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# MISCELLANEOUS LAND CONVEYANCE BILLS

GOVERNMENT

## DOCUMENTS

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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

BILLS PROVIDING FOR SPECIFIC LAND CONVEYANCES

S. 1634, S. 2254, S. 2489, S. 3175, S. 3245, S. 3445, H.R. 3121, H.R. 4243, H.R. 6463,  
H.R. 6997, H.R. 7588, H.R. 7849, H.R. 7971, H.R. 10029, H.R. 10160, H.R. 11168,  
H.R. 11451, H.R. 12772

SEPTEMBER 8, 1978

Publication No. 95-171

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(II)

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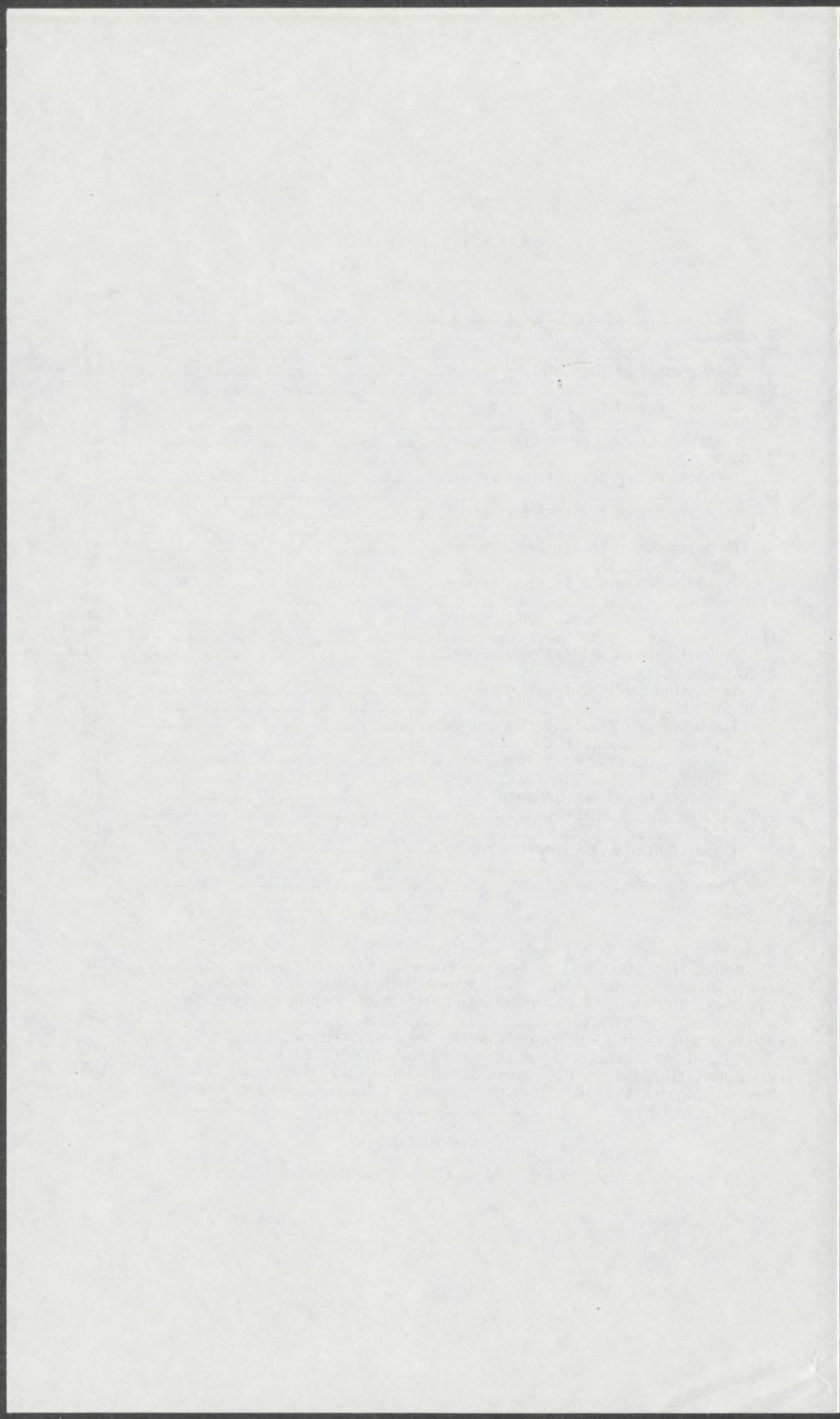
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## MISCELLANEOUS LAND CONVEYANCE BILLS

FRIDAY, SEPTEMBER 8, 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 a.m., in room 3110, Dirksen Office Building, Hon. Dale Bumpers, presiding.

Present: Senators Bumpers and Domenici.

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 several miscellaneous land conveyance bills. The bills include some that have passed the House or have been reported by the House Interior Committee, but which do not have Senate companion bills.

The subcommittee has asked for the views of the administration on each of these bills. Witnesses representing the Department of the Interior and the Department of Agriculture and the Forest Service will testify on each of these bills and submit a report explaining the administration's position.

I hope that the administration witnesses will be as brief as possible, focusing more of your attention on those bills on which the administration has recommended against enactment or suggested amendments.

Also testifying will be the Hon. Calvin N. Rampton, former Governor of Utah on H.R. 6463, a bill to reinstate certain oil and gas leases.

At this point, I will insert in the record copies of the bills and the relevant department reports.

[The texts of the bills together with the department reports before the subcommittee follow:]

(1)

95TH CONGRESS  
1ST SESSION

# S. 1634

---

## IN THE SENATE OF THE UNITED STATES

JUNE 7 (legislative day, MAY 18), 1977

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

---

## A BILL

To convey all interests of the United States in certain real property in Sandoval County, New Mexico, to Walter Hernandez.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 That all right, title, and interest of the United States in the  
4 following lands are hereby released and conveyed to Mr.  
5 Walter Hernandez of Cuba, New Mexico: the northwest  
6 quarter of the northwest quarter of section 27, township 21  
7 north, range 1 west, New Mexico principal meridian,  
8 Sandoval County, New Mexico, containing approximately  
9 forty acres.

10 SEC. 2. Upon application by the grantee, the Secretary

3

2

1 of the Interior is authorized and directed to issue such patents  
2 or other documents of conveyance as he deems necessary to  
3 evidence the conveyance effected by section 1 of this Act.

95TH CONGRESS  
1ST SESSION

# S. 2254

---

## IN THE SENATE OF THE UNITED STATES

OCTOBER 28 (legislative day, OCTOBER 21), 1977

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

---

## A BILL

Directing the Secretary of the Interior to convey certain property to David Sanhite Peele.

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 Secretary of the Interior is authorized and directed  
4       to convey, by quitclaim deed, without consideration, to David  
5       Sanhite Peele, all of the right, title, and interest of the United  
6       States in and to the following property:

7               The tract is located on the south side of Karta Bay  
8       on the Prince of Wales Island. Corner numbered 1 is  
9       located at the mouth of the Karta River and is also (com-  
10      mon with corner numbered 1, Harriet McAllister Allot-

1 ment) 685 chains west and slightly north of VABM  
2 Kassan Mountain 2846 and at approximately 55 degrees  
3 33 minutes 36.6 seconds north latitude, 132 degrees 34  
4 minutes 34.5 seconds west longitude,

5       thence south 10 chains to corner numbered 2,  
6       thence east 40 chains to corner numbered 3,  
7       thence north 55 chains to corner numbered 4,  
8       thence westerly and southerly along the shore of  
9 Karta Bay to corner numbered 1, the point of beginning.

10       Also described as fractional southeast quarter pro-  
11 tracted section 1 and north half northwest quarter pro-  
12 tracted section 12, township 73 south, range 84 east,  
13 Copper River meridian, Craig Quadrangle (C-2).

**S. 2489**

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 6 (legislative day, JANUARY 30), 1978

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

---

**A BILL**

To direct the Secretary of the Interior to convey certain property to Daniel Mahr and Thelma M. Mahr, and Nyel H. Moss and Janice L. Moss.

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 Secretary of the Interior is authorized and directed  
4 to convey, by quitclaim deed and without consideration, to  
5 Daniel Mahr and Thelma M. Mahr of Waverly, Nebraska,  
6 all right, title and interest of the United States in and to the  
7 following described property, together with all buildings and  
8 improvements thereon:

9           (1) The islands formed in the Platte River and  
10       situated in portions of section 32, township 13 north,

II

1 range 10 east of the sixth principal meridian, and in sec-  
2 tions 4 and 5, township 12 north, range 10 east of the  
3 sixth principal meridian, all in Sarpy County, Nebraska,  
4 also known as the James Islands and the Raasch Island,  
5 and any and all land accreting thereto; and including  
6 the same lands as conveyed in a quitclaim deed recorded  
7 in book 92, page 261, March 5, 1955, in the Register  
8 of Deeds, Cass County, Nebraska, and likewise recorded  
9 in book 95, page 254, Register of Deeds, Saunders  
10 County, Nebraska, and all lands accreting thereto; and

11 (2) That part of an island in the Platte River de-  
12 scribed as commencing at a point on the section line on  
13 the west bank of the island which point is 1,990.0 feet  
14 east of the southwest corner of said section 32, township  
15 13 north, range 10 east of the sixth principal meridian,  
16 Saunders County, Nebraska;

17 thence deflecting from said section line left an angle  
18 of 117 degrees 40 minutes on a course which runs north-  
19 westerly a distance of 745.0 feet;

20 thence continuing northwesterly deflecting 24 de-  
21 grees 15 minutes left, a distance of 437.0 feet;

22 thence continuing northwesterly deflecting 30 de-  
23 grees 20 minutes to the right a distance of 300.0 feet;

24 thence in a northeasterly direction deflecting 19

1 degrees 55 minutes to the right a distance of 695.0  
2 feet;

3 thence deflecting to the right 117 degrees 45 min-  
4 utes on a course in a southeasterly direction a distance  
5 of 160.0 feet;

6 thence continuing southeasterly deflecting 28 de-  
7 grees 30 minutes to the right a distance of 358.0 feet;

8 thence deflecting right 21 degrees 10 minutes on a  
9 southwesterly course a distance of 275.0 feet;

10 thence deflecting on an angle of 14 degrees 00  
11 minutes to the left in a southeasterly direction a dis-  
12 tance of 1,455.0 feet to the south line of said section 32;

13 thence west along said south line a distance of 300.0  
14 feet to the place of beginning, together with all accretions  
15 thereto.

16 SEC. 2. That the Secretary of the Interior is authorized  
17 and directed to convey, by quitclaim deed and without con-  
18 sideration, to Nyel H. Moss of Saint Paul, Minnesota, and  
19 Janice L. Moss of Arcadia, Nebraska, all right, title, and in-  
20 terest of the United States in and to the following described  
21 land, together with all buildings and improvements thereon:

22 (1) A parcel of land in section 4, township 12  
23 north, range 10 east of the sixth principal meridian,  
24 Cass County, Nebraska, known as Moss Island and all

1 accretions thereto located in the Platte River in Cass  
2 County, Nebraska, including but not limited to the island  
3 legally described in a decree filed in the District Court  
4 of Cass County, Nebraska, numbered 11561, docket 15,  
5 page 247, as follows:

6 Commencing at a point where the corners of section  
7 4, 5, 8, and 9 all in township 12 north, range 10 east of  
8 the sixth principal meridian, Cass County, Nebraska,  
9 intersect; thence 1,640.5 feet north along the section  
10 line between said sections 4 and 5;

11 thence north 89 degrees 30 minutes east from said  
12 section line a distance of 1,073.6 feet to the point of  
13 beginning;

14 thence in a northwesterly direction at an angle of 59  
15 degrees 11 minutes left from the line extending from the  
16 section line to the place of beginning for a distance of  
17 342.9 feet; said line being north 49 degrees 57 minutes  
18 west;

19 thence north 23 degrees 26 minutes west 837.0 feet;

20 thence north 6 degrees 15 minutes east 279.0 feet;

21 thence south 85 degrees 51 minutes east 195.0 feet;

22 thence south 61 degrees 20 minutes east 302.0 feet;

23 thence south 31 degrees 58 minutes east 446.0 feet;

24 thence south 65 degrees 9 minutes east 850.0 feet;

25 thence south 23 degrees 58 minutes east 688.0 feet;

1           thence south 52 degrees 43 minutes east 491.0 feet;  
 2           thence south 15 degrees 47 minutes east 304.0 feet;  
 3           thence south 7 degrees 31 minutes east 233.0 feet;  
 4           thence north 79 degrees 56 minutes west 410.0 feet;  
 5           thence north 59 degrees 53 minutes west 585.0 feet;  
 6           thence north 53 degrees 45 minutes west 1,101.8  
 7 feet to the point of beginning together with all accretions  
 8 thereto; and any and all other lands located adjoining  
 9 adjacent or accreting thereto to which any title is held by  
 10 the grantor and which comprises a portion of the land  
 11 mass known as Raasch, James, and Moss Islands, and

12           (2) An island in the Platte River in section 32  
 13 township 13 north, range 10 east of the sixth principal  
 14 meridian in Saunders and Sarpy Counties, and in sections  
 15 4 and 5, township 12 north, range 10 east of the sixth  
 16 principal meridian in Sarpy and Cass Counties, known as  
 17 Raasch Island, more particularly described as follows:

18           Commencing at the southeast corner of section 32  
 19 township 13 north, range 10 east of the sixth prin-  
 20 cipal meridian, Sarpy County, Nebraska;

21           thence westerly along the south line of said section  
 22 32 a distance of 1,823.58 feet to the point of beginning,  
 23 said south line bearing north 89 degrees 57 minutes  
 24 east;

- 1           thence north 27 degrees 30 minutes 37 seconds west
- 2           a distance of 939.09 feet;
- 3           thence north 18 degrees 38 minutes 44 seconds west
- 4           a distance of 1,259.33 feet;
- 5           thence north 30 degrees 26 minutes 35 seconds west
- 6           a distance of 1,239.3 feet;
- 7           thence north 35 degrees 14 minutes 36 seconds
- 8           west a distance of 1,073.26 feet;
- 9           thence north 58 degrees 58 minutes 8 seconds west
- 10          a distance of 582.86 feet;
- 11          thence south 2 degrees 14 minutes 37 seconds west
- 12          a distance of 614.4 feet;
- 13          thence south 24 degrees 20 minutes 05 seconds east
- 14          a distance of 2,292.97 feet;
- 15          thence south 16 degrees 15 minutes 32 seconds east
- 16          a distance of 2,246.26 feet;
- 17          thence south 35 degrees 19 minutes 50 seconds east
- 18          a distance of 1,879.42 feet;
- 19          thence south 33 degrees 19 minutes 14 seconds east
- 20          a distance of 953.1 feet;
- 21          thence south 46 degrees 47 minutes 30 seconds east
- 22          a distance of 1,490.6 feet;
- 23          thence south 44 degrees 01 minutes 59 seconds east
- 24          a distance of 2,132.56 feet;

- 1           thence north 21 degrees 20 minutes 29 seconds east
- 2           a distance of 206.04 feet;
- 3           thence north 27 degrees 11 minutes 15 seconds
- 4           west a distance of 732.61 feet;
- 5           thence north 30 degrees 33 minutes 56 seconds west
- 6           a distance of 1,386.58 feet;
- 7           thence north 36 degrees 44 minutes 20 seconds west
- 8           a distance of 531.63 feet;
- 9           thence north 32 degrees 08 minutes 47 seconds
- 10          west a distance of 603.27 feet;
- 11          thence north 58 degrees 18 minutes 50 seconds west
- 12          a distance of 150.9 feet;
- 13          thence north 53 degrees 36 minutes 38 seconds west
- 14          a distance of 873.06 feet;
- 15          thence north 23 degrees 57 minutes 54 seconds west
- 16          a distance of 592.73 feet;
- 17          thence north 20 degrees 00 minutes 51 seconds west
- 18          a distance of 546.92 feet;
- 19          thence north 15 degrees 30 minutes 49 seconds east
- 20          a distance of 205.28 feet;
- 21          thence north 27 degrees 30 minutes 37 seconds west
- 22          a distance of 734.61 feet; to the point of beginning; and
- 23          to include all accretions thereto.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 7 - 1978

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

Dear Mr. Chairman:

This responds to your request for the views of this Department on S. 2489, a bill "To direct the Secretary of the Interior to convey certain property to Daniel Mahr and Thelma M. Mahr, and Nyel H. Moss and Janice L. Moss."

S. 2489 would authorize and direct the Secretary of the Interior to convey by quitclaim deed certain lands in Nebraska to four individuals. The lands are located on islands in the Platte River. The conveyance would be made without payment of consideration.

Due to the absence of any previous records or correspondence with the beneficiaries, we have not been able to develop sufficient information concerning the situation addressed by this bill to take a position. We recommend that the Senate defer its consideration of S. 2489 until we can find out more about the situation addressed by the bill.

We have the following additional comments:

The Wyoming State Office of the Bureau of Land Management has advised us that it is unable to locate any public land which corresponds to the lands described in S. 2489. The official records of that State office show that all lands in question passed from Federal ownership under either the Military Bounty Act of 1855 or the Homestead Act of 1862. Since the United States has already issued a patent for these lands, we would have objections to issuing a second patent or quitclaim deed, as directed by the bill, because it could cloud the title of the first patentee.

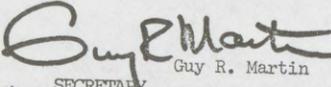
We understand that the beneficiaries of S. 2489 own the three islands which are the subject of this bill. The city of Lincoln, Nebraska

wants to purchase these islands. As a result of the title search, they have been advised that there is some Federal interest in the land.

Depending on the facts, there are several approaches, short of legislation, which may be available to the claimants to accomplish their purpose. The claimants could obtain copies of patents, a statement as to the lack of Federal interest or, if needed, file an application with the Wyoming State Office for a disclaimer of interest under section 315 of the Federal Land Policy and Management Act of 1976.

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,

  
Assistant SECRETARY  
Guy R. Martin

**S. 3175**

---

## IN THE SENATE OF THE UNITED STATES

JUNE 7 (legislative day, MAY 17), 1978

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

---

**A BILL**

To facilitate the exchange of certain lands in the State of Oregon,  
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 (a) in order to facilitate the exchange of certain lands  
4       in the State of Oregon for purposes of enlarging the Ecola  
5       State Park, the Secretary of Interior shall convey to the  
6       State of Oregon the reversionary interest retained by the  
7       United States under the first proviso of the first section of  
8       the Act of August 11, 1916 (39 Stat. 505), in a tract com-  
9       prising about one hundred and sixty acres and described as  
10      the northwest quarter, section 8, township 5 north, range 8  
11      west, Williamette meridian. Such conveyance shall be made,

1 upon relinquishment of patent numbered 602062 by the  
2 State, by issuance of a new patent describing all lands which  
3 were described by patent numbered 602062.

4 (b) The new patent issued under subsection (a) shall  
5 contain all reservations and exceptions required by the Act of  
6 August 11, 1916, and contained in patent numbered 602062  
7 except that the reverter provision contained in the proviso  
8 referred to in subsection (a) shall not apply to the one-  
9 hundred-and-sixty-acre tract described in subsection (a)'.  
10



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 18 1978

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

Dear Mr. Chairman:

Your Committee has requested the views of this Department on S. 3175, a bill "To facilitate the exchange of certain lands in the State of Oregon, and for other purposes."

We would have no objection to enactment of S. 3175 if amended as shown in the enclosed draft substitute bill.

S. 3175 would direct the Secretary of the Interior to convey the reversionary interest of the United States under the first proviso of the first section of the Act of August 11, 1916, in a certain 160-acre tract, to the State of Oregon. The conveyance would be made upon surrender of patent numbered 602062 by the State and issuance of a new patent covering the same lands. The new patent would contain all reservations and exceptions required by the Act of August 11, 1916, and contained in patent 602062 except that the reverter provision would not apply to the 160-acre tract in question.

The Act of August 11, 1916 (39 Stat. 505), granted to the State of Oregon certain lands including the 160-acre tract in question, for use as a public park. It required that the patent to be issued contain a provision stating that "the land shall revert to the United States whenever it shall not be used for the purposes mentioned in this Act." Other reservations and exceptions were included in the Act. However, these other provisions are not in question. A patent numbered 602062 was issued in accordance with the 1916 Act on September 28, 1917, reciting the reverter and other exceptions in the Act.

We have been advised that the 160-acre tract is no longer suitable for park purposes and could be effectively utilized in an exchange to acquire lands that are suitable, as well as funds.

As it has been explained to us, the State of Oregon has been making an effort to arrange a transfer of land which would expand public ownership at Tillamook Head on the Pacific Ocean, between Seaside and Cannon Beach in Clatsop County. The effort to obtain expanded public ownership received an impetus when an anonymous donor from Portland agreed to give the state \$1 million to acquire and develop a natural area park at the top of Tillamook Head. A trail, part of the Pacific Crest Trail, is now included in public ownership as part of Ecola State Park, but the ownership is a thin strip of land along the crest which subjects park timber to severe wind-throw when the adjacent private timber is harvested by clearcutting.

Much of the private land abutting the existing public ownership belongs to Crown Zellerbach. Because this land is exceptionally productive timberland, Crown Zellerbach has been reluctant to sell it. However, the company has been most cooperative in entertaining negotiations over a proposed land exchange.

We have been advised that state officials conducted an exhaustive search for transferrable land and put together a series of possible transactions. Problems have arisen to block each proposal. However, state officials have persisted and, after sharply reducing the size of the proposed addition to public ownership at Tillamook Head, now have a proposal that will require use of the 160-acre tract described in S. 3175.

The specific proposal giving rise to S. 3175 involves exchange of the 160 acres, near Saddle Mountain State Park (NW 1/4 Sec. 8, T. 5N, R. 8 W, W.M.), with Crown Zellerbach for land and timber of equal value at Tillamook Head to be used for public park and recreational purposes.

The 160 acres near Saddle Mountain granted by the 1916 Act is surrounded by private commercial timberlands which are now being clearcut as the timber crop matures. We have been informed that the exchange of this isolated tract has been agreed to by the Oregon Natural Area Preservation Committee, which was assigned the responsibility to assure that no plant or animal life of special or unique value is endangered by land use management decisions.

In order for the State to conclude the exchange, it would be necessary to remove the reverter restriction in the 1916 Act and the patent. S. 3175 is designed to achieve this objective, which cannot be achieved administratively by the Secretary.

We recognize that a change in land use patterns or circumstances may render land unsuitable for the purposes for which it was granted and that in some circumstances sale or exchange of such lands would not violate the general intent of the statute under which they were granted. On the basis of the information we have, we believe that this case is a proper one for relief from the reverter in the 1916 Act.

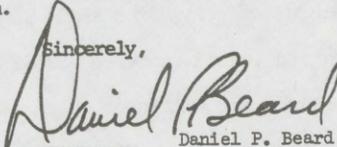
On the other hand, it has been our view that when lands have been granted by the United States for a certain purpose without payment of consideration, any change of use of the lands should be carefully circumscribed to protect the interest of the United States. Several Acts have been passed in the last few Congresses that allowed a change in use subject to stringent requirements to assure that any transaction would be as compatible as possible with the intent of the initial grant.

We do not believe that S. 3175 provides adequate protection of the interest of the United States in assuring that the lands are properly used, nor does it prevent use of the lands for generation of revenues. While we are sympathetic to the problems created by time constraints on negotiations in this case, we cannot approve a bill with these deficiencies. A proposed substitute bill is enclosed. We recommend that this bill be enacted in lieu of S. 3175.

The Geological Survey has reported that the lands involved in S. 3175 are prospectively valuable for oil and gas.

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,



Daniel P. Beard

Acting Assistant SECRETARY

Enclosure

A B I L L

To facilitate the exchange of certain lands in the State of Oregon, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to facilitate the exchange of certain lands in the State of Oregon for purposes of enlarging the Ecola State Park, the Secretary of the Interior (hereinafter referred to as "the Secretary") is authorized and directed to convey to the State of Oregon the reversionary interest retained by the United States pursuant to the first proviso of the first section of the Act of August 11, 1916 (39 Stat. 505) in a tract comprising about one hundred and sixty acres and described as the northwest quarter, Section 8, Township 5 North, Range 8 West, Willamette Meridian. Such conveyance shall be made, upon relinquishment to the Secretary of patent numbered 602062 by the State, by issuance of a new patent describing all lands which were described by patent numbered 602062. The conveyance directed by this section shall be made only if, in the judgment of the Secretary, the requirements of sections 2 and 3 of this Act have been met by the State.

(b) The new patent issued under subsection (a) hereof shall contain all reservations and exceptions required by the Act of August 11, 1916, and contained in patent numbered 602062 except that the reverter provision contained in the proviso referred to in subsection (a) shall not apply to the one-hundred-and sixty-acre tract described in subsection (a) of this section.

SEC. 2. No conveyance shall be made and no new patent issued pursuant to this Act unless the State of Oregon has shown to the satisfaction of the Secretary that:

- (a) the lands described in the first section of this Act will be exchanged for lands of at least equal value, or if not of at least equal value that the values will be equalized by payment of money or other consideration to the State;
- (b) the lands received by the State in exchange are at least as suitable for park purposes as the lands conveyed;
- (c) the lands obtained by exchange by the State will be used for public park purposes in perpetuity; and
- (d) any amount of money or other consideration paid to the State to equalize values on a land exchange under this Act will be used for park purposes.

SEC. 3. The Secretary, upon his determination that the requirements of Section 2 of this Act are satisfied, is authorized and directed to enter into an agreement or agreements with the State of Oregon whereby, in consideration of a conveyance of the reversionary interest of the United States in the lands described in the first section of this Act, and issuance of a new patent, the State of Oregon agrees that:

- (a) title to the lands acquired and dedicated for public park purposes pursuant to Section 2 of this Act will vest in the United States if such lands ever cease to be used for public park purposes; and

(b) the State of Oregon will include provisions to this effect in any document of transfer of such property; and

(c) the State will execute a document to this effect and deliver such document to the Secretary.

**S. 3245**

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**IN THE SENATE OF THE UNITED STATES**

JUNE 26 (legislative day, MAY 17), 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

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**A BILL**

To establish the true location of a northerly boundary of the Angeles National Forest, located in Los Angeles County, California, on the common line between sections 16 and 17, township 4 north, range 10 west, San Bernardino meridian, and to establish the center quarter corner of said section 16.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       SECTION 1. (a) The north half of section 16, town-  
4       ship 4 north, range 10 west, San Bernardino meridian, was  
5       conveyed by the United States to Harry M. Miller by patent  
6       recorded August 13, 1923, in book 2511 at page 336, Official  
7       Records of Los Angeles County as to a portion thereof, and

1 the remainder to Herbert Colbeck by patent recorded De-  
2 cember 4, 1923, in book 2883 at page 144, Official Records  
3 of said county; and

4 (b) The south half of section 16 and section 17 of said  
5 township and range are now part of the Angeles National  
6 Forest. A question has arisen as to the true location of the  
7 common boundary of the Angeles National Forest and the  
8 private lands in said section 16; and

9 (c) The section corners and quarter-corners of said  
10 section 16 were established by the United States Govern-  
11 ment surveyors and depicted upon the official plats of said  
12 township approved by the United States Surveyor Gen-  
13 eral on April 24, 1905, and December 4, 1917; and

14 (d) The southeast, northeast, and northwest corners and  
15 the north and east quarter-corners have been recovered;  
16 however, the southwest corner and the south and west  
17 quarter-corners of said section 16 have been thoroughly  
18 searched for on several occasions by both public and private  
19 surveyors without success; and

20 (e) The Los Angeles County surveyor, while running  
21 the boundary of the Angeles National Forest in 1933, being  
22 unable to find the original west quarter-corner of said section  
23 16, set a monument marked "County Surveyor's Monument  
24 Forest Reserve Cor. R.E. 62 J-249-FB", at the theoretically  
25 correct location of said west quarter-corner to wit: one-

1 half mile south of the found northwest corner and one mile  
2 west of the found east quarter-corner of said section 16;  
3 and

4 (f) Numerous surveyors and private parties have ac-  
5 cepted said county surveyor's monument marked "Forest  
6 Reserve Corner" for the past forty years as the true west  
7 quarter-corner of said section 16 and have subdivided,  
8 resubdivided, and improved such private lands by construct-  
9 ing houses, roads, wells, utilities, and pipelines within the  
10 north half of said section in relation thereto; and

11 (g) There are currently numerous parcels of land in  
12 private ownership within the north half of said section 16,  
13 the boundaries of which would be seriously disrupted should  
14 the west quarter-corner of said section be reestablished in  
15 any location other than that of the 1933 county surveyor's  
16 monument marked "Forest Reserve Corner".

17 SEC. 2. (a) In order to dispel any uncertainty and to  
18 insure that the boundaries of said private land not be need-  
19 lessly disrupted, it is hereby found and declared that the  
20 1933 county surveyor's monument marked "County Sur-  
21 veyor's Monument Forest Reserve Cor. R.E. 62 J-249-FB",  
22 which was set at a point one-half mile south of the north-  
23 west corner and one mile west of the east quarter-corner of  
24 said section 16, as said corners and monument are shown  
25 on the county surveyor's map B-745 on file in the office of

1 the county engineer of the county of Los Angeles, is at the  
2 true location of said west quarter-corner as originally set by  
3 the government land office surveyor in 1912 and depicted  
4 upon the plat of township 4 north, range 10 west, San Ber-  
5 nardino meridian, approved December 4, 1917.

6 (b) It is further found and declared that the south line  
7 of the north half of said section is a line connecting the east  
8 and west quarter-corners hereinabove mentioned and that the  
9 center quarter-corner of said section is located at the mid-  
10 point of the south line of the north half of said section 16 as  
11 hereinabove established.



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

September 13 1978

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

Dear Mr. Chairman:

As you requested, here is our report on S. 3245, a bill "To establish the true location of a portion of northerly boundary of the Angeles National Forest, located in Los Angeles County, California, on the common line between sections 16 and 17, township 4 north, range 10 west, San Bernardino meridian, and to establish the center quarter corner of said section 16."

The Department of Agriculture recommends that S. 3245 not be enacted, and that the enclosed substitute bill be enacted in lieu thereof.

S. 3245 would establish the 1933 Los Angeles County Surveyor's monument marked "County Surveyor's Monument Forest Reserve Cor. R.E. 62 J249FB," and shown on the County Surveyor's map B745 on file in the Office of the County Engineer of Los Angeles County as the true location of the said west quarter-corner as originally set by the Government Land Office Surveyor in 1912.

The quarter corner question results from an erroneous private survey made by a county surveyor in 1933. He was unable to recover evidence of the original monument as established by the United States General Land Office. His survey procedure was not in conformance with existing rules. Also, he made a statement on the map of his survey indicating that his monument was not the quarter section corner of sections 16 and 17. If S. 3245 were enacted, the erroneous monument would become the official monument between National Forest lands and the tract of privately owned lands.

The Juniper Hills tract in section 16 was patented in 1923 based upon an official United States survey approved in 1912. In 1952-53, the tract was resurveyed and subdivided into lots by private surveyors. They used the erroneous corner established by a county surveyor in 1933 as the basis for their survey; consequently, their survey was also in error. This error was later confirmed by a Los Angeles County Engineer survey conducted in 1972-73. The California State Office of the Bureau of Land Management examined the methods employed by the Los Angeles County Engineer and was of the opinion that a Bureau of Land Management

Honorable Henry M. Jackson

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survey would be very close to the Los Angeles County Engineer's survey. The errors in the 1933 survey by a county surveyor and the subsequent retracement of the 1933 survey by private surveyors in 1952 and 1953, respectively, resulted in the tract being skewed from its correct location. As a consequence, several private lots on the west exterior of the Juniper Hills tract partially overlap National Forest lands to the extent of about 15 acres. There are no improvements located on National Forest land.

The Forest Service has unsuccessfully tried to resolve the unauthorized use of National Forest land through administrative procedures involving the use of special use permits and the possibility of land exchanges. We do not support S. 3245 because it would direct that the erroneous county surveyor's survey be substituted for the official and accurate Government survey. We are opposed to the modification of cadastral surveys and the alteration of official records to settle trespass cases and to convey lands. While we do not agree with the approach proposed by S. 3245, there is a need to resolve the inadvertent unauthorized use of National Forest lands caused by the erroneous corner established by a county surveyor. In this regard, and to maintain the integrity of the public land survey system, we offer the enclosed bill as a substitute for S. 3245.

If enacted, our substitute bill would convey the land in question to the Juniper Hills Association after it files an application for and pays the fair market value of the land and administrative costs associated with the conveyance.

We estimate the fair market value of the subject land to be \$2,000 per acre. The total administrative costs to the Association are estimated at \$2,500.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Bob Bergland". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Bob Bergland  
Secretary

Enclosure

A B I L L

To provide for the conveyance of certain lands within the Angeles National Forest in the State of California to the Juniper Hills Community Association.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to resolve the inadvertent occupancy of public land by property owners represented by the Juniper Hills Community Association, the Secretary of Agriculture is authorized, subject to valid existing rights, to convey at fair market value, by quit-claim deed, all right, title and interest of the United States in but not to exceed 15 acres, located within the East 1/2 East 1/2 Northeast 1/4, Section 17, Township 4 North, Range 10 West; San Bernardino Meridian and located within the Angeles National Forest on the west perimeter of the so-called Juniper Hills subdivision, to the Juniper Hills Community Association of Littlerock, California: Provided, That the Juniper Hills Community Association files, within one year following the date of enactment of this Act, an authorized application representing all of the landowners claiming the land with the Secretary of Agriculture for the purchase of said lands.

SEC. 2(a). Upon receipt of the application for purchase of lands, the Secretary of Agriculture shall determine and establish the land to be sold, within the limits of the 15-acre overlap created by reliance on the 1933 County Surveyor's monument marked "County Surveyor's Monument Forest Reserve Cor. R.E. 62 J-249-FB", deemed by the Secretary to be necessary to provide mutually suitable exterior property lines for the Juniper Hills Subdivision.

(b) The Secretary of Agriculture in cooperation with and in accordance with criteria established by the Secretary of the Interior shall perform a cadastral survey of any parcel of land to be conveyed under this Act.

SEC. 3. The Juniper Hills Community Association shall pay in addition to the fair market value of the land to be conveyed under this Act as determined by the Secretary of Agriculture, all other related administrative and survey costs.

SEC. 4. All monies received by the Secretary for the sale of lands conveyed under this Act shall be covered into miscellaneous receipts in the Treasury of the United States.

**S. 3445**

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**IN THE SENATE OF THE UNITED STATES**

AUGUST 22 (legislative day, AUGUST 16), 1978

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

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**A BILL**

For the relief of Marian Law Shale Holloway, Adeline Mary Gill Charles, and Eliza Shale Carstens.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*  
3        That (a) notwithstanding any other provision of law, the  
4        Secretary of the Interior is authorized and directed to pay,  
5        out of any money appropriated to the Department of the  
6        Interior, to Marian Law Shale Holloway, Adeline Mary Gill  
7        Charles, and Eliza Shale Carstens (or to their estates) such  
8        sums as he determines each is legally and equitably entitled  
9        to as compensation for losses (including reasonable attorney  
10        fees) resulting from his erroneous approval of purported  
11        conveyances of parts or all of lot 6, section 35, township 24

1 north, range 13 west, Willamette meridian, containing  
2 eighteen and seventy-five hundredths acres, more or less,  
3 according to the Government survey thereof, such property  
4 being a portion of the allotment of Hattie Smith, deceased,  
5 Quinault allottee numbered 420, and which is not subject  
6 to homestead entry. Such property is situated in Jefferson  
7 County, State of Washington on the Quinault Indian  
8 Reservation.

9 (b) The payment and acceptance of such compensation  
10 pursuant to this Act shall be in full satisfaction of all claims  
11 (1) of the said Marian Law Shale Holloway, Adeline Mary  
12 Gill Charles, and Eliza Shale Carstens, against the United  
13 States or any officer or employee thereof arising out of or in  
14 connection with the purported conveyances of such property  
15 or portions thereof approved by or on behalf of the Secretary  
16 of the Interior on February 19, 1951, September 3, 1953,  
17 and April 19, 1955, and (2) by Adeline Mary Gill Charles  
18 and Eliza Shale Carstens against Marian Law Shale Hollo-  
19 way arising out of or in connection with the purported con-  
20 veyances of portions of such property approved by or on  
21 behalf of the Secretary of the Interior on September 3, 1953,  
22 and April 19, 1955.

23 (c) As a condition precedent to receiving payment of  
24 such compensation pursuant to this Act, the said Marian Law  
25 Shale Holloway, Adeline Mary Gill Charles, and Eliza Shale

1 Carstens (or the executors of their estates) shall execute such  
2 releases and other documents as the Secretary of the Interior  
3 determines are necessary to fulfill the purpose of this Act and  
4 remove any cloud on the title of such property.

5       SEC. 2. No part of the amount appropriated by this Act  
6 in excess of 10 per centum thereof shall be paid or delivered  
7 to or received by any agent or attorney on account of services  
8 rendered in connection with this claim, and the same shall be  
9 unlawful, any contract to the contrary notwithstanding. Vio-  
10 lation of the provisions of this section is a misdemeanor pun-  
11 ishable by a fine not to exceed \$1,000.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 7 - 1978

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

Dear Mr. Chairman:

Your Committee has requested the views of this Department on S. 3445, a bill "For the relief of Marian Law Shale Holloway, Adeline Mary Gill Charles and Eliza Shale Carstens."

We recommend that the bill be enacted.

S. 3445 would authorize and direct the Secretary of the Interior to pay, out of any money appropriated to the Department of the Interior, to Marian Law Shale Holloway, Adeline Mary Gill Charles, and Eliza Shale Carstens (or to their estates) such sums as he determines each is legally and equitably entitled to as compensation for losses (including reasonable attorney fees) resulting from his "erroneous approval of purported conveyances" of some 18.75 acres of trust land located on the Quinault Indian Reservation in Washington and more specifically described in the bill. Section 2 would provide a standard prohibition against the payment of more than 10 percent of the funds appropriated for said payments for the services of any agent or attorney in connection with this claim.

The trust land in question was validly conveyed in 1931 by Harry Shale to his wife, Eliza Shale. In 1951, Bureau of Indian Affairs officials, acting on behalf of the United States and the Secretary of the Interior, inadvertently and erroneously approved a purported sale of the same trust land from Harry Shale to the United States in trust for Marian Law Shale Holloway. Ms. Holloway, who is a Quinault Indian, paid \$5,000 for the land from funds held in trust for her by the Bureau of Indian Affairs on behalf of the United States and the Secretary of the Interior.

In 1953 and 1955, the Bureau of Indian Affairs inadvertently and erroneously approved purported sales by Ms. Holloway of two 2-acre portions of the land involved in the purported 1951 sale for which

she received a total of \$2,400. The purchasers in these purported sales were also Quinault Indians who utilized trust funds in their purchases.

The mistake of the 1951 approval was not discovered until 1968, some 12 years after the death of Harry Shale. Mr. Shale's estate has been probated and proceeds distributed so that no recourse is available against him or his estate for his purported sale of the land in 1951 which he had previously sold in 1931 to his then wife, Eliza Shale.

As indicated below, we believe that the United States owed Ms. Holloway and the 1953 and 1955 Quinault purchasers the duty of assuring that they would obtain clear titles prior to approving the purchases and sales of the restricted land involved and prior to approving the related expenditures of trust funds. Under the provision set out in 25 U.S.C. 379, such purchases and sales require the approval of the Secretary of the Interior (or his delegate) who has set up a procedure by which such sales can be made (25 CFR 121.22 to 121.31).

Pursuant to the statutory provision set out in 25 U.S.C. 5, the Secretary has established a system to maintain land records and title documents (25 CFR 120.1). These land records are maintained by the Secretary on behalf of the United States and are the only title records of Indian land. As such, they are relied upon by Indian people and by all persons who have transactions with Indians related to trust lands.

We do not mean to imply that a duty to maintain these land records is owed by the United States to everyone who deals with Indian people. However, it is inescapable that the United States, acting through the Secretary of the Interior and his delegates, has an obligation to maintain these records as part of its trust responsibilities in approving sales of trust land and in approving the expenditure of trust funds for such land. We believe that this trust responsibility was breached by approval of the deeds and sales of restricted land in each of the three purported sales (1951, 1953, and 1955) and by the approval of the expenditures of trust funds in connection with each such sale.

Any right of action relating to those purported sales, Ms. Holloway or the 1953 and 1955 purchasers may have had to sue the United States is apparently now barred by the statute of limitations (25 U.S.C. sec.

2401 and sec. 2501). However, we understand that a suit (Holloway v. United States - USDC, W.D. Wash. - Civil No. 40-7167) is being held in abeyance to give the plaintiff the opportunity to appeal to the Congress for relief.

We believe that the erroneous approval by the Bureau of Indian Affairs (on behalf of the United States) of the purported 1951 sale to Ms. Holloway and the related expenditures of her trust funds justifies the United States providing compensation. Similarly, the erroneous approvals of the purported 1953 and 1955 sales and the related expenditures of the purchasers of trust funds, justifies the United States providing compensation to those purchasers. Ms. Holloway's losses were lessened by the 1953 and 1955 sales and her compensation should be adjusted accordingly. Therefore, compensating the 1953 and 1955 purchasers would not increase the total compensation paid by the United States.

The amount of compensation due Ms. Holloway would be the sum of (1) the \$5,000 she paid for the land in 1951 plus interest compounded at the interest rates and intervals which would have applied if the funds had stayed in trust until the purported 1953 sale, plus (2) the interest calculated on the balance of such trust fund at the time of the purported 1953 sales less the \$2,000 received by Ms. Holloway at that time with such interest compounded at the rates and intervals which would have applied if the funds had stayed in trust until the purported 1955 sale, plus (3) the interest calculated on the balance of such trust fund at the time of the purported 1955 sale less the \$400 received by Ms. Holloway at that time with such interest compounded at the rates and intervals which would have applied if the funds had stayed in trust until the date the compensation is paid by the United States to Ms. Holloway. In addition, S. 3445 would allow her to receive compensation for reasonable attorney fees which she has incurred as the result of the erroneous approval by the Secretary.

The purported 1953 sale was to Adeline Mary Gill Charles (Quinault Allottee No. 1094) and the purported 1955 sale was to Eliza Shale Carstens (Quinault Allottee No. 918). The amount of compensation to be paid to each of these persons would be calculated in the same manner as described above for Ms. Holloway.

If the payments are calculated as set out above and are paid this calendar year, we estimate the total to be about \$16,000.

It should be noted that Eliza Shale Carstens, the purchaser of the 2 acres in the purported 1955 sale was also the purchaser (Eliza Shale) of the entire 18.75 acres in the valid 1931 sale. However, we do not feel that this fact alters the justification for compensation to her for her loss of funds due to the Bureau of Indian Affairs approval of both the 1955 sale and the related expenditure of her trust funds.

In line with section 1(b) of S. 3445, the payment to each of the three parties would be in full satisfaction of all claims they may have against the United States in connection with the approvals of the purchases and sales and the expenditures of trust funds and they would be required to execute releases to that effect and such other documents as may be necessary to clear any cloud on the title to the land in question. In addition, the 1953 and 1955 purchasers would be required to execute releases for any claims they may have against Ms. Holloway in connection with the purported 1953 and 1955 sales.

Information available in the Office of the Area Geologist, Menlo Park, California, shows that the acreage in question is located within an area which has been classified valuable prospectively for oil and gas. Exploratory drilling has produced indications of oil and gas but, as yet, no producible quantities have resulted.

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,



Guy R. Martin

Assistant SECRETARY

95<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3121

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## IN THE SENATE OF THE UNITED STATES

JUNE 22 (legislative day, MAY 17), 1978

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

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## AN ACT

To convey all interests of the United States in certain real property in Sandoval County, New Mexico, to Walter Hernandez.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*  
3        That all right, title, and interest of the United States in the  
4        following lands are hereby released and conveyed to Mr.  
5        Walter Hernandez of Cuba, New Mexico: the northwest  
6        quarter of the northwest quarter of section 27, township  
7        21 north, range 1 west, New Mexico principal meridian,  
8        Sandoval County, New Mexico, containing approximately  
9        forty acres: *Provided*, That such conveyance shall be made  
10       subject to Federal Oil and Gas lease NM-A 18520 issued

1 June 1, 1973, and shall reserve to the United States all  
2 rentals and royalties payable to the lessor under the terms  
3 and conditions of such lease for so long as such lease re-  
4 mains in full force and effect.

5 SEC. 2. Upon application by the grantee, the Secretary  
6 of the Interior is authorized and directed to issue such pat-  
7 ents or other documents of conveyance as he deems neces-  
8 sary to evidence the conveyance effected by section 1 of  
9 this Act.

Passed the House of Representatives June 21, 1978.

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



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 23 1978

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

Dear Mr. Chairman:

Your Committee has requested the views of this Department on H.R. 3121, as passed by the House on June 21, 1978, and S. 1634, similar bills "To convey all interests of the United States in certain real property in Sandoval County, New Mexico, to Walter Hernandez."

We recommend that the bills not be enacted.

Both H.R. 3121 and S. 1634 would convey to Walter Hernandez of Cuba, New Mexico, without payment of consideration certain lands in New Mexico comprising about 40 acres. S. 1634 is identical to H.R. 3121 as introduced. However, H.R. 3121 was amended in the House to make any conveyance to Hernandez subject to an outstanding Federal oil and gas lease and to reserve to the United States all rents and royalties payable under the lease. This constitutes the only difference in the bills.

While we support the addition of the provision in H.R. 3121 preserving the existing lease and recommend inclusion of this language in S. 1634 if it is to be further considered, we strongly oppose enactment of either bill for the reasons set out below.

Our records indicate that the history of the subject 40-acre tract includes the following:

1. In July, 1921, Patent No. 814438 was issued to Victoriano Santillanes for a homestead entry pursuant to the Act of June 22, 1910 (36 Stat. 583), covering the subject tract among others.
2. In November 1922, Patent No. 886285 was issued to Jose Dario Casados under the Act of March 3, 1891, as amended (27 Stat. 470) describing the same land as Small Holding Claim No. 5660. This Department is unable to explain how the separate patents were issued covering the same tract.

3. In September, 1942, a condemnation action was filed under the Bankhead-Jones Farm Tenant Act (50 Stat. 522) in United States of America v. 4,920.74 acres of land, more or less in Sandoval County, New Mexico, C.A. No. 479 (D.C.N.M.). The Declaration of Taking included a description of the subject tract and named as defendants Mr. and Mrs. Gabriel Montoya who were the record title holders, deriving from Patent No. 814438. It is our view that it was proper to name the Montoyas, since suits by the United States to vacate or annul a patent, erroneously issued, must be brought within 6 years after the date of issuance of the patent. (Act of March 31, 1891, 43 U.S.C. 1166).

4. In April 1946, the Attorney General of the United States found that the condemnation proceedings were regularly conducted and that a valid fee simple title to the subject tract was vested in the United States. Although Jose Dario Casados was not specifically named as a defendant in the condemnation proceedings, his interest under Small Holding Claim No. 5660 was eliminated by such proceedings because the court order for service by publication named all unknown owners, occupants, and claimants thereto. Condemnation is an in rem action amounting to an appropriation of the land. Thus where proof shows that just compensation based on the value of the land was paid into court, all previous estates are obliterated, including any interests derived through Casados.

5. In May 1956, the Agriculture Department issued a 10-year special use permit for some 266 acres of the lands acquired in 1942, including the subject tract, to the Cuba Independent Schools, District 20, Sandoval County, New Mexico for development for school purposes.

6. Our records indicate that in 1956 Casados sold the subject tract to John F. Young whose son-in-law, Walter Hernandez, paid taxes on the land for an unknown period of time, notwithstanding that the parties to the sale had constructive notice of the record title of the United States, which had been acquired and held for some 14 years.

7. In November 1958 some of the land the Department of Agriculture acquired in 1942, including the school acreage, was transferred to the Department of the Interior by Executive Order No. 10787. These lands were made the administrative responsibility of the Bureau of Land Management by Department Order No. 2843 of November 1959 and the school use was continued through a special land use permit extended through February 1972.

8. In 1970, the Cuba Independent Schools, District 20, Sandoval County, New Mexico, sought special legislation authorizing conveyance to it under the Recreation and Public Purposes Act of the lands it was using under the special use permit (see items 5 and 7 above). This was necessary because the lands were acquired and the Recreation and Public Purposes Act applies only to public domain. The bill, S. 417 in the 91st Congress, also authorized conveyance of 40 acres of the same tract to the Village of Cuba under the provisions of the Recreation and Public Purposes Act. S. 417 was reported by the Senate Interior Committee with an amendment deleting the 40 acres involved in H.R. 3121 from the lands the Secretary was authorized to convey if the provisions of the Recreation and Public Purposes Act were met, because of the mistaken belief they were owned by Hernandez, and was enacted in the amended form in July 1970 (84 Stat. 689). The Department's report of May 20, 1970, to the Chairman of the House Committee on Interior and Insular Affairs on S. 417 stated:

"The bill pending before your Committee incorporates amendments we recommended in our report to the Senate Interior and Insular Affairs Committee dated March 11, 1970. The bill as passed by the Senate also excludes 40 acres of land included in the permit but found to be privately owned."

We do not agree that this statement constitutes recognition within the Department of the Interior that the 40 acres which are involved in H.R. 3121 are privately owned. In fact, when the sponsor of S. 417 inquired about this matter, the responsible official of the Bureau of Land Management advised that Mr. Hernandez only claimed ownership of the subject 40 acres and that the Bureau of Land Management's State Office was in no position to confirm it. The Department's report of May 20, 1970, on S. 417 merely summarizes these events. There is no clear indication that anyone in the Department ever recognized private ownership of the subject tract. As a matter of fact, discussions were still ongoing at that time as to whether the claim of Mr. Hernandez was extinguished by the condemnation action, and on May 15, 1970, the Field Solicitor, Santa Fe, found that any interest of the Casados, the predecessor of Hernandez, was eliminated by the condemnation proceeding.

Thus in July 1970 the United States retained title to the tract which was subject to the special use permit. Therefore, as of this date the record owner of the subject lands is the United States as a result of the 1942 condemnation proceedings. There is no record of a

conveyance of the land from the United States, the record owner in 1942, to any other person to date.

It is the position of the Department that all minerals in the tract, as well as the remaining interest, are held by the United States due to the condemnation action. We have reviewed available documents concerning the condemnation and have concluded that the parcel was acquired in fee simple absolute. The 40 acres in question are currently subject to a noncompetitive Federal Oil and Gas Lease No. NM-A 18520, which would be preserved by H.R. 3121, but not by S. 1634.

A field examination in 1974 disclosed no apparent occupancy by Casados or his heirs or assigns, or by Hernandez. We understand that the estimated value of the tract is between \$300 and \$400 an acre, and that the land may have public purpose values.

We recently conducted another field examination of the property on March 11, 1977, to determine if any occupancies existed. It was determined that there were none with the possible exception of encroachment on the tract by a cemetery. Thus, we know of no equities on behalf of Walter Hernandez, except that he has apparently paid taxes on the land.

We do not believe it would be in the interest of the United States or the general public to convey lands free of charge to an individual who apparently bases his claim on failure of the United States to personally serve his predecessor in interest in a condemnation action. Such a position would greatly handicap the United States in the future in condemnation actions and would set an unwise precedent giving rise to other claims.

The Federal Land Policy and Management Act of 1976 expresses a policy of retention of lands in Federal ownership unless certain criteria are met. It also calls for payment of no less than fair market value. In the absence of any persuasive evidence of equities in this case, we oppose special legislation to overcome the policies and procedures in that Act.

Current information in the files of the Geological Survey indicates that the land involved in H.R. 3121 was classified as coal land in 1939 and is prospectively valuable for oil and gas.

As already pointed out, the land is included in oil and gas lease, New Mexico A-18520, which was issued on June 1, 1973. Mesa Verde coal up to possibly nine feet in thickness may be present 1,500 feet deep.

Geological Survey records do not show that the land is valuable for leasable minerals, other than oil, gas, and coal, or for locatable minerals.

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,

A handwritten signature in black ink, appearing to read "Guy R. Martin", written in a cursive style.

Assistant SECRETARY

Guy R. Martin

95TH CONGRESS  
2D SESSION

# H. R. 4243

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## IN THE SENATE OF THE UNITED STATES

APRIL 19 (legislative day, FEBRUARY 6), 1978

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

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## AN ACT

To authorize the Secretary of the Interior to convey certain lands in Placer County, California, to Mrs. Edna C. Marshall, 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 Secretary of the Interior is hereby authorized and  
4        directed to convey to Edna C. Marshall, Auburn, California,  
5        all right, title, and interest of the United States in and to a  
6        tract of land in Tahoe National Forest, Placer County, Cali-  
7        fornia, more particularly described as the northeast quarter  
8        northwest quarter of section 28, township 14 north, range 11  
9        east, Mount Diablo base and meridian, California, consisting  
10       of forty acres, more or less. Such conveyance shall only be

II

made if Edna C. Marshall makes application therefor, and  
2 within one year after the date of this Act, makes payment  
3 of the fair market value of the land as of the date of this  
4 Act, less any enhancement in value brought to the land by  
5 Edna C. Marshall or her predecessors on the land, as de-  
6 termined by the Secretary of the Interior. Edna C. Marshall  
7 shall bear any administrative expenses, including appraisal,  
8 filing, and recording fees, arising from the conveyance.

Passed the House of Representatives April 18, 1978.

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



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 18 1978

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

Dear Mr. Chairman:

This is in response to your request for our views on H.R. 4243 as it passed the House on April 18, 1978, a bill "To authorize the Secretary of the Interior to convey certain lands in Placer County, California, to Mrs. Edna C. Marshall, and for other purposes."

We recommend that the bill not be enacted.

H.R. 4243 directs the Secretary of the Interior to convey to Mrs. Edna C. Marshall a 40-acre tract within the Tahoe National Forest if application to purchase is made within 1 year of enactment. The conveyance would be for fair market value as of the date of enactment plus administrative costs and less any enhancement brought to the land by Mrs. Marshall or her predecessors.

Mrs. Marshall has paid taxes on her possessory interest in mining claims on this land and on improvements thereon, but she has not paid taxes on the land itself. Her payment of taxes on the mining claims cannot give rise to any legal or equitable interest in the land over and above that which might accrue to her under the mining laws.

We believe that only unusually strong equities could justify granting an absolute preference right to a private citizen to purchase public lands. In the absence of further information indicating the existence of such equities, we oppose enactment of this bill.

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,

*Daniel P. Beard*

Daniel P. Beard

Acting Assistant SECRETARY



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

JUL 23 11 22 AM '78

July 24 1978

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

Dear Mr. Chairman:

We would like to offer our comments on H.R. 4243, a bill "To authorize the Secretary of the Interior to convey certain lands in Placer County, California, to Mrs. Edna C. Marshall, and for other purposes."

The Department of Agriculture recommends that H.R. 4243 not be enacted.

H.R. 4243 would authorize and direct the Secretary of the Interior to convey to Mrs. Edna C. Marshall all right, title and interest of the United States in and to a 40-acre tract of land within the Tahoe National Forest, California. The conveyance could be made only if Mrs. Edna C. Marshall made application within one year after enactment and only after she paid the fair market value plus administrative expenses and less any enhancement brought to the land by Mrs. Edna C. Marshall or her predecessors.

The tract was lived on and occupied by Mrs. Edna C. Marshall and various other family members for more than 50 years prior to 1956. From 1956 to 1960 the tract was occupied on an intermittent basis by tenants. The land has not been occupied since August 1960, when the "Volcano" forest fire destroyed the house and all other buildings.

The original occupancy was based on unpatented placer mining claims. There is no indication that any mining was done on the land referred to in this bill. Also, there is no indication that the claimant would qualify for patent under the mining laws.

Several events indicate that the land involved was never patented and still remains in National Forest status. On April 20, 1956, a Mr. A. A. Gorman filed an amended notice of location for the Gorman Placer, Russell Placer, and Mad Canyon Placer mining claims originally filed in 1898, 1855, and 1930, respectively. The tract of land claimed by Mrs. Edna C. Marshall consists of parts of these unpatented claims. The sole purpose of Mr. A. A. Gorman's action was to correct the old erroneous descriptions of the unpatented claims in terms of legal subdivisions of the Public Land Survey, and to include the actual area intended to be included in

the original locations. Mr. A. A. Gorman considered the so-called Gorman Ranch and the surrounding area to be Federal lands subject to appropriation and entry under the General Mining Laws from the dates of the original filings through April 20, 1956. On September 8, 1960, Mrs. Edna C. Marshall, among others, signed a waiver of surface rights pursuant to Section 6 of the Multiple Use Mining Act of July 23, 1955 (69 Stat. 367 as amended), on the Gorman, Russell and Mad Canyon unpatented mining claims as amended, among others.

The document used by Mrs. Edna C. Marshall as a basis for proving patent status is an unrecorded bill of sale dated 1868 from a Mr. Hoffman to Mr. D. J. Gorman for undescribed property known as the Hoffman Ranch. It is not a deed conveying real property. This conclusion is supported by the county records. We have correspondence from the Placer County Assessor's Office indicating that the property in question is recognized as being owned by the United States Government and that it has never been assessed on the secured property tax rolls in Placer County.

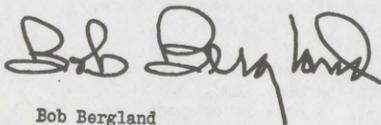
This 40-acre tract is surrounded on three sides by other National Forest land, and on the fourth side by Bureau of Land Management land. About one-half of the area is forested. The other half is pasture or rangeland. The tract is highly suitable for National Forest purposes. There are no residential structures on the land and only remnants of other structures. Conveyance of this property would create a 40-acre private land enclave within a solid block of National Forest System and other public land. Prior land conveyance bills for other public lands have been passed to prevent undue hardship on certain occupants. These have been for small unmanageable slivers or fractional parcels of public land sandwiched between private property and other public lands or for small tracts of public lands. The subject tract, however, contains 40 acres and is an integral and valuable part of adjacent Tahoe National Forest lands. It contains key winter deer range in an area where subdivision of private lands continues to diminish critical deer winter range habitat. In addition, ten acres of the tract are within an area targeted for reforestation in accord with forest management plans developed pursuant to congressional direction contained in the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended. The Tahoe National Forest's long-range land adjustment plans developed from an evaluation of needs for National Forest purposes, contain an objective for acquiring private lands in this area whenever possible to facilitate administration and meet public needs.

If H.R. 4243 were enacted, Mrs. Edna C. Marshall could obtain title to lands within those unpatented mining claims without complying with the requirements of the mining laws. Even though the bill would require the payment of fair market value, its enactment would be an undesirable precedent and contrary to congressional intent expressed in the Senate Hearing Report of August 16, 1962, on S. 3451, the Relief for Occupants of Invalid Claims Act of October 23, 1962 (76 Stat. 1127, as amended; 30 U.S.C. 701-708).

As a result of such an enactment, we could expect requests for similar relief for other unauthorized occupancies presently existent within National Forest System lands in California. Moreover, the occupants of approximately 1,500 other such parcels of National Forest System lands in California who have already voluntarily moved after being notified of their unauthorized occupancy could conceivably use the enactment as a basis for appeal and request similar treatment. We recommend that the bill not be enacted.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Bergland". The signature is written in dark ink and is positioned above the typed name.

Bob Bergland  
Secretary

95TH CONGRESS  
2D SESSION

# H. R. 6463

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IN THE SENATE OF THE UNITED STATES

JULY 19 (legislative day, MAY 17), 1978

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

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## AN ACT

Providing for reinstatement and validation of United States oil and gas leases numbered U-12871, U-12872, U-12874, U-12875, U-12876, U-12877, U-12878, U-12881, and U-13666.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That notwithstanding any decision to the contrary heretofore  
4       made by the Secretary of the Interior of the United States  
5       or his authorized agents or representatives, subject to the  
6       requirements of section 2 of this Act:

7       (a) United States oil and gas leases numbered U-12871,  
8       U-12872, U-12874, U-12875, U-12876, U-12877,  
9       U-12878, and U-12881 shall be held not to have terminated

1 by operation of law or otherwise on December 1, 1975, but  
2 shall be deemed to be in full force and effect for the term  
3 of said leases provided that rentals for subsequent years  
4 are paid or tendered within the time required by law and the  
5 terms of such leases.

6 (b) United States oil and gas lease numbered U-13666  
7 shall be held not to have terminated by operation of law,  
8 or otherwise on April 1, 1976, and the term of said lease  
9 is hereby extended to a date twenty-four months after the  
10 effective date of this Act and so long thereafter as oil or gas  
11 is produced in paying quantities, provided that rentals for  
12 subsequent years are paid or tendered within the time re-  
13 quired by law and the terms of such lease.

14 SEC. 2. Within thirty days after the effective date of  
15 this Act, the Secretary shall give notice to the last record  
16 holder of the oil and gas leases listed in the first section of  
17 this Act of the amount of unpaid rental then accrued under  
18 said leases or that would have accrued had the leases not  
19 terminated. Within thirty days after receipt of such written  
20 notice, the last record holder of such leases, their successors  
21 or assigns, shall tender payment of the amount of rental to

1 the Secretary. If payment is not made within the required  
2 time, the provisions of this Act shall terminate and be of  
3 no force and effect with respect to those leases for which  
4 payment was not made.

Passed the House of Representatives July 18, 1978.

Attest: EDMUND L. HENSHAW, JR.,

*Clerk.*



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 7 - 1978

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

Dear Mr. Chairman:

Your Committee has requested the views of this Department on H.R. 6463, as it passed the House on July 18, 1978, a bill "Providing for re-instatement and validation of United States oil and gas leases numbered U-12871, U-12872, U-12874, U-12875, U-12876, U-12877, U-12878, U-12881, and U-13666."

We would have no objection to enactment of the bill.

H.R. 6463 would provide that certain Federal oil and gas leases, covering lands in Utah shall be held not to have terminated by operation of law, but shall be deemed in full force for their terms if rentals for subsequent years are tendered as provided by applicable law. With respect to one of these leases, U-13666, the term would be extended for 24 months after the effective date of the bill and so long thereafter as oil or gas is produced in paying quantities. The provisions of the bill would be of no force and effect unless within 30 days of written notice by the Secretary, as required by H.R. 6463, the record holder of the leases tenders payment of all rentals accrued or that would have accrued had the leases not terminated.

We would like to point out that the 24 month provision with respect to lease numbered U-13666 would place the lessee in almost the same position he would have been in had the rent been timely paid. The legislative history should, however, make it clear that the 24 months specified in H.R. 6463 takes the place of the 2-year extension provided for in the Mineral Leasing Act and that no such additional extension is available.

Sincerely,

Assistant SECRETARY

Guy R. Martin

95TH CONGRESS  
2D SESSION

# H. R. 6997

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IN THE SENATE OF THE UNITED STATES

APRIL 18 (legislative day, FEBRUARY 6), 1978

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

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## AN ACT

To authorize the Secretary of the Interior to convey all right, title, and interest of the United States in and to a tract of land located in the Fairbanks Recording District, State of Alaska, to the Fairbanks North Star Borough, 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 Secretary of the Interior is authorized to convey  
4        all right, title, and interest of the United States in and to the  
5        following described real property, located in the Fairbanks  
6        Recording District, to the Fairbanks North Star Borough  
7        without payment of consideration:

II

## 1 THE WEST PORTION OF BLOCK 209

2 A tract of land situated in the northwest quarter, section  
3 15, township 1 south, range 1 west, F.B. and M., also  
4 known as United States Survey 849 of the Homestead  
5 Claim of Stacia Rickert described as follows:

6 Commencing at corner number 3, United States  
7 Survey Numbered 849, thence south 89 degrees 57  
8 minutes 14 seconds east, a distance of 2,300 feet, more  
9 or less; along a southerly line of said survey numbered  
10 849 which lies between corners numbered 2 and 3;  
11 thence south 89 degrees 57 minutes 09 seconds east, a  
12 distance of 30 feet, more or less; thence north 0 degree  
13 56 minutes 34 seconds west, a distance of 10 feet, more  
14 or less; to the true point of beginning; thence north 0  
15 degree 56 minutes 34 seconds west, a distance of 337  
16 feet, more or less; thence south 89 degrees 52 minutes  
17 43 seconds east, a distance of 518 feet, more or less;  
18 thence south 0 degree 07 minutes 17 seconds west, a

1 distance of 337 feet, more or less; thence north 89 de-  
2 grees 57 minutes 09 seconds west, a distance of 510  
3 feet, more or less, to the true point of beginning, and  
4 containing 173,218 square feet, more or less.

Passed the House of Representatives April 17, 1978.

Attest: EDMUND L. HENSHAW, JR.,

*Clerk.*



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 18 1978

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

Dear Mr. Chairman:

This responds to your request for the views of this Department on H.R. 6997 as it passed the House on April 17, 1978, a bill "To authorize the Secretary of the Interior to convey all right, title, and interest of the United States in and to a tract of land located in the Fairbanks Recording District, State of Alaska, to the Fairbanks North Star Borough, and for other purposes."

We recommend that the bill be enacted.

H.R. 6997 would authorize the return to the Fairbanks North Star Borough of some 173,218 square feet of land which the Borough had donated by a warranty deed dated December 31, 1970, to the United States for use by the Bureau of Indian Affairs as a school dormitory site. It has since been determined that the Bureau of Indian Affairs will not build the dormitory and we believe that it would be appropriate to return the land to the donor as they have requested. The land is located adjacent to two public schools and a hospital site. The BIA has no use for the site.

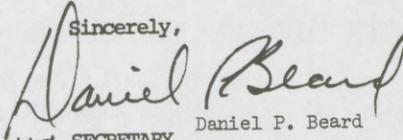
The parcel consists of about 4 acres of vacant lands between two schools in a developed area of Fairbanks. The original homestead covering the lands in question was patented on April 16, 1917. Sometime after patenting, the city acquired the property.

On November 11, 1970, the land was sold to the North Star Borough for \$11,857. Later the Borough deeded it to the Bureau of Indian Affairs.

If the Bureau of Indian Affairs disposes of the property under existing law, it appears it would go to the General Services Administration for further action since no public lands are involved.

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,



Acting Assistant SECRETARY

Daniel P. Beard

95<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 7588

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IN THE SENATE OF THE UNITED STATES

APRIL 19 (legislative day, FEBRUARY 6), 1978

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

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## AN ACT

To confirm a conveyance of certain real property by the Southern Pacific Railroad Company to M. L. Wicks.

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 conveyance described in section 2 (a) of this Act  
4       involving certain real property in Los Angeles County,  
5       California, is hereby confirmed in the successors in interest  
6       to M. L. Wicks, the grantee in such conveyance, with respect  
7       to all interests of the United States in the rights to the real  
8       property described in section 2 (b) of this Act. Portions  
9       of the real property described in such section 2 (b) formed  
10      part of the right-of-way granted to the Southern Pacific Rail-  
11      road Company, a corporation, by the United States by the

1 Act entitled "An Act to incorporate the Texas Pacific Rail-  
2 road Company, and to aid in the Construction of its Road,  
3 and for other purposes", approved March 3, 1871 (16 Stat.  
4 573).

5 SEC. 2. (a) The conveyance confirmed by this Act was  
6 made by a deed dated May 4, 1887, by the Southern Pacific  
7 Railroad Company, a corporation, and D. O. Mills and  
8 Gerrit L. Lansing, Trustees, to M. L. Wicks and recorded  
9 on May 9, 1887, in the office of the county recorder of Los  
10 Angeles County, in the Book of Official Records, Book 222  
11 at page 172.

12 (b) The real property referred to in the first section of  
13 this Act is certain real property in the northwest quarter  
14 of the northeast quarter of section 15, township 7 north,  
15 range 12 west, San Bernardino Meridian, in Los Angeles  
16 County, California, more particularly described as follows:

17 Beginning at the intersection of the easterly line  
18 of Sierra Highway (formerly Antelope Avenue) 90  
19 feet wide as shown on county surveyor's map numbered  
20 8200 on file in the office of the surveyor of said county  
21 with the easterly prolongation of the northerly line of  
22 Jackman Street (formerly 8th Street); thence easterly  
23 along said prolongation to the westerly line of the right-

1 of-way, 100 feet wide, as reserved in that certain deed  
2 dated May 4, 1887, from Southern Pacific Railroad  
3 Company, a corporation, and D. O. Mills and Gerrit L.  
4 Lansing, trustees to M. L. Wicks, recorded May 9, 1887,  
5 in Book 222 at page 172, official records of said county;  
6 thence northerly along said westerly right-of-way line  
7 624.34 feet more or less to the southerly line of Avenue  
8 I (formerly Sierra Madre Road) ; thence westerly along  
9 said southerly line of Avenue I to the easterly line of  
10 said Sierra Highway; thence southerly along said east-  
11 erly line of Sierra Highway to the point of beginning.

12 SEC. 3. (a) Nothing in this Act shall—

13 (1) diminish the right-of-way referred to in the first  
14 section of this Act to a width of less than 50 feet on each  
15 side of the center of the main tract or tracts established  
16 and maintained by the Southern Pacific Company on the  
17 date of the enactment of this Act; or

18 (2) validate or confirm any right or title to, or in-  
19 terest in, the land referred to in the first section of this  
20 Act arising out of adverse possession, prescription, or  
21 abandonment, and not confirmed by conveyance made  
22 by the Southern Pacific Company before the date of the  
23 enactment of this Act.

1           (b) There is reserved to the United States all oil, coal,  
2 or other minerals in the land referred to in the first section of  
3 this Act, together with the right to prospect for, mine, and  
4 remove such oil, coal, or other minerals under such rules and  
5 regulations as the Secretary of the Interior may prescribe.

Passed the House of Representatives April 18, 1978.

Attest:           EDMUND L. HENSHAW, JR.,

*Clerk.*



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 30 1979

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

Dear Mr. Chairman:

Your Committee has requested the views of this Department on H.R. 7588, as it passed the House on April 18, 1978, a bill "To confirm a conveyance of certain real property by the Southern Pacific Railroad Company to M. L. Wicks."

We would have no objection to enactment of the bill.

H.R. 7588 would confirm a conveyance of certain property in Los Angeles, California, to the successor in interest of the grantee of the Southern Pacific Railroad Company.

The records are incomplete as to what events transpired with respect to the lands covered by H.R. 7588. However, it appears that the following transactions took place:

Sections 8 and 23 of the Act of March 3, 1871, granted the Southern Pacific Railroad Company of California a right-of-way through public lands for construction of its railroad. Sections 9 and 23 also granted certain lands comprising alternate sections on each side of the right-of-way. The old Tract Books reflect that all of section 15 T. 7 N., R. 12W., S.B.M., was patented to the Railroad on January 9, 1885, under Railroad List #9. Apparently this patent was issued under sections 9 and 23 of the 1871 Act.

H.R. 7588 indicates that part of the railroad's right-of-way area was deeded by Southern Pacific to M. L. Wicks in 1887. The land grant patent issued in 1885 was cancelled by Decree of the Circuit Court, 9th District, California, on July 19, 1894. All of section 15 was subsequently patented to Moses L. Wicks as a result of an

application filed under section 4 of the Act of March 3, 1887 (24 Stat. 556). On June 15, 1900, Cash Entry Patent No. 5565 was issued to Mr. Wicks pursuant to the Act of April 24, 1820 (3 Stat. 566).

It appears then that the railroad may have attempted to convey, in addition to part of its right-of-way, all of section 15 to M. L. Wicks in or prior to 1887 and that after the railroad's patent was cancelled he sought and obtained title to section 15 from the United States by cash entry patent. However, the 1900 Wicks title would have been subject to the railroad right-of-way which the railroad had no authority to convey.

Congress, in the Act of May 25, 1920 (43 U.S.C. 913), authorized railroad companies to make conveyances of lands granted to such companies for right-of-ways through public lands for a public highway or street to a State, county, or municipality. A similar provision is also found in title 23 of the United States Code, section 316. There is no general authority, however, for the railroad companies to make conveyances of a portion, or all, of the lands, or interest in lands within their rights-of-way. However, the Act of March 8, 1922 (43 U.S.C. 912), provides that upon a finding of abandonment or forfeiture by a court or validation of title by an Act of Congress the lands within the right-of-way pass to the adjoining landowner, except that lands located in a municipality pass to the municipality.

Enactment of H.R. 7588 would confirm conveyances already made to the parties listed in the bill and avoid the need for a decree of forfeiture or abandonment by the railroad. Validation of prior conveyances by legislation is contemplated in the 1922 Act. However, the method of validation set forth in the Act provides that such transfer of lands shall be subject to and contain a reservation of minerals to the United States.

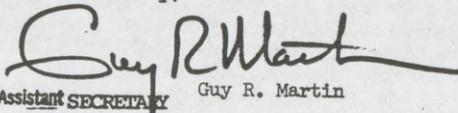
It has been the position of the Department that we will not object to validation by such bills as H.R. 7588 if: (1) the parts of the right-of-way under consideration traverse non-Federal lands; (2) the width of the remaining right-of-way is 50-feet or more on each side of the center line of the main track; and (3) all oil, coal or other minerals are reserved to the United States. These criteria are satisfied by the provisions of H.R. 7588, as it passed the House on April 18, 1978.

Since H.R. 7588 follows the method for validating title set forth in the 1922 Act, we have not insisted on payment for the interests of the United States in the right-of-way. In any event, the United States would lose all interest in the surface rights upon forfeiture or abandonment of the right-of-way by a railroad.

We recommend certain technical amendments to H.R. 7588. In line 15 on page 3 of the House passed version, the phrase "tract or tracts" should read "track or tracks." Also, in lines 1 and 4 on page 4, the word "gas," should be added after the word "coal," in each of these lines. The relevant statute (43 U.S.C. 912) states in the last proviso "Provided further, that the transfer of such lands shall be subject to and contain reservations in favor of the United States of all oil, gas, and other minerals . . ." (emphasis added).

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,



Assistant SECRETARY

Guy R. Martin

95TH CONGRESS  
2D SESSION

# H. R. 7849

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IN THE SENATE OF THE UNITED STATES

AUGUST 17 (legislative day, AUGUST 16), 1978

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

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## AN ACT

To provide for the conveyance of certain public lands in Montana  
to the occupants of the land.

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 Secretary of the Interior is hereby authorized  
4 to convey to Francis T. Oleson and Zona I. Oleson, husband  
5 and wife; Dan Raymond and Elizabeth Louise Raymond,  
6 husband and wife; and Edward J. Bonderenko or their  
7 successors in interest, all right, title, and interest of the  
8 United States, except right, title, and interest in deposits  
9 of all minerals, in lands identified as tracts numbered 1, 2,  
10 and 3 in that part of the west half, southwest quarter of  
11 the northwest quarter, section 2, township 10 north, range

IV.

1 1 west, Montana principal meridian, Lewis and Clark  
2 County, Montana, lying east of the "Erroneous Survey Line",  
3 lying north of the county road right-of-way as shown on  
4 Bureau of Reclamation drawing numbered 296-604-170,  
5 dated September 24, 1971, and as determined available for  
6 sale by the Secretary of the Interior. Such conveyance shall  
7 be made only upon applications by such aforementioned in-  
8 dividuals therefor within six months after the date of this  
9 Act, and upon payment of the appraised fair market value  
10 of the land as of the date of sale plus the administrative costs,  
11 including costs of a land survey, of making the conveyance,  
12 as determined by the Secretary of the Interior within one  
13 year after notification by the Secretary of the Interior of the  
14 amount due. In determining the fair market value of the  
15 land, the Secretary of the Interior shall not include any  
16 values added to the land by Francis T. Oleson and Zona I.  
17 Oleson, husband and wife; Dan Raymond and Elizabeth  
18 Louise Raymond, husband and wife; and Edward J.  
19 Bonderenko or their successors in interest, or their heirs. Any  
20 conveyance made pursuant to this Act shall reserve to the  
21 United States all deposits of all minerals in the lands together  
22 with the right to mine and remove the same, under applicable  
23 laws and regulations established by the Secretary of the  
24 Interior.

1        SEC. 2. Acceptance of Francis T. Oleson and Zona I.  
2 Oleson, husband and wife; Dan Raymond and Elizabeth  
3 Louise Raymond, husband and wife; and Edward J. Bon-  
4 derenko or their successors in interest of any conveyance  
5 made hereunder shall constitute a waiver and release by  
6 them of any and all claims against the United States arising  
7 out of the operation, maintenance, or construction of the  
8 Canyon Ferry Unit, Pick-Sloan Missouri Basin program,  
9 as now or hereafter authorized.

Passed the House of Representatives August 15, 1978.

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



United States Department of the Interior

WASHINGTON, D.C. 20240

AUG 30 1978

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

Dear Mr. Chairman:

Your Committee has requested the views of this Department on H.R. 7849, as it passed the House on August 15, 1978, a bill "To provide for the conveyance of certain public lands in Montana to the occupants of the land."

We would have no objection to enactment of the bill.

H.R. 7849 would convey certain public land near Helena, Montana, to five named individuals or their successors in interest. The land was withdrawn in 1946 for the Bureau of Reclamation as part of the Pick-Sloan Missouri Basin Program. It was apparently entered and improved by the occupants due to an erroneous private survey.

Current records of the Geological Survey indicate that the lands involved are prospectively valuable for coal and gold.

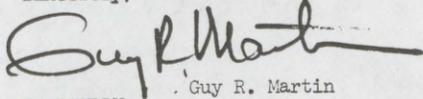
We generally do not support legislation providing for conveyance of land to private parties who are occupying the lands in trespass. However, H.R. 7849 provides for payment of fair market value and administrative costs, including costs of a land survey, and reserves the mineral estate. Furthermore, conveyance of this land would not conflict with any Departmental program.

H.R. 7849, as passed by the House, refers to "applications by such aforementioned individuals." It appears that the listing of the individuals in the bill may be intended to correspond to lots 1, 2 and 3, respectively. If so, we recommend that the word "respectively" be inserted between "convey" and "to" in the first sentence of the

first section of the bill. If the listing of individuals does not correspond to lots 1, 2 and 3, then the bill needs clarification in this regard.

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,



~~Assistant~~ SECRETARY

Guy R. Martin

95TH CONGRESS  
2D SESSION

# H. R. 7971

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## IN THE SENATE OF THE UNITED STATES

APRIL 19 (legislative day, FEBRUARY 6), 1978

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

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## AN ACT

To validate the conveyance of certain land in the State of California by the Southern Pacific Transportation Company.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That, subject to section 3, the conveyances executed by the  
4       Southern Pacific Transportation Company and described in  
5       section 2, involving certain land in San Joaquin County,  
6       California, forming a part of the right-of-way granted by the  
7       United States to the Central Pacific Railway Company under  
8       the Act entitled "An Act to aid in the construction of a rail-  
9       road and telegraph line from the Missouri River to the  
10      Pacific Ocean, and to secure to the Government the use of  
11      the same for postal, military, and other purposes", approved

1 July 1, 1862 (12 Stat. 489), as amended, are hereby  
2 legalized, validated, and confirmed, as far as any interest of  
3 the United States in such land is concerned, and shall have  
4 the same force and effect as if the land involved in each con-  
5 veyance had been held, on the date of conveyance, under  
6 absolute fee simple title by the Southern Pacific Transpor-  
7 tation Company, subject to a reservation to the United States  
8 of the minerals therein.

9       SEC. 2. The conveyances referred to in the first section  
10 of this Act are as follows:

11       (1) The conveyance entered into between the Southern  
12 Pacific Transportation Company, grantor, and Stokely-Van  
13 Camp, an Indiana corporation, as grantee, on March 2, 1973,  
14 and recorded as instrument numbered 55797 on December 3,  
15 1973, book 3822, page 586, of the Official Records of San  
16 Joaquin County, California, describing the following lands:  
17 That certain parcel of land situate in the county of San  
18 Joaquin, State of California, being a portion of the west half  
19 of section 12, township 3 north, range 6 east, Mount Diablo  
20 base and meridian, described as follows:

21       The easterly 125 feet of the westerly 150 feet of  
22       lots 66, 67, 68, 69, the westerly 150 feet of lot 70 and  
23       the easterly 100 feet of the westerly 150 feet of lot 71,  
24       as said lots are shown on the map of the Lodi-Barnhart

1 Tract, recorded November 5, 1906, in volume 3 of Maps  
2 and Plats, page 48, records of said county.

3 Excepting therefrom that portion of said lot 68 lying easterly  
4 of the easterly boundary of the land described in the deed  
5 dated August 27, 1962, to Stokely-Van Camp, Incorporated,  
6 recorded September 5, 1962, in book 2592, page 385, of  
7 Official Records, records of said county, and southerly of  
8 the easterly prolongation of the northerly boundary thereof.

9 (2) The conveyance entered into between the Southern  
10 Pacific Transportation Company, grantor, and Bernardino  
11 Barengo, a married man, as grantee, on June 27, 1973,  
12 and recorded as instrument numbered 37943 on August 9,  
13 1973, book 3792, page 21, of the Official Records of San  
14 Joaquin County, California, describing the following lands:  
15 That certain parcel of land situated in the county of San  
16 Joaquin, State of California, being a portion of the south-  
17 west quarter of section 24, township 4 north, range 6 east,  
18 Mount Diablo base and meridian, described as follows:

19 Commencing at the intersection of the original  
20 located center line of Southern Pacific Transportation  
21 Company's main track (Stockton to Sacramento) with  
22 a line that is parallel with and distant 20.00 feet north-  
23 erly, measured at right angles, from the south line of  
24 said southwest quarter of section 24, said parallel line

1 being the north line of Acampo Road (formerly Main  
2 Street) ;

3 thence north 88 degrees 36 minutes 00 seconds  
4 west, along said parallel line, 140.71 feet to a line that  
5 is parallel with and distant 135.00 feet westerly, meas-  
6 ured at right angles, from said original located center  
7 line and the true point of beginning of the parcel of  
8 land to be described;

9 thence north 14 degrees 58 minutes 30 seconds  
10 west, along last said parallel line, 883.19 feet;

11 thence south 75 degrees 01 minutes 30 seconds west,  
12 at right angles from last said parallel line 9.40 feet to  
13 the southeasterly corner of the lands of Dino Barengo  
14 as described in deed recorded September 29, 1961, in  
15 book 2462, page 290, Official Records of said county;

16 thence northerly along the easterly line of said  
17 lands on the following four courses: (1) north 14 de-  
18 grees 58 minutes 30 seconds west, parallel with said  
19 center line, 14.60 feet, (2) north 11 degrees 33 min-  
20 utes 30 seconds west 100.00 feet, (3) north 9 degrees  
21 39 minutes 30 seconds west 50.00 feet, (4) north  
22 8 degrees 29 minutes 30 seconds west 27.60 feet;

23 thence south 67 degrees 42 minutes 00 seconds  
24 west, along the northerly line of last said lands 69.88  
25 feet to a line that is parallel with ~~and~~ distant 200.00

1 feet westerly, measured at right angles, from said orig-  
2 inal located center line, last said parallel line being the  
3 westerly line of the 400-foot right-of-way granted by  
4 Act of Congress to the Central Pacific Railroad Com-  
5 pany;

6 thence south 14 degrees 58 minutes 30 seconds east,  
7 along last said parallel line, 1046.81 feet to said north  
8 line of Acampo Road;

9 thence south 88 degrees 36 minutes 00 seconds east,  
10 along said north line, 67.75 feet to the true point of be-  
11 ginning, containing an area of 1.565 acres, more or  
12 less.

13 (3) The conveyance entered into between the Southern  
14 Pacific Transportation Company, grantor, and Calvin Clark  
15 III, a married man, as grantee, on November 4, 1974, and  
16 recorded as instrument numbered 56311 on December 9,  
17 1974, book 3934, page 640, of the Official Records of San  
18 Joaquin County, California, describing the following lands:  
19 That certain real property situated in the county of San  
20 Joaquin, State of California, being a portion of section 24,  
21 township 4 north, range 6 east, Mount Diablo base and me-  
22 ridian, more particularly described as follows:

23 Commencing at the point of intersection of a line  
24 parallel with and distant 30 feet westerly, measured at  
25 right angles, from the easterly line of Sycamore Street,

1 with the westerly prolongation of the northerly line of  
2 an alley in block 4 as said street, alley and block are  
3 shown on the map of the town of Acampo;

4 thence south 88 degrees 36 minutes 00 seconds east  
5 along said prolongation, northerly line and its easterly  
6 prolongation thereof, 474.05 feet to a point in the  
7 southwesterly line of land (400 feet wide) of Southern  
8 Pacific Transportation Company;

9 thence north 14 degrees 58 minutes 30 seconds west  
10 along said southwesterly line being parallel with and  
11 distant 200.0 feet southwesterly, measured at right  
12 angles, from the original located center line of said  
13 company's main track (Tracy-Polk), 166.38 feet to a  
14 point in the northerly line of land of Dino Barengo as  
15 described in deed recorded September 29, 1961, in book  
16 2462 of the Official Records, page 290, Records of San  
17 Joaquin County and the actual point of beginning of  
18 the parcel of land to be described;

19 thence continuing north 14 degrees 58 minutes 30  
20 seconds west along said southwesterly line, 693.8 feet  
21 to a point in the southerly line of land now or formerly  
22 of George L. Keeney and E. M. Keeney;

23 thence south 88 degrees 57 minutes east along the  
24 seconds west along said southwesterly line, 693.8 feet

1 to a point distant 74.08 feet westerly, measured at right  
2 angles, from said center line of main track;

3 thence south 6 degrees 42 minutes east 96.05 feet;

4 thence south 8 degrees 29 minutes 30 seconds east

5 559.88 feet to a point in said northerly line of Dino

6 Barengo, being distant 151.12 feet westerly, measured

7 at right angles, from said center line;

8 thence south 67 degrees 42 minutes 00 seconds

9 west along last said northerly line, 49.29 feet to the

10 actual point of beginning, containing an area of 1.343

11 acres, more or less;

12 (4) The conveyance entered into between the Southern

13 Pacific Transportation Company, grantor, and the city of

14 Lodi, a municipal corporation, as grantee, on November 6,

15 1974, and recorded as instrument numbered 57584 on De-

16 cember 17, 1974, book 3937, page 183, of the Official Rec-

17 ord. of San Joaquin County, California, describing the fol-

18 lowing lands: That certain strip of land 125.00 feet in width,

19 situate in the south half of section 36, township 4 north,

20 range 6 east, Mount Diablo base and meridian, county of

21 San Joaquin, State of California and described as follows:

22 A strip of land 125.00 feet wide lying contiguous to

23 and easterly of a line parallel with and distant 75.00

24 feet easterly, measured at right angles, from the original

1 located center line of Southern Pacific Transportation  
2 Company's main track (Stockton to Polk), and extend-  
3 ing from that certain course described as "south 80 de-  
4 grees 47 minutes west 200 feet, more or less" in the  
5 northerly boundary of the land described in deed dated  
6 July 13, 1967, from Southern Pacific Company to Jay  
7 Loveless recorded October 10, 1967, in book 3158, page  
8 339, Official Records of San Joaquin County, northerly,  
9 to the northerly line of the 3.6-acre parcel of land de-  
10 scribed in deed dated May 22, 1915, from H. Becht-  
11 hold et ux, to city of Lodi recorded June 25, 1915, in  
12 book "A", volume 266 of deeds, page 3, San Joaquin  
13 County Records, said northerly line being described in  
14 said deed as following the meanders of the southern  
15 bank of the Mokelumne River.

16 (5) The easement entered into between the Southern  
17 Pacific Transportation Company, grantor, and the city of  
18 Lodi, a municipal corporation, as grantee, for roadway pur-  
19 poses, on November 21, 1974, and recorded as instrument  
20 numbered 5528 on February 7, 1975, book 3952, page  
21 203, of the Official Records of San Joaquin County, Cali-  
22 fornia, describing an easement upon the following property:  
23 That certain strip of land situate in the south half of sec-  
24 tion 36, township 4 north, range 6 east, Mount Diablo

1 base and meridian, County of San Joaquin, State of Cali-  
2 fornia, and described as follows:

3           A strip of land 25.00 feet in width lying contiguous  
4           to and easterly of a line parallel and concentric with and  
5           distant 75.00 feet easterly, measured at right angles and  
6           radially, from the original located center line of Southern  
7           Pacific Transportation Company's main track (Stockton  
8           to Polk), and extending from the northerly line of the  
9           20,480 square foot parcel of land described in Indenture  
10          dated August 24, 1960 from Southern Pacific Company  
11          to city of Lodi recorded September 12, 1960 in book  
12          2334, page 421, San Joaquin County Records, northerly,  
13          to that certain course described as "south 80 degrees 47  
14          minutes west 200 feet, more or less," in the northerly  
15          boundary of the land described in deed dated July 13,  
16          1967, from Southern Pacific Company to Jay Loveless  
17          recorded October 10, 1967 in book 3158, page 339,  
18          Official Records of San Joaquin County, said 25.00 foot  
19          wide strip hereinabove described being also contiguous  
20          to and westerly of the westerly line of the 100.00 foot  
21          wide strip of land quitclaimed to Jay Loveless by said  
22          deed.

23 Reserving unto grantor, its successors and assigns, the right  
24 to construct, maintain, and use railroad, pipeline, communi-

1 cation, and transportation facilities in, upon, over, along,  
2 and across said property.

3 (6) The conveyance entered into between the Southern  
4 Pacific Transportation Company, grantor, and Edward W.  
5 Le Baron and Mable B. Le Baron, his wife, Donald Reynolds  
6 and Constance E. Reynolds, his wife, and Robert Reynolds  
7 and Carolyn W. Reynolds, his wife, as grantees on March  
8 22, 1977, and recorded as instrument numbered 34048 on  
9 June 2, 1977, book 4267, page 458, of the official records of  
10 San Joaquin County, California, describing the following  
11 lands: That certain parcel of land situated in the southeast  
12 quarter of section 23 and southwest quarter of section 24,  
13 township 4 north, range 6 east, Mount Diablo base and  
14 meridian, County of San Joaquin, State of California, and  
15 more particularly described as follows:

16 Commencing at the point of intersection of a line  
17 parallel with and distant 30 feet westerly, measured at  
18 right angles, from the easterly line of Sycamore Street  
19 with the westerly prolongation of the northerly line of an  
20 alley in block 4, as said street, alley, and block are shown  
21 on the map of the town of Acampo;

22 thence south 88 degrees 36 minutes 00 seconds east,  
23 along said prolongation, said northerly line and its  
24 easterly prolongation, 474.05 feet to a point in the

1 southwesterly line of land (400 feet wide) originally  
2 acquired by Central Pacific Railroad Company by virtue  
3 of Act of Congress dated July 1, 1862;

4       thence north 14 degrees 58 minutes 30 seconds west,  
5 along said southwesterly line, being parallel with and  
6 distant 200.0 feet southwesterly, measured at right  
7 angles, from the original location center line of main  
8 track (Tracy-Polk) now of the Southern Pacific Trans-  
9 portation Company, a distance of 860.18 feet to the  
10 northwesterly corner of the 1.343-acre parcel of land  
11 described in quitclaim deed dated November 4, 1974  
12 from Southern Pacific Transportation Company to  
13 Calvin Clark III, recorded December 9, 1974 in book  
14 3934, page 640, Official Records of San Joaquin County,  
15 and the true point of beginning of the parcel of land to  
16 be described;

17       thence continuing north 14 degrees 58 minutes 30  
18 seconds west, along said southwesterly line, parallel with  
19 and distant 200.0 feet southwesterly, measured at right  
20 angles, from said center line of main track, a distance of  
21 1,000 feet, more or less, to the north line of said south-  
22 east quarter of said section 23;

23       thence easterly along last said north line, 130.3 feet,  
24 more or less, to a point in a line parallel with and distant

1 74.08 feet southwesterly, measured at right angles, from  
2 said center line of said transportation company's main  
3 track;

4 thence south 14 degrees 58 minutes 30 seconds east,  
5 last said parallel line, 1,000 feet, more or less, to the  
6 northeasterly corner of said 1.343-acre parcel of land  
7 described in said deed dated November 4, 1974 to Calvin  
8 Clark III;

9 thence north 88 degrees 57 minutes west, along the  
10 northerly line of last said parcel, 131.02 feet to the true  
11 point of beginning, containing an area of 2.89 acres,  
12 more or less.

13 SEC. 3. (a) Nothing in this Act shall—

14 (1) diminish the right-of-way referred to in the  
15 first section of this Act to a width of less than fifty feet  
16 on each side of the center of the main track or tracks  
17 established and maintained by the Southern Pacific  
18 Company on the date of the enactment of this Act; or

19 (2) validate or confirm any right or title to, or  
20 interest in, the land referred to in the first section of  
21 this Act arising out of adverse possession, prescription,  
22 or abandonment, and not confirmed by conveyance made  
23 by the Southern Pacific Company before the date of the  
24 enactment of this Act.

1       (b) There is reserved to the United States all oil, coal,  
2 or other minerals in the land referred to in the first section  
3 of this Act, together with the right to prospect for, mine,  
4 and remove such oil, coal, or other minerals under such  
5 rules and regulations as the Secretary of the Interior may  
6 prescribe.

Passed the House of Representatives, April 18, 1978.

Attest:       EDMUND L. HENSHAW, JR.,

*Clerk.*



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 18 1978

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

Dear Mr. Chairman:

This will respond to your request for the views of this Department on H.R. 7971 as it passed the House on April 18, 1978, a bill "To validate the conveyance of certain land in the State of California by the Southern Pacific Transportation Company."

We would have no objection to enactment of the bill.

H.R. 7971 would confirm, legalize, and validate the conveyance of certain described tracts of land in San Joaquin County, California, which are part of a 400-foot wide right-of-way granted under the provisions of the Act of July 1, 1862 (12 Stat. 489), to Central Pacific Railway Company, now operating as the Southern Pacific Transportation Company. Under the bill, such conveyance made by the Company would now have the same force and effect as if the land involved thereunder had been held at the time of the conveyance in fee simple title by the Southern Pacific Transportation Company, subject to a reservation to the United States for the minerals therein.

Apparently, the railroad conveyed to adjoining landowners, without authority, parts of rights-of-way granted to it by the United States. We have no objection to legislation of this type provided that: (1) the parts of the right-of-way under consideration traverse non-Federal lands; (2) the width of the remaining right-of-way is 50-feet or more on each side of the center line of the main tract; and (3) all oil, coal or other minerals are reserved to the United States. According to records in the Bureau of Land Management's California State Office, these criteria are satisfied in the situation addressed by H.R. 7971.

Congress, in the Act of May 25, 1920 (43 U.S.C. 913), authorized railroad companies to make conveyances of lands granted to such

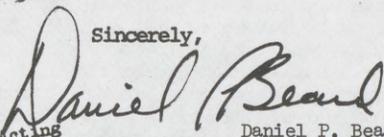
companies for rights-of-way through public lands for a public highway or street to a State, county, or municipality. A similar provision is also found in title 23 of the United States Code, section 316. There is no general authority, however, for the railroad companies to make conveyances of a portion, or all, of the lands, or interest in lands within their rights-of-way. However, the Act of March 8, 1922 (43 U.S.C. 912), provides that upon a finding of abandonment or forfeiture either by Act of Congress, or by a court, the lands within the right-of-way pass to the adjoining landowner, except that lands located in a municipality pass to the municipality. Enactment of H.R. 7971 would validate conveyances already made to the parties listed in the bill and avoid the need for a decree of forfeiture or abandonment by the railroad. Validation of prior conveyances by legislation is contemplated in the 1922 Act.

Since H.R. 7971 follows the method for clearing title set forth in the 1922 Act, we have not insisted on payment for the interests of the United States in the right-of-way. In any event, the United States would lose all interest in the surface rights upon forfeiture or abandonment of the right-of-way by a railroad.

Current records of the Geological Survey indicate that the lands involved in H.R. 7971 are prospectively valuable for oil and gas. The area is not valuable for any other leasable mineral.

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,



Acting

SECRETARY

Daniel P. Beard

Assistant

95<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 10029

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## IN THE SENATE OF THE UNITED STATES

AUGUST 17 (legislative day, AUGUST 16), 1978

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

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## AN ACT

To direct the Secretary of the Interior to convey certain lands in Clear Creek County, Colorado, to Harold and Doris Harlan.

- 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 Secretary of the Interior is hereby authorized and  
4        directed to convey to Harold Harlan and Doris Harlan,  
5        Idaho Springs, Colorado, all right, title, and interest of the  
6        United States in and to a tract of land in lot 18, section 1,  
7        township 4 south, range 73 west, sixth principal meridian,  
8        Clear Creek County, Colorado, known as the Thomas C.  
9        Austin Building Site, and more particularly described as  
10       follows:

IV

1           Beginning at Corner Numbered 1, whence corner  
2           Numbered 2, Survey Numbered 2053, Gardner Placer,  
3           bears south 1 degree 15 minutes west 377.0 feet; thence  
4           north 37 degrees east 226.0 feet to corner numbered 2,  
5           whence the Shaft Honor on the Gold Medal Mine bears  
6           north 30 degrees 40 minutes east and a prominent point  
7           of rocks bears north 86 degrees 28 minutes east; thence  
8           north 53 degrees west 121 feet to corner numbered 3;  
9           thence south 37 degrees west 226.0 feet to corner num-  
10          bered 4; thence south 53 degrees east 121.0 feet to  
11          corner numbered 1, the place of beginning.

12          SEC. 2. The conveyance authorized by this Act shall  
13          be made upon the payment of such sum as may be fixed by  
14          the Secretary to reimburse the United States for the admin-  
15          istrative costs of the conveyance.

Passed the House of Representatives August 15, 1978.

Attest:           EDMUND L. HENSHAW, JR.,

*Clerk.*



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

September 25 1978

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

Dear Mr. Chairman:

We would like to offer our comments on H.R. 10029, a bill "To direct the Secretary of the Interior to convey certain lands in Clear Creek County, Colorado, to Harold and Doris Harlan."

The Department of Agriculture recommends that H.R. 10029 not be enacted.

H.R. 10029 would authorize and direct the Secretary of the Interior to convey all right, title and interest of the United States to 0.58 acres of the land in Clear Creek County, Colorado, to Harold and Doris Harlan. The conveyance would be made upon the payment of such sum as may be fixed by the Secretary to reimburse the United States for the administrative costs of the conveyance.

The tract of National Forest land is located one-half mile south of Idaho Springs, Colorado, in a mountainous area. It contains a two-bedroom log cabin residence, a garage and other improvements, and is surrounded by other National Forest land, a patented mining claim and a parcel of other private land. The tract has been used and occupied for residential purposes for over 75 years. The Harlans have occupied and have paid taxes on the residence and other improvements for the past 19 years. No taxes have been assessed or paid on the land.

This Department has reviewed the proposed conveyance very carefully and believe it would be in the public interest to retain these lands in public ownership. We have unsuccessfully attempted administratively to resolve this occupancy with the present owners through the issuance of a special permit for a period of time to reasonably amortize their investment in the improvements. After that time, the land would still remain in public ownership. We believe that this approach is still valid and reasonable to accomplish our objective of avoiding private land intrusions in the National Forest and the related administrative difficulties. We estimate there are nearly 45,000 situations of this type throughout the National Forest System. Each case, if handled in the manner proposed in H.R. 10029, would not only validate questionable occupancy of public land but would continually erode the public land base.

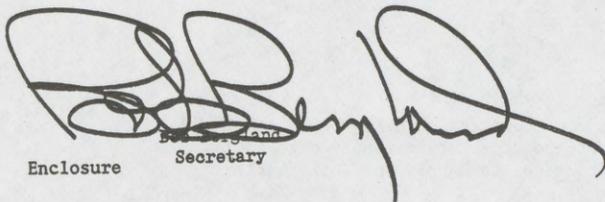
Honorable Henry M. Jackson

2

We recommend that H.R. 10029 not be enacted.

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

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Bob Bergland', is written over the typed name 'Bob Bergland'.

Bob Bergland  
Secretary

Enclosure

## U. S. DEPARTMENT OF AGRICULTURE

Recommended version of H.R. 10029

A B I L L

To provide for the conveyance at fair market value of a tract of land within the Arapaho National Forest, Clear Creek County, Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture (hereinafter called the Secretary) is hereby authorized to convey by quit claim deed to Harold Harlan and Doris Harlan, Idaho Springs, Colorado, all right, title, and interest of the United States in and to a tract of land described as Lot 18, Section 1, Township 4 south, Range 73 west, Sixth Principal Meridian, Colorado, containing 0.58 acres more or less.

Sec. 2. The conveyance authorized by this act shall be made upon the payment of fair market value as determined by the Secretary and all other administrative costs of the conveyance.

Sec. 3. The conveyance will be subject to a right-of-way in favor of Clear Creek County for the Soda Creek Road across any lands in Lot 18 within 33 feet of the center line of said road.

95TH CONGRESS  
2D SESSION

# H. R. 10160

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IN THE SENATE OF THE UNITED STATES

JUNE 22 (legislative day, MAY 17), 1978

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

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## AN ACT

To provide for the conveyance of title and ownership to 2.58 acres within the Bridger-Teton National Forest, Wyoming, to Ben Boschetto, Junior.

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 Secretary of Agriculture is hereby authorized and  
4       directed to convey at fair market value to Ben Boschetto,  
5       Junior, ownership and title to 2.58 acres within the Bridger-  
6       Teton National Forest, Wyoming, described as follows:

7               A tract of land in the northwest quarter section 29,  
8       township 38 north, range 113 west, of the sixth principal  
9       meridian, Sublette County, Wyoming;

10              Beginning at the southeast corner of the north half

1 northwest quarter northwest quarter section 29; thence  
2 south 89 degrees 47 minutes 41 seconds west along the  
3 south line of the north half northwest quarter north-  
4 west quarter, a distance of 185.99 feet to a point on the  
5 northeast right of way line of United States Highway  
6 187; thence north 43 degrees 38 minutes 39 seconds west  
7 along said right of way line a distance of 220.35 feet;  
8 thence north 89 degrees 47 minutes 41 seconds east a  
9 distance of 497.77 feet; thence south 00 degrees 6 min-  
10 utes 29 seconds east a distance of 524.72 feet to a point  
11 on the northeast right of way line of United States High-  
12 way 187; thence north 43 degrees 38 minutes 39 seconds  
13 west along said right of way a distance of 232.28 feet to  
14 a point on the east line of the northwest quarter north-  
15 west quarter section 29; thence north 00 degrees 06  
16 minutes 29 seconds west, along the east line of the north-  
17 west quarter northwest quarter section 29 a distance of  
18 196.06 feet to the point of beginning, said tract contains  
19 2.58 acres.

Passed the House of Representatives June 21, 1978.

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



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

September 6 1978

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

Dear Mr. Chairman:

We would like to offer our comments on the House Act, H.R. 10160, "To provide for the conveyance of title and ownership to 2.58 acres within the Bridger-Teton National Forest, Wyoming, to Ben Boschetto, Junior."

The Department of Agriculture recommends that H.R. 10160 not be enacted.

H.R. 10160 would authorize and direct the Secretary of Agriculture to convey at fair market value to Ben Boschetto, Junior, ownership and title to 2.58 acres of National Forest land adjacent to, but outside of a 0.42-acre parcel owned by him.

The parcel owned by Mr. Boschetto, to which he apparently has clear title, is shown on the enclosed aerial photograph as Tract "A". It consists of 0.42 acres and is part of a larger tract of land described as the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  Sec. 29, which was patented to Jno. B. Lane on February 15, 1923, Patent No. 896168. Subsequent deeds conveying Tract "A" to Mr. Boschetto and his predecessors describe the property as being a parcel within the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ . This parcel was identified by surveys performed in 1948, 1971, and in 1974, and is described in the recorded deeds as being that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 29 lying east of the easterly line of the right-of-way of U.S. Highway 187. Our supplemental statement describes a series of events which affirm the existence of the 0.42-acre tract and provide some additional background on the origin of the 2.58 acres proposed for conveyance to Mr. Boschetto.

Tract "B", which is claimed by Mr. Boschetto and to which H.R. 10160 applies, lies adjacent to, but outside of the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 29 as shown on the enclosed photograph. We find no document of record conveying or purporting to convey title of this tract to Mr. Boschetto. Tract "B" is part of a larger area of public lands reserved for National

Honorable Henry M. Jackson

2

Forest purposes by Presidential Proclamation, dated May 22, 1902. It also is part of a larger tract that was withdrawn from public entry in 1906, by the Secretary of the Interior, because of the potential coal values associated with the tract at that time. Furthermore, Tract "B" was included in power-site classification #433 of August 5, 1955, by the Secretary of the Interior pursuant to the Act of March 3, 1879 (20 Stat. 394). This tract was never removed from reserved status. Any claim of title to the 2.58 parcel "B", therefore, would be by adverse possession against the United States.

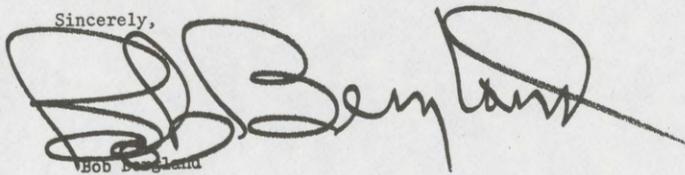
Reportedly, the Boschetto summer home which occupies parts of both Tracts "A" and "B" was constructed sometime in 1957. The Forest Service became aware of the possible encroachment in January 1975. On February 3, 1975, Mr. Boschetto filed an application pursuant to the Color of Title Act, (43 U.S.C. 1068-1068a), to purchase the 2.58 acres (Tract "B"). The Wyoming State Office of the Bureau of Land Management rejected the application for the reason that the subject land had been withdrawn from the operation of the public land laws and reserved for what was then the Teton Forest Reserve by Presidential Proclamation No. 19 on May 22, 1902. This decision was appealed and on July 28, 1975, the Interior Board of Land Appeals affirmed the decision of the Wyoming State Office of the Bureau of Land Management. A copy of the IBLA Decision 75-427 of July 28, 1975, is enclosed.

Current value of the 2.58 acres claimed by Mr. Boschetto and represented in H.R. 10160 is estimated by the Forest Service to be in excess of \$20,000. The tract is within the Teton National Forest approximately 30 miles from Jackson Hole, Wyoming, the southern gateway to Teton and Yellowstone National Parks. As described in H.R. 10160, the parcel would encompass part of the Hoback River. Its proximity to a stream and to the National Parks greatly enhances its value.

To provide legislative relief to Mr. Boschetto as provided in H.R. 10160 would set a precedent adversely affecting the administration, management, and protection of National Forest lands. It could encourage others to trespass on Federal lands in order to gain title from the United States through adverse possession without record title.

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

Sincerely,



Bob Beegland  
Secretary

Enclosures

U.S.D.A. SUPPLEMENTAL STATEMENTON H.R. 10160

Mr. Ben Boschetto, Sr., predecessor in title to Ben Boschetto, Jr., acquired by deed dated September 1, 1949, title to "That portion of the South Half of the Northwest Quarter of the Northwest Quarter ( $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$ ) of Section Twenty-nine (29), Township Thirty-eight (38) North: Range One hundred thirteen (113), West of the 6th Principle Meridian, lying east of the easterly line of the right-of-way of U.S. Highway number One Hundred Eighty-Seven (187), together with all buildings and improvements located thereon. . . ." Subsequent conveyances use the same description. In 1948 a subdivision survey was made of Section 29 by private surveyor Floyd A. Bishop, License No. 303 of Pinedale, Wyoming.

Mr. Bishop established the NE corner of the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{2}$  Section 29 along with other corners and property lines. This corner is in common with the southeast corner of the north half of the northwest quarter of the northwest quarter Section 29 described in H.R. 10160. Subsequent right-of-way and private survey plats also identified the same corners and property lines in this area.

SURVEYS AFFECTING PROPERTY

The highway right-of-way plat dated 1948 shows the property as being within a set back line established 200 feet from the Centerline of U.S. Highway 187. It also shows the Hoback River as being at least 200 feet from the property boundary.

A 1971 survey by Paul Sherbel, involving the land on the west side of the highway, located at the north boundary of the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$ . Mr. Sherbel's survey reestablished the north boundary previously determined by Mr. Bishop.

A plat prepared by Robert A. Harrower of Rio Verde Engineering, Pinedale, Wyoming in 1974 entitled: "Tract of Land Section 29, T. 38 N., R. 113 W. Boschetto," states under the caption "Legal Descriptions, Forest Service Land to Bring Total to 3.00 Acres." Mr. Harrower, the surveyor, described a parcel of land encompassing a certain amount of National Forest land to bring the acreage of the Boschetto tract to a total of 3 acres. This involved 2.58 acres of National Forest land--and is the same area described in H.R. 10160. It also describes the property enclosed within an existing fence around Boschetto's summer home. This fenced tract contained 1.27 acres.

Ben Boschetto's Chain of Title

There are no written instruments of record in our files to indicate Mr. Boschetto's chain to title included any land in the  $N\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  or the  $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ .

He claims title under the following chain to title instruments as evidenced in Color-of-Title Application dated February 3, 1975:

1. Hicks, Ralph, Daisey to Magagna and Anselmi

Deed dated 4/3/47 BK 5D page 117.

Description:  $N\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$  of Section 29, T. 38N., R. 113 W., 6th P.M. Wyo. together with all improvements. The land described in this document lies about 1/8 mile south of the subject tract.

2. Fred L. Magagna and John Anselmi to Ben Boschetto, Sr.

This deed conveyed that portion of the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 29, T. 38 N., R. 111 W., 6th P.M. Wyo. lying east of the easterly line of the right-of-way of U.S. Highway numbered 187 together with all buildings etc. This deed describes and conveys the 0.42 acres actually belonging to Mr. Boschetto.

3. Ben Boschetto, Sr., deceased  
(Decree of distribution No. 5765, 4/17/72 Dist. Court Sweetwater Co., Wyo.) This Court decree describes the same 0.42 acre property conveyed to Mr. Boschetto described in the Deed dated 9/1/49.
  
4. Frieda Boschetto ( $\frac{1}{4}$  interest) to Ben J. and Alfred Boschetto and Verlee Garbrecht  
Deed dated 4/20/72 recorded BK 15D page 474.  
Conveyed an undivided interest in and to the land, summer home and furnishings situated in Hoback Canyon, Sublette County, Wyoming, described as follows: that portion of the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  Section 29, T. 38 N., R. 113 W., 6th P.M. Wyo. lying east of the easterly right-of-way of U.S. 187. In effect, this conveyed Frieda Boschetto's undivided  $\frac{1}{4}$  interest in the 0.42 acre tract to Ben J., and Alfred Boschetto and Verlee Garbrecht.
  
5. Alfred Boschetto, Alex and Verlee Garbrecht (interest) to Ben Boschetto, Jr.  
Deed dated 3/15/74 recorded in BK 5QC, page 388. In effect, this conveyed full ownership of the 0.42 acre tract to Mr. Ben Boschetto, Jr.

There are three other documents in the chain of title not mentioned above which indicate that the location of the north line of the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  was established and known to prior owners. The documents are:

1. J.R. Linn to Sublette Co. Warranty Deed for a right-of-way dated October 4, 1932, recorded in BK 1 of Deeds, page 453, on October 10, 1932.

The granting words include the statement ". . . west 220.0 feet to Station 723+60 of said survey, the point of intersection of said centerline and the north boundary line of the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  said Section 29, containing 0.51 acres. . . ." (emphasis added)

2. Frank M. Hansen, et ux., to Barney DeCora et ux. Warranty Deed dated April 10, 1946, recorded in BK 4 of Deeds, page 612.

3. Barney DeCora, et ux., to Ralph Hicks, et ux. Warranty Deed dated January 6, 1947, recorded in Bk 5 of Deeds, page 58, January 13, 1947.

4. Barney Decora et ux., to Ralph Hicks et ux. Quit Claim Deed dated February 16, 1947, recorded in BK 1 of Quit Claim Deeds, page 416, on January 1947.

Deeds 2, 3, and 4 convey the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , among other lands excepting therefrom a tract of land beginning at:

". . . a point where the Westerly line of the right-of-way of U.S. Highway to 187 intersects the North line of the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 29: T. 38 N., R. 113 W. . . ."

The above documents verify that the north line of the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  over which Mr. Boschetto's home was constructed was identified not only in those documents but also by survey prior to acquisition by Mr. Boschetto. The location of that line has also been verified by each subsequent survey completed by Mr. Bishop in 1948, the Sherbel Survey in 1971 and the Harrower survey in 1974.

The tax assessment schedules for 1950 and 1977, received from the Sublette County Assessor call for a 3-acre tract but do not describe the property other than being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 29. The assessor's plat identifies the parcel as being in the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 29. This is not in the area described in H.R. 10160. The assessor's plat is based on Mr. Bishop's subdivision plat prepared in 1948.

Under color of title application dated February 3, 1975, Mr. Boschetto applied for title to the lands described in H.R. 10160 through the Bureau of Land Management pursuant to the Act of December 22, 1928, as amended. The application was rejected by the Bureau of Land

Management. The Interior Board of Land Appeals affirmed the Bureau of Land Management rejection by decision dated July 28, 1975, IBLA 75-427 (21 IBLA 193). - enclosed.

The application further states that he paid \$14,000 to acquire full interest in the property (he received  $\frac{1}{4}$  interest by inheritance), and that the improvements were valued at \$50,000. Reportedly the home, which is approximately  $\frac{1}{3}$  on National Forest land, was constructed in 1957.

We were unable to find any instruments of record conveying or purporting to convey lands in the  $N\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 29 as described in H.R. 10160 to Mr. Boschetto.

The boundaries of the tract described in H.R. 10160 would extend into the Hoback River, yet all of the plats and conveyance documents clearly show that the Boschetto property was approximately 200 feet from the river.

A careful review of all of the available records concerning Mr. Boschetto's claim to title indicates that he has never had title to any of the land described in H.R. 10160.

95TH CONGRESS  
2D SESSION

# H. R. 11168

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19 (legislative day, AUGUST 16), 1978

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

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## AN ACT

To provide for the conveyance of certain public lands in San Bernardino County, California, to the town of Red Mountain, 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 (a) notwithstanding the provisions of the Federal Land  
4        Policy and Management Act of 1976, the Secretary of the  
5        Interior (hereafter referred to as the "Secretary") within  
6        ninety days after the date of enactment of this Act, shall  
7        establish specifications for an association of the residents of  
8        Red Mountain, San Bernardino County, California (here-  
9        after referred to as the "association") which may through  
10       such trustee as they may designate, make application for the

1 conveyance of such lands as are located within the area  
2 described in paragraph (b) of this section. Such application  
3 shall include, inter alia, a complete internal survey of the  
4 area; shall indicate the extent and character of any improve-  
5 ments on any lot and the name or names of the owners (here-  
6 inafter referred to as "owner") thereof; shall indicate all  
7 unoccupied lots and lands; and shall include a general land  
8 use plan for such area.

9 (b) The lands subject to conveyance pursuant to the  
10 provisions of this Act are described as follows:

11 Township 30 south, range 41 east,

12 Section 6; southwest quarter southeast quarter  
13 northeast quarter northeast quarter, southwest quar-  
14 ter northeast quarter northeast quarter, south half  
15 northwest quarter northeast quarter northeast quar-  
16 ter, southeast quarter northwest quarter northeast  
17 quarter, east half southwest quarter northeast quar-  
18 ter, west half southeast quarter northeast quarter,  
19 northwest quarter northeast quarter southeast quar-  
20 ter northeast quarter, northwest quarter northwest  
21 quarter northeast quarter southeast quarter, east  
22 half northwest quarter southeast quarter, east half  
23 southwest quarter northwest quarter southeast quar-  
24 ter, east half southwest quarter southeast quarter,  
25 east half northwest quarter southwest quarter south-

1 east quarter, east half southwest quarter southwest  
2 quarter southeast quarter.

3 Section 7; north half northeast quarter north-  
4 west quarter northeast quarter, north half northwest  
5 quarter northwest quarter northeast quarter, Mount  
6 Diablo Meridian, California.

7 SEC. 2. Within one hundred and twenty days after  
8 receipt of such application from the association, the Secretary  
9 shall determine if it complies with the specifications estab-  
10 lished pursuant to section 1 of this Act. If he determines  
11 that additional information is required, he shall so notify  
12 the association, through such trustee as it may designate,  
13 in order to allow it to supplement or correct such applica-  
14 tion. The Secretary shall require the association to verify,  
15 under oath or otherwise, that the owner is, at the time of the  
16 enactment of this Act and was, on or before February 27,  
17 1978, in fact, the true owner of improvements located within  
18 the area and the association shall certify such verifications  
19 to the Secretary as a supplement to its application.

20 SEC. 3. As soon as reasonably practicable, but not later  
21 than two years after receipt of an application, or corrected  
22 application, complying with the specifications which he estab-  
23 lished, the Secretary shall convey to the association or its  
24 trustee, as he deems appropriate, all unoccupied lots or lands  
25 and all lands presently used for public purposes, and shall

1 convey to the owner verified pursuant to section 2 of this Act  
2 title to the lot (which shall comply as nearly as possible with  
3 the established boundaries of the area now occupied but shall  
4 not exceed one-half of an acre) upon which the improvement  
5 of such owner is located. The Secretary may in his discre-  
6 tion, convey title to all improved lots to the trustee for recon-  
7 veyance to the appropriate owners in order to minimize  
8 administrative costs. Each such deed of conveyance by the  
9 Secretary or reconveyance by the trustee (i) shall convey  
10 the land without cost to the owner, except for payment of the  
11 respective administrative and recording costs which shall be  
12 paid by said association or owner as the case may be; (ii)  
13 shall be subject to any valid existing rights arising under the  
14 laws of the United States unless relinquished by the holder  
15 thereof; (iii) shall reserve to the United States all minerals  
16 in the lands, together with the right to prospect for, mine  
17 and remove minerals under applicable laws and such regula-  
18 tions as the Secretary may prescribe; and (iv) shall contain  
19 such covenants, mutually enforceable between the land-  
20 owners, as the Secretary has determined to be appropriate to  
21 assure compliance with the land use plan submitted pursuant  
22 to section 1 of this Act. In conveying title to any unoccu-  
23 pied lands to the association, or its trustee, the Secretary  
24 may impose such restrictions or reserve such interests as he  
25 deems reasonable and appropriate to assure compliance with

1 the general land use plan and may permit the association or  
2 its trustee to reconvey any or all of such lands: *Provided,*  
3 That the proceeds derived from such conveyance shall be  
4 transferred to the appropriate county or town officials to be  
5 used for public purposes within the town of Red Mountain.

6 SEC. 4. Unless an application for conveyance of the  
7 lands described in section 1 of this Act is received by the  
8 Secretary within five years after the date of enactment,  
9 the provisions of this Act shall expire and such application  
10 shall then be made only pursuant to the provisions of the  
11 Federal Land Policy and Management Act of 1976.

Passed the House of Representatives September 18,  
1978.

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

95TH CONGRESS  
2D SESSION

# H. R. 11451

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, AUGUST 16), 1978

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

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## AN ACT

To establish the true location of a portion of northerly boundary of the Angeles National Forest, located in Los Angeles County, California, on the common line between sections 16 and 17, township 4 north, range 10 west, San Bernardino meridian, and to establish the center quarter corner of said section 16.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        SECTION 1. (a) The north one-half of section 16, town-  
4        ship 4 north, range 10 west, San Bernardino meridian, was  
5        conveyed by the United States to Harry M. Miller by Patent  
6        recorded August 13, 1923, in book 2511 at page 336, Official  
7        Records of Los Angeles County as to a portion thereof, and  
8        the remainder to Herbert Colbeck by Patent recorded De-

1 cember 4, 1923, in book 2883 at page 144, Official Records  
2 of said county; and

3 (b) The south one-half of section 16 and section 17 of  
4 said township and range are now part of the Angeles Na-  
5 tional Forest. A question has arisen as to the true location of  
6 the common boundary of the Angeles National Forest and  
7 the private lands in said section 16; and

8 (c) The section corners and quarter-corners of said sec-  
9 tion 16 were established by the United States Government  
10 surveyors and depicted upon the official plats of said town-  
11 ship approved by the United States Surveyor General on  
12 April 24, 1905, and December 4, 1917; and

13 (d) The southeast, northeast, and northwest corners  
14 and the north and east quarter-corners have been recovered;  
15 however, the southwest corner and the south and west quar-  
16 ter-corners of said section 16 have been thoroughly searched  
17 for on several occasions by both public and private surveyors  
18 without success; and

19 (e) The Los Angeles County surveyor, while running  
20 the boundary of the Angeles National Forest in 1933, being  
21 unable to find the original west quarter-corner of said section  
22 16, set a monument marked "County Surveyor's Monument  
23 Forest Reserve Cor. R.E. 62 J-249-FB", at the thoretically  
24 correct location of said west quarter-corner to wit: one-half

1 mile south of the found northwest corner and one mile west  
2 of the found east quarter-corner of said section 16; and

3 (f) Numerous surveyors and private parties have ac-  
4 cepted said county surveyor's monument marked "Forest  
5 Reserve Corner" for the past forty years as the true west  
6 quarter-corner of said section 16 and have subdivided, resub-  
7 divided, and improved such private lands by constructing  
8 houses, roads, wells, utilities, and pipelines within the north  
9 half of said section in relation thereto; and

10 (g) There are currently numerous parcels of land in  
11 private ownership within the north half of said section 16,  
12 the boundaries of which would be seriously disrupted should  
13 the west quarter-corner of said section be reestablished in any  
14 location other than that of the 1933 county surveyor's monu-  
15 ment marked "Forest Reserve Corner".

16 SEC. 2. (a) In order to dispel any uncertainty and to  
17 insure that the boundaries of said private land not be need-  
18 lessly disrupted, it is hereby found and declared that the 1933  
19 county surveyor's monument market "County Surveyor's  
20 Monument Forest Reserve Cor. R.E. 62 J-249-FB", which  
21 was set at a point one-half mile south of the northwest corner  
22 and one mile west of the east quarter-corner of said section 16,  
23 as said corners and monument are shown on the county sur-  
24 veyor's map B-745 on file in the Office of the County Engi-

## 4

1 neer of the County of Los Angeles, is at the true location of  
2 said west quarter-corner as originally set by the Government  
3 Land Office Survey or in 1912 and depicted upon the plat of  
4 township 4 north, range 10 west, San Bernardino meridian,  
5 approved December 4, 1917.

6 (b) It is further found and declared that the south line  
7 of the north half of said section is a line connecting the east  
8 and west quarter-corners hereinabove mentioned and that the  
9 center quarter-corner of said section is located at the mid-  
10 point of the south line of the north half of said section 16 as  
11 hereinabove established.

Passed the House of Representatives September 19,  
1978.

Attest: EDMUND L. HENSHAW, JR.,

*Clerk.*



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20240

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

SEP 7 - 1978

Dear Mr. Chairman:

This responds to your request for our views on H.R. 11451 as reported by the House Committee on Interior and Insular Affairs, a bill "To establish the true location of a portion of northerly boundary of the Angeles National Forest, located in Los Angeles County, California, on the common line between sections 16 and 17, township 4 north, range 10 west, San Bernardino meridian, and to establish the center quarter corner of said section 16."

We recommend against enactment of the bill. It is our view that enactment of H.R. 11451 could undermine the official survey system established for public lands.

H.R. 11451 states that certain lands in section 16, township 4 north, range 10 west, San Bernardino meridian, were patented to named individuals; that section corners and quarter corners of section 16 were established and depicted on plats approved by the United States Surveyor General on April 24, 1905, and December 4, 1917; that certain events took place subsequently, including "acceptance" of a 1933 county survey of the boundary of the Angeles National Forest; and that private ownership of various tracts would be seriously disrupted if the section were reestablished in any location other than that of the 1933 county surveyor's monument. The bill finds and declares that the 1933 surveyor's monument "is at the true location of (the) west quarter-corner as originally set by the Government Land Office Surveyor in 1912 and depicted upon the plat of township 4 north, range 10 west, San Bernardino meridian, approved December 4, 1917."

The survey problem addressed by H.R. 11451 apparently stems from establishment of a corner monument by a County Surveyor in 1933 near the  $\frac{1}{4}$  section corner of sections 16 and 17, T. 4 N., R. 10 W., S.B.M. He was unable to recover evidence of the original monument as established by the United States General Land Office, now the Bureau of Land Management. His survey procedure was not in conformance with existing survey rules, and his map indicated that his monument was not the  $\frac{1}{4}$  section corner of sections 16 and 17.

Mr. H. G. Felber and Mr. James O. Bennett, private surveyors, executed surveys in 1952 and 1953, respectively, and, in our opinion, did not follow proper survey procedures. Apparently, the area was subdivided based on these surveys. Since these surveys and the 1933 survey involved private lands, the United States does not assume jurisdiction over or responsibility for them.

Subsequently, the County Engineer conducted a survey in connection with the Master Plan of Highways in 1972-73 and did reestablish the  $\frac{1}{4}$  section corner of sections 16 and 17, the southwest section corner of section 16, and the  $\frac{1}{4}$  section corner of sections 16 and 21. This latest survey does not agree with the previous private and county surveys and would place some of the occupants of the Juniper Hills subdivision in trespass with respect to National Forest lands. The Bureau of Land Management's State Office in California examined the methods employed by the County Engineer and was of the opinion that, if a resurvey was executed by BLM for the purpose of delineating the public lands, BLM's solution would be very close to the County Engineer's survey.

We cannot give a final opinion as to the accuracy or adequacy of any of the county or private surveys in question since we have not been requested by the U.S. Forest Service to execute a resurvey of the subdivisional lines affected. Even though we stated previously that the Bureau of Land Management would probably have a survey solution close to the County Engineer's survey of 1972-73, we cannot state absolutely that the monument set in 1933 is an unacceptable corner monument. There are too many factors to be considered. Our final determination would be based on the professional judgment of a cadastral surveyor assigned to a resurvey and a thorough examination of all relevant evidence so disclosed.

However, we have several reasons for objecting to H.R. 11451. Enactment of H.R. 11451 in its present form could undermine our entire public land survey system. It would declare that a possibly erroneous, unofficial survey is correct and would adopt that survey as the official survey. This would be done indirectly through a "finding" that the monument set in 1933 is at the "true location" of the quarter corner set in 1912 by the Government Land Office Survey. We believe that H.R. 11451 could become a precedent setting bill, creating a tendency to rely on similar private bills to reestablish "lost" section corners and to resolve survey problems.

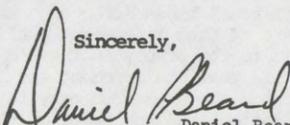
We also object to H.R. 11451 because the survey methods incorporated in the bill are not in accordance with existing statute and case law governing boundaries of public land. For example, section 2(b) of the bill establishes the center  $\frac{1}{4}$  section corner in a manner that is not in compliance with Revised Statute 2396 (43 U.S.C. 752), which contains the procedures for subdividing sections. The center one-quarter of a section is determined at the intersection of the two centerlines of a section.

It should be noted also that changes in surveys often have a ripple effect. In this case, there may be a potential for affecting lands other than those involved in H.R. 11451. We would have to look into the case further to determine specifically what problems of this nature, if any, would be created by H.R. 11451.

We understand that the Department of Agriculture has included with its report a proposed substitute bill which provides for conveyance of the forest lands inadvertently occupied. We have no objection to enactment of the Agriculture Department's proposed substitute bill.

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,

  
Daniel Beard  
Acting Assistant SECRETARY

95TH CONGRESS  
2D SESSION

# H. R. 12772

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IN THE SENATE OF THE UNITED STATES

AUGUST 17 (legislative day, AUGUST 16), 1978

Received; ordered held at desk

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## AN ACT

To facilitate the exchange of certain lands in the State of Oregon,  
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 (a) in order to facilitate the exchange of certain lands  
4        in the State of Oregon for purposes of enlarging the Ecola  
5        State Park, the Secretary of the Interior (hereinafter referred  
6        to as "the Secretary") is authorized and directed to convey to  
7        the State of Oregon the reversionary interest retained by the  
8        United States pursuant to the first proviso of the first section  
9        of the Act of August 11, 1916 (39 Stat. 505) in a tract com-  
10        prising about one hundred and sixty acres and described as  
11        the northwest quarter, section 8, township 5 north, range 8  
12        west, Willamette meridian. Such conveyance shall be made,

1 upon relinquishment to the Secretary of patent numbered  
2 602062 by the State, by issuance of a new patent describing  
3 all lands which were described by patent numbered 602062.  
4 The conveyance directed by this section shall be made only if,  
5 in the judgment of the Secretary, the requirements of sections  
6 2 and 3 of this Act have been met by the State.

7 (b) The new patent issued under subsection (a) hereof  
8 shall contain all reservations and exceptions required by the  
9 Act of August 11, 1916, and contained in patent numbered  
10 602062 except that the reverter provision contained in the  
11 proviso referred to in subsection (a) shall not apply to the  
12 one-hundred-and-sixty-acre tract described in subsection (a)  
13 of this section.

14 SEC. 2. No conveyance shall be made and no new patent  
15 issued pursuant to this Act unless the State of Oregon has  
16 shown to the satisfaction of the Secretary that—

17 (a) the lands described in the first section of this  
18 Act will be exchanged for lands of at least equal value, or  
19 if not of at least equal value that the values will be  
20 equalized by payment of money or other consideration  
21 to the State;

22 (b) the lands received by the State in exchange are  
23 at least as suitable for park purposes as the lands  
24 conveyed;

25 (c) the lands obtained by exchange by the State  
26 will be used for public park purposes in perpetuity; and





United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 29 1978

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

Dear Mr. Chairman:

Your Committee has requested the views of this Department on H.R. 12772, as it passed the House on August 15, 1978, a bill "To facilitate the exchange of certain lands in the State of Oregon, and for other purposes."

We would have no objection to enactment of the bill.

H.R. 12772 would direct the Secretary of the Interior to convey the reversionary interest of the United States under the first proviso of the first section of the Act of August 11, 1916, in a certain 160-acre tract, to the State of Oregon. The conveyance would be made upon surrender of patent numbered 602062 by the State and issuance of a new patent covering the same lands. The new patent would contain all reservations and exceptions required by the Act of August 11, 1916, and contained in patent 602062 except that the reverter provision would not apply to the 160-acre tract in question.

H.R. 12772 as passed by the House contains, in addition to the above, two provisions, sections 2 and 3, which guarantee protection of the United States' interest in the conveyance and bring the Act into closer conformity with the purposes of Congress in granting the lands involved.

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,

Assistant SECRETARY

Guy R. Martin

Senator BUMPERS. The Government witnesses will be first and our first witness is Mr. James Monroe, Assistant Director for Legislation and Plans, Department of the Interior.

**STATEMENT OF JAMES W. MONROE, ASSISTANT DIRECTOR FOR LEGISLATION AND PLANS, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Mr. MONROE. Good morning, Mr. Chairman. I am accompanied this morning by two members of the Bureau's Division of Legislation and Regulatory Management, Ms. Eleanor Schwartz and Lois Fein. They will be available if you need them.

We appreciate the opportunity to present our views on 18 separate bills this morning. In order to provide the framework for our discussion, I would like to discuss those bills to which we have no objection as introduced or with our suggested amendments and then to offer our comments on those bills which we do not support.

S. 3175 and H.R. 12772 would direct the Secretary of the Interior to convey the reversionary interest of the United States contained in the act of August 11, 1916, in a certain 160-acre tract, to the State of Oregon. We have no opposition to the bill, Mr. Chairman, but we do have a substitute bill we have submitted with our formal report.

It is generally identical to the House passed version and we would have no objection if the Senate adopted the House language.

H.R. 6463 would reinstate certain Federal oil and gas leases in the State of Utah which were held to be terminated by operation of law. The Department has no objection to this bill and would not oppose its enactment.

H.R. 6997 would authorize the return to the Fairbanks North Star Borough of about 4 acres of vacant land which the borough had donated by a warranty deed in 1970 to the United States for use by the Bureau of Indian Affairs as a school dormitory site.

On this bill, the Bureau of Indian Affairs, represented by Martin Seneca this morning, has a formal statement. We ask that the statement of the Bureau of Indian Affairs be inserted for the record.

Senator BUMPERS. No objection.

Mr. MONROE. If there are questions, Mr. Seneca is available to help in any way.

H.R. 7588 and H.R. 7971 are similar bills which would validate and confirm conveyances made by the Southern Pacific Transportation Co. of certain lands within rights-of-way granted to it. The bills would confirm conveyance of certain lands in Los Angeles County, Calif., to the successor in interest of the grantee of Southern Pacific.

Our reports recommend several technical corrections to H.R. 7588 and other criteria regarding the center line of the main track and all the reserved minerals being held to the United States. The criteria are met in the situations addressed by both bills and we would have no objection to their enactment.

H.R. 7849 would convey approximately 5 acres of land near Helena, Mont. to five named individuals or their successors in interest. The land was withdrawn in 1946 for the Bureau of Reclamation as part of the Pick-Sloan Missouri Basin program. It was apparently subsequently entered and improved by the occupants due to an erroneous private survey.

We generally do not support legislation providing for conveyance of land to private parties who are occupying the lands in trespass. However, H.R. 7849 provides for payment of fair market value and administrative costs, and reserves the mineral estate.

We believe the bill as drafted would be difficult to implement because it is not clear how the tracts would be distributed and to whom patents would be issued. The problem is described in more detail in our report. We suggest that it be amended to correct the problem.

H.R. 11168 would provide a means of conveying to the residents of the town of Red Mountain, Calif. about 140 acres of public land which they currently occupy.

Senator BUMPERS. Let me interrupt you for a moment on the last item, H.R. 7849. Is there no provision in the bill to indicate how this land is to be distributed, who the grantees are?

Mr. MONROE. That is correct, sir.

Senator BUMPERS. Do you have that in your report you say?

Mr. MONROE. Yes, sir, it is explained in our report in greater detail and we recommend amendments to clarify it.

Senator BUMPERS. Thank you, go ahead.

Mr. MONROE. H.R. 11168 would convey 140 acres of public land in California, to a little community called Red Mountain, Calif. It is a very historic mining town and an interesting community.

Our major concern about this bill is that it does not provide for payment of fair market value, in accordance with provisions of the Federal Land Policy and Management Act of 1976.

In this case, we find no basis for an exception to the fair market value mandate. We do believe that, in lieu of this legislation, the Organic Act, as it is called, for the Bureau of Land Management provides ample authority to handle this matter. However, in an effort to resolve the situation, recognize past use and that improvements have been made on the property, we have provided a draft bill with our report to accomplish the purpose of conveyance of the land.

We note that it would provide for payment of fair market value but the price would reflect the various reservations and conditions imposed by the bill as well as the fact that the beneficiaries would provide an internal survey of individual lots.

If the lands were transferred in a block to the trustee, called for by our substitute legislation and by H.R. 11168, we estimate fair market value to be about \$75 to \$100 per acre. Our substitute bill would resolve the fair market value issue with a certain amount of precision and without imposing undue hardship on the residents, most of whom have approximately half acre lots or less. We feel that payment of half of \$75 to \$100 would certainly not be a major burden on them but would be consistent with the philosophy of payment of fair market value.

S. 3445 would authorize and direct the Secretary of the Interior to pay out of money appropriated to the Department of the Interior, to three individuals, such sums as he determines they are legally and equitably entitled to as compensation for losses—including reasonable attorney fees—resulting from an allegedly erroneous approval of purported conveyances of some 18.75 acres of trust land located on the Quinault Indian Reservation in Washington.

We recommend that the bill be enacted. The Bureau of Indian Affairs, again represented by Mr. Martin Seneca, has a statement this morning that I ask be submitted for the record.

Senator BUMPERS. Without objection.

[The statement follows:]

STATEMENT OF MARTIN E. SENECA, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES,  
BUREAU OF INDIAN AFFAIRS

Mr. Chairman and members of the Committee, my name is Martin Seneca. I am Director of the Office of Trust Responsibilities, Bureau of Indian Affairs. I am pleased to testify in favor of enactment of S. 3445.

The bill would authorize and direct the Secretary of the Interior to pay, out of any money appropriated to the Department of the Interior, to Marian Law Shale Holloway, Adeline Mary Gill Charles, and Eliza Shale Carstens (or to their estates) such sums as he determines each is legally and equitably entitled to as compensation for losses (including reasonable attorney fees) resulting from his "erroneous approval of purported conveyances" of some 18.75 acres of trust land located on the Quinault Indian Reservation in Washington and more specifically described in the bill. Section 2 would provide a standard prohibition against the payment of more than ten percent of the funds appropriated for said payments for the services of any agent or attorney in connection with this claim.

The trust land in question was validly conveyed in 1931 by Harry Shale to his wife, Eliza Shale. In 1951, Bureau of Indian Affairs officials, acting on behalf of the United States and the Secretary of the Interior, inadvertently and erroneously approved a purported sale of the same trust land from Harry Shale to the United States in trust for Marian Law Shale Holloway. Ms. Holloway, who is a Quinault Indian, paid \$5,000 for the land from funds held in trust for her by the Bureau of Indian Affairs on behalf of the United States and the Secretary of the Interior.

In 1953 and 1955, the Bureau of Indian Affairs inadvertently and erroneously approved purported sales by Ms. Holloway of two 2-acre portions of the land involved in the purported 1951 sale for which she received a total of \$2,400. The purchasers in these purported sales were also Quinault Indians who utilized trust funds in their purchases.

The mistake of the 1951 approval was not discovered until 1968, some twelve years after the death of Harry Shale. Mr. Shale's estate has been probated and proceeds distributed so that no recourse is available against him or his estate for his purported sale of the land in 1951 which he had previously sold in 1931 to his then wife, Eliza Shale.

As indicated below, we believe that the United States owed Ms. Holloway and the 1953 and 1955 Quinault purchasers the duty of assuring that they would obtain clear titles prior to approving the purchases and sales of the restricted land involved and prior to approving the related expenditures of trust funds. Under the provision set out in 25 U.S.C. 379, such purchases and sales require the approval of the Secretary of the Interior (or his delegate) who has set up a procedure by which such sales can be made (25 CFR 121.22 to 121.31).

Pursuant to the statutory provision set out in 25 U.S.C. 5, the Secretary has established a system to maintain land records and title documents (25 CFR 120.1). These land records are maintained by the Secretary on behalf of the United States and are the only title records of Indian land. As such, they are relied upon by Indian people and by all persons who have transactions with Indians related to trust lands.

We do not mean to imply that a duty to maintain these land records is owned by the United States to everyone who deals with Indian people. However, it is inescapable that the United States, acting through the Secretary of the Interior and his delegates, has an obligation to maintain these records as part of its trust responsibilities in approving sales of trust land and in approving the expenditure of trust funds for such land. We believe that this trust responsibility was breached by approval of the deeds and sales of restricted land in each of the three purported sales (1951, 1953, and 1955) and by the approval of the expenditures of trust funds in connection with each such sale.

Any right of action relating to those purported sales, Ms. Holloway or the 1953 and 1955 purchasers may have had to sue the United States is apparently now barred by the statute of limitations (28 U.S.C. 2401) and 2501). However,

we understand that a suit may still be held in abeyance to give the plaintiff the opportunity to appeal to the Congress for relief.

We believe that the erroneous approval by the Bureau of Indian Affairs (on behalf of the United States) of the purported 1951 sale to Ms. Holloway and the related expenditures of her trust funds justifies the United States providing compensation. Similarly, the erroneous approvals of the purported 1953 and 1955 sales and the related expenditures of the purchasers' of trust funds, justified the United States providing compensation to those purchasers. Ms. Holloway's losses were lessened by the 1953 and 1955 sales and her compensation should be adjusted accordingly. Therefore, compensating the 1953 and 1955 purchasers would not increase the total compensation paid by the United States.

The amount of compensation due Ms. Holloway would be the sum of (1) the \$5,000 she paid for the land in 1951 plus interest compounded at the interest rates and intervals which would have applied if the funds had stayed in trust until the purported 1953 sale, plus (2) the interest calculated on the balance of such trust fund at the time of the purported 1953 sales less the \$2,000 received by Ms. Holloway at that time with such interest compounded at the rates and intervals which would have applied if the funds had stayed in trust until the purported 1955 sale, plus (3) the interest calculated on the balance of such trust fund at the time of the purported 1955 sale less the \$400 received by Ms. Holloway at that time with such interest compounded at the rates and intervals which would have applied if the funds had stayed in trust until the date the compensation is paid by the United States to Ms. Holloway. In addition, the draft bill would allow her to receive compensation for reasonable attorney fees which she has incurred as the result of the erroneous approval by the Secretary.

The purported 1953 sale was to Adeline Mary Gill Charles (Quinault Allottee No. 1094) and the purported 1955 sale was to Eliza Shale Carstens (Quinault Allottee No. 918). The amount of compensation to be paid to each of these persons would be calculated in the same manner as described above for Ms. Holloway.

If the payments are calculated as set out above and are paid this calendar year, we estimate the total to be about \$16,000.

It should be noted that Eliza Shale Carstens, the purchaser of the two acres in the purported 1955 sale was also the purchaser (Eliza Shale) of the entire 18.75 acres in the valid 1931 sale. However, we do not feel that this fact alters the justification for compensation to her for her loss of funds due to the Bureau of Indian Affairs approval of both the 1955 sale and the related expenditure of her trust funds.

In line with section 1(b) of the draft bill, the payment to each of the three parties would be in full satisfaction of all claims they may have against the United States in connection with the approvals of the purchases and sales and the expenditures of trust funds and they would be required to execute releases to that effect and such other documents as may be necessary to clear any cloud on the title to the land in question. In addition, the 1953 and 1955 purchasers would be required to execute releases for any claims they may have against Ms. Holloway in connection with the purported 1953 and 1955 sales.

Information available in the Office of the Area Geologist, Menlo Park, California, shows that the acreage in question is located within an area which has been classified valuable prospectively for oil and gas. Exploratory drilling has produced indications of oil and gas but, as yet, no producible quantities have resulted.

H.R. 6997 would authorize the return to the Fairbanks North Star Borough of some 173,218 square feet of land which the Borough had donated by a warranty deed dated December 31, 1970, to the United States for use by the Bureau of Indian Affairs as a school dormitory site. It has since been determined that the Bureau of Indian Affairs will not build the dormitory and we believe that it would be appropriate to return the land to the donor as they have requested. The land is located adjacent to two public schools and a hospital site. The BIA has no use for the site.

The parcel consists of about 4 acres of vacant lands between two schools in a developed area of Fairbanks. The original homestead covering the lands in question was patented on April 16, 1917. Sometime after patenting, the city acquired the property.

On November 11, 1979, the land was sold to the North Star Borough for \$11,857. Later the Borough deeded it to the Bureau of Indian Affairs. If the Bureau of Indian Affairs disposes of the property under existing law, it appears it would go to the General Services Administration for further action since no public lands are involved. We think it is inappropriate to return the land to the donor and H.R. 6997 is the vehicle to accomplish this return.

Mr. MONROE. On some of the remaining bills, we have some objections.

Senator BUMPERS. Just a minute on that last bill—OK, go ahead.

Mr. MONROE. On H.R. 3121 and S. 1634, both bills would convey to Walter Hernandez of Cuba, N. Mex., without payment of consideration, certain lands in New Mexico comprising about 40 acres. In addition, H.R. 3121 would make any conveyance subject to an outstanding Federal oil and gas lease and would reserve to the United States all rents and royalties payable under the lease.

While we support the provision in H.R. 3121 preserving the existing oil and gas lease and recommend inclusion of this language in S. 1634 if it is to be further considered, we strongly oppose enactment of either bill.

Mr. Chairman, might I ask—

Senator BUMPERS. Yes, is this your bill, Senator Domenici?

Senator DOMENICI. Yes. H.R. 3121 covers the exact same land and has passed the House. It does have the reservation with reference to an outstanding oil and gas lease that is not in S. 1634. If I understand you correctly, you are saying that if we do go with my bill, S. 1634, you do recommend the reservation language contained in the House bill regarding the oil and gas lease?

Mr. MONROE. Yes, but the final line is that we oppose enactment of either.

Senator DOMENICI. Do I understand correctly that this 40-acre tract of land, for some unknown reason, has had two U.S. patents issued to two different people, thus creating two changes of title? Is that correct?

Mr. MONROE. In general it is; yes, sir.

Senator DOMENICI. The U.S. Government quieted title to a larger tract of land, some 3,900 acres and within that was the 40, is that correct?

Mr. MONROE. Yes, sir.

Senator DOMENICI. Do I understand that the Federal Government's position with reference to quieting out the interest of Mr. Hernandez, is that this is not necessary under the theory that he had notice because the predecessors in the chain of title to the patentee that was not in his chain had notice; is that right?

Mr. MONROE. In effect, yes, sir. What happened at the time was that there was no requirement for personal service and notice was published in a local newspaper but there was no personal service on one of the other owners.

Ms. Schwartz has an additional comment.

Ms. SCHWARTZ. The notice was not through the other chain of title, it was through publication of notice that was intended for Hernandez' predecessors and any other interested persons. We do not say that the notice was through the other patentee.

Senator DOMENICI. But the point is that a search of title here on—there are two patents and a search of the chain of the patent under which he claims title would indicate that he had received this land and was living on it. Is that not correct? You merely got him out of the title by notice and publication.

Ms. SCHWARTZ. By condemnation action. It was only by a condemnation action that the title was cleared.

Senator DOMENICI. Condemnation or quiet title?

Mr. MONROE. Condemnation.

Mr. WOODCOCK. The patents were issued in the twenties as I recollect, sir, and in the early forties there was a condemnation proceeding brought under New Mexico condemnation proceeding laws pursuant to which the Federal Government reacquired title to the land.

Senator BUMPERS. But they failed to serve notice on Mr. Hernandez' predecessor; is that it?

Mr. WOODCOCK. Under those procedures, it was not necessary since it was an action against the land itself and not against individuals. It was not necessary that personal service be effected. The court's jurisdiction was acquired through service by means of publication which is the standard proceeding in condemnation actions.

Senator BUMPERS. What was shown up in a title examination? In Arkansas, we have abstracts and we have abstracts examined to show the chain of title. If he had a title examination, would there be anything to reflect the flaw in the title to Mr. Hernandez before he bought it?

Mr. WOODCOCK. There would be public records, records to the fact that the United States acquired title through condemnation proceedings. Apparently what occurred was that the property was acquired without going through the normal title clearing practice of a title search before Mr. Hernandez reportedly purchased the property.

Senator BUMPERS. How many acres are involved?

Senator DOMENICI. Let me state this, Mr. Chairman. The chain of title under which he claims the Casados chain, there was a conveyance in 1921 before the condemnation suit, in answer to the Chairman's question, to one Mr. Young and many years later, Young in his will willed that land to Mr. Hernandez in whose behalf Congressman Lujan and I have introduced this bill.

If there would have been your kind and my kind of abstract search, they would have found title in John F. Young and they did not condemn against him but used an in rem procedure for condemnation which means he gets public notice, Mr. Chairman.

Senator BUMPERS. Was Young's title good?

Senator DOMENICI. From everything we know, the Federal Government has no explanation as to why two patents to the same 40 acres were issued. So there would have been two chains running down with patentees so, but for this condemnation, there would have been an argument between them.

But they have completely wiped Mr. Hernandez out in an in rem action under a condemnation proceeding for which he received no compensation, I assume or he would not be here.

Mr. WOODCOCK. The abstract would have also shown that the Federal Government had an interest in the land, if they had done a normal complete record search of the title. I don't think there is any question, as far as I know, that error was made initially when the patents were issued by the old land office.

There were two chains of title created and the condemnation proceeding in effect remedied that situation by revesting title in the United States. This would be on the record.

Senator DOMENICI. Of course that would be on the record but that is not what we are talking about. When there is a will that bequeaths

a piece of land and the devisee says let me go out and see if I own it, certainly there is a record of a condemnation action a few years before by the Federal Government.

But that is why he came to us saying I got locked out of 40 acres, not that I bought but that were willed to me. I understand what you are saying but you don't go look that up when you—

Mr. WOODCOCK. I am sympathetic to the gentleman's situation but he is in no different boat than anyone else who owns property in a condemnation proceeding who does not necessarily receive personal service in that action.

Senator DOMENICI. I have no further questions.

Senator BUMPERS. One further question. Since this was an in rem proceeding, was it published, was his name included in the publication?

Mr. WOODCOCK. Presumably not.

Senator BUMPERS. I wonder why the Government did not make any effort to find out who the occupier of the property was?

Mr. WOODCOCK. I am not familiar with the specifics of the condemnation proceeding. However, the proceeding was brought pursuant to the New Mexico condemnation laws at the time. The Federal condemnation proceeding laws were not in effect at that time.

Senator BUMPERS. I hate to judge New Mexico law but it's strange law where the United States or any other commonor was put in a position to at least make a good faith effort to find out who the title holder was or who the possessor of the property was.

You can run a publication in the newspaper, and it's done all the time, describing property. But Hernandez might be illiterate for that matter and there was no good faith effort made to notify him of the condemnation proceeding.

It does seem a little unequitable and I think the Department has a fairly good case to make in opposing this bill. By the same token, I I am not sure that the United States, even though it complied with the letter of New Mexico law was not somewhat at fault in not making a better effort.

Of course, you don't really know exactly how the proceeding took place, do you?

Mr. WOODCOCK. No, sir, we have not looked at the initial condemnation proceeding.

Senator BUMPERS. Pete, do you have any copy of the newspaper publication?

Senator DOMENICI. No, I don't, but I would say that even under the in rem proceeding in New Mexico, the Federal Government failed in this case to name the people in the stray patent. In other words, they looked through one of the patents and named the people and then said if you are surviving, you are notified, and if you are dead, you are notified in this publication.

They have to make a good faith effort in New Mexico to serve the living people, I want to know that, Mr. Chairman.

Senator BUMPERS. That's what I was asking. In our State, you not only have to not only make a good faith effort but you have to take action to determine who the owners are.

Senator DOMENICI. The only way this man would have even got notice that way is if he would have seen, read a notice and saw 3,290

acres described and happened to know that his 40 was within it. Even his predecessors in the chain were not in the notice as people with an interest, if dead or if living, because those in the second patent under which he and his predecessors had been paying taxes since 1922 were not named.

That's the way I understand it. You had two patents out there and you followed the chain of title of one and not the other and this man is supposed to have lost his 40 acres by notice that a block of land and some people that he might have known had a similar chain to his. That's the way I see it.

Ms. SCHWARTZ. May I give you a little bit of the background? The condemnation action was in 1942. In 1946, the Attorney General of the United States found that the proceedings were regularly conducted and valid fee simple title was vested in the United States.

It was not until 1957 that Mr. Hernandez bought the land we are talking about. He bought it from the Casados who had the second patent. So he did not acquire title—

Senator DOMENICI. He did not buy it, ma'am, excuse me for interrupting.

Ms. SCHWARTZ. Our records show that Casado sold the tract to John Young and John Young's son-in-law, Hernandez, paid taxes on it. That's what our records show but this was not until 15 years after the condemnation action which was by then a longtime matter of record.

Senator DOMENICI. My records reflect that in 1921, Dominga Casado, widow of Jose Casado, a patentee, one of the two patentees, sold the land to one John F. Young. Following John Young's death in 1957, the land in question was willed to Walter Hernandez who is the subject in this bill.

That's a little bit different, to have it willed in 1957 than to have bought it. Mr. Young's entry in this chain was far ahead of 1957 from what I have in my records.

Senator BUMPERS. When did he acquire under the will?

Senator DOMENICI. 1957, Hernandez did.

Senator BUMPERS. No, I'm talking about Young. Young purchased it from Casado?

Senator DOMENICI. Yes.

Senator BUMPERS. When was that?

Senator DOMENICI. 1922, we believe.

Senator BUMPERS. The land was patented in 1921 to Casado?

Ms. SCHWARTZ. 1922 to Casado.

Senator BUMPERS. And then it was sold to Young who devised it to your man, Hernandez?

Senator DOMENICI. Yes.

Senator BUMPERS. In 1957. When did the condemnation proceeding take place?

Ms. SCHWARTZ. 1942.

Senator BUMPERS. Was this land actually occupied, did anyone have adverse possession of the place during that period of time?

Mr. MONROE. We don't believe so.

Ms. SCHWARTZ. I don't think so.

Senator BUMPERS. Is the land not located within the city limits of any community?

Mr. MONROE. It's in Sandoval County.

Senator DOMENICI. No, it's not, it is rural land.

Senator BUMPERS. Is it arable land?

Senator DOMENICI. As I understand it, it is in a growing area but it's very remote from anything from what I understand, Mr. Chairman.

Ms. SCHWARTZ. We found no occupancy when we checked it out in 1974. At one time, the Cuba independent schools may have had a permit on it but there was no occupancy in 1974 when we checked it out.

Senator BUMPERS. Let's move on to S. 3245 and H.R. 11451.

Mr. MONROE. S. 3245 and H.R. 11451 would recite the history of a particular trespass situation affecting certain lands in Los Angeles County, Calif., and would state that private ownership of various tracts would be seriously disrupted if a corner of a certain section were reestablished in any location other than that of the 1933 county surveyor's monument.

The bills would find and declare that the 1933 surveyor's monument "is at the true location of (the) west quartercorner as originally set by the Government Land Office Surveyor in 1912 and depicted upon the plat of Township 4 north, range 10 west, San Bernardino meridian, approved December 4, 1917."

We recommend against enactment of S. 3245 and H.R. 11451. It is our view that these bills would severely undermine the official survey system established for the public lands and would set a precedent for disruption of the system through the Western States wherever there are unauthorized occupancy problems.

In essence, S. 3245 and H.R. 11451 would declare categorically that a possibly erroneous, unofficial survey is correct and would adopt that survey as the official survey. This would be done indirectly through Federal recognition of the integrity of the monument set in 1933, thus undermining our public land survey system by creating a precedent of relying on private legislation to resolve survey problems.

We also object to S. 3245 and H.R. 11451 because the survey methods incorporated in the bills are not in accordance with existing statute and case law governing boundaries of public land. This is explained further in our report.

Senator BUMPERS. Do you have some maps with you?

Mr. MONROE. Yes, sir, the representative from the Forest Service, Mr. Raymond Housley is here and he has some maps.

Senator BUMPERS. Let's take a look at those. Staff tells me this is a fairly serious matter.

Mr. MONROE. I also have with me Mr. Keith Williams of our Cadastral Survey Division who is the expert in this regard.

Senator BUMPERS. Explain this, please.

Mr. HOUSLEY. This is the corner, established 1933, the monument.

Senator BUMPERS. Who established that corner?

Mr. HOUSLEY. The county surveyor. It's not a corner, it's a monument agreed on by the county surveyor, Forest Service property. This is a corner established by the county surveyor in 1973 as the official corner. It gives the triangular shape to the land.

Senator BUMPERS. How much land is involved in that?

Mr. HOUSLEY. Approximately 15 acres.

Senator BUMPERS. In the triangle marked off in green, there's 15 acres of land?

Mr. MONROE. Approximately.

Senator BUMPERS. Are there improvements on it?

Mr. HOUSLEY. No improvements.

Senator BUMPERS. Let's talk about this bill again. It looks to me, reading your testimony, that the facts in this case are very clear. They have built a development based on that county surveyor's corner and then they find in 1973 that that's not the right corner and they are asking the United States to convey the land in accordance with the original understanding and make the county surveyor's corner the correct one, is that right?

Mr. MONROE. Yes, sir.

Senator BUMPERS. You can't make it the correct corner, you can simply convey the land?

Mr. MONROE. Correct. We are not 100 percent certain that that is an erroneous corner.

Senator BUMPERS. That the 1933 marker is erroneous?

Mr. MONROE. It's really up in the air. We are not certain where the true corner is. We have not been asked or had an opportunity to check it out.

Senator BUMPERS. How did this legislation come about?

Mr. MONROE. A need to resolve the title of the 15 or so acres.

Senator BUMPERS. Who established this 1973 corner?

Mr. WILLIAMS. Another county surveyor.

Senator BUMPERS. Is this surrounded by Federal lands or National forest lands?

Mr. HOUSLEY. It's National Forest Service land on the west—

Senator BUMPERS. What forest is that?

Mr. MONROE. The Angeles National Forest.

Senator BUMPERS. Do you have an estimate of the value of that 15 acres of land?

Mr. HOUSLEY. Approximately \$2,000 an acre.

Senator BUMPERS. Does that have any effect on the rest of the land in that subdivision?

Mr. MONROE. It very well could have a ripple effect. We are not certain because we have not seen their title documents.

Senator BUMPERS. How could it?

Mr. MONROE. By changing the boundary there, if all the rest of the lots in that subdivision were measured from that one corner. We are not certain which corner the subdivision was plotted from.

Senator BUMPERS. Any description of a lot within that subdivision that used that original corner, unless this bill is enacted, would be in error. But that does not necessarily mean that they would not have the full number of feet their lot called for, does it? In other words, the original—let me think for a second.

Mr. WILLIAMS. It would end up in the same area but it would move so the area would not include the improvements.

Senator BUMPERS. Any time you have an original grantor and grantee, if the original grantor owned all of that land there, you could simply draw a correction deed and the grantee would still get the property he was supposed to get and no one would be damaged except if the grantor owned that entire tract including the 15 acres, then he would just have to keep that.

Are you following me on that, am I wrong on that or not? Let me put it this way. Pick out a lot on this side of the map. That lot right

there, let's assume that begins at a point 500 feet east of the southwest corner and refer to the original corner marker.

Now, that's 100 feet across that green line there. To draw up a correction deed, you would simply say beginning 900 feet east of the new corner. If the original grantor owned all of that land in there, he would be in a position to do that, would he not, so that every lot in there would not be skewed?

Mr. HOUSLEY. That's correct. They could have an exchange of deeds.

Mr. MONROE. You could readjust all the deeds, if necessary.

Mr. HOUSLEY. You could deed the property back to the association and the association could reconvey deeds back to the property owners with the correct description.

Senator BUMPERS. Did the Federal Government know about this prior to the introduction of this bill, did the Forest Service know that these people were occupying that land? They don't know it yet, do they?

Mr. MONROE. Yes, sir, I'm sure they did.

Mr. HOUSLEY. We were aware there was a problem in here, because of the 1973 county surveyor establishing the quartercorner here. We were aware that there was a problem.

Senator BUMPERS. How many feet is that, do you have a survey there, how many feet between the two erroneous corners?

Mr. WILLIAMS. I believe it's about 225 feet.

Senator BUMPERS. Is that a quarter of a mile—it's more than a quarter of a mile if there are 15 acres in there.

Mr. HOUSLEY. Half a mile long.

Senator BUMPERS. Based on what you are saying, 220 feet on that triangle for a half mile, I can't believe there are 15 acres in there. Are you sure of that survey? Is there some dimension shown in there?

Mr. WILLIAMS. Isn't it 550 at the second point?

Mr. HOUSLEY. Right.

Senator BUMPERS. Well, it's close. That's roughly 555,000 square feet and there's 43,000 square feet in an acre so it's somewhere in that vicinity. Let's go ahead. Do you have any other maps, incidentally?

Mr. HOUSLEY. No, this is the only map.

Senator BUMPERS. I am advised by staff that Senator Cranston has a statement he wishes introduced into the record and without objection, it will be so ordered.

[The prepared statement of Senator Cranston follows:]

STATEMENT OF HON. ALAN CRANSTON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, I deeply appreciate having this opportunity to present testimony in support of my bill, S. 3245, to establish the true location of a portion of the northerly boundary of the Angeles National Forest in Los Angeles County, California. Along with my testimony, I am submitting a statement in support prepared by the Juniper Hills Community Association. This legislation is intended to provide relief to the homeowners in the Juniper Hills area of California by correcting a survey problem in Section 16, T 4 N, R 10 W, San Bernardino Meridian, California.

Very briefly, in 1972 when the Los Angeles County Engineer was conducting a survey in connection with the Master Plan of Highways, the county was unable to locate the southwest corner or the south and west quarter corners of Section 16. Therefore, the county established and set these corners based on its interpretation of portions of the original field notes from the United States General

Land Office survey of 1912. As a result, the homes, wells, and other valuable facilities of roughly 100 families in Juniper Hills are not located on the lands described in their deeds. Also, the new boundaries are substantially different from all the United States government and county maps showing Section 16 and from the Angeles National Forest boundaries surveyed by the Los Angeles County Surveyor in 1933.

Mr. Chairman, if the existing Angeles National Forest boundary monumented corner identified as Monument J-249 on the Los Angeles County Surveyor's Map B-745, Sheet A, is established as the west quarter section corner of Section 16 and the midpoint halfway between this boundary marker and the west quarter section corner is established as the center of the section, the property lines will basically fit the lines of usage for over the last 45 years and resolve the problem. S. 3245 resets the boundaries in this way.

I have given the Committee staff a large map prepared by the Los Angeles County Engineer's Office which shows the property lines in Section 16 as they would be using the 1933 and the 1973 survey monuments and their relationship to the existing homes, wells, and other structures. The heavy blue lines represent the property lines as they should be using the 1933 corner. The light dashed lines are where these lines would be using the 1973 monuments. As you can see by the map, any solution that does not return all of the interior lines to the location of the 1933 monument will not resolve the problem for the homeowners.

The Los Angeles County Engineer supports S. 3245. So does the Title Insurance and Trust Company of Los Angeles. Both believe that failure to enact this legislation would cost both the homeowners and the government tens of thousands of dollars and many years litigating the matter through the courts. A resurvey of the area would only serve to complicate the issue further.

I want to stress that prior to requesting this legislation the Juniper Hills Community Association tried to straighten out the situation administratively, through the proper channels of the Bureau of Land Management and the U.S. Forest Service. Since these efforts were to no avail, it appears that this legislation is the only satisfactory way of rectifying the problem for future title purposes.

Mr. Chairman, when the Interior Department testified on the identical House bill, H.R. 11451, the Administration opposed the legislation as drafted and proposed a substitute bill prepared by the Department of Agriculture. The Juniper Hills Community Association and the Title Insurance and Trust Company are convinced that this substitute bill will not resolve the homeowners' problem. They have outlined their arguments in their separate statements on S. 3245. The House Interior Committee, after examining the facts, overrode the Department of Interior and Agriculture's objections and approved H.R. 11451 as originally drafted.

Mr. Chairman, until this legislation is enacted a severe hardship exists for the homeowners in Section 16 of Juniper Hills. Banks and loan companies will not make loans, title companies will not issue a clear title policy, and the saleability of the property is virtually destroyed. I hope that the Senate Energy and Natural Resources Committee will look favorably upon this legislation as the House Interior Committee has done, and report it to the Senate floor for passage this year.

Thank you

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STATEMENT OF RICHARD HOFF, REPRESENTING THE JUNIPER HILLS COMMUNITY ASSOCIATION

Mr. Chairman and members of the committee, my name is Richard Hoff and I represent the Juniper Hills Community Association and the property owners in Section 16, Township 4 north, Range 10 West, San Bernardino Meridian, in support of S. 3245.

Although the property owners in Section 16 are not responsible for the problem which has arisen, but are victims of circumstances, many would lose their homes, wells, access roads and have their property displaced if S. 3245 is not passed. Through no fault of our own, a catastrophe is upon us which threatens the homes and property of almost 100 families. S. 3245 is the only viable solution to avoid this disaster.

Let me explain:

Section 16 is in the Juniper Hills area of Los Angeles County, California. Juniper Hills is a rural community located on a high mountain mesa bordering the Angeles National Forest about 50 miles north and east of the City of Los

Angeles. Many of the residents are retired and live on fixed incomes. Others have scrimped and saved for many years to buy a lot to build a home for their retirement years, which may now be just a dream which can never be, if S. 3245 is not passed.

S. 3245, introduced by Senators Cranston and Hayakawa on our behalf after a thorough investigation, will reestablish the property ownership lines and the Angeles National Forest boundary in Section 16 which have been in question as a result of a survey conducted by surveyors from the Los Angeles County Engineer's office in 1971-73.

For many months we have worked very closely with the Title Insurance and Trust Company (TICOR), the Los Angeles County Engineer and the U.S. Forest Service District representatives to find a solution to this problem. After exploring every possible conceivable way to straighten out this mess it was concluded that the Federal legislation as contained in S 3245 and HR 11451, its companion bill in the House, was the only viable solution. Since most of the properties within the Section are described as fractional portions of the section, the relocation of the section corners to the 1973 monuments set by the County Engineer's Surveyors would displace all of the property boundaries within the section and no other solution will resolve the problem.

The House Sub-Committee on Indian Affairs and Public Lands held a hearing and favorably recommended HR 11451 to the full Committee on the Interior and Insular Affairs. The full House Committee, having considered the same, reported favorable thereon without amendment and recommended to the House that HR 11451 "do pass." We respectfully request your favorable consideration of S 3245 and pray that you also report favorably thereon and recommend to the Senate that the bill pass without amendment. Enclosed are copies of various maps, pictures, correspondence and a detailed report summarizing this very complex problem.

Also submitted with this report is a large map prepared by the Los Angeles County Engineer. The map shows in heavy blue ink the property lines as they will be using the "J-249" west quarter section corner set in 1933, with the light dashed lines indicating the property lines as they would be using the 1973 monument and their relationship to the existing structures and lines of occupation.

I would like to highlight the items covered in this submittal.

In 1933 the Los Angeles County Surveyor, while locating the Boundary for the Angeles National Forest was unable to recover the west quarter corner for Section 16, which is one of the corners in the Forest Boundary. He, therefore, placed a new marker labeled "County Surveyor's Monument Forest Reserve Cor. R.E. 62 J249-FB" at the theoretical location of the west quarter section corner. This marker and other markers placed along the "Forest Reserve Boundary" using this corner as reference, are still highly visible today, as can be seen in the pictures in the presentation report. They have been relied on by the U.S. Forest Service and the property owners during the 45 years since they were placed for the management of the Forest and the location of property boundaries. When several of the markers were burned during the 1953 Forest fire, they were replaced by surveyors from the County Engineer in the same location along the 1933 line.

In 1971 to 1973 when conducting another survey in Juniper Hills for the Master Plan of Highways, surveyors from the Los Angeles County Engineer's Office searched again and still could not find the 1912 west quarter corner or the southwest corner or south quarter corner monuments for Section 16 that were set by the United States General Land Office in 1912. As a result, they set new monuments for these corners. Although they claim to have used Bureau of Land Management's Manual for the Restoration of Lost or Obliterated Corners, the new corners they set are in locations which substantially differ from all previous surveys and maps of Section 16 and from the lines of occupation and use.

For example, the Official Platt of Township 4 north, Range 10 West as filed in the United States General Land Office in 1917 shows the south line of Section 16 to be 79.98 chains or 5278.60 feet. The measured distance of the south line of Section 16, using the 1973 County Engineer's monument, is 4735.92 feet, or approximately 550 feet different from the previously accepted distance. As you can see, either the original 1912 General Land Office survey, the Official Platt filed in 1917, and the County Surveyor's 1933 Survey Monuments, which have been used by the property owners since the original homesteads, are wrong or the 1971-73 County Engineer's survey is in error. The Bureau of Land Management, successor to the U.S. General Land Office, has indicated, based on the County Engineer's assurance they followed "The Manual" that if a resurvey was executed by the

Bureau, their solution would probably be very close to the County Engineer's survey. However, their comments were made without the specific details for the precise means the County Engineer used in interpreting the 1912 survey calls or the tremendous damage which the property owners will suffer as a result of the new corners. If the 1971-73 County Engineer's corners are used, it will displace all of the property boundaries in Section 16 and place 13 homes, 11 wells, 6 garages, and numerous out buildings on the property of others, destroy long-standing land descriptions, render worthless road and utility easements and the location of property boundaries on vacant property will be in question until the matter of prescriptive rights and adverse possession is resolved. Additionally, if the boundaries are relocated using the 1971-73 survey, it will create a change in the area occupied by the Angeles National Forest. Approximately 7 acres of private land would be added to the Forest along the westerly line of Section 16 and approximately 3 acres of Forest land would be lost to the Forest along the south line of the north half of Section 16. This can easily be seen on the large map submitted with this report.

Although the U.S. Forest Service Offices in California have indicated that they consider the legislation as proposed in S 3245 and HR 11451 to be the only practical solution to resolve the problem, the Forest Service's National Office in Washington opposed the legislation at the House Subcommittee hearing, on the basis of "precedent." Please review the rebuttal to their statements which is included at the end of this report.

I should point out that although the corners were replaced in 1971-73, the property owners were not made aware of the change until early 1977 when a private surveyor checked with the County Engineer's office for information for making a survey in the area. Additionally, these corner monuments were placed without the knowledge or consent of the Los Angeles County Counsel. However, since that time, the banks and loan companies will not loan, the title company will not issue a clear title policy and saleability of the property is virtually destroyed. Several properties had been sold and were being processed through escrow at the time we became aware of the new survey, and the sales were canceled. This has placed a severe hardship on the property owners who must sell for one reason or another. If it is not resolved soon, some may lose their homes and land. The Title Insurance Company has indicated that it is virtually impossible to resolve the boundary conflict any way other than that proposed in S 3245 and HR 11451 and that tens of thousands of dollars to both private owners and the public and many years would be required to even pursue another solution through the courts. A resurvey of the area would only serve to further complicate the problem, delay the solution and create an additional hardship on the owners. It seems we have one too many surveys now.

Exhibit "A" in the presentation report is a sketch of Section 16 showing the original lines as shown on all prior maps and surveys in blue; Section 16 as it would be if the 1971-73 County Engineer's survey is used is outlined in red. The Angeles National Forest is indicated in green, with the area currently in private ownership, outside of the Forest management area, which would be taken over by the Forest if the 1971-73 corners are used is shaded in orange. The area in yellow is Forest land which would be transferred to private ownership.

Exhibit "B" is a print of a portion of the Official Platt filed with the U.S. General Land Office in 1917, with the County Engineer's 1971-73 boundaries indicated in red.

Exhibit "C" is a picture of Monument J-249 which the bill will establish as the west quarter corner of Section 16 and which has been recognized as that and relied on by the property owners since 1933.

Exhibit "D" is pictures of the Forest Boundary markers placed in 1933 which the U.S. Forest Service and property owners have relied on since then.

Copies of letter from the Title Company and from the Los Angeles County Engineer are also included in the report, indicating their support of the passage of H.R. 11451 and hence its companion bill S. 3245 which was introduced in the Senate after the letters were written.

REBUTTAL TO THE DEPARTMENT OF INTERIOR AND THE DEPARTMENT OF AGRICULTURE'S  
STATEMENT OF THE HOUSE COMMITTEE REGARDING H.R. 11451

1. Their Premise: (U.S. Forest Service). The survey problem apparently stems from the establishment of an erroneous private survey made by a County Surveyor in 1933.

*Fact.*—While it is true that both the U.S. Forest Service and the private owners have relied on the 1933 monumented Forest boundary for over 40 years in the management of their respective properties, the original homesteader, Mr. Harry M. Miller, stated to a subsequent purchaser that the 1933 monument was located where the 1912 marker was. The 1933 survey was made by the Los Angeles County Surveyor, an official of the County of Los Angeles. The Bureau of Land and Management admits that they "cannot state absolutely that the monument set in 1933 is an unacceptable corner."

2. Their Premise: That the area was resubdivided by the 1952 and 1953 surveys of Mr. H. G. Felber and Mr. James O. Bennett, private surveyors, who did not follow proper survey procedures.

*Fact.*—A substantial portion of the over 320 Acres in private ownership in section 16 was divided prior to the 1952 and 1953 surveys referred to. Additionally, these surveys cover less than 50 of the 320 acres involved. Their surveys did follow accepted procedures in that they used the located official monuments and their distances and bearings in establishing their points.

3. Their Premise: The Los Angeles County Engineer followed proper procedures and precedent in establishing the new 1941-43 monuments and any resurvey would probably be close.

*Fact.*—This is only conjective since it was made without all of the facts. It is questionable that the County Engineer's surveyors did follow these procedures to the letter. The survey was made without the knowledge or consent of the County Counsel and the County Engineer's surveyors did not use a continuity of the 1912 survey "calls" they attempted to use in establishing the southwest corner and the south quarter corner of Section 16.

4. Their Premise: Several private lots partially overlap National Forest lands to the extent of about 15 acres valued at \$2,000 per acre.

*Fact.*—If the 1933 monument is in the correct location for the quarter section corner, there is no overlapping properties. There is only approximately 7 acres of private lands that would be taken over by the Forest using the 1973 monument, but there would also be about 3 acres of Forest land that would be lost to the Forest to private ownerships. The estimated value of the property involved would be close to \$500 per acre.

5. Their Premise: A substitute bill authorizing the sale of the so called "Forest Lands" (disputed area) to the Juniper Hills Community Association for distribution to the adjacent owners, would resolve the problem.

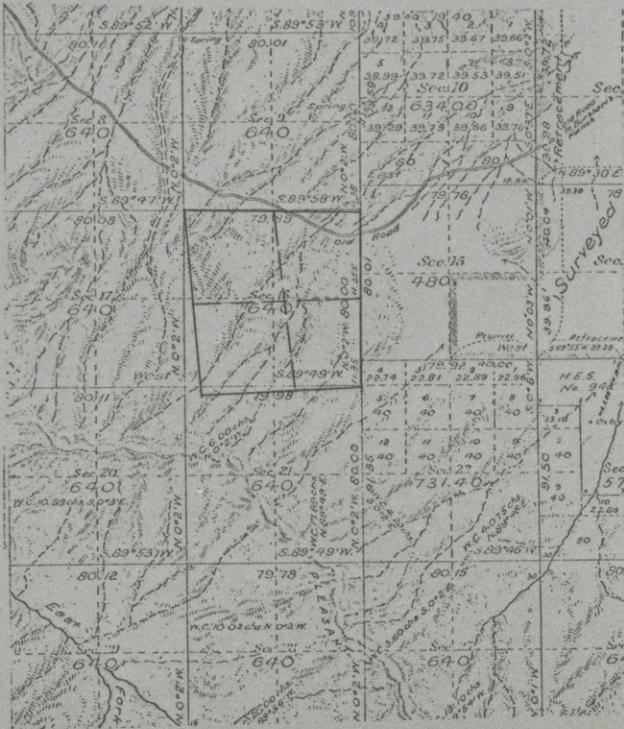
*Fact.*—First, this assumes there is an "inadvertent use" of Forest lands. Second, it does not address or clarify the use of private lands by the Forestry if the 1973 monuments are used. Since the majority of the private parcels are described as fractional portions of Section 16, the relocation of the corner from the 1933 to 1973 monument, would displace all of the property boundaries in Section 16. The substitute legislation proposed by the Department of Agriculture would do nothing to resolve this, only complicate it. All of the 100 owners in Section 16 would still have the conflict in boundaries and lines of occupation and use. Only S. 3245 and H.R. 11451, as written, will correct the situation and alleviate the extreme hardship to the owners.

Mr. Chairman, and members of the committee, I would like to thank you for the opportunity to submit and file this report for your consideration. As you can see, S. 3245 is of vital concern to us. Failure to pass it could result in the loss of land and homes for many owners. It would be disaster. Therefore, I urge your favorable consideration of S. 3245, to the end that it will be approved and ultimately signed into law.

Thank you.



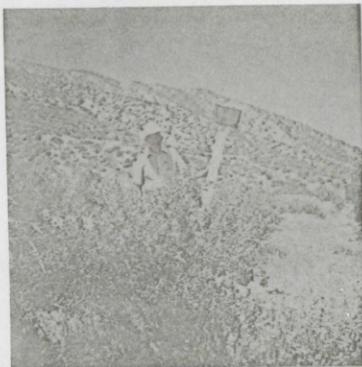
EXHIBIT "B"  
 PORTION OF OFFICIAL PLAT OF  
 TOWNSHIP 4 NORTH, RANGE 10 WEST  
 FILED WITH GENERAL LAND OFFICE



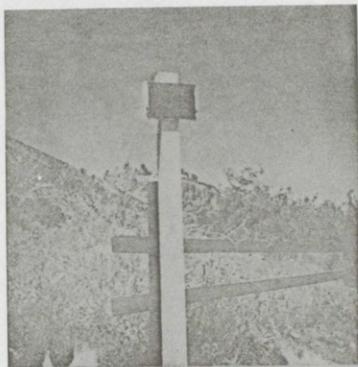
NOTE:  
 DIMENSIONS SHOWN ARE IN CHAINS  
 1 CHAIN = 66 FEET  
 — C.E.'S 1971-73 SURVEY



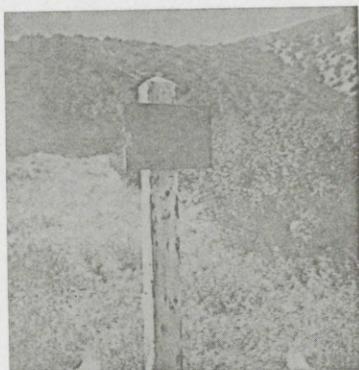
## PICTURES OF FOREST BOUNDARY MARKERS EXISTING SINCE 1933



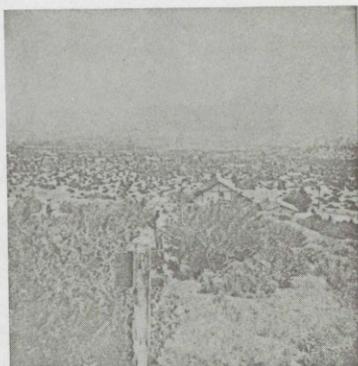
FOREST BOUNDARY MARKER  
J-246 - First marker west  
of east 1/4 corner.



FOREST BOUNDARY MARKER  
First marker south of east  
1/4 corner, looking south.

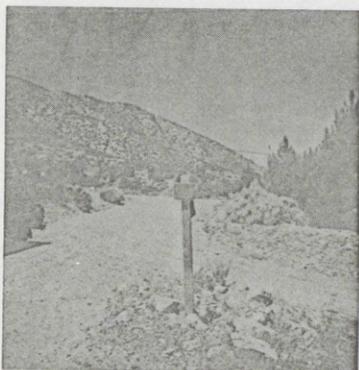


FOREST BOUNDARY MARKER  
J-246-A - South of Harper  
house, looking south.



FOREST BOUNDARY MARKER  
J-246-A - South of Harper  
house, looking north.

PICTURES OF FOREST BOUNDARY MARKERS EXISTING SINCE 1933



FOREST BOUNDARY MARKER  
@ 116th Street East  
and Juniper Hills Road.



East 1/4 Corner looking  
southwest @ 116th Street East  
and Juniper Hills Road.



COUNTY OF LOS ANGELES,  
DEPARTMENT OF COUNTY ENGINEER-FACILITIES,  
*Los Angeles, Calif., April 12, 1978.*

Mr. WILLIAM JENSEN,  
*Acting Chief, Branch of Cadastral Survey, Bureau of Land Management, Federal  
Office Building, Sacramento, Calif.*

SECTION 16, TOWNSHIP 4 NORTH, RANGE 10 WEST, JUNIPER HILLS AREA

DEAR MR. JENSEN: Your attention is called to Congressman William Ketchum's bill, H.R. 11451, and to the letter from your director to Mr. Ketchum, dated February 4, 1978, copies of which are attached.

We have previously corresponded with Mr. A. E. Griffin of your office, both by letter and by phone and personal discussion concerning Section 16, and particularly concerning the west quarter corner of the section. Your office has reviewed our field notes and maps and has agreed that, based on the data available, they would come to substantially the same location that we have adopted for both the west quarter corner and the southwest section corner.

We all agree, I believe, that neither the Felber survey, the Bennett survey, nor the 1933 County Engineer "Forester Reserve Corner J-249" correctly represent the west quarter corner. We must all acknowledge, however, that the Forest Service has relied on the "J-249" monument in its administration of the Angeles National Forest during the 45 years since its establishment and that one or more of the residents of the north half of the section have similarly relied on the monument. We must also acknowledge that, although erroneous, the Felber and Bennett (and Coats) surveys would place the corner in some proximity to the "J-249" monument.

With these facts in mind, we have further examined the occupation pattern within the area, have looked at the potential of the area for future use and development and have examined the impact that a rigid adherence to the Manual of Instructions will have on the people in the Juniper Hills area.

Your attention is called to our topographic diagram designated "North one-half of Section 16, Township 4 North, Range 10 West, S.B.M. Improvements, November 8, 1977", a print of which is attached, and to our two overlays, also attached. (I believe you will find prints of these diagrams at double scale in your file.) Please note that when the overlay on which the west quarter corner is designated "using Dougherty's Monument" is laid on the topographic detail, houses, fences and wells are clearly displaced from the intended boundaries. When the second overlay "using Forest Monument as corner" is used, all occupation evidence closely conforms to the subdivision lines. We suggest then, that a greater equity results from this second solution which admittedly deviates from "The Manual of Instructions". We suggest, however, that it is within the province of Congress to establish such equity as has been proposed in Mr. Ketchum's bill, H.R. 11451, if it sees fit. Because the bill will alleviate the boundary problems that have developed and will return the area to its fullest state of potential development, we support it.

If we can be of further assistance to you, please call Mr. Richard J. Mitchell, Division Engineer of our Survey Division, telephone (213) 974-7301. Mr. Mitchell is completely familiar with the problem.

Very truly yours,

STEPHEN J. KOONCE, *County Engineer.*

PIONEER NATIONAL TITLE INSURANCE,  
*Los Angeles, Calif., April 19, 1978.*

Mr. WILLIAM J. McAULIFFE, JR.,  
*Executive Vice President, American Land Title Association,  
Washington, D.C.*

DEAR BILL: A problem has arisen in our area regarding a corrected survey on the outskirts of the Angeles National Forest, located in Los Angeles, California. Although a local problem at this time, we believe that the basic problem could possibly be repeated in other sections of the country. We therefore request that you cause the enclosed material to be reviewed and consideration be given to assistance to further Congressional action.

Enclosed, please find certain correspondence between Mr. Finley B. Laverty, of the Juniper Hills Community Association, and the offices of Congressman William M. Ketchum of California. Also enclosed is a map prepared by Mr.

Laverty delineating the problems posed by the 1973 corrected survey. While Mr. Laverty's correspondence give some background on the matter. I will attempt to give a brief summary of the situation as it presently exists.

The section in question (Section 16, T4N, R10W, S.B.M.) was originally surveyed in December, 1912. In 1933, while running the boundary for the Angeles Forest, the County Surveyor was unable to recover the west  $\frac{1}{4}$  corner of Section 16. He therefore placed a new monument, labeled J249,  $\frac{1}{2}$  mile south of the NW corner and one mile west of the east  $\frac{1}{4}$  corner of Section 16.

The J249 monument has been the basic reference point for all property owners since 1933. As stated by Mr. Laverty in his analysis, the J249 monument and other monuments based on this point has been recognized by the United States Forest Service as boundary for the National Forest. Certain USGS maps designate J249 as the SW  $\frac{1}{4}$  corner monument and also as a point on the West Section line of Section 16. All private and public ownership of property is based on this line.

In 1972 and 1973, surveyors for the Los Angeles County Engineers, conducted surveys for "Master Plan Highways" in the Juniper Hills area. They were unable to locate any of the 1912 CLO survey corners for the SW corner and the S and W  $\frac{1}{4}$  corners of Section 16. Using non-continuous calls, the County Surveyor erected new monuments for the SW corner and the S and W  $\frac{1}{4}$  corners.

As seen by the enclosed map, if the 1973 survey monuments are accepted, the SW corner of Section 16 would be moved some 550 feet easterly and some 100 feet southerly. In addition, the 1973 W  $\frac{1}{4}$  corner would be some 275 feet easterly and 50 feet southerly from the accepted monument denoted J249. The result is that the adjoining Section is widened westerly and the east-west center line of Section 16 is moved to the south, creating a significant change in the area occupied by the National Forest.

Another consequence of the 1973 survey, if accepted, would be to displace the accepted boundaries of nearly 100 parcels, significantly affecting improvements access and utility easements and the general marketability of all the land in question.

The Juniper Hills Land Association has been in contact with Mr. Christopher Seeger, Administrative Assistant to Congressman William Ketchum. What is suggested is that the Monument J249 be established as the west  $\frac{1}{4}$  corner be accepted as the center of Section 16. Establishment of such points would bring both public and private boundary lines back in to conformance with general usage.

To that end, Congressman Ketchum has agreed to sponsor Federal Act in attempt to establish the aforementioned points as true points regarding Section 16. We enclose a draft of proposed legislation to correct the problem. Failure of passage of such an Act, would result in continuous and burdensome litigation, both to private owners and to the public, regarding proper boundary lines in Section 16.

We therefore request aid and support to the efforts of Mr. Seeger and Congressman Ketchum and cooperation with both to insure the passage of the proposed legislation.

Sincerely,

HOLLIS L. CARLILE,  
*Vice President and Claims Counsel.*

TITLE INSURANCE AND TRUST,  
*Los Angeles, Calif., June 14, 1978.*

Re: HR 11451 (Juniper Hills—Los Angeles County, Calif.

Hon. MORRIS K. UDALL,

*Chairman, Committee on Interior and Insular Affairs, 1324 Longworth Building,*

*Washington, D.C.*

DEAR MR. CHAIRMAN: Members of the Underwriting Practices Department of this company have reviewed the above captioned legislation and believe that the passage of this Bill will enable the company and other title insurers to issue title insurance in the future which is presently unavailable in this area. We further believe that the passage of this Act will enable a surveyor to locate the various parcels on the ground without difficulty arising from the present questionable exterior boundaries of the section covered by this Bill.

As you are aware, title insurance is the only practical method of transferring titles in California since there is little or no abstracts or title opinions and there-

fore the homeowners, for all practical purposes, are required to furnish title insurance. The acceptability of this Bill by the various title insurers will basically solve the problems of the homeowners in Juniper Hills.

We urge your Committee to favorably report as to its passage.

Respectfully yours,

JAMES W. ROBINSON,  
Vice President, Underwriting Practices.

PASADENA, CALIF., December 22, 1977.

Subject: Recommended solution for property ownership disruption by county engineer 1972-73 surveys of U.S. Forest Service Angeles National Forest Service boundary on west side of and through section 16, T4N, R10W, SDEM.

#### SUMMARY

##### *Problem*

A survey party from the Antelope Valley office of the Los Angeles County Engineer could not find the southwest corner and south and west  $\frac{1}{4}$  corner Monuments set in 1912 for Section 16, T4N, R10W, SDEM. During its 1972-73 work in rough mountain terrain the party set new monuments, presumably in place of these corners, using non-continuous 1912 survey "calls". The new monuments are located several hundred feet from these corner locations as mapped in relation to topography over 43 years ago.

Bearings of the Section 16 West line used during the 1912 U.S. Land Office Survey and a 1933 County Surveyor Forest Boundary Survey were within 2 and 8 minutes respectively of north. But the similar bearing from the accepted NW Section corner to the 1973 monument set in place of the SW corner is at an angle of some 6 degrees from north.

The Angeles National Forest Boundary jogs southerly from the Northwest Corner of Section 16 on the line between Sections 16 and 17 one half mile and then extends easterly across the east-west centerline of Section 16. This line was surveyed in 1933 and a monument established at this angle point on a high mountain ridge, as shown by the 1939 USGE "Cima Mesa" Quad by a Section  $\frac{1}{4}$  Corner symbol. Boundary posts, marked "Forest Boundary" were erected after the 1933 Survey. These have been recognized ever since by all land owners as locating the West Line of the N.  $\frac{1}{2}$  of Section 16 and the East-West Centerline of the Section. This centerline is both the U.S. Forest boundary and the South line of private property in the Section except for a few private parcels within the Forest in the N  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ .

If the County Engineers 1971 Monuments were accepted:

1. Private land on the west side of the NW  $\frac{1}{4}$  would become part of the U.S. Forest due to its allocation to Section 17 by the S6 $\pm$  $^{\circ}$  E line to the 1973 SW Section Corner Monument. (Most of this is in rough and steep terrain).

2. USFS land across the E-W Center of the Section would become private land due to movement southerly of this long time accepted location of the Forest Corner. (All of this is in rough and steep terrain).

3. The proportioning of all aliquet part private parcels to the reduced Section Area created by the County Engineer's SW Corner and S & W  $\frac{1}{4}$  Corner Monuments would disrupt boundaries, place some 13 homes, 11 wells, 6 garages and other improvements on the property of others, and destroy title guarantees and long-standing land descriptions of some 90 to 100 property owners. In addition, road and utility enactments would be worthless, and some parcels would have nothing but ravines left on which to build planned homes.

##### *Solution*

A practical solution has been developed after eight months of work by homeowners, the Juniper Hills Community Association, and the County Engineer Survey Division Chief, with the much appreciated help of officials of TICOM, Margaret Rich of Congressman Ketchum's Lancaster Office, Whitney Carter of Lancaster, and William Dresser and Arthur Smith of the U.S. Forest Service.

This solution is the retention of the 1933 surveyed Forest Boundary adjacent to and through Section 16 and the establishment of the monumented Boundary corner "J-249" as the quarter section corner of Section 16, with a mid-point halfway between this monument and the found east quarter corner being the center of the section. Congressman Ketchum and his assistant, Chris Seeger, have offered to take this solution to the Director of the Bureau of Land Man-

agement and to the Congress in the form of the Bill, a draft of which is enclosed, if needed. This solution will retain all of the existing property boundaries and closely conform to the lines of occupation. (See not below.)

NOTE: 8-24-78, H.R. 11451 and S. 3245 will affect this solution.

#### DETAIL DATA

##### *1912 survey*

The United States Land Office made the first surveys of the boundaries of Section 16, T4N, R10W, SB8M, during December 1912. Monuments were set at the Section SW Corner (Notched Stone), the South  $\frac{1}{4}$  Corner (Iron Post), the West  $\frac{1}{4}$  Corner (Iron Post), the NW Corner (Notched Stone), the N  $\frac{1}{4}$  Corner (Marked Stone), and the surveyor found the SE Corner, and the NE Corner from prior surveys.

This survey was apparently the basis for the 1923 patent issued to Larry Miller for all of the land in Section 16 bordering on the Angeles National Forest.

##### *1933 U.S. Forest boundary survey*

Very little property in Section 16 had been sold or developed prior to the Great Depression. In 1933, while fulfilling an assignment to locate the Angeles Forest Boundary, the County Surveyor made a retracement survey of a portion of West line of Section 16. Being unable to recover any evidence of the west  $\frac{1}{4}$  corner, a monument with brass cap marked "County Surveyor's Monument—Forest Reserve Corner—J249 PR—RE62" was set at  $\frac{1}{2}$  mile south of the NW corner and one mile west of the east  $\frac{1}{4}$  corner (C.S. Map—B 745-4). Though not an exact retracement of the West line of Section 16 from the NW Section Corner in accordance with the original 1912 U.S. Land Office survey, it was very close in this steep and rough mountain terrain.

In 1936 Harry Miller showed Richard Langrock, his successor to the W  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of Section 16, the J249 Monument as the replacement of his original SW property corner.

##### *Use of line from NW corner to J249 and line from J349 to E $\frac{1}{4}$ corner*

1. The J249 monument is the basic reference point which has been used by all property owners since 1933 as the West  $\frac{1}{4}$  corner.

2. Following this 1933 survey, the portion of the west line of Section 16 which is common with the southerly jog in the Angeles Forest Boundary was posted with "Forest Boundary" posts and signs in four locations (See enclosed Sec. 16 1934 topo sheet with notes) :

One location, marked J251 on County Surveyor's Map B-745-4 was at the Forest Boundary Corner at the "found (1922)" U.S. Land Office NW corner of Section 16.

A second location was 522 feet southerly of the NW corner of Section 16, marked on C.B. Map B.-745-4 as J250A. (This coincides closely with a long-established private property corner.) This Forest Boundary post and sign remains and is shown in the photo marked (1) attached to the writer's letter of Nov. 2, 1977 to Congressman Ketchum.

A third location on the same line, some 1446 feet further to the south and marked on this same map as J250, was partially burned in the 1953 fire but the post and 2'x2' hub remain.

The fourth, the above described Forest Boundary Corner monument marked J249 on its brass cap set in concrete, has been continuously marked by two Forest Boundary Posts and flagged on many occasions as the westerly terminus of Section 16 centerline to the "found" U.S. Land Office E  $\frac{1}{4}$  corner. A photo of this monument is marked (2) on the attachment to the above mentioned letter of Nov. 2, 1977. The J249 relative location (fitting USGS topo) is marked on photo (3).

3. Several other Forest Boundary posts still exist. These are shown on the 1933 County Surveyor's Map B.-745-4 as J247A, J247, J246A, J246, J245 and J244 (the U.S. Land Office East  $\frac{1}{4}$  Corner Monument), and have continuously been recognized and depended upon as locating of the E/W centerline of Section 16 and the boundary of parcels bordering on this line which is in common with the U.S. Forest Boundary.

4. After the forest fire in 1953 a new "Forest Boundary" post with sign was located on the line between the NW Section Corner of Section 16 and the J249 Monument about midway between Forest Boundary markers J250A and J250. It is clearly visible and has been recognized and used as the location of the W line of Section 16.

5. The "Cima Mesa" USGS Quadrangle dated 1939 shows the W line of Section 16 to run from the NW corner of the Section (at J251) to the Monument J249 Forest Boundary corner, designates this corner topographically (T) as a  $\frac{1}{4}$  corner monument, confirms this by the ridge topo on which J249 is located, and gives this monument's elevation.

6. The 1959 USGS "Juniper Hills" Quadrangle map shows the Forest Boundary on the line from the NW corner of Section 16 to J249 and also on the West Section line at the existing and in the topographic location shown on the 1939 "Cima Mesa" Quad Map.

These USGS maps, together with the well posted Forest Boundary, have been relied upon by the original and succeeding property owners for more than 40 years.

*County surveyor's new monuments would destroy over 90 home and parcel ownerships*

In 1972 and 1973 the Los Angeles County Engineer (and Surveyor) Dept. again became involved in Section 16 when conducting surveys for "Master Plan Highways" in the Juniper Hills area. At that time extensive searching in the vicinity of the SW corner and the S and W  $\frac{1}{4}$  corners of Section 16 revealed no evidence of the original 1912 GLO survey corners. With no notice to the owners of property in Section 16, the Antelope Valley Realty Board, the Title Insurance Companies or the County Counsel, the County Engineer's Antelope Valley Survey Crews proceeded to set a new SW Section corner monument and new S and W  $\frac{1}{4}$  corner monuments. This work was completed without notice to any of the above parties and did not come to the attention of the property owners until about April, 1977 when an employed surveyor obtained data from the County Engineer's office which caused him to use notes created during the 1973 surveys and monument setting. His resulting survey did not match property lines long relied upon.

The Juniper Hills Community Assn. immediately called this problem area to the attention of the County Engineer and was advised that the surveyors had checked their procedure with the Bureau of Land Management offices in Sacramento and had been told that it appeared to conform to what the Bureau surveyors would have done if required so to do but that due to many prior requirements for surveys they could not check into the matter further. This same information was reported in reply to a letter from the President of the Juniper Hills Community Association requesting the Bureau's assistance in clearing up the problem. We understand that the resulting threat of tremendous damage to Section 16 home and property owners was not conveyed to the Bureau office in Sacramento, nor that there was not continuity in the 1912 survey "Calls" which the County Engineer's surveyors used to establish the southwest corner and the south quarter corner of section 16.

What is the detail reason for the problem? Simply (7) this:

1. All the land ownerships in Section 16 have been laid out essentially in relation to the above described and posted U.S. Forest Boundary and the location of Section lines as shown on the 1939 and 1959 U.S.C.S. Quadrangles which accepted the original Patent Surveys and records.

2. The County Engineer 1973 Survey Monument for the SW corner monument for Section 16, if accepted, would move that corner some 550 ft. easterly and some 100 ft. southerly from the location indicated on U.S.G.S. topographic maps in existence for nearly 40 years.

3. Consequently, the W  $\frac{1}{4}$  corner monument set by the County Engineer in 1973 would be some 275 feet easterly and 50 feet southerly of the location of the property owners accepted monument at the Forest Boundary corner, J249.

4. In addition, the County Engineer did not set his S  $\frac{1}{4}$  corner monument half way between his 1973 SW corner monument and the found SE corner of the Section but set it by disconnected calls so that the easterly half of this line is some 520 feet shorter than the westerly half and the total distance is about 540 feet less than one mile. Consequently, the line from the accepted N  $\frac{1}{4}$  corner to the 1973 S  $\frac{1}{4}$  corner monument would be inclined more to the east than the line from the accepted NW corner to the County Engineer's 1973 SW corner monument and any aliquot proportioning of property boundaries, between these several lines would vary accordingly.

5. This leaves a situation such that if the 1973 work of the County Engineers was accepted, Section 17 would be widened westerly into land granted by patent in 1923 and Angeles Forest would be increased by a sliver of land in very rough terrain. On the other hand, because the County Engineers work would

move the east-west center line of the Section southerly, a sliver of land across the entire center line of the Section would be removed from the Forest. We have been advised that the Angeles Forest Supervisor would not favor these changes.

6. The diagonal lines created by the proposed County Engineer's proportioning between his new Section and Quarter-Section Boundary lines would cause nearly 100 parcels of property to have their accepted boundaries displaced and would displace all or parts of 13 homes, 11 wells, 6 garages and other improvements onto property which would then belong to others. An overlay map showing this disruption was given to Mr. Seeger on Nov. 18, 1977. (Map made by Co. Eng'r.)

7. In addition, such a forced relocation of property lines would destroy building sites for which the land has been purchased, i.e., many parcels would be removed into ravines which are now near property boundaries.

8. Further, access road, utility and other easements would be worthless.

9. Cost to recoup any kind of guaranteed title for use and sale of property would require surveys and other work far beyond the financial capability of most of the property owners.

#### *Community action*

When all these factors became known to the Juniper Hills Community Assn. and particularly, to many of the property owners in Section 16, an Association Committee was formed to attempt to rectify the problem. Meetings have been held with the County Engineer's representatives, realtors, Title Insurance and Trust Company attorneys and engineers and letters have been written to the Bureau of Land Management and the area's Congressional representatives. All were requested to help replace this community's integrity as soon as possible and by means it can afford.

#### *Problem solution*

With the assistance of the Title Insurance and Trust Co. of Los Angeles (ITCOR) an investigation of the problem has been carried on with regard to long-time recognized survey lines. The County Engineer has requested that the Bureau of Land Management Office in Sacramento offer suggestions for a useful remedy. Then the County Engineer located all of the building and well improvements in the area based on the accepted N and S lines of Section 16. Next, the County Engineer prepared maps of these building locations with overlays showing the extent to which its suggested proportionment, based on its new monuments, would displace ownerships. Finally, it was determined that acceptance of the long used W  $\frac{1}{4}$  Corner, In., U.S. Forest Service Boundary Corner Monument, J249 and an E-W Section center line from J249 to the accepted E  $\frac{1}{4}$  corner with the mid point of this line accepted as the Center  $\frac{1}{4}$  corner would fit long time usage and would not cause significant dislocation of buildings, walls, and roads and utility easements nor require costly surveys, and legal and title expense. This form of settlement, based on over 40 years of usage, was the best and by far the only financially acceptable solution which the owners could obtain.

Consequently this solution as presented to the Title Insurance and Trust Co., to the County Engineer Survey Division Head, to the Juniper Hills Community Association President and its Section 16 Committee and to as many of the property owners in Section 16 as could be readily reached. After receiving these confirmations it was presented to Margaret Rich, of Congressman Ketchum's Lancaster office and then to Chris Seeger of Congressman Ketchum's Washington office. On Nov. 10, 1977, Mr. Seeger was supplied with a second overlay for the map of Section 16 improvements showing how the proposed solution would make all improvements fit with property deed descriptions since the drastic proportioning would not occur.

#### *Congressional bill*

Ticor attorneys and engineers have prepared this solution in the form of a Bill Draft which we understand may either be accomplished by converting to an order of the Director of the Bureau of Land Management or through passage by Congress. All of the Community property owners and particularly all of those whose homes, property improvements, water supplies and planned parcel use are in jeopardy, urge rapid acceptance and loyal confirmation of this request.

FINLEY B. LAVERTY.

TITLE INSURANCE AND TRUST,  
Los Angeles, Calif., August 31, 1978.

Re: S 3245.

Hon. HENRY M. JACKSON,  
Chairman, Energy and Natural Resources Committee, U.S. Senate  
Washington, D.C.

DEAR SENATOR JACKSON: As is indicated in the presentation by the Juniper Hills Community Association in its presentation to the Senate Committee on Energy and Natural Resources, in support of the above bill, this Company has been active in an attempt to assist the homeowners in trying to solve the problem created by the 1971-1973 surveying work done by the surveyors from the Los Angeles County Engineer's Office.

The controversy can be simply solved by the enactment of this bill, which amounts to a simple acknowledgment by Congress that all of the prior surveying work done in this area is correct. In effect, the passage of this bill will operate as a boundary line agreement which will enable this Company, and other title insurers doing business in Los Angeles County, to insure the title of the land owned by the homeowners of the Juniper Hills Community Association.

It is interesting to note that, except for the fact that the adjacent land is owned by the United States, the homeowners would have in all probability long since acquired title by adverse possession of the disputed area, save for the fact that adverse possession will not normally operate against the United States. The enactment of this bill will solve the problem rather than creating numerous boundary line disputes between these owners and the United States.

We are in accord with the position taken by the homeowners in its presentation to your Senate Committee; and, although we do not wish to burden the Committee with further explanation of this very simple problem, we do wish to observe some matters which are perhaps not clearly set forth in the homeowners' presentation which are as follows:

The position of the Department of Agriculture and the Forest Service seems to be that all interested parties ought to assume that the 1971-1973 surveying work is correct. Such assumption does not seem reasonable or proper in light of the numerous technical surveying and engineering principles and problems involved.

The proposed bill by the Department of Agriculture will, in our opinion, do nothing to solve the problem. Even if a new survey was made and the homeowners Association acquired title to the disputed area, the Company still would not be able to insure titles of the private owners; basically because the past conveyances were based upon the assumption that the location of the corner was as stated in 1933. There are a host of other reasons why we would not be able to insure title.

The position of the Department of Agriculture does not take into consideration the problem presented by the assumption that the 1971-1973 surveying work was correct insofar as the land shown in yellow on Exhibit A to the homeowners' presentation. The proposal by the Department of Agriculture does not deal with this problem at all and simply confuses the entire matter.

We do not agree that the passage of this bill would have any "ripple effect" whatsoever on any lands not within Section 16; and, in insuring lands in this area, we would have no problem in the general vicinity because of the passage of this act, insofar as its effect on other lands.

All private parties involved in this land have always relied upon the 1933 corner monument which was set by the Los Angeles County Engineer under contract with the United States Forest Service, which has indeed itself adopted the 1933 surveying work as being correct.

One normally is not able to create an estoppel against the United States; however, the history of this area shows very plainly that surveyors and private parties have relied upon the location of the 1933 surveying work, and that such reliance was completely reasonable in view of the fact that the 1933 monument was set by the county surveyors under a contract with the Forest Service; and indeed the Forest Service has historically adopted such corner as being the true location.

We join with these homeowners in urging that your Committee report favorably on this bill.

Very truly yours,

HOLLIS L. CARLILE,  
Vice President.

Mr. MONROE. The next bill is H.R. 4243 which we would recommend not be enacted. It would direct the Secretary of the Interior to convey to Mrs. Edna C. Marshall a 40-acre tract within the Tahoe National Forest if application to purchase and payment are made within 1 year of enactment.

The payment required would be fair market value of the land as of the date of enactment plus administrative costs arising from the conveyance less any enhancement brought to the land by Mrs. Marshall or her predecessors.

We understand she claims interest through inheritance, in three mining claims on the land in question on which her grandfather may have had a ranch. Mrs. Marshall states that she paid taxes on the lands and improvements until 1958 and since then has paid taxes on a possessory interest in the mining claims on the land.

In any event, it is our view that payment of taxes on mining claims cannot give rise to any legal or equitable interest in land beyond that which might accrue under the mining laws. Payment of real estate taxes does not necessarily give rise to any equitable or legal interests.

We believe that only unusually strong equities could justify granting an absolute preference right to a private citizen to purchase public lands. We know of no such equities in this case. For these reasons we recommend that H.R. 4243 not be enacted.

H.R. 10029 would convey a little over a half an acre of land in Clear Creek County, Colo., to Harold and Doris Harlan upon payment of administrative costs of the conveyance. We understand that the Harlans are successors in interest to the land.

It is within the Arapahoe National Forest and has been occupied for more than 75 years. The trespass stems from an attempt by a Thomas C. Austin to claim the land as a building site in 1899. This claim was not based on any legal authority, a fact that is recognized by the Harlans' representative.

No law has existed under which an individual could claim title to land as a building site. Consequently, assignees and successors in interest to this building site could never establish their claim for patent purposes.

We defer to the Department of Agriculture as to the need for and advisability of the conveyance directed by the bill.

Generally, we object to conveyance of public lands unless payment of fair market value is made and other criteria of disposal in the Federal Land Policy and Management Act are met. Occupancy without legal authority and payment of taxes are not sufficient bases for conveyance of land without consideration, especially when, as in this case, the occupants have no reason to believe they owned the land. Based on our understanding of this claim, we would not support the bill if the lands were under our jurisdiction.

In addition, we note that the U.S. Geological Survey has reported that the lands involved in H.R. 10029 are prospectively valuable for geothermal resources and that gold and silver are indicated in the vicinity.

H.R. 10160 would authorize and direct the Secretary of Agriculture to convey ownership and title to 2.58 acres of national forest lands in Wyoming to Ben Boschetto, Jr., at fair market value.

Although we defer to the views of the Department of Agriculture as to the merits of the bill with respect to the surface estate, we are opposed to conveyance of the mineral estate.

The land described in H.R. 10160 lies within two noncompetitive oil and gas leases. No production has yet occurred from either lease, but the land lies within the "overthrust belt" which is experiencing intensive oil and gas exploration and production in a three State area.

Also, the adjacent private land to the south and west was patented with coal reserved to the United States. The Geological Survey has indicated that the land described in H.R. 10160 is classified as valuable for coal.

In light of the existing oil and gas leases on the land, the potential for oil and gas and possibly other mineral exploration and production, and the policy stated in the Federal Land Policy and Management Act of 1976 of reservation of mineral interests to insure protection of the public interest, we object to conveyance of the mineral estate.

S. 2254 would authorize and direct the Secretary of the Interior to convey to David Sanhite Peele by quitclaim deed all right, title and interest of the United States to about 160 acres of national forest lands located in Alaska. Such conveyance would be made without payment of consideration.

We oppose enactment of S. 2254 on the grounds that there is no basis for distinguishing the claim of David Sanhite Peele from the claims of about 80 other persons who appear to be similarly situated. These claims are presently in litigation in a class action suit pending in the U.S. District Court in the State of Alaska. We strongly recommend that consideration of a legislative solution in this case should await the outcome of the pending litigation.

Senator BUMPERS. Do you have a report on the merits of the bill, the factual situation?

Mr. MONROE. The Department of Agriculture has; yes, sir.

S. 2489 would authorize and direct the Secretary of the Interior to convey by quitclaim deed without payment of consideration certain lands in Nebraska to four individuals. These lands are located on islands in the Platte River.

We have not been able to develop sufficient information concerning the situation addressed by this bill to develop a position. For this reason, we recommend that the committee defer its consideration of S. 2489 until we can find out more of the facts surrounding the bill.

We have been unable to locate any public land which corresponds to the lands described in S. 2489. Our records show that the lands in question passed from Federal ownership under either the Military Bounty Act of 1855 or the Homestead Act of 1862.

Since the United States has already issued a patent for these lands, we would have objections to issuing a second patent or quitclaim deed, as directed by the bill, because it could cloud the title of the first patentee and create further title problems.

In addition, we understand that the beneficiaries of S. 2489 own the three islands which are the subject of the bill and that the city of Lincoln, Nebr., wants to purchase these islands from them. As a result of a title search, they have been advised that there is some Federal interest in the land.

Depending on the facts, there are several approaches, short of legislation, which may be available to the claimants to accomplish their purpose. For example, the claimants could obtain copies of patents, a statement as to the lack of Federal interest, or if needed, file an application with BLM's Wyoming State office for a disclaimer of interest under section 315 of the Federal Land Policy and Management Act of 1976.

In any event, we would hope that the claimants would contact our State office people in Cheyenne who have jurisdiction over public lands in Nebraska and work with them to determine as many of the facts as are available in this case. We have all the land records there. Thank you, Mr. Chairman, that concludes our formal testimony on these bills.

Senator BUMPERS. Thank you, Mr. Monroe.

Our next witness is Mr. Raymond Housley, Associate Deputy Chief, U.S. Forest Service, Department of Agriculture, Washington. Welcome, Mr. Housley.

**STATEMENT OF RAYMOND M. HOUSLEY, ASSOCIATE DEPUTY CHIEF,  
FOREST SERVICE, DEPARTMENT OF AGRICULTURE**

Mr. HOUSLEY. Thank you, Mr. Chairman. Since much of our testimony is consistent, even identical with that of the Department of Interior witness, if you wish, I can summarize and present briefly a summary of our comments on each of the bills.

Senator BUMPERS. Please do.

Mr. HOUSLEY. With respect to the conveyance of land to Ben Boschetto, Jr., by H.R. 10160, we feel that to provide legislative relief to Mr. Boschetto as provided in H.R. 10160 would set a precedent adversely affecting the administration, management and protection of national forest land.

It could encourage others to trespass on Federal lands in order to gain title from the United States through adverse possession without record title. We do have a map of that particular situation if the committee would wish to have that.

Senator BUMPERS. I would like to see it.

Mr. HOUSLEY. Mr. Paul Haarala of our land staff will indicate the location of the tracts in question.

Senator BUMPERS. Is it that little triangle up there?

Mr. HOUSLEY. The triangle in red marked with the letter "A" is the tract which we believe Mr. Boschetto holds title to. The tract which he wishes to acquire is the larger area in blue which surrounds the tract he owns.

Senator BUMPERS. Does Mr. Boschetto own any other lands south of U.S. Highway 187 or should I say west of U.S. 187?

Mr. HOUSLEY. No, sir, his deed covers that portion of the land marked with the letter "A" across the highway from the bulk of that.

Senator BUMPERS. He does not own the property across the highway?

Mr. HOUSLEY. That is correct.

Senator BUMPERS. You admit his ownership under that part described in the letter "A" and that's four-tenths of an acre and he is asserting ownership of 2.58 acres?

Mr. HOUSLEY. He's asking that that be transferred to him.

Senator BUMPERS. 2.58 be granted to him and that would give him total ownership of about 3 acres, is that right?

Mr. HOUSLEY. Yes, sir.

Senator BUMPERS. What does he base his claim of title on? This is the one where I asked Mr. Monroe if they had a report on.

Mr. HOUSLEY. Mr. Chairman, our report was tardy in reaching the committee but there is one before you as of this morning which details the circumstances behind this.

Senator BUMPERS. What does he base his claim of title to that 2.58 acres on?

Mr. HOUSLEY. Mr. Boschetto's father constructed some improvements on the tract some years ago and these improvements encroached on the national forest land. They are in part on part of the land owned by Mr. Boschetto and in part on national forest land.

He wishes to acquire title to the land on which his improvements rest and in addition to enough land, as the survey which he purchased indicates, he wishes enough additional land to bring the total tract to 3 acres.

Senator BUMPERS. Does the Forest Service oppose this?

Mr. HOUSLEY. Yes, sir, we strongly oppose enactment of this bill.

Senator BUMPERS. Does the bill provide for payment of the fair market value?

Mr. HOUSLEY. Yes, sir, it does so provide.

Senator BUMPERS. There is mention of minerals there, that it might be part of an overthrust belt. I've never heard the term used before and I'm not sure what it means.

Mr. HOUSLEY. This is an area that is extremely active in terms of oil and gas exploration, in that portion of the Western United States at the time.

Senator BUMPERS. I don't think Mr. Boschetto will get terribly rich off 2½ acres, no matter what they find under it unless it's uranium. What kind of minerals do you anticipate being there?

Mr. MONROE. Oil and gas, Mr. Chairman.

Mr. HOUSLEY. It was originally withdrawn from public entry because of potential coal values in 1906.

Senator BUMPERS. Are you saying that the current value is in excess of \$20,000? In your testimony, you say the current value of the 2.58 acres is in excess of \$20,000. Is that with improvement on it?

Mr. HOUSLEY. That would be exclusive of improvements.

Senator BUMPERS. 2½ acres are worth \$20,000 in the Teton National Forest?

Mr. HOUSLEY. Yes, sir; it is quite close to Jackson Hole, Wyo.

Senator BUMPERS. Do you have any comparable sales close by to back that up?

Mr. HOUSLEY. I am certain these values can be supported.

Senator BUMPERS. That's inconceivable to me. According to this map, it's right out in the middle of nowhere.

Mr. HOUSLEY. It's an attractive area near Jackson Hole and adjacent to a perennial stream. I am certain that that value is based on transaction evidence appraisals.

Senator BUMPERS. I am going to make a special trip out there to look at that. I will wait until it snows and ski season and then go look at it.

Let's go on to Edna Marshall bill, 4243.

Mr. HOUSLEY. Even though this bill would require payment of the fair market value of the land, its enactment would be an undesirable precedent, we feel. We feel it would be contrary to congressional intent previously expressed.

It would enable Mrs. Marshall to attain title to lands within unpatented mining claims without compliance with the mining laws. This would constitute inequitable treatment in view of the 1,500 other persons in similar circumstances in California who have voluntarily moved when notified of their unauthorized occupancy.

We recommend that H.R. 4243 not be enacted.

Senator BUMPERS. Are the only taxes she paid on mining claims? She did not attempt to pay taxes on the property itself?

Mr. HOUSLEY. I believe that is correct, possessory interest tax in California on the mining claims. If I might correct myself, the possessory interest taxes were paid on improvements which were at one time on the mining claims. Those improvements burned down several years ago.

Senator BUMPERS. What is the value of this property, or do you have an estimate?

Mr. HOUSLEY. We have no current estimate of the value of these 40 acres.

Senator BUMPERS. Apparently until 1960 when the volcano fire occurred, she traces her title back, Mrs. Marshall traces her title back to around 1856, she and her ancestors have occupied this land during that period of time. Does your report indicate that?

Mr. HOUSLEY. Yes, sir; that is correct. The family and their predecessors occupied the nonpatented mining claims.

Senator BUMPERS. There are 1,500 other people who are similarly situated?

Mr. HOUSLEY. There are that many who have already vacated national forest land in California when informed of their trespass status under very similar circumstances.

Senator BUMPERS. The House report said Mrs. Marshall supplied the committee with copies of tax receipts in 1869, 1902, 1912, 1958, and 1959 which do not indicate any interest other than a fee title, although in the latter 2 years, the tax assessments were adjusted to reflect a possessory interest only.

Mr. HOUSLEY. It is our view that there never was a title issued to the land.

Senator BUMPERS. OK, let's go ahead to S. 3245.

Mr. HOUSLEY. With respect to S. 3245, for which the map is before you, we recommend that S. 3245 not be enacted and that our proposed substitute bill be enacted in lieu of this S. 3245. If enacted, our substitute bill would convey the land in question to the Juniper Hills Association after the association files an application for and pays the fair market value of the land and the administrative costs associated with the conveyance.

We estimate the fair market value of the subject land to be \$2,000 an acre and the total administrative costs to the association we estimate would be \$2,500. We feel that this solution would take care of the problem without doing violence to the standard survey procedures.

Senator BUMPERS. What do you estimate the value of that to be?

Mr. HOUSLEY. \$2,000 an acre, 15 acres about \$30,000 plus the administrative costs of \$2,500.

Senator BUMPERS. Does the Juniper Hills—what's it called—land association?

Mr. HOUSLEY. Juniper Hills Association.

Senator BUMPERS. Juniper Hills Association; do they assert ownership over that tract? Would they be the beneficiaries if this bill was enacted?

Mr. HOUSLEY. The members of the association would be; yes sir.

Senator BUMPERS. Who are the members—all the people who reside in that subdivision?

Mr. HOUSLEY. There are 93 owners, 93 comprise the association.

Senator BUMPERS. I don't want to take the time here to delve too deeply into that but I am wondering, was this developed by an individual, the subdivision? Was it developed by someone who developed it and sold the lots and maybe with certain covenants with it and that sort of thing and when they become the owners of the pool and the tennis courts and the club and all that sort of thing? Was it that kind of development or do you know?

Mr. HOUSLEY. I assume it was done on the basis of an individual or group subdividing and selling lots. I can't say that for certain but that's my assumption.

Senator BUMPERS. Let me ask you another question. Do you know what beginning point was used in all of these conveyances? Was the faulty marker the beginning point in many of these conveyances? If it wasn't it's not all that relevant here, is it?

Mr. HOUSLEY. It is our assumption that it was the beginning point, although Mr. Monroe did raise a question.

Senator BUMPERS. Do you know, Mr. Monroe?

Mr. MONROE. No, sir; we don't know. Therein lies the problem.

Senator BUMPERS. Is there anyone here from the Juniper Hills Association?—That land is worth \$2,000 an acre.

Mr. HAARALA. As I understand it, sir, some of these portions were conveyed as aliquot parts of the section, in other words, subdivisions of the section.

Mr. HOUSLEY. In other words, they were not tied to the erroneous corner or more recently established—

Senator BUMPERS. Does that map reflect a half section?

Mr. HAARALA. This is the north half of the section, yes.

Senator BUMPERS. Did you say that's a half mile, the north-south mile is half a mile long?

Mr. HAARALA. It should be half a mile long, right.

Senator BUMPERS. That's a section of land that you're showing there, isn't it?

Mr. HAARALA. This is the north half of section 16.

Senator BUMPERS. That's right, half section.

Mr. HAARALA. If a parcel of land is conveyed by aliquot parts, then your corner shifts over here and the location of that tract of land with relation to the section skews.

Senator BUMPERS. Yes.

Mr. HAARALA. These parcels that were conveyed by metes and bounds descriptions and tied to these corners would not be affected.

Senator BUMPERS. Do you have a map of the whole section?

Mr. HOUSLEY. No, sir, we don't. We could provide additional maps for the committee.

Senator BUMPERS. Are we going to have the same problem in the south half of the section?

Mr. HAARALA. It is all national forest land in the south.

Senator BUMPERS. The forest comes up to the south line of that subdivision?

Mr. HOUSLEY. That is correct.

Senator BUMPERS. It really presents a knotty problem. Are the 93 members of the Juniper Hills subdivision, Juniper Hills Association, are they the present owners of those tracts in there?

Mr. HOUSLEY. That is my understanding; yes, sir.

Senator BUMPERS. Where is this located?

Mr. HOUSLEY. Within Los Angeles County.

Senator BUMPERS. Within an incorporated city?

Mr. HOUSLEY. No, sir; not to my knowledge.

Senator BUMPERS. Are those—do those various lots there, are there improvements on all of that?

Mr. HOUSLEY. On many at least.

Mr. HAARALA. The improvements are shown, existing improvements are shown by these little squares. They represent buildings and so forth. There are some lots that are unimproved.

Senator BUMPERS. I assume a requirement of owning property there, one of the benefits or requirements is that you become a member of the Juniper Hills Association and everybody in that subdivision will benefit from the enactment of this bill, is that correct?

Mr. HOUSLEY. I'm not certain that that is the case but there may be that there are owners who are not members.

Senator BUMPERS. Here is what the House report says. It says that the new corners set by the county engineer are established as the official corners for section 16. It will not only affect the individual boundaries but will place 13 homes, 11 wells, 6 garages and numerous outbuildings on the property of others.

It will also change the location of the posted Angeles National Forest boundaries. The relocation of property lines would destroy building sites for which the land has been purchased, many—will be relocated in the ravines which are adjacent to property boundaries.

Easements for access roads and utilities would become worthless. They go ahead and say with regard to your suggestion that a substitute bill be adopted, the Department of Agriculture, although opposed to H.R. 11451 recognizes the need to resolve this situation and recommends a substitute bill.

The substitute would require another survey and conveyance of up to 15 acres of forest land. The survey cost, administrative costs and fair market value for the land would be paid for by the property owners. Although this would establish the boundary in accordance with official—survey techniques, it would realign the subdivided interior lots, a considerable financial burden would be placed on the individual lot owners to resolve the interior boundaries in addition to paying the government administrative and survey costs.

The house reported this bill out favorably.

Let's move on to Harold and Doris Harlan, H.R. 10029.

Mr. HOUSLEY. We recommend that H.R. 10029 not be enacted. We have unsuccessfully attempted administratively to resolve this occupancy with the present owners through the issuance of a special use permit for the period of time which would reasonably allow them to amortize their investment in the improvements.

After that time, the land would still remain in public ownership. We believe that this approach is still valid and reasonable and we would like to pursue that with the Harlans.

Senator BUMPERS. This business of paying tax on improvements and not on the land is foreign to me. We don't do that in my State. You pay taxes on a piece of property and that includes all the real estate attached to it. Apparently, other States have different methods of assessing.

You say in your testimony that the Harlans have occupied and paid taxes on the residence and other improvements for the last 19 years, no taxes have been assessed or paid on the land. Is that common in some States? Is that common in Utah?

Mr. HOUSLEY. In this case, I would assume that taxes on the improvements were paid on the assumption that they were on the land owned by the Harlans.

Senator BUMPERS. That's the implication, that when you pay taxes on the residence, they were more or less recognizing that they had no right to the land. I think the Forest Service has taken a reasonable approach based on your testimony. You are trying to reach an agreement to allow them to continue using the land long enough to amortize their investment, is that the idea?

Mr. HOUSLEY. Yes, sir, that's the objective but we were unsuccessful in reaching an agreement with the folks on that point.

Senator BUMPERS. I agree with you that you probably have at least 45,000 similar situations where people are occupants of land that belong to the forest, most of them knowingly. If you pass this bill, you might have 45,000 bills on our hands.

Let's go on to David Sanhite Peele, S. 2254.

Mr. HOUSLEY. This case is but one of over 200 such cases on the national forests in Alaska where applications for Indian allotments are considered to be ineligible. The BLM, I understand, has over 5,000 such applications on public domain.

For Congress to give special consideration to Mr. Peele would be considered an invitation for similar consideration on the other cases. Although the acreage of this tract and the others is small, at least in terms of Native settlements, most of the allotment claims on the national forests are located in the head of bays and mouths of streams where public values are highest and public access is needed.

For these reasons and others, in the full statement we recommend that S. 2254 not be enacted.

Mr. Chairman, this concludes our prepared statement and we would be pleased to have our full statement considered in the record, if you wish.

Senator BUMPERS. I am going to leave the record open on all of these bills so that Senators Hayakawa and Stevens and possibly some other Senators who may not have had notice or realized these hearings were being held can submit statements. I will leave the record open for a

week, 7 days, for comments and statements from any interested senators.

Mr. Housley, I appreciate very much your coming up to testify.

Mr. HOUSLEY. Thank you, Mr. Chairman.

[The prepared statement of Mr. Housley follows:]

STATEMENT OF RAYMOND M. HOUSLEY, ASSOCIATE DEPUTY 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 the 6 of the 18 bills being considered today which involve the programs or lands administered by the Department of Agriculture. These are: H.R. 10160, H.R. 4243, H.R. 11451, S. 3245, H.R. 10029, and S. 2254.

CONVEYANCE OF LAND TO BEN BOSCHETTO, JR. (H.R. 10160)

The Department of Agriculture recommends that H.R. 10160 not be enacted. H.R. 10160 would authorize and direct the Secretary of Agriculture to convey at fair market value to Ben Boschetto, Jr., ownership and title to 2.58 acres of National Forest land adjacent to, but outside of a 0.42-acre parcel owned by him.

The parcel owned by Mr. Boschetto, to which he apparently has clear title, consists of 0.42 acres and is part of a larger tract of land described as the SW1/4NE1/4, S1/2NW1/4NW1/4, N1/2SW1/4NW1/4, and the NW1/4SE1/4 Sec. 29, which was patented to Jno. B. Lane on February 15, 1923, Patent No. 896168. Subsequent deeds conveying the 0.42-acre tract to Mr. Boschetto and his predecessors describe the property as being a parcel within the S1/2NW1/4NW1/4. This parcel was identified by surveys performed in 1948, 1971, and in 1974, and is described in the recorded deeds as being that portion of the S1/2NW1/4NW1/4, Sec. 29 lying east of the easterly line of the right-of-way of U.S. Highway 187.

The land claimed by Mr. Boschetto and to which H.R. 10160 applies, lies adjacent to, but outside of the S1/2NW1/4NW1/4 of Sec. 29. We find no document of record conveying or purporting to convey title of this tract to Mr. Boschetto. This tract is part of a larger area of public lands reserved for National Forest purposes by Presidential Proclamation, dated May 22, 1902. It also is part of a larger tract that was withdrawn from public entry in 1906, by the Secretary of the Interior, because of the potential coal values associated with the tract at that time. Furthermore, the tract was included in power-site classification #433 of August 5, 1955, by the Secretary of the Interior pursuant to the Act of March 3, 1879 (20 Stat. 394). This tract was never removed from reserved status. Any claim of title to the 2.58-acre parcel, therefore, would be by adverse possession against the United States.

The Forest Service became aware of the possible encroachment in January 1975. On February 3, 1975, Mr. Boschetto filed an application pursuant to the Color of Title Act, (43 U.S.C. 1068-1068a), to purchase the 2.58 acres. The Wyoming State Office of the Bureau of Land Management rejected the application for the reason that the subject land had been withdrawn from the operation of the public land laws and reserved for what was then the Teton Forest Reserve by Presidential Proclamation No. 19 on May 22, 1902. This decision was appealed and on July 28, 1975, the Interior Board of Land Appeals affirmed the decision of the Wyoming State Official of the Bureau of Land Management.

Current value of the 2.58 acres claimed by Mr. Boschetto and represented in H.R. 10160 is estimated by the Forest Service to be in excess of 20,000. The tract is within the Teton National Forest approximately 30 miles from Jackson Hole, Wyoming, the southern gateway to Teton and Yellowstone National Parks. As described in H.R. 10160, the parcel would encompass part of the Hoback River. Its proximity to a stream and to the National Parks greatly enhances its value.

To provide legislative relief to Mr. Boschetto as provided in H.R. 10160 would set a precedent adversely affecting the administration, management, and protection of National Forest lands. It could encourage others to trespass on Federal lands in order to gain title from the United States through adverse possession without record title.

## CONVEYANCE OF LAND TO EDNA C. MARSHALL (H.R. 4243)

The second bill of interest to the Department is H.R. 4243 which would authorize and direct the Secretary of the Interior to convey to Edna C. Marshall all rights, title and interest of the United States in and to a tract of land in the Tahoe National Forest described as the NE 1/4 NW 1/4, Sec. 28, T. 14 N., R. 11 E., Mount Diablo Base and Meridian, California, consisting of forty acres, more or less. Conveyance would be made only if Mrs. Marshall made application within one year after enactment of this bill and paid fair market value, plus any administrative expenses of the transaction.

This tract of land consisting of parts of three unpatented mining claims, is an integral part of a large area of National Forest land, and is surrounded by Federal lands. The tract is bounded by the National Forest on three sides and by BLM land on the fourth side. About one-half of the area is forested land and the other half is pasture or rangeland. These lands are highly suitable for National Forest purposes. There are no substantial structures presently located on the land.

The tract was lived on and occupied intermittently by Mrs. Marshall and various other family members until 1956. The land was occupied by tenants from 1956 until August of 1960, when the "Volcano" forest fire destroyed the house and all other buildings.

Although this tract was occupied and lived upon for many years as part of a ranch and ancestral home of Mrs. Marshall or relatives, the occupancy was based on unpatented placer mining claims. There is no indication that any mining was done on the area in question. Also, there is no indication that the claimant would qualify for patent under the mining laws or other statutes. On September 8, 1960, Edna C. Marshall, among others, signed a waiver of surface rights pursuant to section 6 of the Multiple Use Mining Act of July 23, 1955 (69 Stat. 367 as amended).

We have correspondence from the Placer County Assessor's Office that the property in question is recognized as being owned by the United States Government and has never been assessed on the secured property tax rolls in Placer County.

Enactment of H.R. 4243 would have the effect of encouraging National Forest users paying possessory interest taxes under California law to seek private legislation to obtain title to National Forest lands. Even though the bill would require payment of the fair market value of the land, its enactment would be an undesirable precedent.

The Department of Agriculture recommends, therefore, that H.R. 4243 not be enacted.

## ESTABLISHMENT OF A PORTION OF THE NORTHERLY BOUNDARY OF THE ANGELES NATIONAL FOREST (S. 3245)

The third and fourth issues of concern to the Department of Agriculture are S. 3245 and its House counterpart H.R. 11451 which would establish the 1923 Los Angeles County Surveyor's monument marked "County Surveyor's Monument Forest Reserve Cor. R.E. 62 J249FB," and shown on the County Surveyor's map B745 on file in the Office of the County Engineer of Los Angeles County as the true location of the said west quarter-corner as originally set by the Government Land Office Surveyor in 1912. We recommend that S. 3245 not be enacted and that our proposed substitute bill be enacted in lieu of S. 3245.

The quarter corner question results from an erroneous private survey made by a county surveyor in 1933. He was unable to recover evidence of the original monument as established by the United States General Land Office. His survey procedure was not in conformance with existing rules. Also, he made a statement on the map of his survey indicating that his monument was not the quarter section corner of sections 16 and 17. If S. 3245 were enacted, the erroneous monument would become the official monument between National Forest lands and the tract of privately owned lands.

The Juniper Hills tract in section 16 was patented in 1923 based upon an official United States survey approved in 1912. In 1952-53, the tract was resurveyed and subdivided into lots by private surveyors. They used the erroneous corner established by a county surveyor in 1933 as the basis for their survey; consequently, their survey was also in error, as confirmed by a Los Angeles County Engineer survey conducted in 1972-73. The California State Office of the Bureau of Land Management examined the methods employed by the Los Angeles County Engi-

neer and was of the opinion that a Bureau of Land Management survey would be very close to the Los Angeles County Engineer's survey. The errors in the 1933 survey by a county surveyor and the subsequent retracement of the 1933 survey by private surveyors in 1952 and 1953, respectively, resulted in the tract being skewed from its correct location. As a consequence, several private lots on the west exterior of the Juniper Hills tract partially overlap National Forest lands to the extent of about 15 acres. There are no improvements located on National Forest land.

The Forest Service has unsuccessfully tried to resolve the unauthorized use of National Forest land through administrative procedures involving the use of special use permits and the possibility of land exchanges. We do not support S. 3245 because it would direct that the erroneous county surveyor's survey be substituted for the official and accurate Government survey. We are opposed to the modification of cadastral surveys and the alteration of official records to settle trespass cases and to convey lands.

While we do not agree with the approach proposed by S. 3245, there is a need to resolve the inadvertent unauthorized use. In this regard, and to maintain the integrity of the public land survey system, we recommend a substitute bill for S. 3245. We will provide the Committee with copies of the substitute bill and our legislative report.

If enacted, our substitute bill would convey the land in question to the Juniper Hills Association after it files an application for and pays the fair market value of the land and administrative costs associated with the conveyance.

We estimate the fair market value of the subject land to be \$2,000 per acre. The total administrative costs to the Association are estimated at \$2,500.

CONVEYANCE OF LAND TO HAROLD AND DORIS HARLAN (H.R. 10029)

The fifth bill of interest to the Department of Agriculture is H.R. 10029. This would authorize and direct the Secretary of the Interior to convey all right, title and interest of the United States to 0.58 acres of land in Clear Creek County, Colorado, to Harold and Doris Harlan upon the payment of such sum as may be fixed by the Secretary to reimburse the United States for the administrative costs of the conveyance. We recommend that H.R. 10029 not be enacted.

The tract of National Forest land is located one-half mile south of Idaho Springs, Colorado, in a mountainous area. It contains a two-bedroom log cabin residence, a garage and other improvements, and is surrounded by other National Forest land, a patented mining claim and a parcel of other private land. The tract has been used and occupied for residential purposes for over 75 years. The Harlans have occupied and have paid taxes on the residence and other improvements for the past 19 years. No taxes have been assessed or paid on the land.

We have unsuccessfully attempted administratively to resolve this occupancy with the present owners through the issuance of a special use permit for a period of time to reasonably amortize their investment in the improvements. After that time, the land would still remain in public ownership. We believe that this approach is still valid and reasonable to accomplish our objective of avoiding private land intrusions in the National Forest and related administrative difficulties. We estimate there are nearly 45,000 situations of this type throughout the National Forest System. Each case, if handled similarly in terms of conveyance, would not only validate questionable occupancy of public land but would continually erode the public land base. For these reasons, we recommend that H.R. 10029 not be enacted.

CONVEYANCE OF LAND TO DAVID SANHITE PEELE (S. 2254)

The sixth bill that we would like to comment on is S. 2254 which would authorize and direct the Secretary of the Interior to convey to Mr. David Sanhite Peele all right, title, and interest of the United States in and to a 160-acre tract of land within the Tongass National Forest, Alaska. The conveyance would be made by quitclaim deed and without other consideration.

Mr. Peele's grandfather, Sanhite (or Sauhite), also known as Billy Wilson, apparently occupied a tract of land located on the west side of the Karta River in the 1880's. In 1887, the Territorial Governor of Alaska provided Mr. Peele's grandfather with a document which was a notice addressed "To whom it may concern", which verified a recorded notice setting up his claim to possession and occupation of 160 acres of land as a homestead. This document did not assign any

land to the grandfather and indicated that the terms under which title to such lands could be acquired were left to future legislation by the Congress. The land actually occupied and utilized by the grandfather consisted of approximately 3 acres and contained a residence, outbuildings, a small garden, and a smokehouse.

The grandfather occupied the site until his death in 1912. There is no record of him filing for the land under any Indian Allotment authority, including the Act of May 17, 1906.

Mr. David Sanhite Peele was born on February 12, 1912, at the Village of Kasaan. He, along with his parents, moved to the grandfather's Karta River tract in 1915 or 1916. They left the site prior to 1938 and subsequent use was intermittent consisting of summer use for hunting and fishing purposes. There is no record of either the father or David Sanhite Peele filing for land under the Indian Allotment authorities prior to 1956. Mr. David Sanhite Peele would not qualify as an applicant under the 1906 Act because he was not the head of a family, twenty-one years of age or occupying the site on August 20, 1902, the date the Forest Reserve was established. In addition, the site does not qualify for allotment purposes since it is mineralized and is not primarily suited for agricultural or grazing purposes.

At present, the site contains a Forest Service public recreation cabin and an old road to the Flagstaff Mine. The first two miles of this road are currently maintained as a trail to Karta Lake. About 12 acres of this area have been selected by the Sealaska Corporation under section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA) for existing cemetery sites and historical places. In addition, the tract is part of a 39,000-acre wilderness study area proposed by the Administration.

Mr. David Sanhite Peele applied for an allotment encompassing the grandfather's tract in 1956. This application was rejected by the Bureau of Land Management in 1966. He then filed another application for an allotment in 1971 covering the subject tract which is located across the Karta River and east of the grandfather's tract. This application was rejected by the Bureau of Land Management in 1974. He appealed the decision to the Interior Board of Land Appeals (IBLA) who sustained the rejection of the application on June 16, 1975. IBLA's decision also applied to 88 other applications.

This is but one of over 200 such cases on the National Forests in Alaska. The BLM has over 5,000 applications on public domain. For Congress to give special consideration to Mr. Peele could be considered an invitation for similar consideration on other cases. Although the acreage of this tract and the others is small, at least in terms of Native settlements, most of the allotment claims on the National Forest are located in the head of bays and at the mouths of streams where public values are highest and public access is needed.

For these reasons, we recommend that S. 2254 not be enacted.

Mr. Chairman and members of this Committee, this concludes my prepared statements. I will be happy to respond to any questions you may have.

Senator BUMPERS. Our next witness is Governor Rampton from Utah who is here to testify regarding H.R. 6463.

Cal, if you can, why don't you just summarize and give us a statement of the bill? Interior said they have already testified that they have no objection to the bill so it looks like you're in pretty good shape.

#### STATEMENT OF HON. CALVIN L. RAMPTON, GOVERNOR, SALT LAKE CITY, UTAH

Governor RAMPTON. All right, I've talked myself out of cases before and I don't want to do it this time.

Senator BUMPERS. Some people around here can't take yes for an answer but us old Governors know how to do that.

Governor RAMPTON. This bill would reinstate nine oil and gas leases that were terminated for alleged late payment of the rental fee. There are eight of these leases that I will address myself very briefly because they have a common fact situation and common ownership

The other one which is U-13666 has a different fact situation. They were joined in a single bill by the House committee and I believe both of them have the same equitable position.

In regard to the eight leases, these leases were taken in 1970. The annual renewal date was December 1 of each year. These lands have been under lease since the 1950's at which time some drilling has been done on them and some showing was made as to both gas and oil.

In view of the fact that there was no gas line near there and the oil price was low at that time, the leases were allowed to expire and they were put under lease again in 1970.

As I stated a few minutes ago, the annual renewal date was December 1. On December 1, 1975, a check was placed in the mail for the renewal of these eight leases. It was placed in a drop box just outside the post office of Salt Lake City.

By the procedure that had been in effect for quite a number of years, pickups were made from that dropoff every hour and distributed inside the post office at the delivery boxes.

Under the procedure that had been in effect, these checks would have been picked up and put in the BLM box about 3 o'clock in the afternoon and they would be collected every day at 4:30.

Some short while previous to this date, a new post office had been built in Salt Lake City and the procedure had been changed. The collections from the drop box were taken out to the sub-office, they were sorted and brought back into the main office.

The result was that, instead of being put in the BLM delivery box at 3 o'clock, this check did not get in there until sometime after 4:30. The envelope in which it was enclosed bears the December 1 date but the in-stamp of the BLM office shows 10 o'clock on the morning of December 2.

Senator BUMPERS. I can't believe that we are on this thing.

Governor RAMPTON. We have been before the Board of Appeals of the Department of Interior and they rejected it. I can't see why it was necessary. I will say this, probably it is technically right, although I was amazed to find, I practiced law many years, that the provision for the effective date of the date of mailing is not found in the Administrative Procedures Act as peculiar to the Internal Revenue Act.

Technically, I suppose this is right, but it is a case that recommends itself—

Senator BUMPERS. I can't believe; No. 1, that they don't use the postmark as the effective date rather than the date of receipt because that could be taken out of the mailbox and lay around an office sometimes for half a week.

We stamp everything with a date and time that it is opened in our office but during the Panama Canal Treaty debate, we didn't get the mail opened sometimes for 2 days after it was received in our office, the volume was so heavy. You can conceive of the situation happening in BLM certainly.

Governor RAMPTON. I can't fault them on a real narrow technical basis but certainly it is a harsh ruling against a citizen and one that commends itself to equitable relief.

Senator BUMPERS. How about the other case, Cal?

Governor RAMPTON. Mrs. Due represents that owner and she is here. I don't have the facts on that case.

Senator BUMPERS. Would you like to state for the record the factual situation in that case?

Mrs. DUE. I think the situation is quite clear, Senator, that the equity should bring, in this case as well as in the first one. The Department itself says that there are situations where there are otherwise deserving cases which should be given private help in a situation like this and I think that is meritorious in this case as well.

Senator BUMPERS. Very well. Cal, do you have anything that you want to say?

Governor RAMPTON. No.

Senator BUMPERS. Thank you very much.

[The prepared statement of Governor Rampton follows:]

STATEMENT OF HON. CALVIN L. RAMPTON, GOVERNOR, SALT LAKE CITY, UTAH

H.R. 6463 would reinstate nine oil and gas leases which were terminated by the Bureau of Land Management because of the alleged late payment of annual lease charges. This statement is addressed to lease numbers U-12871, U-12872, U-12874, U-12875, U-12876, U-12878 and U-12881, which were held by Constitution Petroleum Company, Arrow Petroleum Company and East Utah Mining Company with Constitution Petroleum Company as operator. The fact situation as to these eight leases is common.

H.R. 6463 also includes lease number U-13666 held by Oil Resources, Inc., which will be treated in another statement, as the fact situation that affects this lease is different.

The eight leases held by Constitution Petroleum Company and associates were issued on December 1, 1970, therefore, annual rental payments were due on the first day of December of each succeeding year. Portions of the property had been under lease in the late 1950s and encouraging showings of both gas and oil have been found as a result of drilling performed at that time. However, because of the price of oil prevailing in the late 1950s and because of the fact there was at that time no gas transmission line near enough to take the gas, the exploratory wells were capped and the leases were abandoned until the filings hereunder discussed were made in 1970. Since the earlier abandonment, a gas transmission line has been built near the property.

The annual rental payments for each of the leases were made in the years 1970, 1971, 1972, 1973 and 1974. During this period, Constitution Petroleum Company expended approximately \$35,000 on the property. On the 6th day of November, 1975, Constitution Petroleum Company and its associates entered into a drilling contract with Willard Pease Oil and Gas Company to drill three wells on the subject property. The first well was to be commenced within 90 days of the signing of the contract, the second within 190 days of the signing of the contract, and the third within 300 days of the signing of the contract. The drilling contract was reduced to writing on November 26, 1975 and a copy is attached to this statement.

The sixth rental payment under these leases was due on the 1st day of December, 1975. A check for \$9,266.50,<sup>1</sup> was mailed to the Land Office in Salt Lake City on the 1st day of December, 1975. The check, in an envelope properly addressed, was deposited in a drop box just outside the main post office in Salt Lake City at about 2:00 P.M. on the afternoon of December 1st. Under the routine which had been followed for many years in Salt Lake City, pickups were made at such drop boxes and distribution made to the letter boxes within the post office about every hour, which would have meant that the letter containing the check would be placed in the post office box of the Land Office by about 3:00 P.M. in the afternoon, well before the pickup by Land Office personnel at about 4:00 P.M.

Shortly before this time, however, the routine had been changed at the post office and letters were taken to a sorting office some distance from the main post office, there sorted and brought back in and deposited. This change in routine was unknown to the personnel of Constitution Petroleum Company and, in fact, was not commonly known in Salt Lake City, as is established by the affidavit executed

<sup>1</sup> Of this amount, \$8,708.00 was applicable to the subject leases, while \$558.50 was applicable to other leases with a later anniversary date and which were not cancelled.

by Robert A. James, then an assistant to Senator Frank E. Moss of Utah, which affidavit is attached to this statement.

As a result of this change in procedure, the envelope containing the check in question was not deposited in the Land Office mail box until sometime after the afternoon pickup was made by Land Office personnel, such pickup having occurred at about 4:00 or 4:50 P.M. The envelope stayed in the post office box overnight and was picked up the following morning. The envelope was stamped by the post office December 1, but the cover letter with the check is stamped in at the Land Office at 10:00 A.M. on the morning of December 2.

Constitution Petroleum's application for reinstatement was denied by the Utah State Office of the Bureau of Land Management on December 15, 1975, a denial which was upheld by the Interior Board of Land Appeals on June 30, 1976. The payment has been held in suspense by the Land Office pending a final determination of this matter. Rental payments for subsequent years have been tendered by Constitution Petroleum Company, but have been returned by the Land Office. Constitution Petroleum Company stands ready at any time to again tender the payments for 1976 and 1977 if H.R. 6463 is passed by the Congress.

After H.R. 6463 was introduced, comments were sought from the Department of the Interior. On December 1, 1977, the Secretary of the Interior advised the chairman of this committee: "While the Department does not affirmatively endorse the legislation, the Department has no objection to the legislation."

While the Constitution Petroleum Company does not question the technical correctness of the decision from the Interior Board of Land Appeals, the result appears harsh, inflexible and lacking in equitable consideration. As such, the claim of Constitution Petroleum Company and associates appears to be an appropriate matter for congressional relief.

Senator BUMPERS. The hearing is adjourned.

[Whereupon, at 11 a.m., the hearing was adjourned.]

## APPENDIX

### ADDITIONAL STATEMENTS AND COMMUNICATIONS SUBMITTED FOR THE RECORD

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Mr. Chairman, it is a pleasure to testify today before the Subcommittee on Public Lands and Resources in support of S. 2254, a bill directing the Secretary of the Interior to convey certain property to David Sanhite Peele.

This measure would convey to Mr. Peele by quitclaim deed the surface rights to 160 acres of land located on Karta Bay, Prince of Wales Island, Alaska. This property initially belonged to his grandfather, Sanhite. A September 23, 1887, letter written by Territorial Governor A. P. Swineford to Sanhite Peele recognized his possessory rights to this land.

Since Sanhite Peele, an Alaskan Native, relying on this letter; did not apply for a Native allotment; a formal deed to the land was never issued. Before his death in 1912, Sanhite Peele willed this property to his grandson, David, with David's father, James, as the trustee. Subsequently based on his grandfather's use and occupancy, the Bureau of Indian Affairs on behalf of his grandson, David, twice filed for a Native allotment to this property. The applications were rejected both times.

Because there is no authority in the 1906 allotment act for a son to inherit property based on a father's use and occupancy, the initial application was rejected. Additionally, since the land was not primarily valuable for agriculture and grazing and because David did not qualify for this allotment based on use and occupancy before the forest withdrawal date; the second application was also rejected. The Interior Board of Land Appeals affirmed this decision.

Mr. Chairman, Sanhite Peele's claim to the land was based on the Territorial Governor's letter stating his possessory rights based on use and occupancy. At that time documents of this kind known as "Skookum Paper" were widely recognized. According to the Alaska State Director of the Bureau of Land Management, "a 'Skookum Paper' apparently was not based on any law or other authority but had considerable value in establishing occupancy prior to the creation of the Tongass National Forest in 1902".

David applied for this land based solely on his grandfather's use and occupancy, established in 1887 by the letter from the Territorial Governor. The United States Forest Service and the Interior Board of Land Appeals have rejected his claim because he did not meet the qualifications of the 1906 allotment act. Since this property "was" the Peele's in 1887, and was never a Native allotment, and was never meant to be a Native allotment—except when the Bureau of Indian Affairs made an application on behalf of David Peele in 1956—I urge favorable consideration of this legislation. According to the Bureau of Land Management, David Peele's only recourse to obtain a deed to this property is enactment of private legislation such as this.

Mr. Chairman, thank you for providing me with this opportunity to testify in favor of Senate Bill 2254.

STATEMENT OF HON. EDWARD ZORINSKY, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Private Bill S. 2489 has been introduced on behalf of my constituent's Mr. & Mrs. Daniel Mahr and Nyel H. Moss and Anna Moss, who have agreed to sell islands they own to the city of Lincoln, Nebraska. They are most anxious to

ascertain if the government has any interest in the islands because the city of Nebraska cannot purchase the land without a clear title insurance policy.

The question of an interest on behalf of the United States government arises a result of poor and incomplete records because of the original government's survey of the territory of Nebraska in 1855. It appears as though, in examining the original notes of the surveyor, that the property in question was not an island in 1855, but because of change in course of the Platte river, the property has become an island. Because of confusion and lack of records, the question has arisen as to whether or not the property was ever patented by the United States government to the State of Nebraska and therefore, whether or not the government still has an interest.

The City of Lincoln has been interested in taking possession of the island immediately to begin development of their well fields. These elderly citizens who presently own the land are most anxious to obtain a disclaimer on behalf of the government of the U.S. in order to sell their land to the city of Lincoln, Nebraska.

I would hope to obtain favorable consideration of this bill.

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STATEMENT OF HON. JAMES P. JOHNSON, A U.S. REPRESENTATIVE FROM THE STATE OF COLORADO

I want to thank you for including H.R. 10029 on your Subcommittee hearing agenda for September 8, and to urge your support for its passage. This bill, which I introduced in November 1977, would authorize the Secretary of the Interior to convey 0.58 acres of land in the Arapaho National Forest in Clear Creek County, Colorado, to Harold and Doris Harlan upon payment of the administrative costs of the conveyance.

The need for this legislation stems from the original occupant filing claim to the land in 1899 as a "building site," a designation for which there is no statutory authority for an individual to receive title. This legal technicality has prevented the successors in interest from establishing their claim for patent purposes.

There is little doubt that were it not for the original filing error, title would have passed long ago under the provisions of the Color-of-Title Act. However, the Executive Agencies have chosen to ignore this fact and oppose the bill to avoid a "private land intrusion" into the national forest and to retain the land in public ownership. The fact is that more than half of the subject parcel is bordered by patented mining claims and other private lands, and that the land has been used for private residential purposes continuously for the past seventy-five years.

The present occupants, the Harlans, have resided on the property for the past nineteen years, have made significant investments in the residence and in other improvements on the property and have paid taxes on them during the entire period of their occupancy. It is my strong belief that they should be granted the opportunity to acquire title to their homesite and be able to fully enjoy the benefits of their investments.

The Indian Affairs and Public Lands Subcommittee, the full Interior Committee and the House passed H.R. 10029 by voice votes. I hope that you and your Committee will view the equities in this case similarly and act accordingly.

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STATEMENT OF HON. JOHN J. McFALL, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. Chairman, I want to express my appreciation for this opportunity to provide the Subcommittee with information concerning the bill H.R. 7971, which will clear the title on several small parcels of land in my Congressional District.

First, I think it is important to note that in February 7, 1978 testimony before the House Indian Affairs and Public Lands Subcommittee, the Bureau of Land Management of the Department of the Interior expressed no objection to H.R. 7971. Subsequently, this bill was unanimously passed by the House Interior and Insular Affairs Committee and by the full House of Representatives on April 18, 1978.

This legislation would validate the conveyance of land by the Southern Pacific Transportation Company to the City of Lodi, six individuals and a cooperative cannery. Altogether there is less than fourteen acres involved in the transfer of five parcels and the granting of an easement over another for road purposes.

Eight years ago, I introduced similar legislation involving twenty parcels of land along the Southern Pacific right-of-way in Lodi. After that measure became law, it was found there were three more parcels in Lodi over which a title cloud still remains, with two of these in use by the City for municipal purposes. Additionally, approval is being sought of title clearance for three pieces of property in Acampo, about two miles north of Lodi. This land was also part of the land granted under Congressional authorization in 1862 to the predecessor of Southern Pacific for railroad purposes.

The exact status of the land in Lodi was clouded with respect to width of the right-of-way. Several years after the grant to the Central Pacific Railroad Company (Southern Pacific's predecessor), the Federal Government issued patents to a number of persons which included portions of the 400 foot right-of-way. These patents were duly recorded in the records of San Joaquin County and local taxes were paid by the patentees and their descendants. The grant to the railroad did not appear on the County records and it was not until a California Supreme Court ruling in 1925 that the railroad even claimed ownership of the full 400 feet on any of the property within the city.

This court decision established that a person could not acquire title by adverse possession against a railroad which claimed title under the 1862 act. Subsequently, action was initiated by some of the persons involved to clear their titles.

Legislation enacted by Congress in 1929 and 1934 cleared title to 68 parcels by ratifying deeds from the railroad to the various property owners as is being requested at this time. The 1970 law affected an additional 20 parcels in the same manner.

The three pieces of property in the Acampo area are parts of acreage which the railroad acquired but never used for railroad purposes. The railroad allowed the present occupants and their predecessors full use of the land and local taxes have been paid by the users throughout the years.

The railroad has issued quit claim deeds and one easement for the parcels covered by H.R. 7971. The railroad charged only \$250 in each instance to cover its administrative costs.

Mr. Chairman, this legislation is nearly identical to a bill, H.R. 3818, which the House passed in the last Congress. Unfortunately, the Senate did not have time to act on that bill before adjournment in 1976. The only difference in this bill is the addition of one of the parcels in the Acampo area. That parcel is covered by Section 2(6) on page 10 of H.R. 7971. In 1975 and 1970 as well as earlier dates, the Department of the Interior has expressed no objection to enactment of the legislation, under which the United States reserves full mineral rights to the properties. Additionally, there will be no cost to the Federal government in clearing these titles.

Mr. Chairman, I thank you and the subcommittee for your consideration of this matter. I wholeheartedly urge that the ownership cloud over these parcels be removed from the record.

HON. DALE BUMPERS,  
*Chairman, Subcommittee on Public Lands and Resources, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.*

I am privileged to be permitted to present to the Subcommittee my testimony concerning Senate Bill 2254, introduced by the Honorable Senator Stevens and the Honorable Senator Gravel. This Bill would convey to me, by quit-claim deed, a 160 acre tract of land within the Tongass National Forest, Alaska, which has been used and occupied by my family for over 100 years. This Bill affords an opportunity for the Congress of the United States to correct an injustice for which there is no remedy under present law.

The tract of land which would be conveyed to me by Senate Bill 2254 is located on Karta Bay, Prince of Wales Island, Alaska. This land had been occupied by my ancestors, and was occupied by my grandfather San'i-hat, for his entire life, from his birth in the 1820's until his death in 1912, at the age of approximately 86. In 1884, San'i-hat had recorded his claim to this land, in a document recorded in Book A of Records, Page 75, at the Customs House in Wrangell, Alaska. Those Records now appear to be lost, since efforts to locate them by a number of federal government agencies over the past few years have proven unsuccessful. On September 23, 1887, A.P. Svineford, the Governor of Alaska, issued a Notice under the Seal of the Territory of Alaska, recognizing San'i-hat's claim to the property. This Notice was recorded in the Miscellaneous Records of the Ketchikan, Alaska

Recording District, Book 7, Page 54, on March 7, 1929. The Governor's Notice directed that San'i-hat's possession and occupation of the property not be disturbed, pending the "future legislation by Congress" which would establish the terms under which he could acquire title to the land. However, Congress never passed legislation which would have enabled San'i-hat to acquire title to the land. For the information of the Subcommittee, I have attached to this statement a copy of the Governor's Notice, as recorded, and would request that it be included in the record of this hearing.

My grandfather San'i-hat continued to occupy his land until his death in 1912, the year I was born. Prior to his death, San'i-hat willed his property to me, with my father James as trustee. My father and I continued to use and occupy the property, as my grandfather San'i-hat had done before us. On May 17, 1956, the Bureau of Indian Affairs filed an application for a Native Allotment for this land on my behalf, to obtain clear title to the land for me. This Application was rejected in 1966, because the Bureau of Land Management claimed that there was no provision in the Native Allotment Act of 1906 for an individual to inherit rights to an allotment, based on use and occupancy by an ancestor of that individual. On November 12, 1971, the Bureau of Indian Affairs filed a second Application for a Native Allotment on my behalf for the same tract of land. That Application was rejected on February 7, 1975, for the same reasons as the earlier Application, and additionally because the land was not chiefly valuable for agricultural or grazing purposes. I appealed this denial of my Allotment Application to the Interior Board of Land Appeals, which affirmed the denial on June 16, 1975.

A number of other individuals had applied for Native Allotments in South-eastern Alaska, and were denied those allotments for the same reasons for which my allotment applications were denied. In the interest of resolving the legal questions involved in all of those applications, a class action lawsuit, *Shields, et al. v. United States*, Case No. Civil A77-66, was filed in the U.S. District Court for the District of Alaska. That lawsuit is now pending. However, to the best of my knowledge, my allotment application for this 160 acre parcel of land is the only application which is based upon an official document, signed by the Governor of the Territory of Alaska, recognizing my ancestor's right to possess and occupy the land involved.

My grandfather San'i-hat first occupied and used this land prior to 1867, when Alaska was purchased by the United States. His right to possess and occupy the land was established by law (the Act of May 17, 1884, 13 Stat. 26) and was recognized by the Governor of the Territory of Alaska in an official document in 1887. San'i-hat continued to use and occupy the land until his death in 1912, when he willed the land to me. My father and I continued to use the land until 1966, when we were forcibly evicted by the U.S. Forest Service, and our cabin and other buildings on the land were burned down. Since that time, I have attempted to follow established legal procedures to regain possession of my land, without success. Senate Bill 2254, now being considered by this Committee, is my final hope to regain ownership of my land. I respectfully request that the Committee and the Senate favorably consider this Bill, and restore to me the land which had been occupied by my ancestors for over 100 years.

Thank you for permitting me to present this testimony to the Committee.

DAVID SANHITE PEELE.

DISTRICT OF ALASKA, EXECUTIVE OFFICE,  
Sitka, September 23, 1887.

TO WHOM IT MAY CONCERN: Whereas, one "Sauhite" a native of Alaska, whose "white name" is "Billy Wilson", has exhibited to me a paper which is endorsed as having been recorded in Book A of Records, on page 75, at the Custom House in Wrangell, on April 9th, 1884, in which said paper the said "Sauhite" sets up his claim to the possession and occupation of 160 acres as a homestead, on Karta Bay, Prince of Whales Island, Alaska, "about one mile above the Baronovich claim", and

Whereas, the said "Sauhite" claims to have been in possession and occupation of the same land for many years, this is to warn all other persons that he cannot legally be dispossessed. The Act of May 17, 1884, entitled "An Act providing a civil government for Alaska", Section 8, "That the Indians or other persons in said district (Alaska) shall not be disturbed in the possession of any lands actually in their use or occupation, or now claimed by them, but the terms under

which such persons may acquire title to such lands is reserved for future legislation by Congress". Under this law it is my duty to see that the indians are protected in their rights, and I hereby give notice that in this particular case, and in all others of a similar character, the attention of the district attorney will be called to, and the aid of the Courts invoked in behalf of the rights of the native claimant or claimants.

[SEAL OF THE TERRITORY OF ALASKA]

A. P. SWINEFORD, *Governor.*

Filed and made of record March 7, 1929 at 9:30 A.M. in Vol. 7, Misc. Rec. page 54.

-----, *Recorder.*



