEY. Yes, there is.

Senator BUMPERS. How many homes are there on that tract?

Mrs. HARVEY. Thirty-five lots that is improved and have homes on them.

Senator BUMPERS. What disposition does the Government offer, what kind of a settlement have they offered to make?

Mrs. HARVEY. They are charging us, myself, they are charging $10,000 for damages.

Senator BUMPERS. The people who own homes there?

Mrs. HARVEY. Each one of them have different amounts that have been charged.

Mr. DUNCAN. By way of clarification, Senator, the judgment

awarded by the jury on the claims for damages was I think 41,000 or 42,000, allocated according to the amount of acreage they had.

Mrs. Harvey is the mortgagee on a lot of this property; when the suit was filed in 1971, most of the mortgagors ceased paying on their mortgages, and there was an agreement struck between the landowners that they would mutually fund the litigation and attempt to get relief legislation, and if either was successful, the mortgagors would continue or resume paying on the mortgages. There were a few that have continued to pay Mrs. Harvey, but by and large, there has been no flow of funds on those mortgages since the Government filed suit.

Senator BUMPERS. Is there any estimate of the value of this tract of land right now with the improvements, what is the total estimate?

Mr. SHEBLEY. We haven't had a formal appraisal, Mr. Chairman. We had one contractor out to the subdivision some years ago who estimated the improvements themselves, the cost of constructing them, was in excess of 2½ million dollars, but we didn't pursue that very far.

The Government itself, the only appraisal it has made was in preparation for the lawsuit, assessing the rental damages, and it said now how much would a similar 50 by 100 lot rent for per year during a period of time, so we have only got ballpark figures in that regard.

Senator BUMPERS. The thing about this case, it is a different case from the S. 2590, but there certainly seems to be a case of unjust infringement on the part of the Government. They are not offering any compensation, and indeed they are charging property owners rent I assume to live there?

Mr. DUNCAN. That is correct, and it is retroactive.

Senator BUMPERS. They are not charging rent on the basis of the value of the improvements, are they?

Mr. DUNCAN. No—on the basis of the estimated value of the land for rental purposes, without improvements on it.

Senator BUMPERS. Did the Harveys get an attorney's opinion on the title of this property at the time they purchased it?

Mr. DUNCAN. They had four or five title opinions. They had an absolute title opinion from TransAm. They were able, during the first 5 or 6 years of selling lots on this property, to secure title insurance.

Senator BUMPERS. I noticed that the title insurance company has paid some of these people.

Mrs. HARVEY. That's right.

Mr. DUNCAN. They have. It was only sometime after the initiation of the Beaver condemnation suit and during the course of that suit that the United States began raising the issue that the adjacent lands to the Harvey's Fishing Hole were accretion, that there were fears that they might assert a similar claim on Harvey's Fishing Hole, and we believe and I think we could substantiate that members of the staff of the Bureau of Reclamation circulated rumors in the 1960's that they would claim this land, and those rumors led the title company to back off from further insurance.

Senator BUMPERS. Is Mrs. Harvey, she and the estate, defendants in a lawsuit by some of these property owners?

Mr. DUNCAN. None of them has filed yet. There is that exposure.

Mrs. HARVEY. We have one that rescinded their contract, and Mr. Stafford here in the other suit represented us on that suit, and may have paid that off.

Senator BUMPERS. Is there anybody here who has a different position in this suit, either in the derivation of Mrs. Harvey's title or for some other reason?

Mr. SHEBLEY. Mrs. Trulove and Mr. Foster are both individuals who purchased in 1961 and 1964 respectively from the Harveys. They, too, had title insurance, title searches, had the approval of the State of California and Arizona, subdivision maps and the like, and they were able to obtain title insurance without any problem.

In that regard, however, it should be noted that title insurance is only issued for the unimproved value of the lot, in 1961, the value of a 5,000 square foot lot in Mrs. Trulove's case, which came nowhere near compensating her for what she has there now.

Mrs. Trulove has here—you have asked about improvements—some photographs of the area.

Senator BUMPERS. May I see those? Mrs. Trulove, what did you pay Mrs. Harvey for your lot?

Mrs. TRULOVE. We paid $14,000. Well, one lot, my husband and I have, own two river lots. We paid $7,350 per lot.

Senator BUMPERS. You bought two?

Mrs. TRULOVE. Yes.

Senator BUMPERS. How much have you put—did the title insurance company reimburse you for the value of the lot?

Mrs. TRULOVE. Yes.

Senator BUMPERS. How about the improvements? What is the cost of the improvements on this property?

Mrs. TRULOVE. My home owner's insurance policy values my home at $60,000. That doesn't include our outside improvements, which you can see in the pictures. That is the home and the garage and the outbuildings.

Senator BUMPERS. And you are on the river?

Mrs. TRULOVE. Yes.

Senator BUMPERS. Do you live there?

Mrs. TRULOVE. Yes. We bought the property in 1961, and I have lived there permanently since 1966, and I would like to refute the BLM's claim. I had no clauses in my title insurance policy.

Senator BUMPERS. Were there any clauses in your deed, any reservations, whatever?

Mrs. TRULOVE. I have the U.S. 1914 patent deed, warranty deed, with Mrs. Harvey.

[Subsequent to the hearing the following information was submitted for the record:]

As stated previously, the contents of deeds between the Harveys and purchasers from them are not known to us. However, it is known that R. W. Trulove, the husband of Mrs. Beverly Trulove, received a copy of a Final Subdivision Public Report on October 2, 1961. A copy of his receipt for this subdivision report and a copy of the Final Subdivision Public Report are enclosed. The applicable provision of the Final Subdivision Public Report is contained as the second paragraph under "WATER." These documents, taken together, provide adequate notice to any prospective purchaser that the affected land was subject to adverse claims by virtue of movements of the Colorado River.

We, the buyers of Lot 30A of Harvey's Fishing Hole, a subdivision, have read the Final Subdivision Public Report by the State of California Division of Real Estate, of Harvey's Fishing Hole (revised) Yuma County, Arizona, Res. No. 14203.

Signed Gerald E. Moore

Date Jan 14 1962

We, the buyers of Lot 4 of Harvey's Fishing Hole, a subdivision, have read the Final Subdivision Public Report by the State of California Division of Real Estate, of Harvey's Fishing Hole (revised) Yuma County, Arizona. Res. No. 14203.

Signed [illegible]

[illegible]

5701 West 112th Street
Lennox, Calif.

Date October 2, 1961

We, the buyers of Lots 77 and 78 of Harvey's Fishing Hole, a subdivision, have read the Final Subdivision Public Report by the State of California Division of Real Estate, of Harvey's Fishing Hole (revised) Yuma County, Arizona. Res. No. 14203.

Signed R.W. [illegible]

James Shuler

Date October 21, 1961

We, the buyers of Lot 5 of Harvey's Fishing Hole, a subdivision, have read the Final Subdivision Public Report by the State of California, Division of Real Estate, of Harvey's Fishing Hole (revised) Yuma County, Arizona. Res. No. 14203.

Signed Frank D. Lago

Ethel E. Lago

Date October 13, 1962

We, the buyers of Lot No. 8 of Harvey's Fishing Hole, a subdivision, have read the Final Subdivision Public Report by the State of California Division of Real Estate, of Harvey's Fishing Hole (revised) Yuma County, Arizona. Res. No. 14203.

Signed [illegible] L. Moore

[illegible] L. [illegible]

Date Jan 13, 1962

We, the buyers of Lot 77 of Harvey's Fishing Hole, a subdivision, have read the Final Subdivision Public Report by the State of California Division of Real Estate, of Harvey's Fishing Hole (revised) Yuma County, Arizona. Res. No. 14203.

Signed Reece L. Moore Sr

Reece Lee Moore

9591 East 219th Street
Long Beach 19, Calif.

Not completed

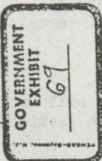


Exhibit #4

EDMUND G. BROWN, Governor
STATE OF CALIFORNIA
Division of Real Estate
W. A. SAVAGE, Commissioner
MAIN OFFICE
1015 L Street, Sacramento 14

XXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXX
SAN DIEGO OFFICE
615 Orpheum Theatre Building

Room 8003, State Office Bldg.
107 South Broadway
Los Angeles 12, California

SAN FRANCISCO OFFICE
1182 Market Street
OAKLAND OFFICE
Room 6040, 1111 Jackson Street
FRESNO OFFICE
Room 3084, State Building
2550 Mariposa Street

2nd PARTIAL AMENDED

FINAL SUBDIVISION PUBLIC REPORT

ON
HARVEY'S FISHING HOLE (REVISED)
YUMA COUNTY, ARIZONA
RES. NO. 14203

Note—Read This Report Before Buying!

This Report Is Not an Approval or Disapproval of This Subdivision

It reflects information obtained by the Division of Real Estate in its investigation of said tract.

The Commissioner does not regulate or govern the size of parcels, drainage, sanitation, water, and the physical aspects of subdivisions. All such matters are regulated and passed on by the local public bodies and officials.

FEBRUARY 20, 1961

NOTE: THIS REPORT DOES NOT COVER LOTS 20, 21, 26, 29A, 41, 42, 50, 81 AND 82.

SPECIAL NOTES

RESTRICTIONS AND OTHER MATTERS OF RECORD: Purchasers should investigate the conditions, reservations and restrictions that may run with the land, including city or county zoning restrictions.

Copies of those items which are recorded may be inspected at the office of the Yuma County Recorder. Information about zoning may be obtained at the office of the Yuma County Planning Commission. Certain lots are restricted for residential purposes only; and uses are limited in other ways for certain lots. Matters of record may be subject to certain errors or omissions.

WATER: The subdivider advises that Sportsmen's Paradise Water Co. will supply water to this tract free of charge until such time as this company is approved as a public utility by the State of Arizona.

This tract is subject to any adverse claim by reason of accretion, alluvion, avulsion, reliction, erosion; failure of the public records to disclose appurtenant means of ingress or egress for tract; or possibility that tract or any part of it is not within the State of Arizona or is claimed by any agency or individual to be within the State of California.

LOCATION: This subdivision is located on Harbor Boulevard and other streets on the north bank of the Colorado River at Cibola Ferry Crossing. (abandoned), approximately 17 miles south of Blythe, California.
It consists of approximately 30 acres divided into 96 parcels.

SUBDIVIDER: KINDRED E. HARVEY

DEPOSIT MONEY HANDLING: The subdivider advises that all money will be impounded in an escrow or trust account in accordance with Section 11013.4(a) of the Business and Professions Code.

Exhibit #5

ROADS: Roads within this subdivision are improved County roads.
Information to this Division indicates that access to this tract appears to be over a regularly travelled road, however, this Division has not been advised as to its exact legal status.

UTILITIES: The subdivider advises that electric utility services are available, subject to company extension rules and regulations, from the California Electric Power Company.
Purchasers should contact the above company regarding service connections and the costs involved.

SEWAGE DISPOSAL: The subdivider advises that septic tanks are to be used for sewage disposal

DESERT WIND AND RAINS: Heavy winds blow from time to time in all desert regions, and this may or may not prove detrimental to this Subdivision.
During certain periods of the year heavy rains may occur in desert regions. Damage may result to property along natural drainage courses which have not been protected by sufficient flood control measures.

MISCELLANEOUS: The subdivider advises that it is approximately 17 miles to the nearest high school, 5 miles to the nearest grammar school, and 5 miles to the nearest community shopping center.
He also advises that school bus service is available to the grammar school and high school.
Purchasers should contact the local school board regarding school facilities and bus service.

FIRE PROTECTION: The subdivider advises that there is no organized structural fire protection for this tract.

CONTRACTS OF SALE: The subdivider has indicated that sales may be made on Contracts of Sale. Prospective purchasers should read and understand the terms of these contracts before signing them.

(Signed) W. A. Savage
Commissioner

BPP:ny

RES. NO. 14203
(2nd Partial Amended)

EDMUND G. BROWN, Governor
STATE OF CALIFORNIA
Division of Real Estate
W. A. SAVAGE, Commissioner
MAIN OFFICE
1015 L Street, Sacramento 14

LOS ANGELES OFFICE
Room 310, Spring Arcade Building
SAN DIEGO OFFICE
615 Orpheum Theatre Building

SAN FRANCISCO OFFICE
1182 Market Street
OAKLAND OFFICE
1815 Telegraph Avenue
FRESNO OFFICE
308 Rowell Building

PARTIAL AMENDED

FINAL SUBDIVISION PUBLIC REPORT

ON
HARVEY'S FISHING HOLE (REVISED)
YUMA COUNTY, ARIZONA
RES. NO. 14203

Prospective Purchasers Should Read This Report Before Buying!

This Report Is Not an Approval or Disapproval of This Subdivision

It reflects information presented by the subdivider of the above-subject tract and other information obtained by the Division of Real Estate in its investigation and examination of said tract. This report is issued in accordance with the provisions of Sections 11010 and 11018 of the Business and Professions Code of the State of California.

Subdivision reports are issued by the Commissioner on subdivisions for the purpose of preventing fraud, misrepresentation or deceit. The Real Estate Commissioner does not regulate or govern the size of parcels, drainage, sanitation, water, and the physical aspects of subdivisions. All such matters are regulated and passed on by the local public bodies and officials.

Seller Should Note the Following:

Rule No. 2795 of the Commissioner's Rules and Regulations (Chapter 6, Title 10, California Administrative Code) requires that:

(1) a true copy of this report must be given to the prospective purchaser;
(2) *the prospective purchaser must be given an opportunity to read this report before a deposit is taken or an agreement of sale is executed;*
(3) a receipt must be taken from the buyer showing not only that he received a copy but that he had an opportunity to read it before buying; and
(4) the receipts so taken must be kept available for inspection by the Commissioner or his deputies.

NOTE: THIS REPORT DOES NOT COVER LOTS 20, 21, 26, 29A, 41, 42, 50, 81 AND 83.

SPECIAL NOTES

RESTRICTIONS AND OTHER MATTERS OF RECORD: Purchasers should investigate the conditions, reservations and restrictions that may run with the land, including city or county zoning restrictions.

Copies of those items which are recorded may be inspected at the office of the Yuma County Recorder. Information about zoning may be obtained at the office of the Yuma County Planning Commission. Certain lots are restricted for residential purposes only; and uses are limited in other ways for certain lots. Matters of record may be subject to certain errors or omissions.

WATER: The subdivider advises that the Sportsmen's Paradise Water Co. will supply water to this tract free of charge until such time as this company is approved as a public utility by the State of Arizona.

This tract is subject to any adverse claim by reason of accretion, alluvion, avulsion, reliction, erosion; failure of the public records to disclose appurtenant means of ingress or egress for tract; or possibility that tract or any part of it is not within the State of Arizona or is claimed by any agency or individual to be within the State of California.

DATE OF THIS REPORT: June 2, 1960

LOCATION: This subdivision is located on Harbor Boulevard and other streets on the north bank of the Colorado River at Cibola Ferry Crossing (abandoned), approximately 17 miles south of Blythe, California.

It consists of approximately 30 acres divided into 96 parcels.

SUBDIVIDER: KINDRED E. HARVEY

DEPOSIT MONEY HANDLING: The subdivider advises that all money will be impounded in an escrow or trust account in accordance with Section 11013.4(a) of the Business and Professions Code.

ROADS: Roads within this subdivision are improved County roads.

Information to this Division indicates that access to this tract appears to be over a regularly travelled road, however, this Division has not been advised as to its exact legal status.

UTILITIES: The subdivider advises that electric utility services are available, subject to company extension rules and regulations, from the California Electric Power Company.

Purchasers should contact the above company regarding service connections and the costs involved.

SEWAGE DISPOSAL: The subdivider advises that septic tanks are to be used for sewage disposal.

DESERT WIND AND RAINS: Heavy winds blow from time to time in all desert regions, and this may or may not prove detrimental to this subdivision.

During certain periods of the year heavy rains may occur in desert regions. Damage may result to property along natural drainage courses which have not been protected by sufficient flood control measures.

MISCELLANEOUS: The subdivider advises that it is approximately 17 miles to the nearest high school, 5 miles to the nearest grammar school, and 5 miles to the nearest community shopping center.

He also advises that school bus service is available to the grammar school and high school.

Purchasers should contact the local school board regarding school facilities and bus service.

FIRE PROTECTION: The subdivider advises that there is no organized structural fire protection for this tract.

CONTRACTS OF SALE: The subdivider has indicated that sales may be made on Contracts of Sale. Prospective purchasers should read and understand the terms of these contracts before signing them.

(Signed) W. A. Savage
Commissioner

JMM:bt:bl

GOODWIN J. KNIGHT, Governor
STATE OF CALIFORNIA
Division of Real Estate
MAIN OFFICE
1021 O Street, Sacramento 14

LOS ANGELES OFFICE
Room 310, Spring Arcade Building

SAN DIEGO OFFICE
613 Orpheum Theatre Building

SAN FRANCISCO OFFICE
1182 Market Street

OAKLAND OFFICE
Room 304, 1744 Broadway

FRESNO OFFICE
308 Rowell Building

FINAL
SUBDIVISION PUBLIC REPORT
ON
HARVEY'S FISHING HOLE
YUMA COUNTY, ARIZONA
RES. NO. 14203

Prospective Purchasers Should Read This Report Before Buying!

This Report Is Not an Approval or Disapproval of This Subdivision

It reflects information presented by the subdivider of the above-subject tract and other information obtained by the Division of Real Estate in its investigation and examination of said tract. This report is issued in accordance with the provisions of Sections 11010 and 11018 of the Business and Professions Code of the State of California.

Subdivision reports are issued by the Commissioner on subdivisions for the purpose of preventing fraud, misrepresentation or deceit. The Real Estate Commissioner does not regulate or govern the size of parcels, drainage, sanitation, water, and the physical aspects of subdivisions. All such matters are regulated and passed on by the local public bodies and officials.

Seller Should Note the Following:

Rule No. 2795 of the Commissioner's Rules and Regulations (Chapter 6, Title 10, California Administrative Code) requires that:

(1) a true copy of this report must be given to the prospective purchaser:
(2) *the prospective purchaser must be given an opportunity to read this report before a deposit is taken or an agreement of sale is executed;*
(3) a receipt must be taken from the buyer showing not only that he received a copy but that he had an opportunity to read it before buying; and
(4) the receipts so taken must be kept available for inspection by the Commissioner or his deputies.

SPECIAL NOTE: Your attention is especially directed to the paragraphs below headed: (X) RESTRICTIONS AND OTHER MATTERS OF RECORD, (X) STREETS, (X) WATER, (X) FIRE PROTECTION AND (X) CONTRACTS OF SALE.

DATE OF THIS REPORT: December 13, 1956.

LOCATION: This subdivision is located on Harbor Boulevard and other streets on the north bank of the Colorado River at Cibola Ferry Crossing approximately 17 miles south of Blythe, California.
It consists of approximately 30 acres divided into 75 parcels.

SUBDIVIDER: KINDRED E. HARVEY.

DEPOSIT MONEY HANDLING: The subdivider advises that all money will be impounded in an escrow or trust account in accordance with Section 11013.4(a) of the Business and Professions Code.

(X) RESTRICTIONS AND OTHER MATTERS OF RECORD: Purchasers should investigate the conditions, reservations, and restrictions that may run with the land, including city or county zoning restrictions.
Copies of those items which are "recorded" may be inspected at the office of the Yuma County Recorder.
This tract is subject to the following:
Reservation in favor of the United States of America for right-of-way for ditches or canals constructed by authority of the United States, recorded in patent in Docket 66, Page 293; Official Records of Yuma County, Arizona.

Effect of the soldiers and sailors Civil Relief Act on Sam Thompson, et al, defendants in Clause No. 13919 in the Superior Court of the State of Arizona, County of Yuma.

Any adverse claim by reason of accretion, alluvion, avulsion, reliction, erosion; failure of the public records to disclose appurtenant means of ingress or egress for tract; or possibility that tract or any part of it is not within the State of Arizona or is claimed by any agency or individual to be within the State of California.

(X) STREETS: Streets within this subdivision have been offered for dedication for public use but have not been accepted by the county.

The subdivider advises that he and/or Yuma County will install the street improvements.

This may mean that future care and maintenance will be at the expense of property owners.

Information to this Division indicates that access to this tract appears to be over a regularly travelled road, however this Division has not been advised as to its exact legal status.

(X) WATER: There is no regular water service to this tract. However bottled water or tank delivery is available according to information supplied by the subdivider from the "Triple A" Water Company, Brawley, California.

UTILITIES: The subdivider advises that electric utility services are available, subject to company extension rules and regulations, from the California Electric Power Company.

Purchasers should contact the above company regarding service connections and the costs involved.

SEWAGE DISPOSAL: The subdivider advises that septic tanks are to be used for sewage disposal.

DESERT WIND AND RAINS: Heavy winds blow from time to time in all desert regions, and this may or may not prove detrimental to this subdivision.

During certain periods of the year heavy rains may occur in desert regions. Damage may result to property along natural drainage courses which have not been protected by sufficient flood control measures.

MISCELLANEOUS: The subdivider advises that it is approximately 17 miles to the nearest high school, 5 miles to the nearest grammar school, and 5 miles to the nearest community shopping center.

He also advises that school bus service is available to the grammar school and high school.

Purchasers should contact the local School Board regarding school facilities and bus service.

(X) FIRE PROTECTION: The subdivider advises that there is no organized structural fire protection for this tract.

(X) CONTRACTS OF SALE: The subdivider has indicated that sales may be made on contracts of sale. Prospective purchasers should read and understand the terms of these contracts before signing them.

(Signed) D. D. WATSON
REAL ESTATE COMMISSIONER
OF CALIFORNIA

JMM:bt:rlk

Res. No. 14203

Senator Bumpers. What is the nearest city to this area?

Mrs. Trulove. Blythe, Calif.—17 miles.

Senator Bumpers. How far below Hoover Dam is this?

Mrs. Trulove. Many miles below Hoover. Our closest large dam is Parker Dam, 80 miles up river.

Mrs. Harvey. It is about 200 miles.

Mrs. Trulove. Hoover is 200 miles.

Senator Bumpers. How far are you from Blythe, Calif.?

Mrs. Trulove. Seventeen miles.

Senator Bumpers. That is where the people from Arkansas went to pick cotton.

Mrs. Trulove. They are still there.

Senator Bumpers. Some of them are coming back now since things have gotten a little more prosperous.

Mrs. Trulove. Yes. Sir, I have been in the area since 1961. I am familiar, in fact, I have made myself—this problem has been such a terrible problem upon us that I have studied everything I could possibly get my hands on, and I will be happy to answer any questions you might have.

Senator Bumpers. What a stark contrast between the Arizona and the California side of the river. This is a big bend in the river; isn't it? Does that bend have a name?

Mrs. Trulove. No. We are just a little, as you can see, 27 acre subdivision totally surrounded by over 2,000 acres of Government land.

Senator Bumpers. The land, if I am looking at this map correctly, is the top of this map north?

Mrs. Harvey. Yes.

Mrs. Trulove. Yes. Your section of river is the strange section. It runs almost east and west.

Senator Bumpers. There is a bridge across the river at that point?

Mrs. Trulove. It's gone. We had a flash flood. It was called Savola's Farmer's Bridge.

Senator Bumpers. It washed out?

Mrs. Trulove. We had a summer flash flood and the debris knocked the bridge out. It no longer is there.

Senator Bumpers. When was that?

Mrs. Trulove. Three years ago in September.

Senator Bumpers. Is all this land northwest of this subdivision Government owned?

Mrs. Trulove. Yes. It is now being leased by the Beaver Brothers.

Senator Bumpers. How much land was involved in the Beaver case, 11 acres?

Mrs. Trulove. There are 168 acres; they are now leasing from the Federal Government 850 acres for I believe $5.51 per acre. They are re-leasing the land to local farmers for the going price, which has to be between maybe $110 and $125, and I think they have either a 15- or a 12-year lease.

Senator Bumpers. They are leasing it at $5 an acre on 800 acres?

Mrs. Trulove. Yes.

Senator Bumpers. When was that lease executed?

Mrs. Trulove. I would be guessing, but I believe it was no more than 2 years ago.

Mr. Shebley. The present lease I think is only 2 or 3 years old, but

interestingly, the thing that has always appeared curious to us, and we are not here to testify about this, but since Your Honor has asked, we think shortly after they, quote, lost, close quote, their condemnation suit to the land adjoining ours, that they entered into a very favorable lease agreement for Government lands that they are now making quite a bit of money on. That's fine for them I suppose, but interestingly, the Beaver suit, the reason it is of some importance to us, not only is the land next door, but it was the harbinger, it was the first Government suit prosecuted through trial and appeal that the Interior was able to get a favorable judgment, and they used that decision against everyone along the Colorado River now.

Senator BUMPERS. Where was the Beaver land in relation to this subdivision, north or south?

Mr. SHEBLEY. It was just west. The river runs almost due east to west. The road that would lead on to the bridge you are looking at, Mr. Chairman, would also draw a line that would dissect the two parcels, the Beaver parcel from the Harvey's Fishing Hole parcel, so it was just west of downstream.

Mrs. TRULOVE. The large section, which would be on the east side of us, has been leased from the Federal Government by quite a large farming operation called the Desert Company, and they are not doing quite so well because they are paying a little over $10 per acre per year.

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

The comments of Mr. Shebley are erroneous. The condemnation case to which he refers was lost by the Beaver Brothers in 1963 (United States v. 11.8 acres, Civil No. 2468–SD, the Dredge Harbor Case). The judgment was affirmed on appeal in 1965. Other litigation filed in 1971 was settled with the Beavers. The settlement was effectuated in 1974. The lease referred to by Mr. Shebley and Mrs. Trulove was issued as a result of this settlement.

The statement that the lease occurred shortly after the Beavers lost the condemnation suit is totally false. It was consummated nine years after judgment in the condemnation suit became final.

The Beavers Brothers' lease with the United States was executed on April 19, 1974. The annual rental is $5,000. The rental is not adjustable during the term of the lease. The lease was executed as part of a settlement of a law suit which also encompassed the entry of a judgment of title and right to possession in the United States (United States v. R. A. Beaver, et al., Civil No. 71–0283–E).

The rental was computed as indicated below.

The fair market rental value of comparable agricultural lands in the Palo Verde Valley at the time the lease was executed was $55 per acre. There was deducted from this amount the annual water charge normally payable by the lessor because the lessee was required to pay that water charge. This resulted in a net fair market rental value. The unamortized investment of the defendants in the land was then considered. This unamortized investment was confirmed by an FBI audit. It was considered that 15 years was a reasonable period of time to amortize an agricultural type investment. The 15-year period was divided into total unamortized investment to obtain a value which represented that amount which necessarily would have to be amortized during each year of the lease. The total acreage was divided into the average annual amount needed to be amortized and this amount was then deducted from the net fair market rental value of the lands. That amount remaining was rounded off to the $5,000 per year rental charge contained in the lease. This mechanism was adopted as a means of allowing the defendants an opportunity to avoid a substantial monetary loss.

The defendants in *United States* v. *Iva May Harvey* were offered a more favorable settlement than that accepted by the Beaver Brothers. The defendants in *Harvey* rejected that offer. Enclosed is a copy of a November 24, 1975, letter from the United States Attorney to counsel for the defendants in which the settlement

offer was made. Also attached is a January 12, 1976, letter from defendants' counsel to the United States Attorney rejecting that offer.

Exhibit No. 1

November 24, 1975.

Re United States v. Iva May Harvey, et al., Civil No. 72–277–T

Floyd Shebley, Esq.,
McCann & Shebley,
San Francisco, Calif.

Dear Mr. Shebley: Pursuant to your request for terms relating to a possible settlement of the above-entitled case, the Department of the Interior has now delineated the parameters of a possible lease that could be offered to the defendants claiming ownership of lots in Harvey's Fishing Hole. The basic terms of the proposed settlement would be as follows:

1. Entry of a stipulated judgment confirming title to and the right to possession of the premises (the Harvey's Fishing Hole Subdivision) in the United States.
2. Dismissal of the cause of action for damages as to all defendants.
3. The execution of a lease of the subject lands to their respective claimants.

The terms of the lease would be as follows:

1. The maximum length of the term would be twenty-five years.
2. A yearly rental of $120–$180 per lot would be paid to the United States. The difference between the rent charged and the fair rental value would allow the defendants to amortize previous investments in the lots over the term of the lease.
3. Use of the subject land would be limited to residential use only. No new commercial businesses would be allowed.

In addition, all leases would be subject to the following limitations:

1. One lot would be leased to each defendant or one lot would be leased to a husband and wife together, as the case may be. If, however, substantial permanent improvements had been constructed on more than one lot by a defendant prior to receiving notice of the claim of the United States to the subject lands, the government would consider leasing more than one lot to such defendant. In this regard, each case would have to be judged on its own merits. Sham transfers of interests in the lots following the receipt of notice of the claim of the United States to the subject lands or to avoid the policy of leasing only one lot to each defendant would not be respected.
2. Permanent improvements existing on lots at the time of the execution of the lease could be maintained. New or replacement improvements would be limited to mobile homes which would be maintained so as to be capable of being moved out of the flood plain upon 24 hours' notice. Any other improvements, including fences, would require the prior written consent of the United States, which consent would not unreasonably be withheld. All such improvements would have to conform to the Guidelines for Construction in the Flood Plains of the Lower Colorado River issued by the Bureau of Reclamation in March 1969.
3. No unlawful use of the premises would be permitted.
4. No fences or other obstruction could be constructed across facilities of the United States without prior written consent.
5. Each lessee would have to release the United States from any claims for damages arising from flood control operations and would be required to waive any rights to grants or loans that might arise as a result of flood control operations of the United States under acts of Congress such as the Flood Disaster Relief Act and loan programs administered by the Small Business Administration. The release and waiver would not apply to claims arising under the Federal Tort Claims Act or by exercise of the United States of its right of eminent domain.
6. Each lessee would be required to protect the premises from deterioration including keeping the area free from weeds and particularly from allowing weeds to go to seed. Failure to so protect the premises will result in action being taken by the United States to protect the premises from deterioration at the expense of the lessee.
7. No electricity, water or other services would be furnished by the United States.
8. The injunctive provisions of the decree in *Arizona* v. *California, et al.*, pertaining to the use of water from the Colorado River would have to be incorporated in the lease. The Bureau of Land Management is currently attempting to obtain water rights along the Colorado River. If these efforts are successful, the lessees

would be permitted to use a portion of the Bureau of Land Management's water rights at cost. If these efforts are unsuccessful, it is anticipated that water rights may be available through the Palo Verde Irrigation District.

9. All lessees would be required to indemnify the United States for all damages arising out of their use of the premises.

10. Lessees would be required to refrain from polluting the Colorado River with sewage and other noxious substances. Compliance with all international agreements, federal and state laws relating to pollution would be required.

11. Transfers or assignments of leases would be permitted only with the prior written consent of the Bureau of Land Management which consent would not unreasonably be withheld. Each transferee or assignee would be required to agree to abide by the terms of the lease. A standard charge of $25 would be imposed to cover expenses of approving a transfer. No sublease or assignment of part of the premises would be permitted if done for the purpose of allowing multiple occupancy.

12. Each lease would be terminated:

(a) upon the end of the term specified in the lease;

(b) upon default in the payment of rent, after notice to pay rent or quit;

(c) upon default in the performance of the other terms and conditions of the lease, after an opportunity for hearing and determination that default in fact has occurred; and

(d) at the option of a lessee at the end of any calendar year provided that the lessee is not in default under the lease.

13. Upon termination, all lessees would be required to remove the improvements or to allow the United States to remove such improvements at the expense of the lessee.

In addition to all of the foregoing, the standard "canned" provisions required by statute, regulations and executive orders would be included.

All actual leases would be issued and administered by the Bureau of Land Management.

The foregoing general terms would be offered to all defendants claiming land within the Harvey's Fishing Hole Subdivision. The generosity of these terms should not be misconstrued as some sort of recognition of the legitimacy of the defendants' claims. I sincerely hope that you and your clients will accept these terms and avoid the unnecessary expense of taking this matter to trial. I am sure you realize that, should the United States be successful at trial, no settlement would be offered.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

TERRY J. KNOEPP,
U.S. Attorney.
MICHAEL E. QUINTON,
Assistant U.S. Attorney.

MCCANN & SHEBLEY,
COUNSELORS AT LAW,
San Francisco, Calif., January 12, 1976.

Re *United States* v. *Iva May Harvey, et al.*
MICHAEL E. QUINTON, Esq.,
Assistant U.S. Attorney,
San Diego, Calif.

DEAR MIKE: This is to advise you that as of the date hereof, we have received written responses from a total of fifty of the defendants (representing twenty-eight different families) in the above-referenced matter in response to the settlement proposal contained in your letter dated November 24, 1975. All of these responses, without exception, were negative.

The above figures do not include the Harvey family, which I understanding has voted unanimously to reject this settlement offer.

Very truly yours,

FLOYD H. SHEBLEY.

Senator BUMPERS. What are the crops that are grown around there?

Mrs. TRULOVE. Mainly cotton at this point; we do have a produce. We have lettuce, and there is melons. There is onions.

Senator BUMPERS. Are you telling me other land in that area is privately owned and rents for over $100 an acre a year?

Mrs. TRULOVE. It is Government-leased land, and the basic lessee pays the basic amount, but they can sublease it to other farmers, and then this is where the large amount of money comes in, on the subleasing.

We look pretty tiny there, Senator Bumpers.

Senator BUMPERS. Thank you.

[The prepared statements of Mrs. Harvey, Mrs. Trulove, Mr. Foster, and Mr. Shebley follow:]

STATEMENT OF IVA MAE HARVEY, BLYTHE, CALIF.

Mr. Chairman and members of the committee, I am Iva Mae Harvey of Blythe, California. I appear in support of the proposed amendment of H.R. 7101 (S. 2590), which would provide certain legal and equitable relief to certain landowners on or near the Colorado River in Riverside and Imperial Counties. I am accompanied by my attorney Wallace L. Duncan of Washington, D.C., and by Mr. and Mrs. Don Harvey who also own property in the area to which the proposed legislation relates.

By way of background, certain members of my family and I are landowners in the community near Cibola, California, known both as "Harvey's Fishing Hole" and "Sportman's Paradise". My late husband, Kindred, myself and our family were the owners, dating back to 1952, of all of the contested property which would or may be affected by the enactment of the proposed amendment of H.R. 7101 (S. 2590) as introduced and co-sponsored by Senators Cranston and Hayakawa.

Other witnesses have addressed or will address the specific effects and legal aspects of the proposed amendment. I support the analysis and recommendation of the proposed amendment as described by these witnesses. For purposes of my statement and for the information of the Committee, its Staff, and the full Senate, I will set forth certain background information which I believe establishes compelling reasons for extending the legal and equitable relief requested in this legislation to property owners located in Imperial County, California. I also submit that this background information conclusively demonstrates that my family, I and all other affected landowners at Harvey's Fishing Hole would qualify for relief under the six stringent conditions which would be imposed by the proposed legislation.

Our interest in the subject lands extends back beyond the 1952 purchase thereof by the late Mr. Harvey and myself from the record owner. Prior to that time, Mr. Harvey received permission to go on the lands, began clearing, fencing and the early stages of development. Our purchase of the subject lands was finally consummated in 1952.

The property was purchased by the late Kindred E. Harvey and myself under joint tenancy deed dated November 10, 1952, from Richard F. Goulette and Lillian N. Goulette, his wife. The deed was duly recorded in the County of Yuma, State of Arizona.

Historically, the chain of title to these properties now located in Imperial County, California, as a result of the 1966 Colorado River Boundary Compact, dates back to January 13, 1914, when the United States issued Homestead Patent No. 381486 to one S. E. Carlin. Said patent, signed by President Woodrow Wilson, was recorded in the County of Yuma, State of Arizona. Between the date of the original patent (January 13, 1914) and the date of purchase by the Mr. Harvey and myself, the following transactions took place respecting the property now know as "Harvey's Fishing Hole" and/or "Sportsman's Paradise:"

A. A deed from Cherry S. E. Carlin to W. A. Carlin, recorded in Book 37 of Deeds, page 307 in the County of Yuma, State of Arizona.

B. A deed from W. A. Carlin and Grace Carlin, his wife, to Sam Thompson, recorded in Book 61 of Deeds, page 473 in the County of Yuma, State of Arizona.

C. A deed from John Garfield Eckles to Fred Wardle, recorded in Book 74 of Deeds, page 295, in the County of Yuma, State of Arizona.

D. A Treasurer's Deed to the State of Arizona as a result of a tax foreclosure as recorded in Book 98 of Deeds, page 261, in the County of Yuma, State of Arizona.

E. A deed from the Board of Supervisors of Yuma County, to Richard F. Goulette and Lillian M. Goulette, his wife, recorded in Book 109 of Deeds, page 465, in the County of Yuma, State of Arizona.

Prior to purchasing the above-described property by deed dated November 10, 1952, and as early as 1948, the late Kindred E. Harvey and I had obtained permission to utilize the surface rights to portions of the land in controversy from one Alfred Robb who purported to hold an interest in portions of the subject property. The nature of the rights or property interests of the said Alfred Robb, now deceased, are apparently not a matter of record and are obscured by the passage of time and the deaths of the principals involved. Whatever the nature of the rights of the late Alfred Robb, acting with his permission and consent, Mr. Harvey and I, members of the Harvey family and others acting in their employ entered upon a portion of these lands and commenced clearing the densely covered lands for the purposes and with the intent of farming the land.

Mr. Harvey and I obtained absolute title to all of the lands in dispute on November 10, 1952, and were theretofore and thereafter in constant, continuous, actual, open and notorious possession of said lands. During this period, portions of the lands in question were surveyed, cleared, partially fenced and otherwise utilized by the Harvey family.

At the time of the purchase of said lands in 1952, portions of the lands in dispute were covered with large and aged cottonwood trees and trees of other varieties, and compared with dense brush and other foliage. The existing trees, some which were cut and cleared subsequently as hereinafter described, had existed on the lands in question for years prior to the date of acquisition by Mr. Harvey and me according to individuals familiar with the history and development of the area.

From the date the property in dispute was first occupied and/or purchased by us, our ownership, possession and occupancy of these lands was well known to representatives of the United States of America and certain of its agencies, including the United States Bureau of Reclamation and the United States Bureau of Land Management. Mr. Harvey and several other members of the Harvey family held numerous conferences and discussions with representatives of the United States Bureau of Land Management and/or the Bureau of Reclamation about the lands in question and other unrelated lands in the vicinity of Blythe and Palo Verde, California. During these conferences and discussions which occurred prior to 1967, the right, title and interests of the Harvey family to the lands involved in the present controversy, were readily and consistently recognized, acknowledged and conceded by representatives of the United States.

Following the acquisition of title by Mr. Harvey and myself, Mr. Harvey, his Estate and I have fully paid property taxes to cognizant local taxing authorities on all lands in which we held a property interest. In this regard, the subject lands were on the tax rolls of the County of Yuma, State of Arizona, until 1966, when the Congress of the United States formally ratified the Colorado River Boundary Compact between the States of Arizona and California (See Public Law 89–531 and California Government Code, Section 175 *et seq.*). Until the effective date of the Compact, property taxes were assessed by the County of Yuma and paid by us in full on all tracts on which we had a present property interest.

After the effective date of the Colorado River Boundary Compact, the lands in dispute were carried on the tax rolls of Imperial County, California, and Mr. Harvey, his Estate and I have paid unsecured property taxes in full on all property in which we maintained a present property interest. Unsecured property taxes were voluntarily tendered and paid to the cognizant taxing authority of Imperial County since, in light of the title dispute which had developed between us and the United States, Imperial County officials refused to assess and collect taxes on the lands in question as secured properties to which title was not in question. It is my understanding that representatives of the United States of America and its agencies interceded and prevailed upon officials of Imperial County, California to refuse to recognize the subject property as title and secured property and to assess and collect property taxes on that basis.

Beginning in 1956, and in reliance upon the title to the subject property purchased in 1952, Mr. Harvey and I conceived a plan of development of said property and began the planning and development of a recreational-residential community consisting of some ninety-six (96) lots to be located on some twenty-eight (28) of the original forty (40) acres purchased by us.

During 1956 and 1957, a large portion of the subject property owned by us was cleared in preparation for the development of a recreational and residential community. During this period, many of the large and aged cottonwood trees and trees of other varieties were removed together with brush and other foliage. The clearing and preparation of said lands for development was done openly and notoriously, under the color of title and was, at all times, well known to and observable by representatives of the United States of America, including representatives of the U.S. Bureau of Reclamation and the U.S. Bureau of Land Management. At no time during this period did any representative of the United States of America raise or state any objection to the clearing, preparation and development of the subject lands.

In 1957, Mr. Harvey applied for a permit for the development of a recreational and residential subdivision on the lands in question. In 1958, after reviewing the application for a subdivision permit, including proof of title submitted in support thereof, the State of California issued a subdivision permit to us and final development of the property was commenced. (A copy of the revised map of the Harvey's Fishing Hole Subdivision is attached as Exhibit A).

Following the issuance of the subdivision permit by the State of California, final clearing of the subject lands was accomplished by hand, by bulldozer and by grader and improvements installed at great expense to and effort by the Harvey family.

At all times during the development of the Harvey's Fishing Hole Subdivision, we were in open and notorious possession of said property and the development above-described was conducted with the knowledge of and without objection by cognizant and responsible officials of the United States of America.

In 1958, as development of the subdivision progressed, we commenced the sale of lots to third parties. To date, approximately eighty (80) lots have been sold by me and the late Kindred E. Harvey to third parties, many of whom, at great expense and with considerable effort, improved said properties, built homes and located on said properties, either permanently or for part-time recreational purposes. At the outset, we conveyed title to said lots by warranty deed on which title insurance was secured by the purchasers. In other instances, we conveyed such lots by quitclaim deed, leased lots with an option to buy said property or leased lots for specified terms.

In the sale and conveyance of some of these lots, we became the mortgagees of said properties and extended credit to the purchaser-mortgagor to accommodate the sale of said lots. Substantial balances on unpaid mortgages are still outstanding and are still owed to me and the Estate of Kindred E. Harvey. Since this action in ejectment was initiated in 1972, and for various periods preceding the filing of said action, the United States began a systematic and sustained challenge to our title to various portions of the subject property. As a result, most of the mortgagors have withheld payments due on said mortgages and have refused to resume such payments until the title question is resolved in our favor.

Certain of those who purchased lots from us under warranty deeds have already collected the proceeds of title insurance purchased and secured on said lots. These circumstances have created a severe economic hardship for me and the Estate of Kindred E. Harvey, and have exposed me and the Estate to potential legal liability to purchasers who purchased lands and interests therein on the strength of the title purchased by us in 1952 and the circumstances surrounding the ownership and development of the subdivision.

Not until some time in 1967, did any representative of the United States of America raise any question respecting the validity of our title. In point of fact, to the best of my recollection, a Mr. Crosby, who was then a representative of the Bureau of Land Management, inspected the subject lands as late as 1963 and assured us that the subject lands could not have been created by accretion to Federally-owned uplands.

It is my understanding and belief that the Department of the Interior, commencing some time in 1962 or 1963 initiated a review of title problems respecting lands located on the Colorado River and subsequently developed a program known as the Lower Colorado Land Use Program. As part of said program, agents of the United States approached various of the landowners commencing in 1967. In approaching certain of the landowners, the agents of the United States asserted that said lands belonged to the United States and notified such individuals that, if they had occupied parcels of land on or before August 24, 1965, they might qualify for a temporary use permit to be issued by the United

States upon application properly submitted to the United States Bureau of Land Management or Lower Colorado Land Use Office.

Earlier, on October 7, 1960 the United States of America filed a "Notice of Filing Complaint on Condemnation" in the action entitled, *United States of America* v. *11.8 Acres of Land, More or Less, in the County of Imperial, State of California, et al., and Unknown Owners*, No. 2468–SD–K, in the United States District Court of the Southern District of California, Southern Division. The latter case, which subsequently came to be referred to popularly as the "*Beaver*" case (*R. A. Beaver, et al.* v. *United States of America*, 350 F.2d 4 (9th Cir. 1965), involved some 11.8 acres of land approximately adjacent to Harvey's Fishing Hole Subdivision or Sportsman's Paradise. In the original notice, the United States simply sought to condemn the subject lands for public use in connection with the Colorado River Front Work and Levee System Project of the Bureau of Reclamation. We, for reasons unknown to us, were named as parties to the *Beaver* case although we neither owned nor claimed any part of the 11.8 acres which the United States sought to condemn in those proceedings.

When the *Beaver* case was initiated as a condemnation suit, the United States did not raise the question of title to either the lands involved in the *Beaver* case or the adjacent lands owned by us. It was assumed by us that the United States recognized title in the record owners and simply sought to exercise the Government's inherent power of eminent domain to acquire property needed for a public use. To the best of my recollection and belief, the question of the validity of title arose subsequently and only in connection with the question of the amount of compensation to which the record owners of the 11.8 acres of the land involved in the *Beaver* case were entitled.

When we discovered that the United States, in the context of the *Beaver* case, sought to challenge the title to these properties on the basis of the spurious claim that said properties were accretions to Federally-owned uplands, we retained counsel (the late Richard F. Harless of Phoenix, Arizona), to file an Answer and otherwise participate in Civil Action No. 2468–SD–K (Beaver case), to the extent that our interest might appear.

On October 10, 1963, an Answer to the Summons and Complaint filed by the United States in Civil Action No. 2468–SD–K was filed on our behalf. A copy of our Answer is attached hereto and made a part hereof as Exhibit B. In essence, said Answer set forth the fact that we had no property interest in the lands involved in the condemnation suit (Civil Action No. 2468–SD–K), but that we owned adjacent lands which were in a similar category. The Answer alleged that an adverse factual determination as to the formation and ultimate ownership of the lands involved in the *Beaver* case might adversely affect the titles of adjacent tracts, including those owned or developed and sold by us.

On November 15, 1963, the United States filed a Motion to Strike our Answer in the *Beaver* case on the grounds, *inter alia*, that the defense raised in the Answer (i.e., the validity of our title) was insufficient as a matter of law in the contest of a condemnation case on contiguous or adjacent lands sought by the United States for a public use. A copy of the Government's motion to Strike and accompanying points and authorities is attached hereto and made a part hereof as Exhibit C.

Following the filing of the Government's Motion to Strike, there followed a series of negotiations and correspondence between our attorney and the representatives of the United States (to-wit Messrs. Francis C. Whalen, U.S. Attorney and James S. Okazaki, Assistant United States Attorney) as a result of which it was determined that our Answer would be withdrawn on the condition that our respective rights would not be prejudiced in any way by the ultimate decision in the *Beaver* case. Before agreeing to withdraw the Answer filed in Civil Action No. 2468–SD–K, Mr. Harvey sought and obtained the assurances of his counsel (the late Richard F. Harless) that the issues in the *Beaver* condemnation suit were irrelevant and unrelated to any issue which might ultimately affect our title or that of those who had purchased property involved in this dispute. Mr. Harvey received such assurances from his counsel and was assured that similar representations had been made by the representatives of the United States. That the aforesaid negotiations, discussions, assurances and representations occurred is documented in a letter dated May 25, 1967, from Richard F. Harless, Esquire, to Mr. Albert Romeo, Administrator, Lower Colorado Land Use Office (copy attached hereto and made a part hereof as Exhibit D).

As a result of the aforementioned negotiations, discussions, assurances, and representations, Mr. Harvey agreed to the withdrawal of the Answer previously filed in Civil Action No. 2468–SD–K, and on January 24, 1964, a Stipulation and Order was filed with the United States District Court. At some subsequent date, our Answer was permitted to be withdrawn without prejudice to our interests. A copy of the Stipulation and Order are attached hereto and made a part hereof as Exhibit E.

After our withdrawal without prejudice from Civil Action No. 2468–SD–K, the *Beaver* case was tried and, on the basis of the limited factual presentation of the Government in that case, judgment was awarded to the United States granting possession and ownership of the 11.8 acres in dispute in those proceedings. On the ancillary issue of damages, the Court concluded, again on the basis of an inadequate record, that the lands in question had accreted to Federally-owned uplands and that, despite the equities in the favor of the record owners of said land, title was in the United States and the defendants were, therefore, not entitled to compensation.

In the *Beaver* case, neither the defendants nor the United States presented evidence adequate to demonstrate the actual and historical development, formation, location, nature and use of said lands. There was, and is, considerable evidence that the lands involved in the *Beaver* case and contiguous and adjacent lands were not created by accretion, but were located in juxtaposition with the course of the Colorado River, by avulsive changes in the River. In this regard, there exists considerable evidence that the dramatic changes of the Colorado River course occurred, for the most part, in the period before the closing of the gates at Hoover Dam in 1935. Prior to that time, many man-induced changes in the River course were made including several which affected the course of the River in the immediate vicinity of the lands involved in the *Beaver* case and those located at Harvey's Fishing Hole. Moreover, there exists considerable evidence, both physical and testimonial, that the topography of the lands in dispute, including existing plant and tree cultures, was not disturbed when the course of the River was altered. Such evidence was not before the Court in *Beaver*.

Notwithstanding the assurances and promises of the Government to Mr. Harvey in 1963 and 1964 in the context of the *Beaver* case, and notwithstanding the fact that we withdrew our Answer in the *Beaver* case "without prejudice" per the abovementioned Stipulation and Order submitted January 24, 1964, the United States later relied heavily upon the record and factual basis of the *Beaver* case in seeking to eject us and our successors in interest from property of which they are the lawful and rightful owners.

It was only after the conclusion of the *Beaver* litigation in 1967 that representatives of the United States began to question our title and to express any interests in acquiring lands or asserting title to lands located in Harvey's Fishing Hole.

Even then, it was not until 1972 that the United States took any affirmative action to assert title in ejectment proceedings against the current owners of lands in the community.

Throughout the protracted litigation which followed (and which is still pending in the United States Court of Appeals for the Ninth Circuit), we were thwarted by the applicable legal doctrines which we seek here to have Congress waive. We are confident that the record before the United States District Court would clearly have supported our position on a number of legal and equitable defenses which were either precluded or severely restricted under the doctrine of sovereign immunity.

I respectfully invite the Committee's members and staff to give thoughtful consideration to this information and background and to consider the equities involved under basic notions of fairness. Upon such analysis, I am confident that fair minds will conclude that the property owners and homeowners at Harvey's Fishing Hole are fully worthy of the same legal and equitable considerations as our fellow landowners in Riverside County who obtained relief in Public Law 91–505 and those who are seeking relief in H.R. 7101.

We are equally confident that, given the opportunity, through the enactment of the proposed amendment to H.R. 7101, we can meet the stringent limitations set forth in this legislation, namely a showing that:

(1) The United States claims ownership of the disputed lands on the basis of accretion, erosion or reliction;

(2) The private claimant has paid real estate taxes on the disputed lands on the same basis as other owners of land within the same taxing jurisdiction;

(3) The private claimant claims title by a conveyance which a reasonable person would have believed was free of any claim by the United States;

(4) The disputed lands are situated in Riverside or Imperial County, California, within three miles of any portion of the Colorado River between river points 13.00 and 14.00, as defined in the interstate compact defining the boundary between the States of Arizona and California (80 Stat. 340) ; and

(5) An action was brought by the United States before the date of enactment of the bill and the litigation is still pending, or an action is brought by a private claimant within 2 years after the date of the enactment of this bill.

In closing, I thank you for this opportunity to present the views and position of the Harvey interests and we urge your early and favorable action on the proposed amendment.

EXHIBIT A

EXHIBIT B

Law Office of
Richard F. Harless
1212 N. Central Ave.
Phoenix, Arizona
Attorney for Defendants
Kindred E. Harvey and
Iva Mae Harvey, his wife.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. 11.3 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA; STATE OF CALIFORNIA, et al., and UNKNOWN OWNERS, Defendants.	NO. 24[illegible]-SD-C Civil ANSWER

Come now the Defendants, KINDRED E. HARVEY and IVA MAE HARVEY, his wife, by their attorney, RICHARD F. HARLESS, and in answer to the Complaint and all proceedings heretofore had herein admit, deny and allege as follows:

FOR A FIRST DEFENSE

I

1. The said Defendants Kindred E. Harvey and Iva Mae Harvey, his wife are residents of Blythe, State of California. The said Defendants were served with Summons and Complaint in the above entitled cause and have not thus far answered or filed pleadings herein. Said Defendants are informed that no default has been taken against them and that the issues of the Plaintiff, United States of America and said Defendants are still open and subject to contest.

II

2. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in

paragraph I of said Complaint, except admit that the action herein purports to be one for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

III

3. The said Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in said Complaint therefore on information and belief the said Defendants deny all the allegations contained in said Complaint not herein admitted.

SECOND DEFENSE

I

4. The said Defendants have a full fee simple interest in lands adjoining the lands described in the Complaint. On information and belief the said Defendants are informed and believe that the facts and issues as set forth in said Complaint are similar to the facts and situation as affect the lands now owned and occupied by the said Defendants, and the Defendants on information and belief allege that any decision or determination of the Court, or judgments entered in the cause herein, will set a precedent and affect the titles to the lands of the said Defendants, which is more particularly described as follows:

> A Subdivision known as HERVEYS' FISHING HOLE
> in the Southwest 1/2 of Section 21, T1N, R23W,
> G&SRB&M as recorded in the Office of the County
> Recorder in the County of Yuma, State of
> Arizona

The said Defendants allege that all of the lands held by the said Defendants and the lands as described in the said Complaint are fee simple lands. The said Defendants further allege on information and belief that attempts are being made to have said lands determined and adjudged as accretion lands, and said determination would affect the rights and titles of the lands of said Defendants.

5. The said Defendants allege that the lands held by the Defendants, are in a similar category to the lands described in this cause of action. The lands of said Defendants have been subdivided and lots have been sold, and numerous individuals now hold title to said lands. Said Defendants answer this cause on behalf of themselves and those various and sundry individuals to whom the Defendants have conveyed titles to parcels and piece out of said subdivision. The said Defendants allege that a determination of the facts and law in this cause of action will affect the titles of all of said parcels of land heretofore conveyed by the Defendants; that it is important in the interest of justice and equity that said Defendants have a determination that the status of the titles of said lands are fee simple in order to protect the titles of lands belonging to Defendants and to those to whom they Defendants have conveyed titles to land.

WHEREFORE, said Defendants demand judgment dismissing the Complaint herein, or alternatively, determining and finding as a matter of fact and law that the title to the lands as described in the Complaint herein and the land held by the Defendants and the lands of those to whom said Defendants have conveyed title, are fee simple lands, and granting to the said Defendants such other relief as the Court shall deem lawful and proper in the circumstances, whether in law or in equity.

DATED this 10th day of October, 19[illegible].

/s/ Richard F. Harless

[illegible]
Attorney for Defendants [illegible]
[illegible]
1215 N. Central Ave.

STATE OF CALIFORNIA }
COUNTY OF RIVERSIDE } ss

RICHARD E. HARVEY, being duly sworn, deposes and says:

That he is one of the Defendants herein; that he has read the foregoing Answer and knows the contents thereof; and that the matters therein stated are true of his own knowledge except as to those matters stated therein on information and belief, and as to such matters he believes them to be true.

/s/ Richard E. Harvey

SUBSCRIBED AND SWORN to before me this 10th day of October, 196[illegible]

/s/ Edith [illegible]
Notary Public

My Commission expires:
January 26, 1964

EXHIBIT C

FRANCIS C. WHELAN
United States Attorney
JAMES S. OKAZAKI
Assistant U. S. Attorney
511 Federal Building
Los Angeles, California 90012
Telephone: [illegible]
688-2478

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

11.8 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, et al.,
Defendants.

No. 2460-SD-K Civil

MOTION TO STRIKE, NOTICE THEREOF, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

COMES NOW the plaintiff, United States of America, by Francis C. Whelan, United States Attorney, and James S. Okazaki, Assistant United States Attorney, Southern District of California, and, pursuant to Rule 12(f), Federal Rules of Civil Procedure, and based upon the points and authorities submitted herewith, respectfully moves this court to strike the defenses pleaded herein by answer of defendants, KINDRED E. HARVEY and IVA MAE HARVEY, his wife for the reason that the same are insufficient as a matter of law.

The above motion will be based on the files and records of the court in this case.

DATED: November 15, 1963.

FRANCIS C. WHELAN
United States Attorney
JAMES S. OKAZAKI
Assistant U. S. Attorney

By [illegible]
Attorneys for Plaintiff

J.O:[illegible]
11/13/63

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POINTS AND AUTHORITIES

I.

Introduction

Under and by virtue of the federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, 43 U.S.C., § 372, et seq.), the Secretary of the Interior of the United States was granted certain broad powers with respect to public lands. Furthermore, the Congress of the United States authorized the Bureau of Land Management, under the direction of the Secretary of the Interior, to perform necessary protection work between the Yuma Project and the Boulder Dam for the purpose of controlling the flow of the Colorado River (Act of July 1, 1940, 54 Stat. 703; Act of June 28, 1946, 60 Stat. 338), and funds necessary to defray costs of operating and maintaining the Colorado River Front Work and Levee System of Arizona, Nevada and California were appropriated by the aforesaid Act of June 28, 1946.

Pursuant to the aforementioned acts and the authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 1958 ed., § 257), this action in eminent domain was commenced on October 10, 1960 to acquire the adverse interests, if any, in and to lands for use in connection with the Colorado River Front Work and Levee System Project. On the same date the Solicitor of the Department of the Interior, under authority delegated by the Secretary of the Interior, filed a Declaration of Taking and there was deposited into the registry of the court the sum of $1.00 as estimated just compensation for said land.

By answer, filed November 5, 1963, defendants, KIMBALL E. [illegible] HARVEY and IVA MAE HARVEY, deny all allegations in plaintiff's Complaint except the allegations concerning the nature of these proceedings, and assert an alleged affirmative defense to this whole proceedings.

Plaintiff calls upon this court by this motion to strike under Rule 12(f), Federal Rules of Civil Procedure, to determine the

questions of law thus raised and the legal sufficiency of the defense.

II

Defendants Have Not Complied with the Provisions of Rule 71A(e).

It should be emphasized that in a federal condemnation proceeding there is no such thing as a judgment in default, and since, by such proceedings private property is being taken for public use, it is imperative that there be strict compliance and conformity with the procedures established by statute. (Concord Improvement Co. vs. Reichelderfer, 65 F. 2d 109, (D.C. Cir. 1933))

The language of Rule 71A(e) of the Federal Rules of Civil Procedure is explicit and unequivocal.

> "If a defendant has any objection or defense to the taking of his property, he shall serve his answer within 20 days after the service of the notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property."

It is apparent that the defendants, in neglecting to file an answer for more than three years after personal service of the notice of filing of complaint upon them, have waived their right to object to the taking. Moreover, defendants' answer fails to conform to the requirements of Rule 71A(e) by not identifying the property in which they claim to have an interest, and in not stating the nature and extent of the interest claimed.

III

In Condemnation Proceedings Public Necessity and Use Are Legislative Questions and Not Subject to Judicial Review.

Eminent Domain is merely a means for the Federal Government to exercise its constitutional powers. Accordingly, if the United States Government has the power to embark upon the project for which the land is sought, the use is a public use and the right to realize it through the exercise of eminent domain is clear. Barnidge v. United States, 101 F.2d 295 (C.A. 8, 1939); City of Oakland v. United States, 124 F.2d 959 (C.A. 9, 1942), cert. denied, 316 U.S. 679 (1942); Berman v. Parker, 348 U.S. 26, 99 L. Ed. 27 (1954).

The Constitution of the United States vests in Congress the power to regulate interstate commerce and to provide for the general welfare. Pursuant to these powers, Congress, by the Act of June 28, 1946 (60 Stat. 338), determined that public necessity required the performance of protection work for the purpose of controlling floods improving navigation, and regulating the flow of the Colorado River, and appropriated funds therefor. This determination of public necessity and the subsequent selection of particular lands for the use are within the exclusive province of the legislature and is not subject to judicial review.

> "When the use is public the necessity or expediency of appropriating any particular property is not subject to judicial cognizance." Boom Co. v. Patterson, 98 U.S. 403 (1878)

As the Supreme Court of the United States stated in Berman v. Parker, 348 U.S. 26, 99 L. Ed. 27 (1954):

" . . . When the legislature has spoken, the public interest has been declared in terms well nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia (See Block v. Hirsh, 256 U.S. 1135, 65 L.Ed. 865, 41 S.Ct. 458, 16 A.L.R. 165) or the States legislating concerning local affairs. See Olsen v. Nebraska, 313 U.S. 236, 85 L.Ed. 1305, 61 S.Ct. 862, 133 A.L.R. 1500; Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525, 93 L.Ed. 212, 69 S.Ct. 251, 6 A.L.R. 2d 473; California State Auto Association v. Maloney, 341 U.S. 105, 95 L.Ed. 788, 71 S.Ct. 601. This principle admits of no exception merely because the power of eminent domain is involved. The rule of the judiciary in determining whether that power is being exercised for a public use is an extremely narrow one. See Old Dominion Land Co. v. United States, 269 U.S. 55, 66, 70 L.Ed. 162, 165, 46 S.Ct. 39; United States ex rel. TVA v. Welch, 327 U.S. 546, 552, 90 L.Ed. 843, 848, 66 S.Ct. 715."

The court further stated on page 36:

" . . . Once the question of public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch."

In United States v. 6.74 Acres of Land, 148 F.2d 618 (C.A. 5, 1945), the Fifth Circuit, on page 620, said:

> "We conclude that under the congressional acts the necessity of the taking and the extent of the title to be taken are questions vested exclusively in the Secretary of War, and that upon the filing of the declaration of taking and the depositing of the money in the registry of the court neither appellee nor the court below could assail or in anywise limit the title which immediately passed to the Government thereunder."

The court, in the case of United States v. Mischke, 285 F.2d 628 (C.A. 8, 1961), reaffirmed the cases relied upon herein by the plaintiff, and stated:

> "The determination of the Secretary of the Army, the delegate of Congress, as to the necessity of acquiring the lands selected by him is, we think, no more vulnerable to judicial review or redetermination than would have been the same determination and selection if made by Congress itself in the act authorizing the project."

In a recent Supreme Court case entitled Barenblatt v. United States, 360 U.S. 109, 3 L.Ed. 2d 1115 (1959), the court, on page 132, stated:

> "So long as Congress acts in pursuance of its constitutional power, the judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power."

IV

Defendants' Claims of an Interest in and to Adjoining Lands is Immaterial and Irrelevant.

To be permissible, a defense must be such that it raises an issue proper for judicial inquiry. Defendants' claims of interest in and to lands adjoining the property and premises condemned herein are totally irrelevant and immaterial to the issues of the instant action.

> "Upon motion made by a party before responding to a pleading or if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Rule 12(f), Federal Rules of Civil Procedure.

V

Conclusion

The Act of Congress in authorizing the performance of protection work for the purpose of controlling floods, improving navigation, and regulating the flow of the Colorado River is clearl an exercise by Congress of its interstate commerce power and its power to provide for the general welfare. The taking herein is therefore for a public use and the defenses raised by the defendant are insufficient as a matter of law. It is therefore respectfully submitted that plaintiff's motion be granted.

EXHIBIT D

TELEPHONE
264-1631

RICHARD F. HARLESS
ATTORNEY AT LAW
SUITE 1000, FINANCIAL CENTER
CENTRAL AVENUE AT OSBORN ROAD
PHOENIX, ARIZONA 85012

May 25, 1967

U.S. Dept of Interior
Lower Colorado River Land Use Office
Box 1648
Yuma, Arizona 85364

Attn: Mr. Albert Romeo
Administrator

Dear Mr. Romeo:

Mr. and Mrs. Kindred E. Harvey have shown me a copy of a letter which you directed to Senator Carl Hayden on May 3, 1967, pertaining to the Harvey lands, Sportsman's Paradise, South of Blythe, California.

I note from your letter that you have stated that the rights of the Harvey's are concluded and already been tried in the case of Beaver v. United States, Civil 2468-SD-K. I wish to call to your attention that I filed an answer in the Beaver case on behalf of the Harveys in October, 1963, prior to the time the decision in that case was rendered. This answer set forth the fact that the Harveys would be affected by a decision in the Beaver case, and requested the right to be heard. The U.S. District Attorney filed a motion to dismiss our answer on the grounds that the fact that Harvey's land was in similar condition was not in issue, and therefore, their answer should not stand and should be stricken from the record.

After correspondence and telephone conversations with Mr. Francis C. Whelan, the U.S. District Attorney and his assistant, Mr. James S. Okazaki, it was decided that the Harveys would withdraw their answer on condition that their rights would not be prejudiced by the decision in the Beaver case. On the 24th day of January, 1964, stipulation was entered into between myself, the U.S. District Attorney, whereby the Harveys withdrew their answer and

Mr. Albert Romeo
May 25, 1967
Page 2

that the same was withdrawn "without prejudice"to the Harveys. Thereafter Judge Fred Kunzel signed a Court Order permitting the withdrawal of the Harvey pleadings and stated in his Order that the withdrawal was "without prejudice to said defendants". Therefore, for these reasons and other reasons, the Harveys are not bound by the Beaver decision, and they demand their day in Court and if the government takes their land, that they be justly compensated for it.

I note by your letter to Senator Hayden that you have libeled the title to the Harvey's land. It is our intention that all those who have damaged the Harveys by libel, or otherwise, when the decision is finally reached deciding that the title to their lands is valid, will be held accountable and actions for damages will be brought against them.

Very truly yours,

RICHARD F. HARLESS
Attorney at Law

EXHIBIT E

Law Office of
Richard F. Harless
1218 N. Central Ave.
Phoenix, Arizona
Attorney for Defendants
Kindred E. Harvey and
Iva Mae Harvey, his wife.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. 11.8 ACRES OF LAND, MORE OR LESS, IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA, STATE OF CALIFORNIA, et al., and UNKNOWN OWNERS, Defendants.	NO. 2468-SD-C CIVIL STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiff and the Defendants, Kindred E. Harvey and Iva Mae Harvey, his wife, by their attorneys duly authorized that the Answer filed herein in behalf of said Defendants may be withdrawn without prejudice.

DATED January 24, 1964.

FRANCIS C. WHELAN
United States Attorney
JAMES S. OKAZAKI
Assistant U.S. Attorney

By ______________________
Attorneys for Plaintiff

RICHARD F. HARLESS
1218 N. Central Ave.
Phoenix, Arizona

____
Attorney for Defendants
Kindred E. Harvey and Iva Mae Harvey, his wife

O R D E R

Pursuant to the foregoing Stipulation, it is

ORDERED that the Answer of the Defendants, Kindred E. Harvey and Iva Mae Harvey, his wife, be withdrawn without prejudice to said Defendants.

DONE IN OPEN COURT this ____ day of January, 1964.

____
JUDGE OF THE UNITED STATES DISTRICT COURT
SOUTHERN DIVISION

STATEMENT OF BEVERLY TRULOVE

Mr. Chairman and members of the subcommittee, my name is Beverly Trulove and I am submitting this statement in support of Amendment No. 3078 to S. 2590. This amendment would simply waive the sovereign's immunity and allow the occupants of Harvey's Fishing Hole, the community in which I live, to assert all of our defenses in the lawsuit brought against us by the United States.

Harvey's Fishing Hole is a small residential subdivision located on the Colorado River a few miles south of Blythe, California. In 1961 my husband and I purchased a lot there and started building a vacation and retirement home almost immediately. When we first looked at this lot the subdivider, Mr. Kindred E. Harvey, gave us a copy of the subdivision map and report which had been approved by the States of Arizona and California and assured us that he had clear title to this land. Before we purchased it, however, we had a title search conducted and learned not only that Mr. Harvey was correct but that his chain of title went back to a patent deed issued in 1914 by President Woodrow Wilson. We processed our purchase through a reputable escrow company and a policy of title insurance was issued to us for the unimproved value of our lot.

For about five years after we purchased our lot we continued to live in Los Angeles and used it, and the home we were building, as a weekend escape from the "big city." In 1966 we moved there permanently and have lived there since. We have a lovely home that I am very proud of. My husband and I, with the help of our two sons and a few friends, built it ourselves. I am submitting herewith a few photographs of some of the homes and other improvements in our litle community that will help you visualize what Harvey's Fishing Hole really looks like.

In the Spring of 1967, and after our home and many others had been completed, we received a letter from the Department of the Interior's Lower Colorado River Land Use Office telling us that we were occupying federally owned land and that we had to go to Yuma, Arizona, to negotiate a temporary land use permit. The same letter was sent to everyone who owned a lot at Harvey's Fishing Hole and was the first notice that the Department of the Interior gave us about its claim of ownership. We were all stunned and unanimously rejected Interior's not too generous offer of a land use permit.

Shortly after we received this notice my husband and I, and several other people from Harvey's Fishing Hole, attended a hearing of the Land Law Review Commission in Palm Springs, California. We were introduced to Mr. Albert Romeo, the Administrator of the Lower Colorado River Land Use Office, who boldly proclaimed that we would never defeat the Government's claim to our land because we would run out of money long before it did! That prophesy has almost come true.

About the same time Mr. Romeo's Administrative Assistant, Mr. Melvin Crosby, came to my home and in front of several people stated that if we didn't agree to the Government's terms our homes would be bulldozed into the river! I think it was then that my husband and I first realized there was little room for negotiation and that a long, hard battle lay ahead of us.

However, during a 1967 visit to Harvey's Fishing Hole on, to use his term, "official business" Mr. Crosby inspected the topography and told Mr. Harvey and a mutual acquaintance that the Government's accretion claim was a physical impossibility. Moreover, at an earlier meeting with Mr. Harvey, and after examining the 1914 patent and the 1952 conveyance to the Harveys, Mr. Crosby stated that "no finer title could be found" than ours.

These conflicting statements by the two top men charged with the "legalization" of our purported occupancy of federal land served only to confuse and outrage us. But even more outrageous is the fact that between 1961 and 1967 the Department of the Interior employed a person it called a "surveillance specialist" who actually, though surreptitiously, spied on us. He was issued a 4-wheel drive vehicle, a camera, a pair of binoculars (and who knows what else) and was instructed to go out and find all "trespassers" on federal land along the lower Colorado River. He reported his findings to Messrs. Romeo and Crosby and, with but one exception, told all such occupants that they were on federal land. A small sign to that effect was tacked to any improvements on Government claimed land if the occupant could not be found. Well, this surveillance specialist must have thought we were exceptional because though he observed us and reported our progress to his superiors he never once told any of us that the Department of the Interior claimed our land. In fact, we didn't even know we had been spied on until three or four years ago.

Similarly, the very Department of the Interior employee who during the late 1950's first decided that our land was the product of accretion came to Harvey's Fishing Hole eight to ten times a year, watched us build our homes, spoke with certain of us from time to time, but never once mentioned to any of us that we were on Government land. His explanation, when asked why he didn't warn us, was simply that it was not his "responsibility", either as a Government engineer or as a human being.

To say that the Department of the Interior has been unfair is to grossly understate what it has done to us. Everyone who hears of our problem appears, like us, to be absolutely outraged. Many say, for example, "they can't do that to you, can they?" Others simply shake their heads and utter some unkind remark about their Federal Government. We have gathered, and I have with me today, over 3,000 signatures of voters who support our request that you, Senators, expand Public Law 91–505 to include Harvey's Fishing Hole.

I myself am forced to repeatedly ask "why am I to be thrown off the land that my husband and I purchased in good faith, have built a home on with the knowledge of Interior, have paid property taxes on since 1961, and which Interior has no conceivable need for?" We did nothing wrong when we purchased our lot and built our home. And why should anyone, including the Federal Government, be allowed to wait for over forty years to assert a claim of ownership, especially when it's based upon an obscure theory called accretion? Why weren't we, like everyone else who occupied land along the lower Colorado River, advised by Interior's surveillance specialist that we were on federal land? Finally, what conceivable use can the Federal Government, which already owns about 95 percent of the land in my Country, have for my home? Is Interior actually going to bulldoze all of our houses and other permanent improvements into the Colorado River and make a park out of these 27 acres? Such a move would easily merit Senator Proxmire's "Golden Fleece" Award.

My husband of 33 years isn't with me today. He is a World War II veteran and served with honor in the South Pacific. Due primarily to the strain caused by Interior's eleven year effort to evict us from our home he has developed ulcers. Gentlemen, it hasn't been easy living at Harvey's Fishing Hole these past eleven years. It has taken a heavy toll from all of us, both emotionally and financially. Just imagine how you would feel if you had prudently purchased a small parcel of land, built your retirement home on it, and had just gotten all settled in when your own Government commenced an unrelenting effort to evict you and destroy your home. And, as if that is not bad enough, Interior wants us to pay rent to it for our use of this land since 1960!

In conclusion, Gentlemen, I will simply again ask that you support us and the Senators from California by voting in favor of Amendmnet No. 3078. I am sure that all my friends and neighbors at Harvey's Fishing Hole would join me in thanking you for allowing me to tell you a part of our sad story.

STATEMENT OF WILMER E. FOSTER, GRASS VALLEY, CALIF.

Good morning, Mr. Chairman and other members of the Subcommittee. My name is Wilmer E. Foster and I live in Grass Valley, California. As many of you may know, Grass Valley is in the Sierra foothills and gets quite cold in the winter. So my wife and I spend our winters at a home we built for our eventual retirement at Harvey's Fishing Hole, which is located in the desert in Southern California.

We purchased our lot there in 1964 and built a small but comfortable home on it. When we purchased our lot we were totally ignorant of the Department of the Interior's claims that this is accretion land and that it is owned by the United States. In fact, we still do not believe those claims and sincerely feel that they are ill-founded. Obviously, had we known of Interior's claim to our land we would never have built a home and made the other valuable improvements we have to our lot.

Since Interior has decided to evict my neighbors and us from our vacation and retirement homes, and regardless of whether or not its claim of accretion has any merit, I am here to ask you, Senators, to allow us to defend our title fairly and with a full opportunity to present issues and facts that we could had anyone other than the United States of America sued us. Specifically, I request your favorable recommendation to the full Senate on Amendment No. 3078 which, in

essence, would add our small residential subdivision to the land already afforded this opportunity by Public Law 91–505.

That statute allows nineteen farmers occupying approximately 2,100 acres of land about four or five miles upstream from us to assert "all legal and equitable defenses which are available against a private party litigant under the laws of the State in which the subject real property is located. . . ." As presently worded Public Law 91–505 encompasses only "land situated in Riverside County, California, within three miles of any portion of the Colorado River between river points 13.00 and 13.17. . . ." S. 2590 would move the downstream boundary to river point 13.19 and add 340 acres of disputed land to P.L. 91–505. And Amendment No. 3078 would extend the coverage of this Act about two more miles downstream to river point 14.00 and add an additional 27 acres of land currently claimed by the Department of the Interior. As both Harvey's Fishing Hole (the 27 acres of land mentioned above) and river point 14.00 are in Imperial County, California, Amendment No. 3078 would also add that County to the geographical boundary description contained in the existing statute.

Under Public Law 91–505, both as it is presently worded and as we ask that it be amended, no land is allowed the benefit of this waiver of sovereign immunity unless the following conditions have first been met:

1. The Government's assertion of title or ownership must be based either on the doctrine of accretion or that of avulsion;

2. the lands claimed cannot be "necessary to provide riparian frontage to other contiguous lands owned by the United States";

3. the facts upon which the Government's claim of accretion or avulsion is based must have "occurred more than forty years prior to the effective date of" Public Law 91–505 (i.e., October 23, 1930);

4. the private claimant must have "paid real property taxes on the disputed land on the same basis as other owners of fee lands within the same taxing jurisdiction";

5. the private occupant's claim to the lands in dispute must be based upon a chain of title originating with a conveyance from a State or the Federal Government; and

6. "a reasonably prudent man would have believed that, when he acquired title to the real property in question, he had obtained title free of the likelihood of any claim by the United States Government, any State, or any private person. . . ."

While obviously few people could fulfill all of these conditions, we at Harvey's Fishing Hole earnestly believe we can. However, whether or not we are able to do so will be determined, if at all, by a federal district court and not by me or the members of this Subcommittee. But just in case any of you have doubts about our ability to meet these rather stringent requirements I would like to briefly address each of them.

First, the Government's claim of ownership is explicitly based upon the theory of accretion. The Government contends that between the date of our 1914 patent and June 24, 1930, the Colorado River moved gradually and imperceptibly across our land and in doing so washed away our title.

Second, the United States already owns riverfront land on both sides of us and adjacent to Harvey's Fishing Hole and our 27 acres are in no way "necessary to provide riparian frontage to other contiguous lands owned by the United States. . . ." In fact, the Federal Government already owns most of the riverfront land on both sides of the lower Colorado River and has never articulated a need for our property to provide access for any of the land it owns in this area.

Third, the first aerial photograph of this vicinity, one which the Department of the Interior places total faith in and considerable reliance upon, shows clearly that by June 24, 1930 (the date this photograph was taken) the channel of the Colorado River at Harvey's Fishing Hole was almost identical to its present position. Hence, the purported accretion "occurred more than forty years before the effective date of" Public Law 91–505.

Fourth, until 1966 we were assessed real property taxes by Yuma County, Arizona, on the basis of our ownership of this land in fee simple. To my knowledge no-one in our subdivision ever failed to pay those taxes. In 1966, with Congress' ratification of the interstate boundary compact between Arizona and California, we were annexed to Imperial County, California. In 1967, and specifically because of the claim of the Department of the Interior, the Imperial County tax assessor placed us on the unsecured property tax rolls and has assessed us for a purported unsecured interest in this land and for the improve-

ments we have placed on it. When we received our first assessments from Imperial County we retained a large Los Angeles law firm and diligently tried to get our lots placed on the secured property tax rolls, but we have been unable to persuade the assessor to do so. I therefore do not believe that a federal district judge would disallow our invocation of Public Law 91–505 on the ostensible basis that we have failed to pay real property taxes on the same basis as other fee simple owners. And, I should add that we faithfully pay the assessments we receive from the Imperial County tax assessor notwithstanding the Government's continued attempts to evict us from our homes.

Fifth, our chain of title is unblemished and originates with a patent signed by President Woodrow Wilson on January 30, 1914. Moreover, in 1952 and shortly before Mr. and Mrs. Harvey took title to this land, the previous owners obtained a decree from the Yuma County, Arizona, Superior Court quieting their title against that County and State and all previous owners and occupants of this land. Interior has never questioned our chain of title but has simply asserted that no land exists to which our title attaches.

Sixth and finally, Public Law 91–505 requires that we, as reasonably prudent persons, believed that we obtained title free from the likelihood of any adverse claim on the date of our respective purchases. I can categorically state that my wife and I had no knowledge whatsoever of the Government's claim when we purchased our lot in 1964. At that time I didn't even understand what accretion was. And I think that all of my neighbors who purchased their lots prior to the 1967 notices we received from Interior were likewise ignorant of this accretion claim. Let me briefly explain why.

As I mentioned a moment ago, our title goes back to a 1914 patent and our chain of title is unbroken. The fact that our chain of title originated with a document signed by a United States President impressed me, and I am sure that it had the same effect on my neighbors. "Who would dispute the validity of a deed signed by a President?", I thought. Also, each of us learned from the subdividers of this property, the Harvey family, that the subdivision had been approved by both the States of Arizona and California. Also, we were told that our title was good by several title insurance companies, including the largest of them all, Transamerica Title Insurance Company. In addition, the Harvey's had the quiet title decree mentioned a moment ago to reaffirm their ownership.

Mrs. Trulove, who will be speaking to you in a moment, will further substantiate the fact that we were prudent purchasers. I would like to point out, however, that the Government itself did not even suspect that it owned this land until about 1959. That was seven years after the Harvey's had purchased it and three years after they cleared it and began subdividing it into the 96 lots that now exist there. Based upon this suspicion Interior surveyed this area in 1961 and only then concluded that Harvey's Fishing Hole was the product of accretion. Hence, to accuse the Harvey's and those who purchased lots from them prior to the 1961 survey of being less than prudent is to charge them with greater knowledge about ancient river movement than that possessed by the Government hydraulic engineer who first suspected accretion. He had been going to this area since 1948 and only in 1959 did he suspect that accretion had occurred. Interestingly, 1959 is the year that Interior decided that it wanted the parcel next door to us for a dredge harbor to carry out a channelization project in which that same hydraulic engineer, Mr. John McEwan, was involved.

I would like to conclude my remarks, Gentlemen, by simply reminding you that we are obviously not, as Interior would have you believe, common "squatters" or "trespassers." We, like the nineteen large farmers who presently benefit from Public Law 91–505, have very strong and compelling equities on our side and ask only for an opportunity to defend our title without our hands tied behind our backs. In short, we only ask for a chance to prove in a court of law and by a preponderance of the evidence any defenses we may have to Interior's claim that the United States owns our land. Thank you.

Statement of Floyd H. Shebley, Attorney, West Linn, Oreg.

I am an attorney at law with offices located at 1480 Short Street, West Linn, Oregon 97068. I represent those occupants of Harvey's Fishing Hole who purchased lots there from the subdividers of this 27 acre residential subdivision. This statement is submitted on their behalf and sets forth briefly the background and status of the lawsuit brought against them by the United States of America and the probable effect of Congress' passage of Amendment No. 3078.

In 1972 the Government commenced this action, entitled *United States of America* v. *Iva May Harvey, a widow, et al.* in the U.S. District Court for the Southern District of California (Civil No. 72 277 T). Its single claim for relief was based upon an allegation that the land in dispute, now popularly known as "Harvey's Fishing Hole", had attached to federally owned uplands by the process of accretion. Ejectment and rental damages were prayed for.

The many answers submitted on behalf of the 196 defendants unanimously denied the allegation of accretion and averred that the Colorado River had in fact moved by the process of avulsion (i.e., suddenly and perceptibly as a result of several man-made channel cuts and annual flooding).

In November of 1976 this matter went to trial. Judge Howard B. Turrentine allowed the defendants to raise the defense of estoppel but specifically ruled that adverse possession could not be asserted. Though substantial and convincing evidence of both an avulsive movement and of estoppel was presented the jury, after four days of deliberation, found for the United States.[1] The defendants have appealed to the Ninth Circuit Court of Appeal (Docket No. 77–2279), which is expected to hear oral arguments on this matter within the next six months. If they lose this appeal, which statistics at least indicate they will, the defendants do not presently contemplate any further appeals.

The reason the occupants of Harvey's Fishing Hole ask for passage of Amendment No. 3078 is simple. Approval of that measure would permit them to have a new trial on the defenses of adverse possession, laches and the statute of limitations. For the reasons set forth below, with such defenses they would surely prevail. But they need immediate legislative relief because Section 4 of Public Law 91–505, the Act which they seek to have amended, provides that this statute applies only to cases actually pending and not to those that have been finally determined or terminated. The appeal in this matter, if lost, will doubtless terminate this litigation prior to the next session of Congress. Thus, it is imperative that the occupants of Harvey's Fishing Hole obtain legislative relief during this session.

Section 1 of Public Law 91–505 makes the law of the situs state applicable in cases where the United States judicially asserts a claim of accertion or avulsion. Harvey's Fishing Hole is located in California and, under the law of that State, title to property can be acquired by adverse possession only by one "who, by himself or by himself and his predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for" either 20 years having paid property taxes for that same period of time. California Code of Civil Procedure §§ 749, 749.1.

Mr. and Mrs. Kindred E. Harvey went into actual possession of this land under a lease arrangement in 1948. They purchased it in November of 1952 and the Government commenced this action in July of 1972. Hence, ignoring for the sake of argument the occupancies of their predecessors in interest, the Harveys lack four months of the 20 year period of occupancy. However, tacking on the occupancy of just one predecessor in interest, Mr. and Mrs. Richard Goulette, the 20 year period is quite easily attained. If we use the shorter period of required occupancy (i.e., 10 years) we could start the period of adverse possession in July of 1962—long after the subdivision was completed and "booming"—and still defeat the Government's claim of accretion.

The Harvey's and those who purchased from them have paid all property taxes assessed against this property since 1952 so either the 5 or 10 year tax paying period could be satisfied without effort.

If Amendment No. 3078 is passed the occupants of Harvey's Fishing Hole could also invoke the defenses of laches and the statute of limitations for the commencement of an action for ejectment and damages. Laches requires only an undue and prejudicial delay by the plaintiff in bringing its action against the defendants. Here, for example, the United States waited over 40 years before it asserted its claim of accretion and, in the meantime, the land was cleared, subdivided and improved by the defendants at great effort and expense. Moreover, the United States would obviously be unjustly enriched if it is allowed to take, without compensation, the fruits of that effort and expense.

The California statute of limitations for the recovery of possession of real property, and the rents and profits thereof, provides that such actions must be

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[1] No attempt is made herein to explain the reasons for this verdict or the grave miscarriage of justice it constitutes. In that regard the statements of Mr. Wilmer E. Foster and Mrs. Beverly Trulove, which are being submitted to this subcommittee contemporaneously herewith, and my April 27, 1978 letter to all members of the Senate Committee on Energy and Natural Resources should be consulted.

commenced within five (5) years after the plaintiff was entitled to possession. California Code of Civil Procedure §§ 318–22. Hence, if this statute is literally applied the United States' claim was barred in 1935, five years after the purported accretion occurred. But even if we start the period of limitations running in 1961 when the Department of the Interior officially decided that Harvey's Fishing Hole is federal land, this action should have been commenced no later than 1966. But, as noted above, it was not brought until July of 1972.

The Department of the Interior is expected to oppose passage of Amendment No. 3078 on the ostensible grounds that this bill, if passed, would set a "dangerous" precedent and would require Interior to more carefully police the public lands. It is respectfully submitted that if a person can meet the strict standards set forth in Section 1 of Public Law 91–505 and then go on to prove, in a federal district court, that his defense is meritorious there is absolutely no danger of opening the so-called flood gates to meritless claims against the sovereign. Further, it is ludicrous to compare, as Interior does by implication, secret trespassers on lands known to be public with people who, as here, are actually observed by Interior and who openly occupy and improve lands to which they have a clear chain of title. This comparison becomes totally unconscionable when the very employees of that Department charged with the administration of public lands along the lower Colorado River are allowed to remain silent during the several years that they watched the occupancy and improvement of these 96 residential lots. In short, if indeed a precedent is to be set with passage of Amendment No. 3078 it is one which should have been set long ago.

Senator BUMPERS. Did anybody else wish to be heard?

Mr. LANDSTROM. I would like to be heard.

Senator BUMPERS. Mr. Landstrom, just pull a chair up there at the end of the table.

STATEMENT OF KARL S. LANDSTROM, ATTORNEY AT LAW, ARLINGTON, VA.

Mr. LANDSTROM. Mr. Chairman, my name is Karl Landstrom of Arlington, Va. I formerly was Director of the Bureau of Land Management in 1963, and when the public land law review was in operation, I was the Department of Interior's representative on the advisory council of that committee.

Very briefly, my paper points out to the committee that the principles involved here were recommended by the Public Land Law Review Commission, along with the same lines as the legislation that is before you, and I have quoted a part of their recommendations.

They recommended in effect that persons who find themselves in these situations be treated in the same manner as private citizens would be under State law, and that the defense of sovereign immunity be abandoned in such instances, both as to adverse occupancy——

Senator BUMPERS. You will be happy to know you are talking to an author of the bill which would remove the doctrine of sovereign immunity as a defense.

Mr. LANDSTROM. That would be exactly in line with the Commission's recommendation, and as you know, Mr. Chairman, Senator Jackson, the chairman of your full committee, was a member of that Commission, as was Chairman Udall in the House committee.

My paper quotes from Congressman Udall: "We are simply saying that let these people go to court with the Government and settle it as they would between private property owners," and he made that statement before the House of Representatives on the floor in 1970 when the 1970 law was made.

Now, I say in my paper that Congress made an error at that time, a very grave error, a constitutional error, limiting the scope of the

change in this rule to only a certain property location along the river in Riverside County. That is denying equal protection of the law to anyone else who is similarly concerned, so that that error should now be rectified.

They compounded the error in 1974 when they passed Public Law 93–578 which again limited the same kind of benefit to a certain tract on the Arizona side of the river, which is only 5 miles from Harvey's Fishing Hole, and in which the factual conditions are almost exactly the same.

Now, here is a chance for the committee to do simple constitutional justice so that all citizens under like circumstances can be treated the same in our courts and not discriminated against because of the accident of the State of their residence or the location of the property that is involved.

Now, in addition to that statement, I would like to, if I could, take another several minutes and attempt to——

Senator BUMPERS. It is a quarter of 1. How many is several?

Mr. LANDSTROM. About 2—I have 10 things that I think were misstated in Mr. Petty's statement.

No. 1, page 2, the sovereign immunity argument has been answered by the Public Land Law Review Commission report. On page 3, they state that the 1970 act established a precedent. They fail to mention that the 1974 act established a still further precedent, that the Congress in 1974 did not follow the mandate of the committee in 1970 that this shall be the final precedent.

They say on page 3 that it is inequitable to grant these claimants relief, that other occupants would thus come in and demand relief. I doubt if there are any other situations like this at all. I don't think that is a sound argument.

On page 4, they say that the Harvey's Fishing Hole is highly suitable for public recreation, but of doubtful value for permanent occupancy. We have heard these people testify that they have lived there for some 20 years. That is, in most people's book, pretty near permanent, and I would be hopeful personally that they can continue to live there.

Now, on page 5, the BLM statement talks about the courts, and the fact that a jury was requested by the defendants. I think that is unnecessary to tell the committee because any citizens who are before the court in this kind of action are entitled by law to a jury. I don't think that should be held against them if they ask to have a jury.

They say the court allowed the assertion of the equitable defense of estopple. They do not mention to the committee that the court did not allow the defense of laches, which I think is of even greater importance, as I understand the facts.

Now, on page 6, they say that it would be unfair to other persons occupying lands contiguous to Harvey's Fishing Hole who settle within the United States and receive 15-year permits if this legislation should pass. That is utterly false. There are no other persons occupying any lands contiguous to Harvey's Fishing Hole. There is a number of miles on both sides up and down the river and to the west, and the river is on the forest side. That statement is just utterly false.

In summary, Mr. Chairman, for those reasons, I sincerely hope that

the committee will adopt the legislation with the amendment offered by the two California Senators.

Thank you very much.

[Subsequent to the hearing, the Department of the Interior submitted the following information for the record:]

Mr. Landstrom in his testimony enumerates alleged "misstatements" in the testimony of the Department's witness. However, it appears that all but two of these so-called misstatements involve nothing more than a difference of opinion.

The remaining two allegations relate to the Department's doubt as to the value of the property at Harvey's Fishing Hole for permanent occupancy, and the Department's statement that enactment of S. 2590 would be inequitable to other persons who occupied lands contiguous to Harvey's Fishing Hole and settled with the United States. Responses to Mr. Landstrom's remarks on those two items are enclosed.

As to the first contention

The Harvey's Fishing Hole community is built on flood plain land fronting on the Lower Colorado River. There are no protective dikes or levees on this side of the River and the expected flows of 40,000 cfs coming down the River will flood the community.

Channelization and flood control structures have been constructed to move floodwaters through this Palo Verde Valley, Cibola Valley Area.

The Bureau of Reclamation affirms that periodic flood flows of up to 40,000 cfs can be expected in the future, and that the estimates in the 1959 Report on the Comprehensive Plan, Colorado River Channelization are still valid. In that report it is estimated that a flow of 40,000 cfs will occur in this reach of the River an average of 31 times per 100 years.

It should be noted that the requirements of Executive Order 11988 of May 24, 1977, concerning flood plain management are relevant to management of lands so situated.

Flood plains generally may be suitable for recreation type activities which do not involve permanent structures, where destruction by floods will not cause extensive property damage or human suffering. By the same token flood plains are not suitable for intensive development.

It appears that the reason that Harvey's Fishing Hole has not already been destroyed by flood may be the fact that development took place at the same time Lake Powell behind Glen Canyon Dam was being filled. Thus, no excess flood flows reached the Lower Colorado since closure of Glen Canyon Dam. Bureau of Reclamation studies indicate that floodwater release can be expected as storage facilities are filled to their operating levels.

As to the second contention

Persons occupying government land contiguous to Harvey's Fishing Hole who settled with the United States and received 15 year permits are presently in possession and the land is being irrigated. Thus they are "occupying" the land contiguous to Harvey's Fishing Hole. The total area surrounding Harvey's Fishing Hole included in the leases is approximately 1800 acres.

Mr. Landstrom in his capacity as Legislative Counsel for the Sportsman's Paradise Homeowners wrote a letter to Congressman Charles Wilson on August 16, 1974, concerning questions raised. Congressman Wilson later wrote the Department about these same issues.

The enclosed copy of a letter sent to Congressman Charles Wilson by the Department on April 19, 1977, in response to similar questions also responds to Mr. Landstrom's testimony. This letter referred to a bill in the 94th Congress similar to S. 2590 with respect to Harvey's Fishing Hole.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., April 19, 1976.

Hon. Charles H. Wilson,
House of Representatives,
Washington, D.C.

Dear Mr. Wilson: I am responding to your letter of March 23, 1976, in which you raise several questions concerning this Department's position on H.R. 2071 as transmitted in our report to the House Committee on the Judiciary on

March 2, 1976. I appreciate your concerns in this matter, and I hope that this letter will address those concerns and provide the information you request.

The first point questions the statement in our March 2, 1976, report that under present law the United States may assert sovereign immunity to the defenses of laches, equitable estoppel and adverse possession, and, therefore, the only issue in cases in which the United States claims ownership due to a shift in a river course is whether the shift was gradual (accretive) or sudden (avulsive). You advise that the law in this respect was changed by the Act of October 25, 1972 (86 Stat. 1176, 28 U.S.C. 2409a), and you refer to a Court order in a case involving lands in H.R. 2071 which supports this interpretation of the 1972 Act.

As this Department stated in our report of March 2, 1976, we do not believe the enumerated equitable defenses may be used against the United States. While Congress could change the law in this respect, we do not believe that the 1972 Act to which you refer had that effect. It merely permitted the filing of quiet title actions against the United States in certain cases and to tha limited extent sovereign immunity was "waived." In other words consent to sue the United States was granted without changing the substantive law, *i.e.*, sovereign immunity against certain defenses. The case you refer to is *United States* v. *Iva May Harvey*, Civil No. 72–277–T (S. D. Cal., filed July 17, 1972). On October 15, 1974 an order was entered denying the motions for summary judgment filed by plaintiff and defendants. In that order the Court held, *inter alia*, that the defendants, in their counter claim, could assert equitable estoppel against the United States because the Court concluded that the express exclusion of adverse possession in 28 U.S.C. § 2409a indicated an intent to include all other thories of action, including equitable estoppel to the extent it is available in a suit to quiet title. The United States was not able to appeal the Court's order because the order was interlocutory or non-appealable. We would like to point out that while no final judgment has been entered in this case, final judgments have been entered in two other cases wherein the Federal District Courts held, *inter alia*, that 28 U.S.C. § 2409a does not allow the assertion of equitable estoppel against the United States. *Wackerli* v. *Morton*, 390 F. Supp. 962 (D. Idaho 1975) ; *Moyer Ranch, Inc.* v. *United States*, Case No. 75–167–C5 (D. Kan. Feb 6, 1976)

The fifth point in your letter is related to the first point, so I will address it out of order. The fifth point refers to the statement in our March 2 report that one of the reasons why the Department recommended against enactment of H.R. 2071 was because a case on point was presently being reviewed in the judicial branch. The fifth point questions this position on the ground that the Department supported enactment of the legislation which became the 1972 Act while actions to quiet title were pending in the courts. Thise position on H.R. 2071 is not inconsistent with our views on the 1972 Act. As I stated earlier, the 1972 Act resulted in a procedural change in the law, it did not change substantive law. The 1972 Act only permitted an individual to bring suit against the Government to quiet title to land, and assured that such individual's complaint would not be dismissed because the Government had not consented to suit. The Act did not permit the assertion of equitable defenses against the Government. H.R. 2071 would effect substantive changes in the law, unlike the 1972 Act.

Finally, in further response to question five, we believe that a proposal for legislative relief based on equitable aspects might be a proper subject for Congressional consideration after all judicial remedies have been exhausted and all legal questions have been determined. This does not indicate a position on the part of the Administration but a willingness to consider the facts of a case and any equities which may be presented at that time.

The second question addresses how this Department reconciled some of the statements in the March 2 report with the findings and recommendations of the Public Land Law Review Commission, specifically Recommendation 113 which you quote in your letter.

Recommendation 113 can be broken down into 3 parts. We do not disagree with the second part, namely that citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The Act of October 25, 1972 was supported by the Administration. It permits individuals to institute such suits. It seems to us to be Congressional implementation of this part of Public Land Law Review Commission Recommendation 113.

The first part of Recommendation 113 is that the doctrine of adverse possession should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. The third part of Recommendation 113 is that the defenses of equitable estoppel and laches should be

available in a suit brought by the Government for the purpose of quieting title to real property or for ejectment. The Department and the Administration disagree with these recommendations. In our view Congress also disagreed with them in enacting the 1972 Act.

We would note that the Recommendation should be interpreted in the context of the balance of the study. For example, Recommendations 111 and 112 bear on 113. They recommend respectively that statutes and administrative practices defining unauthorized use of public lands be clarified and necessary statutory authority for policing by Federal agencies be provided, and that an intensified survey program to locate and mark boundaries be undertaken.

The third point questions the Department's assertion in the March 2 report that sovereign immunity is an important factor in public land management. This statement meant that if sovereign immunity was waived we would need increased manpower to police the public lands. Your letter requests that we reconcile this assertion with certain contrary conclusions of the Public Land Law Review Commission. The text which you quote follows Recommendation 113 of the Report. The first paragraph quoted was actually an historical reference. The Commission report, on p. 261, specifically prefaced the quoted paragraph with the statement "the Commission notes that as an historical matter" inadequate manpower was apparently the primary reason for Governmental reliance on sovereign immunity. This text appears to relate to the second part of Recommendation 113, namely that citizens should be able to bring actions to quite title against the Government. Thus, it would seem that the discussion regarding lack of manpower probably relates to lack of manpower to adequately defend the suit on the basis of the points of law involved, rather than manpower to police the lands to identify trespassers, etc. The Department's report refers to the latter, and we stand by that statement. With respect to the remainder of the quoted text which is also extracted from the discussion of Recommendation 113, we disagree with that position. Our position on the 1972 Act and in court cases since then demonstrates this disagreement. Again, resolution of these cases and the questions of law that have been raised will resolve this issue. Congress has acted and the courts will interpret the 1972 Act.

In any event, Recommendation 113 and the discussion following it do not indicate that the recommendations should be retroactive to the detriment of the Government. The Department's March 2 report points out an aspect of the sovereign immunity question which is not discussed in Recommendation 113. The United States may have relied on its sovereign immunity in making decisions as to whether to bring an action against a trespasser. A sudden change in this situation would be unfair to the Government unless a grace period were provided.

The fourth point concerns the precedential impact of H.R. 2071, about which we are seriously concerned. You refer to legislation similar to H.R. 2071 which was signed into law in 1974, and indicate that this 1974 Act did not lead to a flood of new bills. You also request a list of all private relief bills introduced subsequent to the 1974 Act.

We have not done a survey to ascertain whether similar relief bills have been introduced, nor do we believe such a review would be feasible. We would have to examine every one of the hundreds of bills which have been introduced involving any conveyance of land and refer such proposals to our Bureau of Land Management State Offices to determine whether similar issues are involved. However, it should be pointed out that the statement in our March 2 report refers to the effect of enactment of H.R. 2071, not a previous bill.

I hope that these answers have been responsive and have addressed your concerns as to this Department's position on H.R. 2071. Please do not hesitate to contact us if we can be of any further assistance to you in this matter.

Sincerely yours,

THOMAS S. KLEPPE,
Secretary of the Interior.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 23, 1976.

Hon. THOMAS S. KLEPPE,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: The Committee on the Judiciary has forwarded to me a copy of your Department's letter of March 2, 1976, consisting of its legislative

report on H.R. 2071, my bill "to establish standards for the settlement of disputed land title claims to certain real properties alleged to be public lands of the United States . . ." I find that the letter raises several questions about which I seek to be advised by your Department at the earliest possible time.

First, your Department's letter states that under present law the United States may assert sovereign immunity to the defenses of laches, equitable estoppel and adverse possession; and that therefore the only issue in cases in which the United States claims ownership alleging a shift in a river course is whether the shift was gradual (accretive) or (avulsive). I am advised, however, that the law in this respect was changed by action of the Congress in 1972 when it amended Title 28 of the U.S. Code to allow the United States to be made a party to actions to quiet title to lands in which the United States claims an interest. The 1972 enactment referred to, which is codified in 28 U.S.C. Sec. 2409a (Real Property Quiet Title Actions), provides in pertinent part as follows:

(a) The United States may be named as a party in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest . . .

(g) Nothing in this section shall be construed to permit suits against the United States based on adverse possession.

I am also advised that the amended provisions in 28 U.S.C. Sec. 2409a have been judicially construed by the United States District Court for the Southern District of California, Civil No. 72–277–T, in an Order dated October 15, 1974, as permitting the private land claimants in a quiet title action started by the United States to properly assert equitable estoppel in their answers and counterclaims. Inasmuch as the Court's reasoning, in reaching this conclusion, was that the statutory exclusion of "adverse possession" in 28 U.S.C. Sec. 2409a indicated a legislative intent to include all other theories of action to the extent they may be available in any suit to quiet title, presumably he Court's judgment extends to laches as well as to estoppel. Accordingly, the statement in your Department's letter, as referred to, appears to run directly counter to the present law (except as to "adverse possession") as the law has been declared in the Court's Order.

I must therefore inquire whether the people in your Department who prepared and signed the letter of March 2, were aware of the Court's Order, referred to; and if they were so aware, how they were able to rationalize or justify the statement of the present law as has been made to the Committee in view of the contents of the Order.

Second, the Department's letter states that the legislation as proposed in the bill would make a blanket waiver of the United States' immunity to equitable defenses without giving any consideration to the special and unique circumstances of the United States as a landowner. However I am advised that the proposition of eliminating all further remnants of such immunity (and "adverse possession" now appears to be the only remnant, in view of the Court's Order of October 15, 1974, above referred to) was very thoroughly and completely considered by the Public Land Law Review Commission during its study preceding its Report of 1970. In that Report, the Commission recommended in part as follows:

DETERMINATION OF TITLE DISPUTES

Recommendation 113: The doctrine of adverse possession should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The defense of equitable estoppel and laches should be available in a suit brought by the Government for the purpose of trying title to real property or for ejectment.

I must therefore inquire whether the people in your Department who prepared and signed the letter of March 2 were aware of the Commission's study and recommendation; and if they were so aware, how they were able to rationalize, or justify the statement that the legislation now proposed, taken in the context of the Commission's Report and other applicable circumstances, would amount to a blanket waiver of the alleged immunity of the United States without giving any consideration to the circumstances of the United States.

Third, the Department's letter of March 2 states that the alleged immunity of the United States from equitable defenses is important to the effective management of public lands. I am advised, however, that the Public Land Law

Commission has found the facts to be exactly to the contrary, in the following language quoted from the Committee's Report:

"An apparent primary reason for reliance upon the doctrine of sovereign immunity in actions to try title to land claimed by the Government was the lack of manpower in Federal land managing agencies to make the investigations required to defend the Government's claim on its merits. While this may have been a valid basis for the use of the doctrine as an absolute defense in such actions during the 19th century, these managing agencies now appear to have sufficient manpower to effectively assert any meritorious defense which the Government may have to such a suit * * *

"Believing as we do, that it is not an undue interference with the functions of the Government to require it to defend its claim to real property in a proper suit, the Commission finds to valid reason for placing the Government in a more advantageous position in suits brought by it to establish such a claim * * *"

I must therefore inquire whether the people in your Department who prepared and signed the letter of March 2, were aware of the Commission's study and conclusions in this respect; and if so how they were able to rationalize or justify the statement that the alleged immunity still remains, in 1976, an important factor in effective public land management.

Fourth, the Department's letter of March 2, states that enactment of the proposed legislation would invite a "flood" of similar requests for special relief from the Congress. However I am advised that very similar legislation involving certain zones of land along the Colorado River in the State of Arizona was passed by the Congress and enacted into law by signature of the President on December 31, 1974 in the form of Public Law 92–578, "To relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona." I am further advised that no "flood" of bills of the kind referred to in the Department's letter has been introduced in the Congress following the 1974 enactment.

I must therefore inquire whether the people in your Department who prepared and signed the letter of March were aware of the 1974 enactment, as well as the absence of any "flood" of bills as the letter indicates would "inevitably" follow if favorable action should be taken on my bill. I also request a listing of each request for special relief from the Congress which may have been introduced after the date of the 1974 enactment involving the Arizona lands.

Fifth, the Department's letter states that the Department opposes a change in the basic laws affecting quiet title actions during the time that any specific cases may be pending in the Judicial Branch. This appears to me to be a strange and inconsistent position in view of the fact that the 1972 enactment, making generally applicable changes in 28 U.S.C., Sec. 2409a, was enacted into law at the request of the Administration at a time when one or more specific quiet title cases were awaiting Judicial Branch determination. But in any event, I recall that on June 14, 1973 your Department advised me that if the title in the matter involved in legislation which I had introduced in the 93rd Congress were to be found by the Judiciary Branch to be in the United States, such a result would not preclude me from taking action toward granting legislative relief following such Judicial determination.

I take it that the Department at that time recognized that under the state of the law as it existed in 1973 any Judicial Branch determination would likely be based on so-called "legal" aspects of the case, omitting consideration of some or all of the so-called "equitable" aspects. I presumed that the Department's 1973 statement indicated a willingness to consider any important "equitable" aspects in connection with relief legislation in the event the courts should have found in favor of the United States based on an absence of consideration of one or more theories of equitable relief.

Recognizing that the law has been, or may have been, changed as regards consideration by the courts of equitable defenses, by virtue of the 1972 amendments to 28 U.S.C. Sec. 2409a, but not so far as to embrace "adverse possession", please advise me whether your Department continues in the belief, as expressed to me in 1973, that a proposal for legislative relief, even after title may have been judicially determined to reside in the United States, is a proper subject for Congressional consideration in the event that any applicable theory of equitable defense which might be properly raised by the private claimants was excluded in the Judicial Branch's determination of the case.

Your prompt reply to this letter will be appreciated.

Very truly yours,

CHARLES H. WILSON.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 2, 1976.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to the request from your Committee for the views of this Department on H.R. 2071, a bill "To establish standards for the settlement of disputed title claims to certain real properties alleged to be public lands of the United States, and for other purposes."

We recommend against enactment of the bill.

H.R. 2071 would allow a private defendant, in suits to quiet title initiated by the United States, to assert all legal and equitable defenses against the United States that it could under State law against a private litigant. The bill would limit these defenses to situations where (1) ownership is claimed on the basis of alleged accretion, avulsion or reliction, (2) the private claimant has paid taxes on the property during his period of ownership, (3) the private claimant claims the disputed land or land to which the disputed land is claimed to have accreted by title from a conveyance which a reasonable person would believe did not include the likelihood of a claim by the United States because of avulsion, accretion, or reliction, (4) the land is situated in Arizona or California within three miles of the Colorado River between certain well-defined areas on the California-Arizona border, and (5) an action has been brought before passage of the Act, but a final determination has not been reached, or is brought within two years of the Act by the private claimant.

Under present law, the United States, in actions to quiet title to land may assert sovereign immunity to the defenses of laches, equitable estoppel or adverse possession. Therefore, the only issue in cases in which the United States claims ownership due to a shift in a river course is whether shifts in the river which caused an ownership question to arise were gradual (accretive) or sudden (avulsive) or the result of a reduction in the water level (reliction). Avulsion does not disturbe title to property riparian to a navigable stream, but riparian owners gain or lose title to accreted or eroded portions.

We oppose this legislation in that it would weaken the United States' traditional claim to land by making a blanket waiver of the United States' immunity to equitable defenses without giving any consideration to the special and unique circumstances of the United States as a landowner. This immunity is presently an important factor in effective management of the public lands, and if changes in that immunity are to be considered, such consideration should involve all public lands and the unique problems inherent in their management.

Public lands comprise more than three quarters of a billion acres. Existence of these vast expanses without ability to effectively police them gives rise to countless opportunities for persons to occupy the lands without authorization. Enactment of private legislation, even within the geographical parameters of this bill, would inevitably initiate a flood of similar requests for special relief from Congress. Once this precedent has been established for these claimants, it would be difficult to deny similar relief for anyone similarly situated. Therefore, the arguments against this bill are broader than simply the specific dispute involved.

Not only would the subject bill waive immunity to certain defenses but it would do so without prior notice. A private party has several years, usually five or seven, within which he must move to establish his claim to property based on adverse possession or the statute of limitations, or a reasonable period of time under equitable estoppel after notice of the claim is given the State, within which they must settle the dispute, before the claimant can prevail. However, under the concept advanced in this bill, the Government, although having relied on sovereign immunity to these defenses up until the present, does not have a similar grace period whereby it may dispute the title. If these defenses are permited in this situation, and we strongly oppose any such action, a grace period should be permitted the United States for the purposes of providing an opportunity to take action on any matter on which it would have acted absent reliance on sovereign immunity.

The specific issues of this case which are raised in the present bill are now the subject of a law suit, and therefore we do not feel such a change should be made in a specific case while this case is being reviewed in the judicial branch.

Finally, the bill as proposed would arbitrarily favor only select persons occupying Government land. The property covered by the legislation is narrowly

defined. We see no reason to favor these few beneficiaries of this legislation. A piecemeal erosion of the traditional sovereign immunity defenses will not allow for consideration of the unique problems inherent in the management of 750,000,000 acres of Federal land.

For all the above reasons, the Department strongly opposes enactment of this legislation.

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

Sincerely yours,

NATHANIEL REED,
Assistant Secretary of the Interior.

KARL S. LANDSTROM,
ATTORNEY AT LAW,
Arlington, Va., August 16, 1974.

Hon. CHARLES H. WILSON,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. WILSON: This is a protest submitted on behalf of the Sportsman's Paradise Homeowners Association of California against certain of the contents of a letter of August 2, 1974, written by Jack Horton, Assistant Secretary of the Interior, to the Honorable James A. Haley, Chairman of the Committee on Interior and Insular Affairs, regarding H.R. 2218, H. Res. 183, and H.R. 11098 and certain other measures relating to the disputed title to certain real property in the vicinity of the Colorado River.

The protest is based upon analysis of the letter in relation to the facts, circumstances, and law applicable thereto as I understand them and as I have been advised by Mr. Ralph W. Brookins, Legislative Chairman of the Asociation. This analysis suggests that the letter reflects errors of fact, misleading statements of fact, and questionable statements of law concerning which the Committee should be advised. An extra copy of this letter of protest is enclosed in case you should wish to bring it to the attention of the Committee.

The August 2 letter contains this statement: "The constantly shifting nature of the Lower Colorado River about 40 or more years ago caused additions of land on one side of the river and corresponding reductions on the other. Some changes in the river were gradual and some more cataclysmic."

These sentences would appear to leave an impression that each and every one of the changes in the river's bed and banks resulted either in "additions" or "reductions" or both, and that none of the changes left any of the lands in place. The fact is that in some instances that have been identified, there was an avulsive effect in which the river's bed and banks changed but the land, in a real property sense, remained unchanged.

For instance, a report dated August 31, 1972, submitted by John S. McEwan of the staff of the Bureau of Reclamation to Region 3 of the Bureau regarding movements of the river in the vicinity of Harvey's Fishing Hole contains description of an avulsive movement which occurred to the West of the Harvey's Fishing Hole site.

The issue whether Harvey's Fishing Hole, more than 40 years ago, was subjected to erosion and accretion, on the one hand, or avulsion on the other hand, is being adjudicated in the pending action in the U.S. District Court for the Southern District of California in *United States* v. *Ida May Harvey, Widow, et al.* A comprehensive report advising the Committee on all pertinent aspects of the title dispute concerned in the measures which you have introduced would have informed the Committee to such effect.

The Assistant Secretary's letter then states: "The Hoover Dam, completed in 1935, allowed for control of the course of the river, but ownership of some land which had shifted prior to that date is being disputed." This is a misleading or self-serving description of the issues that have arisen, first, because one issue is whether the "land" indeed had shifted or not; and second because other important issues have been raised, such as the defenses of laches and equitable estoppel, which do not depend upon resolution of the facts concerning the history of the river's movements.

The letter goes on to say in part: "The claimants and their predecessors appear to have occupied the land specified in the bills since before 1935. The Department

of the Interior has always considered the claimants as trespassers on Federal land."

There is no information that has come to my attention indicating specifically that any or all of the Department's officers and employees "always" have regarded the occupants of the Harvey's Fishing Hole site as "trespassers." The Assistant Secretary's statements seem greatly exaggerated in view of the fact that the Department did not carry out a resurvey and survey of alleged accredted lands at the site until 1961-62 and the further fact that notices of the Government's title claims to the lands were not sent out to the occupants until much later.

"Trespass," according to Websters New World Dictionary (1957) is defined as "to go beyond the limits of what is considered right or moral . . . to go on another's land or property unlawfuly . . . an illegal act done with violence against another's person, rights, or property. . . ." Information has come to my attention indicating that many of the defendants in *Harvey* acquired record title to their property rights in the reasonable belief that the title they had acquired was valid and free of any adverse claims and without notice of any claim on behalf of the United States. If there is a current practice in the Department of the Interior to denominate as "trespassers" any persons against whom quiet title actions have been commenced, without awaiting the outcome of such actions under due process, then I would suggest that such practice needs to be stopped immediately.

The letter of August 2 then proceeds by describing generally actions taken by the Department of the Interior in the late 1950's and early 1960's regarding "trespassing" along the Lower Colorado River. This appears to be "boiler-plate" language having only indirect or remote connection with the particular lands and the particular facts involved in the legislation which you introduced and is before the Committee. As is evidenced in an answer filed on April 5, 1974 by attorneys for the United States in *Harvey*, the earliest date on which any of the defendants in that action were given written notice by the Government of the claim of title being asserted on behalf of the United States was January 9, 1967. The same document indicates that some of the defendants or counterclaimants in the case were not given written notice until 1972 and 1973.

The situation of the private title holders at Harvey's Fishing Hole is far different from the situation, say, of certain residents of an area along the river near the site of Parker Dam. During hearings of a Special Subcommittee of the House Committee on Interior and Insular Affairs held at Blythe, California on October 4, 1957 (85th Cong., 1st Sess., Serial No. 22, 1958), a spokesman for these residents was asked by Congressman Saylor: "Does anyone who has lived in this recreation district you have described to us claim he owns title to anything up there?" The answer from the spokesman was: "None whatsoever." It appears to be unfair and prejudicial for the Department of the Interior, as exhibited in the Assisatnt Secretary's letter to blanket in together all residents of lands along the river to which the Government may claim title into a single category.

The letter goes on to make the assertion that under present law the only issue to be adjudicated in the title dispute, concerning the record title holders at Harvey's Fishing Hole and the other parties involved in other legislation referred to in the letter, is "whether the changes in the river which caused the shifts of land were accretive, i.e., gradual, or were avulsive, i.e., sudden." Aside from the obviously inartful expression of this particular issue (if the river avulsed, the "land" would not have "shifted"), it cannot properly be said that avulsion v. accretion is the "only issue" the present law allows to be raised. The fact is that other issues have been raised and are now before the Court for adjudication. One such issue is whether the defenses of laches and equitable estoppel, which have been raised by some of the defendants against the claims of the United States, may operate against the Government in this instance. Facts tending to show that the Goverment is guilty of laches or that equitable estoppel is established have been presented in defendants' pleadings.

The letter of August 2 proceeds to assert that the United States is immune to defenses other than the issue of accretion v. avulsion, and then describes the background of the Act of October 23, 1970 (84 Stat. 1106) which granted a conditional waiver of asserted immunity against equitable defenses in title disputes involving lands situated along a certain stretch of the river within Riverside County, California. Quoted in the letter in prominent detail is a statement of the House Committee's report to the effect that the Committee considered the facts giving rise to the legislation "a unique situation", and that the Committee felt that the legislation should not be considered as a precedent for waiving the doctrine of sovereign immunity.

In that regard, you should be advised and the Committee should know that there is good reason to believe that, in a proper case, the United States may not be possessed of so-called immunity against the defenses of laches and equitable estoppel when raised by a private claimant in a quiet title action.

One matter that should be recognized is that, as of the time the Act of October 23, 1970 was enacted, private claimants such as those in Riverside County could not obtain standing to bring an action against the Government absent Governmental consent. This situation has since changed, by virtue of enactment of the Act of October 25, 1972 (86 Stat. 1176). Under the 1972 Act, private claimants, subject to certain qualifications, may bring actions to adjudicate disputed land titles in which the United States claims an interest, other than certain classes of interests which had been made the subject of earlier legislation. Insofar as privtae claimants, such as those at Harvey's Fishing Hole, are authorized by the 1972 Act to bring actions and have standing, the issue is not one of "sovereign immunity" in the ordinary sense (immunity from suit) but of whether, once suit has arisen, the United States is immune from the equitable defenses.

On this question the decisions of the courts appear to divide. For instance, in *United States* v. *Certain Parcels of Land*, 131 F. Supp. 65, S.D. Cal. 1955, the opinion of the Court stated in part:

"To summarize, the Government is bound by the doctrine of estoppel where: (1) There has been a waiver of sovereign immunity to suit, cf. *Hopkins* v. *Clemson Agricultural College*, 1911, 221 U.S. 636, 646, 31 S. Ct. 654, 55 L. Ed. 890; (2) The agent whose conduct is relied upon to work an estoppel acted within the scope of his authority lawfully conferred; and (3) Application of the doctrine does not bring a result that is either inequitable or contrary to law."

And in *Small & Robinson* v. *United States*, 123 F. Supp. 457 (S.D. Cal. 1954), the Court stated: "True, the government may not be sued without its consent [citations omitted], but where consent has been granted, the case should be decided "as between man and man on the same subject matter."

However, in *Beaver* v. *United States*, 350 F.2d 4 (9th Cir. 1965) involving lands alongside Harvey's Fishing Hole but, as I understand it, much different factual circumstances, the Appellate Court upheld the trial court's judgment holding that the doctrine of estoppel was inappropriate "when sought to be applied against the government under the facts of this case."

Note that *Beaver*, as well as the other cases just referred to were decided before enactment of the 1972 Act which waived sovereign immunity in quiet title cases, at least in part.

At the time the Committee favorably reported the 1970 legislation regarding the Riverside County lands, the situation at Harvey's Fishing Hole was not squarely before the Committee, and the Committee's non-inclusion of the Harvey's lands in the legislation at that time should not be viewed as an precedent against a full and fair legislative consideration of the equities of the present title holders at the site.

The Assistant Secretary's letter then opposes "legislation that would further weaken the United States' claim to land by waiving immunity to claims such as laches or statutes of limitations . . ." This statement presupposes that the 1970 legislation has already so weakened the claims of the United States elsewhere, which allegation has not been demonstrated and may be challenged. It also presupposes that the legislation to which the letter is addressed, comprising several very minor parcels of land, would have such weakening effect. This further presumption may also be challenged. There should be no mere assumption, without some kind of facts to back it up, that the "unique situation" encountered in the Riverside County cases in 1970 and that now encountered at Harvey's Fishing Hole, are representative of great numbers of like situations existing generally or having the potential of arising generally in the public land states.

The argument made in the August 2 letter to the effect that the Government ought not to be required to undertake the task and expense of properly policing the Federal lands has already been adequately and authoritatively answered in the report of the Public Land Law Review Commission.

Perhaps where civil rights and property rights of private citizens are concerned, the Government has no responsible choice except to undertake such time and effort as is necessary to do justice and promote equity under the law. The Committee needs no further reminder that the Commission unequivocally recommended that the defenses of equitable estoppel and laches should be available in a suit brought by the Government for the purpose of trying title to real property or

for ejectment. However it may be useful to quote the following extract from the PLLRC report's explanation of the reasons for this recommendation:

Waiving of sovereign immunity in quiet title actions against the Government and permitting the defenses of laches and equitable estoppel to be asserted in actions brought by the Government, would give no undue advantage to adverse claimants. They would be required to assert and prove their claims by competent evidence. The Government would not be required to surrender any of its property rights and would have all of the safeguards available to any litigant. Furthermore, laches and estoppel are equitable defenses. As the very terms imply, if permitted they could not be invoked to work an inequity against the Government as plaintiff in a proper action.

Certainty of title is to be desired. So long as disputed Federal claims to land exist without final resolution, there can be no certainty of title. The Commission finds that the advantage of final determination of such claims under the accepted rules of real property law in courts of competent jurisdiction outweigh any claimed disadvantage to the Government.

The Assistant Secretary's letter, at a later point, reasons that "it would be inequitable to grant the claimants in these bills special relief since other occupants of land along the river have either litigated in accordance with the law or they have recognized Federal ownership and have agreed to pay rent for future use . . ." For reasons that I have expressed earlier in this letter of protest, this reasoning is like comparing apples to oranges. The equities of the Harvey's Fishing Hole defendants ought not to be arbitrarily depreciated or devalued by the Assistant Secretary and placed on the same plane as those of other parties, such as those referred to in the Parker area, who had no claim to private land title and freely so stated.

The second reason advanced by the Assistant Secretary for not waiving immunity for these cases is that the land is "excellently suited for public recreational use . . ." If this is the case, the Department should be asked to explain why it has proposed to grant, or has just granted, leases for river-frontage lands both upstream and downstream from the Harvey's Fishing Hole site for long-term intensive agricultural use. There reportedly is some 200 miles of river shoreline held in the title of the United States within reach of Interstate 10, which is mentioned in the Assistant Secretary's letter. The amount of river shoreline involved at Harvey's Fishing Hole is approximately one-quarter mile fronting on approximately 27 acres.

The third reason advanced is that the land "is invaluable as a fish and wildlife preserve." The letter then goes on to say:

"Unfortunately, essential river control and channelization programs have caused losses to the precious backwater areas which support fish and wildlife. Federal ownership of the backwater areas which remain would assure that they would be properly protected and maintained."

Insofar as the Harvey's Fishing Hole site is concerned, attribution of this quoted statement could only have been made by someone who is totally unfamiliar with the geographical characteristics of the site. Again, general "boilerplate" language appears to have been used in the preparation of the Assistant Secretary's statement without due regard for the actual facts and the careful consideration that the pending legislation deserves in the Department.

Anyone who has visited Harvey's Fishing Hole knows that the river at that point is artifically channelized with heavy embankments. In no sense are the lands in a "backwater area" which supports the propagation or management of fish and wildlife. As a matter of fact, this third point raised in the August 2 letter appears to relate solely to the lands concerned in H.R. 4450 and H. Res. 247, which concern certain lands in Riverside County. The Assistant Secretary or those who prepared the letter for his signature clearly should have so stated so as not to result in misleading the Committee in respect to the lands involved in H.R. 2218, H. Res. 182, and H.R. 11098.

The Subcommittee on Public Lands has tentatively decided to include in H.R. 5441, the BLM Organic Act legislation, a provision conditionally waiving the asserted immunity against the defenses of laches and equitable estoppel in judicial actions involving specified limited areas along the river, including the areas concerned in the legislation to which the Assistant Secretary's letter of August 2 was addressed. However this development should not deter the Committee from considering the contents of this letter of protest in case you should elect to forward it to the Committee.

My hope is that, upon receipt of a communication from you together with copy of this protest, the Chairman of the Committee, Congressman Haley, or the Chairman of the Subcommittee, Congressman Melcher, will ask the Department of the Interior to reconsider its report and submit a revised report which will overcome the deficiencies and correct the errors which have been pointed out.

With best personal regards,

Sincerely,

KARL S. LANDSTROM,
Legislative Counsel,
Sportsman's Paradise Homeowners Association.

Senator BUMPERS. Thank you, Mr. Landstrom. I'm sure these people appreciate your taking the time and interest to come over on their behalf as a former Director of BLM.

[The prepared statement of Mr. Landstrom follows:]

STATEMENT OF KARL S. LANDSTROM, ATTORNEY AT LAW, ARLINGTON, VA.

Mr. Chairman, my name is Karl S. Landstrom, and I am an attorney at law at 510 N. Edison Street, Arlington, Va. 22203. I am a member of the District of Columbia Bar and the Virginia State Bar, and served for a time as Director of the Bureau of Land Management and as the Department of the Interior's principal representative on the Advisory Council of the Public Land Law Review Commission.

For a period of time after retiring from the Department of the Interior, I served as counsel for the Sportsman's Paradise Homeowners Association, a group of property owners at the 27-acre tract of land along the Colorado River known as Harvey's Fishing Hole. I have appeared on behalf of these property owners in hearings of the Senate and House Committees on Interior and Insular Affairs and for a time I defended certain members of the Association against the ejectment action that had been brought against them by the U.S. Department of Justice in the U.S. District Court for the Southern District of California. However for several years I have had no official connection with either the litigation or the legislation involving these matters. I appear before you merely as a friend of the Committee interested in the proper disposition of the legislation that is before you.

My view is that the Congress committed a serious injustice in 1970 when it passed Public Law 91–505 in a form that denied the benefits of the Act to all citizens except those residing or owning property claims within a certain geographical area, namely, "land situated in Riverside County, California, within three miles of any portion of the Colorado River between river points 13.00 and 13.17, as defined in the interstate compact defining the boundary between the States of Arizona and California . . ."

The substance of the 1970 Act, in my view, was proper. It reformed the judicial rules applicable to title disputes between the United States and any private party so that the United States would be subject to all legal and equitable defenses that are available against any private party litigant under like circumstances under the laws of the State in which the real property concerned is situated, providing that all of six very restrictive conditions are met. Such substantive provisions of the 1970 Act are well within the confines, and are actually much more conservative, than the applicable findings and recommendations of the Public Land Law Review Commission (1970) from which I quote in part as follows:

"Determination of Title Disputes.

"Recommendation 113. The doctine of adverse possession should be made applicable against the United States with respect to the public lands where the land has been occupied in good faith. Citizens should be permitted to bring quiet title actions in which the Government could be named as defendant. The defenses of equitable estoppel and laches should be available in a suit brought by the Government for the purpose of trying title to real property or for ejectment. . . .

"Believing as we do, that it is not an undue interference with the functions of the Government to require it to defend its claim to real property in a proper suit, the Commission finds no valid reason for placing the Government in a more advantageous position in suits brought by it to establish such a claim. . .

"The Commission also recommends that the doctrine of adverse possession be made applicable against the United States where land has been occupied in good faith. . . ."

The Commission has rightly pointed out that the Government ought not hide behind the outdated doctrine of sovereign immunity in title disputes, inasmuch as if the Government's claim is good, it will be established in favor of the Government, but if the Government's claim is bad it cannot be harmed by losing its case in the courts, because it will lose nothing to which it is rightfully entitled within our scheme of justice. Congressman Udall put the matter very clearly in the Floor debate on the 1970 Act when he told his colleagues: "We are simply saying, 'Let these people go to court with the Government and settle it as they would between private property owners.'" (Cong. Record, Oct. 5, 1970, daily ed., at H9511).

I recommend that the Committee members read in full the treatment of this general subject in the Public Land Law Commission's 1970 report, at pages 260–262.

The error that was made by the Congress in the 1970 Act was not in the substance but in the geographic limitation. S. 2590 as introduced and H.R. 7101 as it passed the House are now asking the Congress to commit another act of unjust discrimination, repeating the mistake that was made in 1970 and again in 1974 in the form of the geographic limitations in the Act of December 31, 1974, Public Law 93–578, limiting the benefits to certain lands on the Arizona side of the River. In 1970 and again in 1974 the land claimants at Harvey's Fishing Hole have been victimized by one of the oldest and most vicious forms of legislative discrimination in the history of this country—discrimination on the basis of geographic location of property holdings or place of residence as between States or localities.

I think the Committee members would agree with me that any form of unjust discrimination is too much. Enough of it is enough, and the pending measures certainly should be rejected unless they are amended as proposed by Senator Cranston and Senator Hayakawa so as to extend the geographic limits to the Harvey's Fishing Hole site.

I recall that the Department of Justice has traditionally opposed legislation of this sort on the ground that it might result in a flood of additional cases seeking the same kind of relief. In my judgment this objection is unsound. If there are further cases going back more than forty years and purporting to meet the six stringent requirements of the 1970 Act, where are they? Who are the claimants? Why have they not presented themselves to date?

Unless the Government's witnesses should be able to point specifically to additional instances of this exceedingly rare kind of factual situation, such objection should be disregarded by the Committee.

Nor is it necessary that the Committee or its staff examine closely into the intricate and voluminous facts and circumstances surrounding each particular claim at the several sites that are involved in the pending amendment. If the Amendment is adopted and the legislation become the law, all that will happen is that the private claimants will be able to exercise their rightful equities in a court of law. The court is the proper forum where the facts in each instance will be presented and established under normal judicial procedures. If the facts as thus established do not qualify any claimant from coming with the provisions of the legislation, the claim will be denied. If the facts do, indeed, qualify the claimant under the law, then the claim will be treated as under the provisions of the real property law of the State concerned, and proper justice will be accorded to each party.

As Senator Cranston has well put it, these citizens at Harvey's Fishing Hole should have equal treatment under the law and in the courts. That is all that Amendment No. 3708 would do, and as a friend of the Committee, I urge that the Amendment be adopted and the legislation be favorably reported to the Full Committee.

Senator BUMPERS. Mrs. Harvey, Mrs. Trulove, gentlemen, we thank you very much for coming such a long distance to be here this morning to present the evidence, the photographs; and the committee will be considering this legislation at its next markup, and meanwhile, of

course, the committee members will be getting additional information. Even though they are not here, they will be made aware of the testimony and the statements that were made here.

Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

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