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HEARINGS
BEFORE THE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS

ON
H.R. 3015
REPEAL OBSOLETE LANGUAGE FROM AGRICULTURAL
COLLEGE ACT OF 1890
APRIL 25, 1979

H.R. 3575
REDUCTION OF PENALTIES ASSESSED ON MARKETINGS
OF PEANUTS
APRIL 26, 1979

H.R. 1573 AND S. 41
LAND CONVEYANCE TO BELL COUNTY, KY., BOARD OF
EDUCATION
MAY 30, 1979

H.R. 998
ABOLISH STATE PRISON FARMS FROM PAYING OF MARKETING
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JUNE 26, 1979

H.R. 998
VIEW OF PORTERS CREEK, TENN., AND LOWER LLAGAS
CREEK, CALIF., WATERSHED PROJECTS
FEBRUARY 5, 1980

H.R. 5528
IMPROVING THE QUALITY OF GRAIN FOR EXPORT
SEPTEMBER 10, 1980

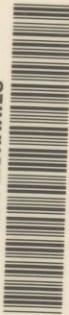
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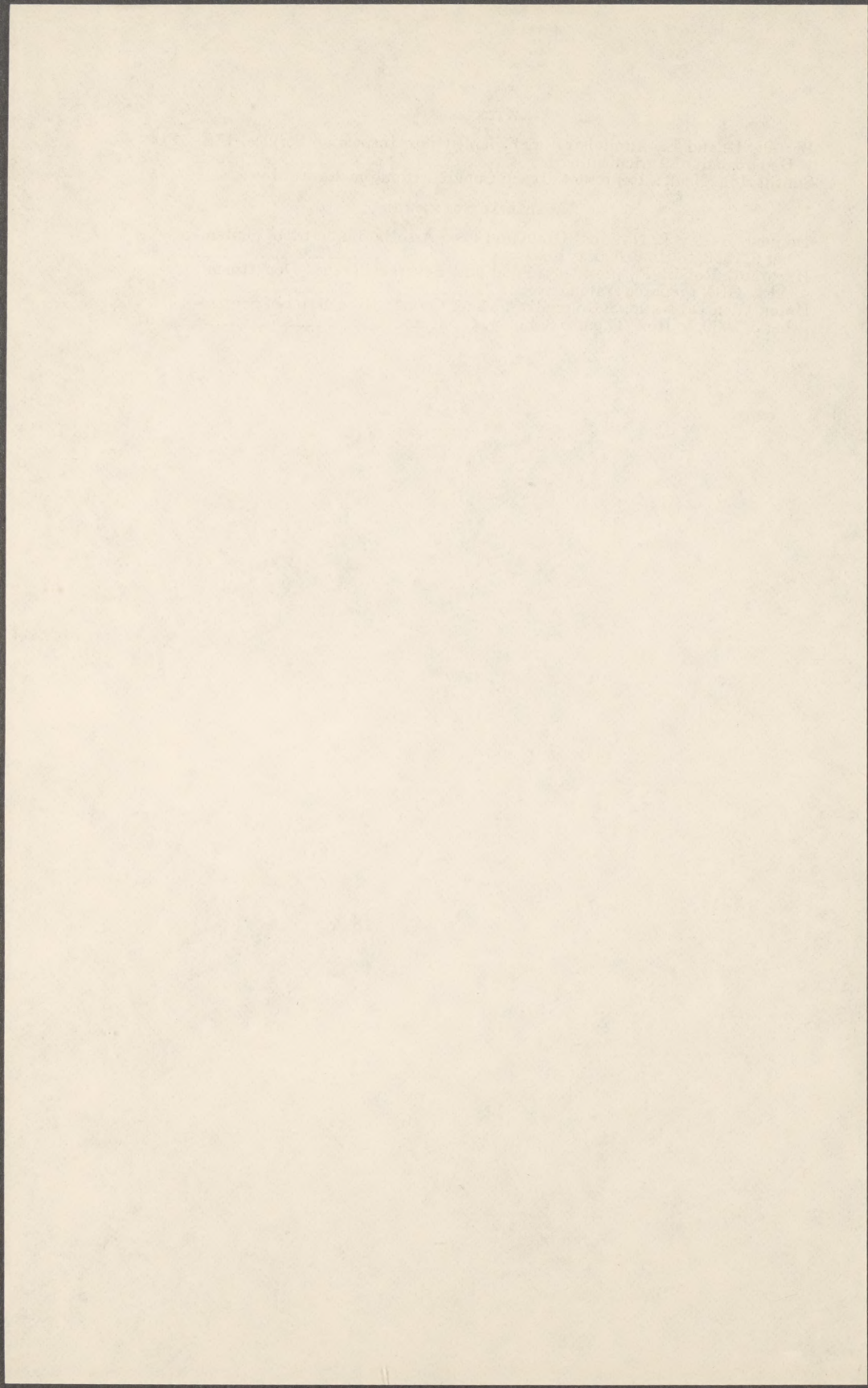
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REPEAL OBSOLETE LANGUAGE FROM AGRICULTURAL COLLEGE ACT OF 1890

WEDNESDAY, APRIL 25, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENT INVESTIGATIONS,
OVERSIGHT, AND RESEARCH OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 2:20 p.m., in room 1302, Longworth House Office Building, Hon. E de la Garza (chairman of the subcommittee) presiding.

Present: Representative Wampler.

Staff present: William A. Imhof and J. Robert Franks, associate counsels; Glenda L. Temple, clerk; Humberto Ruben Pena, Anita R. Brown, Thomas E. Adams, Jr., and Gerald R. Jorgensen.

Mr. DE LA GARZA. The subcommittee will be in order.

We are meeting today in order to consider H.R. 3015, by Mr. Leland, our distinguished colleague from Texas.

[H.R. 3015 and the reports from the U.S. Department of Agriculture and the U.S. Department of Health, Education, and Welfare follow:]

[H.R. 3015, 96th Congress, 1st Session]

A BILL To repeal obsolete statutory language purporting to permit racial segregation in agricultural and mechanical arts colleges financed under the Agricultural College Act of 1890

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of August 30, 1890 (26 Stat. 417; 7 U.S. Code 321-326a), is amended as follows:

(1) In the first section, by striking out "but the establishment and maintenance of such colleges" and all that follows through "to separate colleges for white and colored students".

(2) In section 2, by striking out "or the institution for colored students,".

(3) In section 3, by striking out "or of institutions for colored students,".

(4) In section 4, by striking out "or of institutions for colored students,".

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 14, 1979.

Hon. THOMAS S. FOLEY,
*Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 3015, a bill "To repeal obsolete statutory language purporting to permit racial segregation in agricultural and mechanical arts colleges financed under the Agricultural College Act of 1890."

The Department is in sympathy with the intent of this legislation. This statute is currently administered by the Department of Health, Education, and Welfare. However, the Department of Agriculture/Science and Education Administration

(USDA/SEA) administers agricultural research and extension programs for the 1890 colleges and Tuskegee Institute. In order to ensure that the provisions of H.R. 3015 do not result in changes in the status of the USDA sponsored programs, the Department proposes that H.R. 3015 be amended to include the language of the proposed amendment attached to this report.

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 BERGLAND, *Secretary*.

Enclosure.

SUGGESTED AMENDMENT TO H.R. 3015

On first page of bill, substitute the following for lines 5 through 8:

(1) In the first section, by striking out "*Provided*, That no money shall be paid" and all that follows through "to separate colleges for white and colored students" and inserting in lieu thereof: "*Provided*, That where any State or Territory has more than one agricultural college, no money shall be paid under this Act or the Act of July 2, 1862 to such State or Territory for the support or maintenance of such colleges unless the funds received in such State or Territory be equitably divided among such colleges, as proposed by the legislature of each State or Territory and approved by the Secretary of Health, Education, and Welfare."

On second page of bill, all the following new lines:

Sec. 2. Nothing in this Act shall be construed as affecting the status or continued funding of any institution heretofore or hereafter established under the Acts of July 2, 1862 or August 30, 1890.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,

June 14, 1979.

HON. THOMAS S. FOLEY,
*Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for a report on H.R. 3015, a bill "To repeal obsolete statutory language purporting to permit racial segregation in agricultural and mechanical arts colleges financed under the Agricultural College Act of 1890."

The bill would delete from what is popularly known as the Second Morrill Act the provision that a State's establishment and maintenance of separate but equal agricultural institutions for black students satisfies the requirement in the Act that a State make no distinction based on race or color in the admission of students. The bill would also strike out references to "institutions for colored students" wherever they appear.

As noted in the title of the bill, the "separate but equal" provision and the references to "institutions for colored students" are obsolete and we support their elimination from the Second Morrill Act. Our only concern with the bill is that paragraph (1), besides eliminating the obsolete language, also eliminates the requirement that Federal funds be equitably divided between eligible institutions in a State that has more than one such institution. This requirement remains viable today and should not be eliminated.

Subject to the restoration of the requirement that funds provided to a State under the Second Morrill Act be equitably divided among its eligible institutions, we recommend that the bill be favorably considered. Enactment of the bill would result in no additional costs to the Federal government.

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

Sincerely,

JOSEPH A. CALIFANO, *Secretary*.

MR. DE LA GARZA. This is legislation intended to eliminate certain words from the basic act instituting the Agricultural College Act of 1890. This has been known as a traditional black agricultural colleges of the United States act.

We will be happy to hear from you at this time, Mr. Leland.

STATEMENT OF HON. MICKEY LELAND, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS

Mr. LELAND. Thank you, Mr. Chairman.

I am honored to appear before your subcommittee for the first time today in support of my bill, H.R. 3015.

It is a special honor since you are my colleague from Texas. I want to thank you for expediting this matter in the manner in which you have.

H.R. 3015 is a simple bill that is intended to remove some archaic and undoubtedly unconstitutional language from our statute books. The bill repeals certain language from the Agricultural College Act of 1890 that would permit funding of racially segregated colleges.

I was, quite frankly, shocked and dismayed when staff members reported to me the existence of this language that condones separate colleges for "white" and "colored" students. I had thought that authority for "separate-but-equal" educational systems had been finally laid to rest by the Supreme Court over 20 years ago in the *Brown v. Board of Education* and related school cases.

Moreover, I would have thought that by now language such as that contained in this act would have been purged from the United States Code.

Mr. Chairman, obviously I am not an expert in the operation of the land-grant funding mechanism. My bill is intended only to remove the racial segregation language without affecting the other provisions of the act, and I would hope this intent could be made clear in the committee report.

I have checked the bill with various attorneys and the legislative counsel to see that it does not disturb the funding scheme. There are representatives here from the Agriculture Department and HEW who are experienced with these provisions, and I would certainly appreciate their views on the bill and its effect.

I have asked the distinguished chairman to offer a minor technical amendment which merely perfects the intent of my bill by striking the entire proviso, which contains the segregation language.

Originally, I had thought the opening sentence of the proviso, which restates a prohibition against discrimination, should be retained, but later counsel has advised that this is completely unnecessary since the nondiscrimination provisions of title VI of the Civil Rights Act applies to this funding also.

Additionally, Mr. Chairman, I would very much appreciate your consideration of marking up the bill today. I realize, however, that there are some problems and, therefore, I defer to your better wisdom.

I expect that there will be no opposition to this proposal once everybody is privy to the information that we have shared just recently.

I can think of no better commemoration of these historic decisions than for Congress to remove this last vestige of segregation in our schools from the statutes by enacting H.R. 3015 in light of the fact that May 17 is the anniversary of *Brown v. Board of Education*.

Mr. Chairman, I now yield.

Mr. DE LA GARZA. We very much appreciate your interest and certainly your most commendable intent in what you have tried to do with your legislation.

There have been some questions raised by our staff and by others outside of the subcommittee staff as to the practical effects of the words or part of the words that you intend to delete.

Apparently, there seems to be some difference of opinion among the legal minds that have looked at the legislation. We would feel more comfortable if we could delay action today in order that we might be very certain and accurate as to what we intend to do. I find no place where anyone disagrees with the intent or thrust of the legislation.

We have had no time to receive the administration's position on this legislation because of the urgency of time such that we accelerated our hearing for your convenience.

Therefore, we have no position expressed from the administration yet. However, we do have representatives of the Department of Agriculture and the Office of Education who are here solely for the purpose of working with us insofar as the technicalities are concerned and yet not to present their respective departments' positions.

Therefore, I would like to ask Mr. Thomas Ronningen who is here from the Department of Agriculture and Mr. Alford who is here from the Office of Education, to take a seat with Congressman Leland. In order that we might get some information from you, we will ask you to come forward.

Mr. Wampler?

Mr. WAMPLER. Thank you, Mr. Chairman.

I want to welcome our colleague, Mr. Leland, before the subcommittee. I believe this is the first opportunity I have had to meet him here, but we have met, of course, before. He is to be commended, I think, for what he is trying to do in H.R. 3015.

As one who has long had an interest in the traditional Federal-State partnership in our land-grant colleges and universities, including our so-called 1890 colleges and universities, I do not want to be a party of knowingly doing anything to disrupt that historical partnership which I think has contributed in an admirable way to helping to enhance the quality of education for all our people.

I recognize that when the original statute passed it was at a different time and a different period of history in our country, and one that I do not think many of us are particularly proud of. I think our problem, other than what you are attempting to do, Mr. Leland, is to get sufficient resources to all of our land-grant colleges, including the 1890 colleges, so that they can carry on the traditional mission in the vital fields of research, teaching, and extension, and the things that I think have contributed greatly to enhancing the quality of life for the people in rural America.

I asked one of our staff members to contact the president of our 1890 college in Virginia, the Virginia State College at Petersburg, Va. Frederick Nicholas, who is the vice president, said that he was not in a position to comment on the legislation because apparently they had not had time to study it. Also, he was concerned as to what the position of Dr. Morrison of Alabama A. & M. and Dr. Dowdy, who is the chancellor of North Carolina A. & T. University, might think. So, I think it would be helpful to the subcommittee to know what the positions of the traditional 1890 colleges might be, both in the several States and as an organization.

I had been led to believe that many of them wanted to maintain their unique status that they now have. However, I think we are all in accord that if there is anything in the statute that suggests that it is perpetuating segregation, then that certainly is not the intent.

I would support any reasonable language to remove that. However, at the same time I think you and I agree, Mr. Leland, that we do not want to do anything to damage the traditional funding formulas or to in any way alter the unique contribution the 1890 colleges have made through the years. I trust that will continue.

Mr. LELAND. If I might respond, let me say this. If there is any kind of damage that this bill would do to that intent, I would be the first to pull this bill out.

I appreciate the comments from both you, Mr. Wampler, and the chairman on this matter. I fully agree that the overriding import of this situation is the funding of the colleges and the treatment that they get from the Federal Government and the relationship they have developed over the years.

Language is sometimes insulting, of course, to some people as they peruse the statutes or the code, but it is not necessarily important when the substance of the matter is the financing of the education of not only blacks in these schools but people who are seeking an education in this area.

As I alluded to earlier, I would be the first to override any kind of attempt for a piece of legislation like this to pass if indeed it did do damage to that relationship.

I fully intend to contact the members of the association personally to find out what their opinion is. I would hold their opinions in high regard and would balance that with the technical information that we gather along with more time to consider the legislation.

I must say that it was quite an idea for me to assume at the time to get this legislation passed, hoping that it did not do any damage, and I still hope it will not do any damage to the intent.

This is, of course, the 25th anniversary of the *Brown v. Board of Education*.

I yield to what is right and just for all of us.

Mr. WAMPLER. I appreciate the comments. I concur.

I might take this opportunity to solicit the gentlemen's support when the appropriations bill to fund the Department of Agriculture for fiscal year 1980 come before the House. We are going to be offering amendments trying to restore some of the contemplated cuts that would directly affect the funding formula for our land-grant colleges, including those of 1890. That would be a time when all of us could do something meaningful to help provide substance so that they can carry on what I can conceive to be great programs.

I appreciate the comments.

Thank you, Mr. Chairman.

Mr. DE LA GARZA. Mr. Ronningen and Mr. Alford, have you had an opportunity to examine the legislation?

Mr. RONNINGEN. Yes, to some degree.

Mr. DE LA GARZA. Do you have any opinions, understanding that you are not here representing the Department or a position from the Department, but rather as a technical adviser?

Mr. RONNINGEN. That is correct.

Mr. DE LA GARZA. Would you care to tell us your opinion on the issue?

COMMENTS OF THOMAS S. RONNINGEN, ASSOCIATE DEPUTY DIRECTOR OF SCIENCE AND EDUCATION ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE

Mr. RONNINGEN. Mine are technical comments, of course. I think the essence of my informal reactions have been well stated already. The Department is beginning to develop an official opinion on this proposed legislation, so I cannot comment on that position until it has been finally formulated, but I think the expressions here, both from the chairman and Congressman Wampler, generally reflect the interpretations that we have preliminarily made on this legislation.

We do want to continue the acceleration and progress of the programs in research and extension that are underway in the 1890 land-grant colleges and Tuskegee Institute. They are showing fine progress. They are interacting more usefully and completely with other research and extension activities in their States and with the Department of Agriculture.

We certainly would go along with the statements that would say that we want to be sure that changes proposed would not legally weaken the justification of those programs.

Mr. DE LA GARZA. Mr. Alford?

COMMENTS OF ALBERT L. ALFORD, ASSISTANT COMMISSIONER FOR LEGISLATION, U.S. OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. ALFORD. Mr. Chairman, I would say that we have just been brought into this lately. Yesterday was my first exposure. Then I was asked this morning if we could provide somebody to come up this afternoon.

As a matter of fact, we received the bill as we reached here this afternoon and have just taken our first look at it.

We had looked at the language of the basic law this morning in conjunction with the HEW General Counsel in the Office of Education.

I would say, looking at the bill as it is set out here, that we have at least a few technical changes that we would recommend. They are what I would call perfecting amendments. They do not go counter to the thrust that Mr. Leland is proposing.

I read Mr. Leland's statement in the record when he introduced the bill. I have listened to his statement this afternoon. I think that we basically have no disagreement as to the intent that is being carried out.

I can state that as far as the Department of HEW is concerned, we do want to be very careful that no harm would come to the institutions already being served by this program.

We would be willing to provide you the perfecting amendments as we see them which would do the job that perhaps Mr. Leland wants done, if that would meet your needs.

Mr. DE LA GARZA. Thank you very much.

I guess the best thing to do under the circumstances would be to recess the hearing on this bill and allow the Department of Agriculture, HEW, our legal staff, and the legal staff of Mr. Leland to consult with each other to see if we can't come up with the wording that would do no harm and yet accomplish the purpose which Mr. Leland seeks to accomplish. I think this can be done expeditiously. I do not know that it would take too long.

I am very interested, Mr. Leland, in this. We would endeavor to do this also on our part. I am interested that the association of the 1890's and Tuskegee be advised, if they have not been advised.

I would suggest that you and I would be well served if Dr. Thomas of Prairie View were contacted first. [Laughter.]

Mr. LELAND. I agree, Mr. Chairman.

Mr. DE LA GARZA. Is there anyone here who could assist in any manner and who would feel that their presentation could in any way assist us?

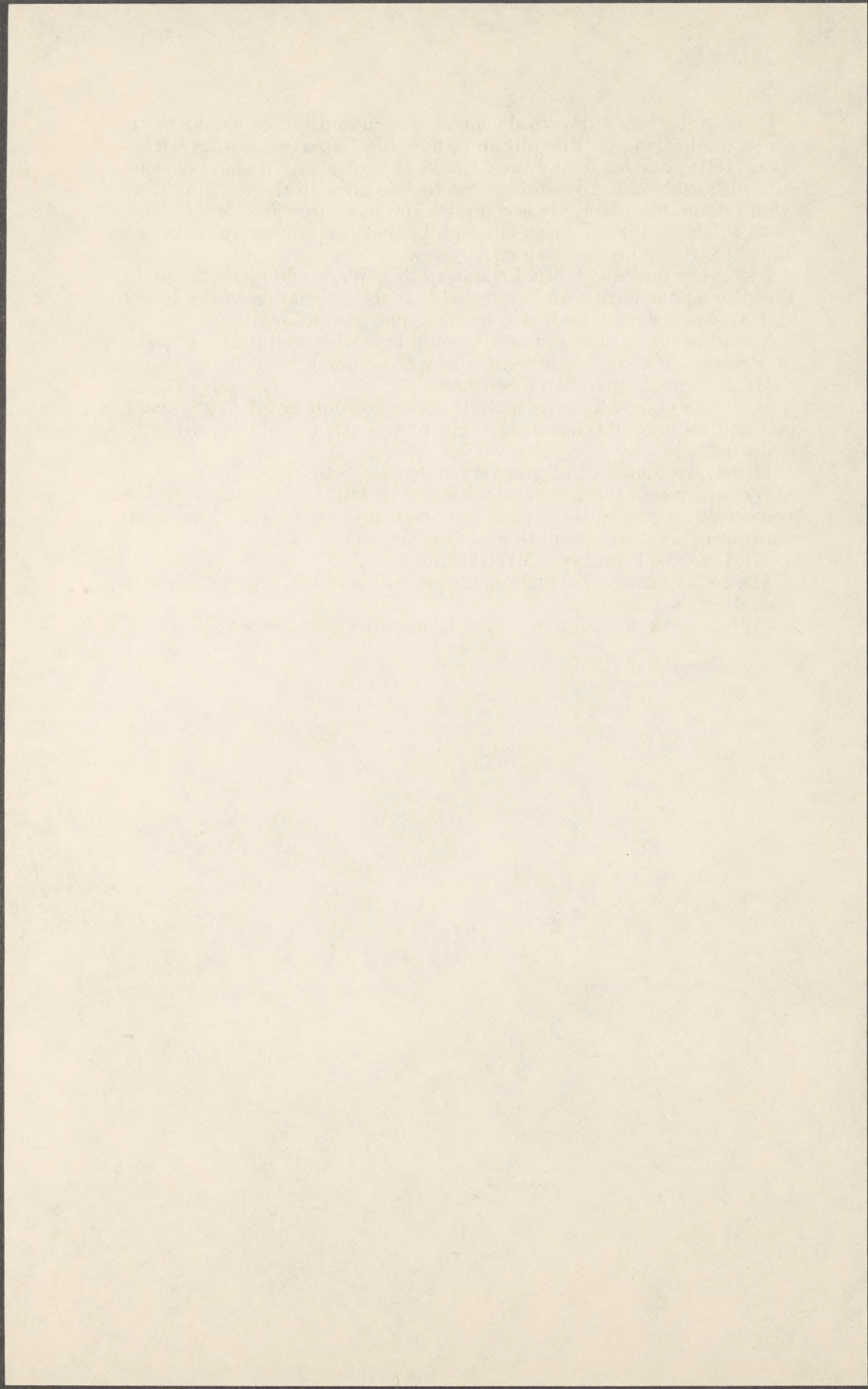
If not, we thank all of you very much for your presence.

We will recess the hearing and our staff will be in touch with the respective staffs and those people concerned to see if we can come up with an expeditious resolution of this situation.

Mr. LELAND. Thank you, Mr. Chairman.

Mr. DE LA GARZA. The subcommittee will stand in recess subject to the call of the Chair.

[Whereupon at 2:35 p.m., the subcommittee was recessed.]



REDUCTION OF PENALTIES ASSESSED ON MARKETINGS OF PEANUTS

THURSDAY, APRIL 26, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OILSEEDS AND RICE
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 1302, Longworth House Office Building, Hon. Dawson Mathis (chairman of the subcommittee) presiding.

Present: Representatives Jones of North Carolina, Whitley, Stenholm, Findley, and Thomas.

Staff present: Fowle C. West, staff director; Glenda L. Temple, clerk; and Leighton Lang.

Mr. MATHIS. The subcommittee will be in order.

We are meeting this afternoon to hear testimony from the Department of Agriculture relative to their position on the bill H.R. 3575, which is pending before the subcommittee. At the conclusion of the testimony from the Department and testimony from witnesses who are here and who have presented statements for the record, the subcommittee will be able to take action on the bill, hopefully to report it to the full committee with a recommendation that it do pass.

[H.R. 3575 and the report from U.S. Department of Agriculture follow:]

[H.R. 3575, 96th Congress, 1st Session]

A BILL To provide the Secretary of Agriculture with flexibility in the imposition of marketing penalties for peanuts

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 359(a) of the Agricultural Adjustment Act of 1938, as amended, is further amended by adding at the end thereof the following sentence: "The amount of any penalty imposed under this section may be reduced in accordance with regulations established by the Secretary if he determines that the marketing subject to the penalty was done unintentionally or unknowingly and that a reduction in the amount of such penalty would not impair the effective operation of the peanut price support program."

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 4, 1979.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of April 17 for a report on H.R. 3575, a bill "To provide the Secretary of Agriculture with flexibility in the imposition of marketing penalties for peanuts."

The Department recommends passage of this bill.

This bill would authorize the reduction of penalties assessed on marketings of peanuts in situations where it is determined, pursuant to regulations issued by

the Secretary, that the excess marketings were unintentionally or unknowingly done and reduction in the penalty would not impair the effective operation of the peanut price support program.

The legislation governing the peanut program provides, in effect, that penalties shall be assessed on peanuts marketed as quota peanuts in excess of the established farm poundage quota. This legislation also provides that the rate of penalty for excess marketings shall be 120 percent of the support price for quota peanuts. The quota support price for the 1978 crop is \$420 per ton. Therefore, the penalty rate is \$504 per ton or 25.2 cents per pound.

We are advised by our State ASCS offices that we have a large number of producers who are in a penalty situation because they marketed quota peanuts in excess of their farm poundage quota. We are also advised that a close examination of the facts surrounding the excess marketings shows that the vast majority of the marketings resulted from unintentional errors either by the handler or by some mistake on the part of the producer.

Based on information provided by our State ASCS offices, we estimate that we will have as many as 1200 cases where growers have marketed quota peanuts in excess of their farm poundage quota. The amount of penalty could be as much as \$2,000,000. These estimates are projected figures since marketings for many peanut farms have not been reconciled.

There is no statutory basis for reduction or waiver of marketing penalties where it is established that the penalties resulted from an unintentional error or mistake. Unless the law is changed to provide more flexibility, we are required to assess both the producer and the handler with the quota penalty and hold both jointly and severally liable for its payment. The flexibility provided by the bill is desirable in order to provide fair and equitable treatment to producers and handlers.

The excess marketings for the 1978 crop resulted from many types of errors. The major categories are: (1) Failure of handler to post a sale on producer's marketing card, and (2) Computation and posting errors. These type errors can be expected to happen during any marketing season. However, we believe that the large number of errors this marketing season was due to the newness of the peanut poundage program. A concerted effort was made to inform producers and handlers alike on the recordkeeping procedures for the marketing of the peanuts. Even so, there was not a complete understanding of the program, particularly during the first part of the marketing season.

We have already taken steps to minimize the number of errors during the 1979 marketing year. We have redesigned the basic sales document to simplify its use. The executed sales documents will be furnished to our county ASCS offices for review to discover and initiate corrections of the most obvious errors before distribution to our Management Field Office. Also, after a year's experience in the program, we feel that we can do a better job in training the people who are involved in the operation of the program.

While this bill will provide flexibility in assessment of penalties, we expect to issue regulations to apply the full penalty prescribed by law to those cases where the excess marketing was intentionally or knowingly made. We also expect to issue regulations to establish penalties for excess marketings because of unintentional errors at such a level that will deter violations.

It should be noted that the bill does not contain an effective date provision. It is recommended that there be a provision inserted making the amendment effective beginning with penalties assessed on the 1978 crop peanuts.

Enactment of H.R. 3575 would not require additional funds.

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

Sincerely,

BOB BERGLAND, *Secretary.*

Mr. MATHIS. The first order of business is to hear from the Department witness, Mr. James M. Davis, the Deputy Director, Production Adjustment Division, ASCS, in the Department of Agriculture.

Mr. Davis, we welcome you before the subcommittee. We will be delighted to hear from you at this time.

STATEMENT OF JAMES M. DAVIS, DEPUTY DIRECTOR, PRODUCTION ADJUSTMENT DIVISION, ASCS, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY DALLAS SMITH, DEPUTY DIRECTOR, PRODUCTION ADJUSTMENT DIVISION; AND THOMAS VonGARLEM, DEPUTY DIRECTOR, PRICE SUPPORT AND LOAN DIVISION

Mr. DAVIS. Thank you, Mr. Chairman.

I appreciate the opportunity to present the Department's view on H.R. 3575 before the subcommittee.

We understand that this bill would authorize the reduction of penalties assessed on marketings of peanuts, as provided by regulations issued by the Secretary, where it is determined that the excess marketings were unintentionally or unknowingly done and reduction in the penalty would not impair the effective operation of the peanut price support program.

The Department recommends passage of this bill. The authority provided by this bill in the assessment of penalties is desirable in order to provide fair and equitable treatment to producers and handlers.

The current legislation governing the peanut program provides, in effect, that penalty shall be assessed on peanuts marketed as quota peanuts in excess of the established farm poundage quota. The legislation also provides that the rate of penalty for excess marketings shall be 120 percent of the support price for quota peanuts. The quota support price for the 1978 crop is \$420 per ton. This means that the penalty rate is \$504 per ton or 25.2 cents per pound.

We are advised by our State ASCS offices that we have a large number of producers who are in a penalty situation because they marketed quota peanuts in excess of their farm poundage quota. We are also advised by our State ASCS offices that they have closely examined many of these cases and found that the vast majority of the excess marketings resulted from unintentional errors either by the handler or by the producer.

We estimate that we will have as many as 1,200 cases where growers have unintentionally marketed peanuts as quota peanuts in excess of their farm poundage quota. The amount of penalty could be as much as \$2 million. These estimates are projected figures since marketings for many peanut farms have not been reconciled.

Current legislation provides no basis for reduction or waiver for marketing penalties where it is established that the penalties resulted from an unintentional error or mistake. Unless the law is changed to provide more flexibility, we are required to assess both the producer and the handler with the quota penalty and hold both jointly and severally liable for its payment. We feel that this bill will provide the flexibility that is needed for the Department to assess penalties in a fair and equitable manner.

The excess marketings for the 1978 crop resulted from many types of errors. The major categories are: one, failure of handler to post a sale on producer's marketings card; and, two, computation and post-

ing errors. These type errors can be expected to happen during any marketing season. However, we believe that the large number of errors this marketing season was due to the newness of the peanut poundage program. A concerted effort was made to inform producers and handlers alike on the recordkeeping procedures for the marketing of the peanuts. Even so, there was not a complete understanding of the program, particularly during the first part of the marketing season.

We have already taken steps to minimize the number of errors during the 1979 marketing year. We have redesigned the basic sales document to simplify its use. The executed sales documents will be furnished to our county ASCS offices for review to discover and initiate corrections of most of the obvious errors before distribution to our management field office. Also, after a year's experience in the program, we feel that we can do a better job in training the people who are involved in the operation of this program.

While this bill will provide flexibility in assessment of penalties, we expect to issue regulations to apply the full penalty prescribed by law to those cases where the excess marketing was intentionally or knowingly made. We also expect to issue regulations to establish penalties for excess marketings because of unintentional errors at such a level that will deter violations.

The bill does not contain an effective date provision although we believe it was intended that the penalty reduction authority apply to the 1978 crop as well as to the subsequent crops. We recommend that a provision be inserted making the amendment effective beginning with the 1978 crop peanuts.

I would be pleased to attempt to answer any questions that you may have.

We also have with us from the Department Tom VonGarlem and Dallas Smith, who are very knowledgeable about price support and producer associations. They can answer any questions in those areas of responsibility.

Mr. MATHIS. Thank you, Mr. Davis. We also appreciate you noting the fact that Mr. VonGarlem and Mr. Smith are present with you.

I appreciate very much the testimony that you have presented to the subcommittee this afternoon. I am sure that it is sufficiently in-depth to answer all the questions of the members of the subcommittee. However, we certainly would ask any member of the subcommittee if they do have questions.

The gentleman from North Carolina.

Mr. JONES of North Carolina. Mr. Chairman, I do not have any questions. I do want to commend the Department for your sympathetic understanding of perhaps what was our error and a willingness to join us in correcting it. We are very grateful for your statement.

Mr. Chairman, I have an amendment that I would like to offer at this time.

Mr. MATHIS. The gentleman is recognized for that purpose.

Mr. JONES of North Carolina. On page 2 of the printed bill, following the word "program" I offer the following as an amendment: "effective beginning with the 1978 crop."

Mr. MATHIS. Might the chair suggest to the gentleman that perhaps a more logical place for the amendment might be on line 5 on the first page immediately following the word "sentence" and prior to the word

"The". I think it might make the language read a little smoother for the benefit of those in the Department who have to interpret this language.

Mr. JONES of North Carolina. I will amend my motion to that effect.

Mr. MATHIS. Is there objection to the amendment offered by the gentleman from North Carolina?

[No response.]

Mr. MATHIS. Without objection, the amendment is agreed to.

The gentleman from Illinois.

Mr. FINDLEY. Mr. Davis, what do you mean by the term "unintentional error or mistake"? Is it an error on the part of the Government in making a measurement or an error on the part of the farmer in making a measurement?

Mr. DAVIS. Congressman, it could be a combination of two or three things.

Mr. FINDLEY. It is not restricted to just official mistakes; is that correct?

Mr. DAVIS. What normally happens—and we have investigated one State in particular—we find that about three-fourths of the penalties involved in that particular State were due to pounds on the basic sales document not being deducted from the farmer's marketing card.

In looking further at some of the situations, it is the fastness of the sales. Somehow, the pounds on the basic sales document did not get deducted from the farmer's marketed card.

Mr. FINDLEY. This is a new problem; is that right?

Mr. DAVIS. Yes, sir, it is a new problem for the peanut program for the 1978 crop with the poundage approach.

Mr. FINDLEY. Just to increase my understanding of the program, are farmers taking advantage of the opportunity to plant additional peanuts beyond the quota?

Mr. DAVIS. Not as far as the amount of acreage is concerned. I do not have the figures to show how many exceeded their acreage allotment. But the penalty there is pretty heavy, and it is discouraging it.

Actually, what we found so far is the excess marketing is due to unintentional sales of quota peanuts beyond the farm poundage quota.

Mr. FINDLEY. I may not have the right term. It was my understanding that farmers could produce for the \$400-and-some a ton within the quota. But they also had the option to market extra peanuts at about \$260 a ton. Is that correct?

Mr. DAVIS. Yes, that is right.

Mr. FINDLEY. Are they using that option?

Mr. DAVIS. They are. They are planting their allotment. They are selling additional peanuts.

Mr. FINDLEY. When they do sell the additional peanuts, there is no penalty on those sales?

Mr. DAVIS. That is correct. It is a lower price support. It is \$250 per ton.

Mr. FINDLEY. But it is the same type peanuts.

Mr. DAVIS. It is the same type peanuts.

Mr. FINDLEY. Do most farmers do this, produce for the lower price as well as the higher price?

Mr. DAVIS. They did for the 1978 crop.

Mr. FINDLEY. And one has to presume that they made money at the lower price.

Mr. DAVIS. They contracted a lot of the additional peanuts for a higher price than \$250 per ton. Mr. VonGarlem may want to comment on that particular aspect.

Mr. FINDLEY. I guess the comment I would like to make—and perhaps he would like to respond to it—is this. If they are making money at \$250 a ton, they are really fattening their bank account at over \$400.

Mr. MATHIS. Would the gentleman yield at that point, prior to hearing from the representative of the Department?

Mr. FINDLEY. Yes.

Mr. MATHIS. I think that the gentleman well knows that the purpose of the hearing today is to attempt to correct a technical error that was in that bill. I also understand that the gentleman recognizes this as being an opportunity to get his licks in on the program.

But let me say in response to the gentleman that those gentlemen who participated in the program last year, by and large, most of them entered into contract prior to the beginning of the season. In many instances it was at \$400, which was the resale policy established by the Department of Agriculture for these peanuts that had a loan value of \$250. So the loan value was in fact \$250. I do not think that any representative from the Department and certainly any member of this committee who comes from a peanut-producing area would tell you that there is a peanut farmer in the world who could survive at \$250. That is, in essence, a loan price—much the same and maybe a little lower even than the equated value of corn at the loan value that we have for corn today.

Mr. FINDLEY. I wonder if you could indicate to me the average income farmers had last year from these additional peanuts.

Mr. MATHIS. I do not have those figures. I do not know that Mr. VonGarlem does because we are still in the process of cleaning out the inventory from the CCC warehouses on those peanuts that did go into the loan. And there were some that were not contracted that were in the additional peanut category.

Mr. FINDLEY. Could you give us a range figure?

Mr. VONGARLEM. At the early part of the season we were selling at \$400 and above, as they were coming in. There were very few peanuts that were of eligible edible quality that were placed under the additional loan. By and large, the vast majority of the additional peanuts that were produced—and there were quite a few produced—were produced in response to contracts.

Mr. FINDLEY. What was the average price of the contracts—or the range?

Mr. VONGARLEM. It was \$380 to \$410—in that neighborhood.

Mr. DAVIS. I think that is right.

Mr. FINDLEY. I thank the chairman.

Mr. MATHIS. I thank the gentleman from Illinois.

The gentleman from California?

Mr. THOMAS. Thank you, Mr. Chairman.

We had an amendment which had its start with the 1978 crop, but that is open-ended. The assumption is that you want to retain this discretionary power open-endedly.

Mr. DAVIS. Yes, sir. We feel it is needed because of the nature of the marketing system and the poundage approach. There are going to be errors each year.

We had experience in a similar type program, a tobacco program, which is a poundage approach. After the first year, the number of errors dropped tremendously. But we still feel like there is a need for this type legislation because there are going to be some mistakes due to human error at the marketplace.

Mr. THOMAS. I understand the first year startup problems. But my assumption is that people go through it. After the first year, you clean out most of those mechanical errors. I am concerned about the possibility of an incentive if they could argue that it was an unknowing or an unwitting error that first year, there will be a number who will want to play that the second year.

The 120-percent penalty is a pretty severe one. If we had some kind of a termination date on it, we could clear out the mechanical problems. People would be sobered by the fact that, even if it is an unwitting mistake—for example, after 3 years of operation of the program, you are going to get that 120-percent penalty. But, if there is a feeling that they can still try to ride on the unwitting and unknowing for 3 or 4 years after the program has started, there will be some of those who try to play that game.

I am inviting the department's reaction to some kind of a termination on the discretionary aspect, at which time it would go back to the 120 percent.

Mr. DAVIS. I think that one thing the Department is committed to is to set the penalty rate at whatever level it would take to keep these errors from continuing to any large extent.

Mr. THOMAS. So you are looking for that flexibility and assure me that you will penalize according to the crime, but 120 percent is too stiff sometimes.

Mr. DAVIS. Right. Let's say if the number of errors were to go upward—we don't think they will—we may bounce back to 120 percent real quick. We are definitely committed. We state in our report that we will set the penalty level it would take to get the job done.

Mr. THOMAS. My assumption is that the way the bill is written it extends to your ability to waive any penalty in certain instances. Do you read it that way? Or do you have to levy a minimum penalty?

Mr. DAVIS. There is no minimum as we see the authority in the bill. However, the minimum we feel would be set is the level that the advantage the grower would get out of selling at the high quota support rate—

Mr. THOMAS. To take away his advantage?

Mr. DAVIS. Right; to take the advantage out, plus a penalty if it is necessary.

Mr. THOMAS. Thank you very much, Mr. Davis.

Mr. MATHIS. Are there further questions from the subcommittee?

[No response.]

Mr. MATHIS. If not, the gentleman from North Carolina, Mr. Jones, moves that the subcommittee report the bill, as amended, to the full committee with a recommendation that it do pass.

Is there discussion of the motion?

[No response.]

Mr. MATHIS. If not, the question occurs on the motion.

All those in favor of the motion by the gentlemen from North Carolina, Mr. Jones, signify by saying aye.

[A chorus of ayes.]

Mr. MATHIS. Those opposed, no.

[No response.]

Mr. MATHIS. The ayes have it. The subcommittee therefore reports the bill to the full committee with a recommendation that it do pass.

Without objection, we will insert in the record prepared statements that have been submitted.

If there is no further business, the subcommittee will stand adjourned, subject to the call of the Chair.

[Whereupon, at 2:25 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[The submitted material follows:]

STATEMENT OF CARLTON BUTLER, NATIONAL ASSOCIATION OF FARMER ELECTED COMMITTEEMEN

Mr. Chairman, Members of this Committee, it is a pleasure for me to testify before you today. My name is Carlton Butler, a member of the National Association of Farmer Elected Committeemen, and also a peanut grower from Carrsville, Virginia. I am here today to ask you to support H.R. 3575 introduced by Congressman Dawson Mathis from Georgia. This Bill concerns the penalties that have been imposed on the peanut growers due to the new peanut program.

Under the new peanut program that went into effect in 1978, peanut growers have been put in a very distressing situation. The grower would deliver his peanuts to the buying station thinking that he was doing what was required of him. Due to the extra paper work involved under the new peanut program the buying station was under a stress situation also, trying to get the paper work complete and sent to proper channels before the 24-hour time limit expired. In trying to get all this done there were errors made that were unintentional. When this happened, the grower was put in a penalty situation. He was penalized at \$504.00 per ton, this compares to \$420.00 per ton for the peanuts that he sold, so you can see that this \$84 per ton penalty is very hard for the peanut grower to take.

We feel that since this was the first year to get started under a new program that a lot of penalties were unjustly caused. We had some cases that the mail was put in the Post Office at the correct time, but due to the way that mail is now being handled that it did not get stamped until the next day, this put it into a penalty situation, not due to the fault of the grower, or the buyer, but due to the fault of the Postal Service.

If there is one thing that a peanut grower doesn't need today, it is an added expense.

Mr. Chairman, and Members of this Committee, we hope that you will put your support behind H.R. 3575 and give it full speed ahead.

Thank you for your time and I hope that you will consider what has been said here today in the testimonies that have been given by farmers and other organizations in support of this Bill.

STATEMENT OF H. EMMETT REYNOLDS, CHAIRMAN, NATIONAL PEANUT GROWERS GROUP

The National Peanut Growers Group, a federation of the nation's fourteen state and regional peanut producer organizations, endorses and urges the passage of H.R. 3575.

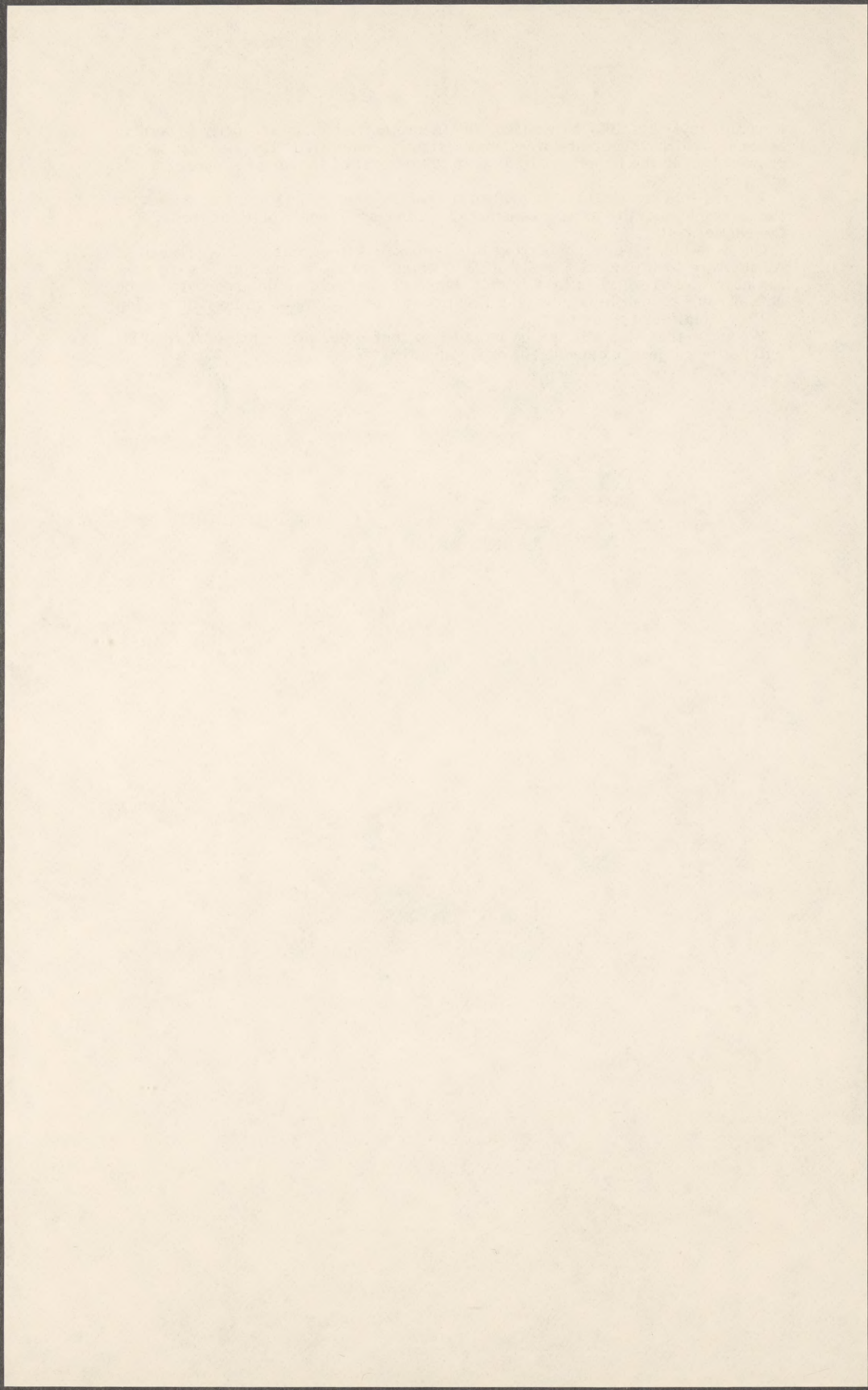
The Bill is fully justified in our opinion since it will provide an avenue for disposing of peanut marketing violations found to result from honest and unintentional errors made at peanut marketing locations last fall. Such errors are surfacing as USDA's Management Field Office at Kansas City provides computer readouts on 1978 crop farmers stock peanut marketings. These errors consist of incorrect numbers on weights of loads of peanuts marketed. The erroneous recordings have resulted in farm poundage quotas being exceeded in some instances and undermarketed in other cases. If the farm poundage quota is shown as being exceeded, the grower is in violations under Title VIII of the Food and

Agriculture Act of 1977 as written. USDA presently has no authority to resolve cases in which the errors were inadvertently committed. The penalty to the grower and/or the buyer, set by law at 120 percent of the quota support rate, is often substantial.

We are told by USDA's Agricultural Stabilization and Conservation Service that there appears to exist a considerable number of such violations throughout the peanut belt.

Our sole objective in supporting this proposal is to permit the Department of Agriculture to utilize its County ASCS Committees in determining case by case the nature of these violations so that innocent parties may be absolved. We do not, of course, wish to remove any liability in cases where there may have been willful violations by any party.

We trust that this bill can be handled so that other provisions of Title VIII will not be subject to amendment or modification.



LAND CONVEYANCE TO BELL COUNTY, KY., BOARD OF EDUCATION

WEDNESDAY, MAY 30, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENT INVESTIGATIONS,
OVERSIGHT, AND RESEARCH OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:35 p.m., in room 1302, Longworth House Office Building, Hon. E de la Garza (chairman of the subcommittee) presiding.

Present: Representatives Skelton, Fithian, Wampler, and Grassley.

Staff present: John E. Hogan, counsel;; William A. Imhof, and J. Robert Franks, associate counsels; Peggy L. Pecore, clerk; Humberto Ruben Pena and Gerald R. Jorgensen.

Mr. SKELTON (acting chairman). The subcommittee will come to order.

The hearing today is to consider H.R. 1573, to authorize the Secretary of Agriculture to convey certain lands in Bell County, Ky., to the board of education of Bell County, Ky.

[The bill H.R. 1573 and S. 41 follow:]

[H.R. 1573, 96th Congress, 1st Session]

A BILL To authorize the Secretary of Agriculture to convey any interest held by the United States in certain lands located in Bell County, Kentucky, to the Board of Education, Bell County, Kentucky

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is authorized and directed to convey to the Bell County Board of Education, Bell County, Kentucky, all right, title, and interest in and to 47.04 acres of land, more or less, a portion of the real property described as tract numbered 1101b in the quitclaim deed made by the United States, as grantor, to the Commonwealth of Kentucky, for the use and benefit of the Department of Conservation, dated April 15, 1954, recorded in Bell County, Kentucky, in Deed Book numbered 120, page 460, which the United States may hold as a result of covenants contained in said quitclaim deed: *Provided, however,* That any proceeds from the sale, lease, exchange, or other use or disposition of the lands shall be used exclusively for educational purposes by the Bell County Board of Education.

SEC. 2. The 47.04-acre tract described in section 1 lies on the east side of United States Highway 25E on Log Mountain in the Kentucky Ridge State Forest, and is more particularly described as follows: Beginning at a point in the west line of a 150-foot Kentucky Utilities Transmission Line easement and the east right-of-way line of United States Highway 25E; thence, running with said easement south 01 degrees 46 minutes west, 2,286 feet to a concrete monument (set); thence, leaving said easement and running south 86 degrees 34 minutes west, 1581.52 feet to a concrete monument (set) in the east right-of-way line of

United States Highway 25E; thence, with said right-of-way the following courses: north 28 degrees 36 minutes east, 500 feet; north 28 degrees 22 minutes east, 349.03 feet to a concrete right-of-way monument (found); north 37 degrees 36 minutes east, 456.59 feet to a concrete right-of-way monument (found); north 11 degrees 25 minutes west, 128.82 feet to a concrete right-of-way monument (found); north 38 degrees 11 minutes east 497.55 feet to a concrete right-of-way monument (found); north 38 degrees 11 minutes east, 679 feet to a concrete right-of-way monument (found); north 50 degrees 02 minutes east, 343.70 feet to the point of beginning.

[S. 41, 96th Congress, 1st Session]

AN ACT To require the Secretary of Agriculture to convey any interest held by the United States in certain lands located in Bell County, Kentucky, to the Board of Education, Bell County, Kentucky

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture shall convey, without consideration, to the Bell County Board of Education, Bell County, Kentucky, all right, title, and interest in and to 47.04 acres of land, more or less, a portion of the real property described as tract numbered 1101b in the quitclaim deed made by the United States, as grantor, to the Commonwealth of Kentucky, for the use and benefit of the Department of Conservation, dated April 15, 1954, recorded in Bell County, Kentucky, in deed book numbered 120, page 460, which the United States may hold as a result of covenants contained in said quitclaim deed: *Provided*, That any proceeds from the sale, lease, exchange, or other use or disposition of the lands shall be used exclusively for educational purposes by the Bell County Board of Education.

SEC. 2. The 47.05-acre tract described in section 1 lies on the east side of United States Highway 25E on Log Mountain in the Kentucky Ridge State Forest, and is more particularly described as follows: Beginning at a point in the west line of a 150-foot Kentucky Utilities Transmission Line easement and the east right-of-way line of United States 25E; thence, running with said easement south 01 degrees 46 minutes west, 2286.00 feet to a concrete monument (set); thence, leaving said easement and running south 86 degrees 34 minutes west, 1581.52 feet to a concrete monument (set) in the east right-of-way line of United States 25E; thence, with said right-of-way the following courses: North 28 degrees 36 minutes east, 500.000 feet; north 28 degrees 22 minutes east, 349.03 feet to a concrete right-of-way monument (found); north 37 degrees 36 minutes east, 456.59 feet to a concrete right-of-way monument (found); north 11 degrees 25 minutes west, 128.82 feet to a concrete right-of-way monument (found); north 38 degrees 11 minutes east, 497.55 feet to a concrete right-of-way monument (found); north 38 degrees 11 minutes east, 679.00 feet to a concrete right-of-way monument (found); north 50 degrees 02 minutes east, 343.70 feet to the point of beginning.

Passed the Senate April 4 (legislative day, February 22), 1979.

Attest:

J. S. KIMMITT,
Secretary.

Mr. SKELTON. Our first witness is Congressman Tim Lee Carter.

STATEMENT OF HON. TIM LEE CARTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. CARTER. Thank you, Mr. Chairman.

I appreciate very much the opportunity to be here today to testify in support of H.R. 1573 and S. 41, which would give the Bell County, Ky., Board of Education clear title to 47.04 acres of land so that they may proceed to construct a new school.

Since the devastating flood of April 1977 in southeastern Kentucky, the Board of Education of Bell County has been working diligently to plan for new school facilities which would be located out of the flood plain in order to prevent the possibility of the damage that they suffered at that time.

They were able to obtain from the Commonwealth of Kentucky title to 47.04 acres of land in the Kentucky Ridge Forest in Bell County for this purpose. The Commonwealth, in 1954, received title to this land from the U.S. Department of Agriculture, but certain rights were retained.

The Board of Education is prepared to go ahead with the construction of the new school facilities, but the only problem with their ability to proceed concerns the lack of clear title to the land. They are unable to sell the necessary school bonds until this reservation is removed.

I requested information from the Forest Service in 1978 concerning the removal of this reservation, and, in a letter from them dated September 15, 1978, it was stated:

We will be unable to comply with the request because the Secretary of Agriculture has no authority to release a State or successor in title from the public purpose provision contained in the deed of conveyance, which is required under Subsection (c), Section 32, Title III, Bankhead-Jones Farm Tenant Act (50 Stat. 522, 525), as amended. Special legislation would be required to authorize the Secretary of Agriculture to make this release.

Mr. Chairman, it is this special legislation that we are seeking, and I want to point out, too, that the Forest Service indicated:

... we would not expect the proposed use of the lands for the construction of a high school to conflict with the public purpose reservation contained in the deed.

But the fact remains that the Board of Education must be able to sell its bonds in order to begin construction, and they cannot do so without clear title.

The Senate passed the bill S. 41, April 4, 1979, and I ask this committee to give favorable consideration to this and to my bill, H.R. 1573, to which I am submitting an amendment for the committee's review.

Mr. Chairman, it is essential that the Bell County Board of Education be permitted to take needed action as soon as possible in connection with this project. They have been able to overcome a great many obstacles in laying the groundwork for building a school outside the flood plain, and I believe that we should help them in overcoming this last remaining one.

Officials of the Commonwealth of Kentucky have assured me that they have no objections to this proposal. In fact, the land was transferred by them as a gift, free and clear, with only the reservation held by the United States.

This legislation would provide the necessary authority to the Department of Agriculture to make a gift of this land by conveying "all right, title, and interest in and to" the 47.04 acres.

Further, it provides:

That any proceeds from the sale, lease, exchange, or other use or disposition of the lands shall be used exclusively for educational purposes by the Bell County Board of Education.

Again, Mr. Chairman, this legislation would make a gift of this land. It involves no public funds and it would not affect any lands adjacent to this 47.04 acre tract.

I am pleased to have with me today representatives of the Bell County School System, and I would appreciate their being able to make statements to the subcommittee concerning this matter.

I want to point out, too, Mr. Chairman, that Senators Huddleston and Ford strongly support this proposal.

I ask the committee to give favorable consideration to this important measure and to act as quickly as possible in order to permit the board of education to go ahead with this project.

With your permission, Mr. Chairman, I will at this point submit the amendments that I am proposing to H.R. 1573.

Mr. SKELTON. Thank you for your testimony.

As I understand it, this is merely a procedure to clear the title to the land in which certain mineral rights were reserved in the Federal Government; is that correct?

Mr. CARTER. Yes; but actually, most of the mineral rights, or all of the mineral rights, so far as I know, have already been conveyed by the owners to the Bell County Board of Education. I am sure the coal rights have been conveyed.

Mr. SKELTON. What then remains in the Federal Government's title; the mineral rights alone?

Mr. CARTER. The public purpose reservation. We just want to grant as a gift a clear title to the Bell County Board of Education so they can sell bonds, to build a much needed school, but let me ask Superintendent Ike Slusher to respond.

Mr. SKELTON. There is a reversionary interest if the land is used for anything other than public interest, and that is the purpose in which you wish this title to be cleared; is that not correct?

Mr. SLUSHER. That is correct.

Mr. SKELTON. Thank you.

Mr. Wampler, do you have any questions?

Mr. WAMPLER. I have no questions, Mr. Chairman, other than to commend our friend and colleague from Kentucky.

I might say, Mr. Chairman, that I am familiar with the terrain in Bell County, Ky., since it adjoins my congressional district.

The problem that is brought forth here is common in many of the mountainous counties of southeast Kentucky, southern West Virginia, and southwest Virginia, in that we have experienced devastating floods with a degree of regularity.

I think the board of education in Bell County is to be commended for trying to build a new school out of the flood plain and perhaps prevent damage that has occurred and which we can reasonably anticipate may occur in the future.

If I understand the bill correctly, it seems to me it has merit. The fact that Bell County has been delayed now for something well over a year in proceeding with the construction of this badly needed new facility has obviously cost taxpayers of Bell County and the Commonwealth of Kentucky additional money.

Mr. Chairman, I would hope that when we finish this hearing that we might move expeditiously to see if we can help them resolve that dilemma so they can proceed.

Mr. CARTER. Mr. Chairman, with your permission, I will submit an amendment to the bill, H.R. 1573, so that it will conform to the language of S. 41.

I urge the committee to take action as soon as possible to clear the title to this land.

I want to thank the gentleman for your kindness and for the reception we have received here.

[Amendment to H.R. 1573 submitted by Mr. Carter follows:]

On page 1, line 3, strike "is authorized and directed" and insert "shall";
On page 1, line 4, strike "to convey" and insert "convey, without consideration,";
On page 2, line 6, strike "however,".

Mr. SKELTON. The amendments of which you speak have been taken care of in the Senate bill; have they not?

Mr. CARTER. Yes.

Mr. SKELTON. They actually reserve certain mineral rights; is that not correct?

Mr. CARTER. This would give to the Bell County Board of Education clear title as far as the United States is concerned.

Mr. SKELTON. Otherwise the title is clear; right?

Mr. CARTER. It is a fee simple title. It is a clear title, as I believe the lawyers say.

Mr. SKELTON. Thank you.

Mr. Slusher?

STATEMENT OF I. M. SLUSHER, SUPERINTENDENT, BELL COUNTY SCHOOL SYSTEM, BELL COUNTY, KY.; ACCOMPANIED BY ROBERT HENSLEY, CHAIRMAN, BELL COUNTY SCHOOL SYSTEM, AND DANNY T. GAMBREL, MEMBER, BELL COUNTY SCHOOL SYSTEM, BELL COUNTY, KY.

Mr. SLUSHER. Thank you, Mr. Chairman.

Accompanying me today is Mr. Robert Hensley, chairman of the Bell County Board of Education, and Mr. Danny T. Gambrel, who is a member of the Bell County Board of Education.

Following the April 1977 flood, Bell County schools suffered a \$1.3 million loss to our school plants situated below the flood plain in Bell County.

Both of our senior high schools, Lone Jack High and Bell County High, are currently located on the banks of Cumberland River. Each time we experience high water we find ourselves repeating a cleanup operation and trying to reestablish our high school facilities.

We now have the opportunity to construct a new senior high school which will consolidate the two high schools now located within the flood range. This is being made possible through a gift of land made to the board of education from the State of Kentucky.

However, this property held certain reservations of mineral rights in favor of the Department of Agriculture. These reservations prohibit us from selling the necessary school bonds to finance this project. Therefore, we must have these reservations removed in order to proceed with this project of school construction.

This project affects approximately 1,500 students in rural Bell County at an estimated cost of \$6.5 million. It is very important that we begin this construction as soon as possible due to the fact that one of our high school buildings is not structurally sound and is currently condemned by the State fire marshall's office. This necessitates the board of education spending moneys needlessly to bring this building

into compliance while we are waiting to begin construction on the new school.

We are also very apprehensive with each flooding season fearing that we will be flooded out and left without adequate facilities for our high school students.

Bell County is situated in a mountainous area with very little land that can be developed for school facilities. This site that we are proposing to use for our high school is centrally located which is easily accessible by a four-lane highway. Water and powerlines are also close at hand which makes this a very desirable location for our new high school.

May I appeal to each of you individually to consider the lives of the boys and girls of Bell County and recognize our need for this new facility. The future of our young people depends upon your support and endorsement of this legislation.

This creates no expense to the taxpayers. It is simply a technicality in the deed which must be corrected to allow the sale of school bonds.

Let me thank each of you for your consideration of this measure and hope that you will react favorably to our cause.

All other reservations in this property have been removed, with the exception of the reservation that is held by the United States.

There has been a gift made by the J. M. Hubert Land Co. for all mineral rights that they hold to this property. The Weaver Gas & Oil Co. also had an interest in the property. They have given their interest to the board of education.

Six weeks ago one of the high schools that is being consolidated had a roof collapse. This placed the board of education in a dilemma in that we are trying to house approximately 260 children.

This measure is certainly of great urgency that we do get some action and try to proceed with the construction of the new high school.

I think for this reason we are making this appeal to you people to help us with this situation. It involves no funds whatsoever. It is just a technicality that has to be removed from the deed in order for us to proceed with the construction.

Thank you.

Mr. SKELTON. Thank you.

Mr. de la Garza, do you have any comments?

Mr. DE LA GARZA. The only things more important than my dear friend from Kentucky are those voting constituents. So far as I am concerned, whatever Dr. Tim Lee Carter wants, he gets.

Thank you very much.

Mr. CARTER. Mr. Chairman, let me respond.

Mr. SKELTON. There is no response to that. [Laughter.]

Mr. CARTER. The distinguished gentleman from Texas is one of the best friends I have had since I have been in Congress. Party lines have never shown a division when it came to my support for him or his support for me. I am thankful that it is that way.

Thank you.

Mr. SKELTON Thank you. Mr. Wampler?

Mr. WAMPLER. Mr. Chairman, I do not know that I have any additional questions. I think the record should show clearly that there is no cost to the Government involved in this. And, if I understand it correctly, the likelihood of there being any valuable minerals or metals

on this property is extremely limited. It seems to me it is sound public policy to make this conveyance. The local school board in Bell County can then proceed forthwith with construction of the badly needed educational facility.

Mr. SKELTON. Mr. de la Garza?

Mr. DE LA GARZA. Possibly we can move on the Senate bill, if they are identical.

Mr. SKELTON. The Senate bill is a cleaner bill. If we moved on the House bill, we would have to adopt Dr. Carter's two amendments. I think if we moved to the Senate bill, it would expedite the matter; is that not correct?

Mr. CARTER. That is correct.

Mr. SKELTON. I would like at this point to enter into the record copies of correspondence between Dr. Carter and Mr. Slusher dated April 23, 1979; Dr. Carter and the Department of Agriculture, dated September 15, 1978, and a copy of a letter from Charles H. Lambert, acting secretary, of the Kentucky Department for Finance and Administration, dated August 15, 1978, regarding this site.

Without objection, so ordered.

[The above referred-to letters follow:]

BELL COUNTY SCHOOL SYSTEM,
Pineville, Ky., April 23, 1979.

HON. TIM LEE CARTER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CARTER: We were recently informed of the passage of Legislation by the Senate releasing the Department of Agriculture's interest in the 47.4 acres of land the Bell County Board of Education is trying to clear for the new proposed high school. I would like to ask you to see where this bill now stands in the House of Representatives and when we may hope for passage by the House of this release of the property.

We are very interested in beginning the construction and grading during the spring of this year if possible, however, we must have a release from the Department of Agriculture in order to make further plans. We would greatly appreciate your help in this matter and looking forward to hearing from you soon.

Respectfully yours,

I. M. SLUSHER,
Superintendent

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., September 15, 1978.

HON. TIM LEE CARTER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CARTER: This is in further reply to your August 18 letter concerning the request by the Bell County Board of Education to have restrictions and reservations removed from the title of their 47 acre property.

We will be unable to comply with the request because the Secretary of Agriculture has no authority to release a State or successor in title from the public purpose provision contained in the deed of conveyance, which is required under Subsection (c), Section 32, Title III, Bankhead-Jones Farm Tenant Act (50 Stat. 522, 525), as amended. Special legislation would be required to authorize the Secretary of Agriculture to make this release.

We should point out that we would not expect the proposed use of the lands for construction of a high school to conflict with the public purpose reservation contained in the deed. We are not, however, in a position to comment on difficulties related to the need to remove the reservation to obtain funding for the project.

We would be happy to discuss this matter further with you if you desire.

Sincerely,

G. W. VAN GILST
(For John R. McGuire, Chief).

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION,
Frankfort, Ky., August 15, 1978.

HON. TIM LEE CARTER,
*House of Representatives,
Rayburn Office Building,
Washington, D.C.*

DEAR DR. CARTER: This is responsive to your recent inquiry concerning the status of a proposal by the Bell County Board of Education to acquire certain of the lands of the Kentucky Ridge State Forest as a site for a new Consolidated Bell County High School.

According to our records, there was executed and delivered to the Bell County Board of Education under date of September 22, 1977, a Deed of Quitclaim, conveying a boundary described by a new survey as containing 47.04 acres of land in the Kentucky Ridge Forest, as the site for a new Bell County Consolidated High School. The quitclaim conveyance was made to the Board of Education without monetary charge and was conditioned on its use for school purposes and was subject to certain other rights, easements, reservations and restrictions contained in the Quitclaim Deed dated April 15, 1954, by which the Commonwealth originally acquired title to the land from the United States. Since title to the property had been acquired by the Commonwealth by Quitclaim, upon the advice of counsel, it was transferred to the Board of Education by the same mechanism.

I am advised by our General Counsel, that he was contacted several months ago by Mr. Lawrence Forgy of Tarrant, Combs & Bullitt, and Mr. Cornelius W. Grafton of Grafton & Fleischer, bond counsel for the Board of Education, concerning a correction of the deed in the event that the federally imposed restrictions, etc., on the property were released and certainly we would be amendable to the release of those conditions in the deed to the Board, but Counsel says he has heard nothing further about the matter.

If there is any additional information we can provide you, please let us know.

Very truly yours,

CHARLES H. LAMBERT, *Acting Secretary.*

Mr. DE LA GARZA. I move we report the Senate bill.

Mr. WAMPLER. I second the motion.

Mr. DE LA GARZA. That is, as soon as we have a quorum.

Mr. WAMPLER. Mr. Chairman, while we are waiting on a quorum, I would assume this legislation would be proper to be placed on the suspension calendar. I do not imagine it would be controversial. It would expedite the handling.

Does the gentleman from Kentucky have thoughts on that?

Mr. CARTER. I would think it should be that way. This legislation does cost the U.S. Government anything. It benefits the people of Bell County a great deal.

Mr. WAMPLER. That decision rests with the discretion of the chairman of this subcommittee, but so far as I am concerned, I would want to expedite the handling so it could pass the House and be on its way to the President for his disposition.

Mr. CARTER. I will rely on the distinguished gentleman's advice and that of the chairman.

Again, I want to thank the gentlemen from Virginia and Missouri and from the great State of Texas for their kindness.

Mr. SKELTON. We will take a short recess at this point.

[Recess taken.]

Mr. SKELTON. May I ask if there is an opposition from the U.S. Department of Agriculture against this bill?

I understand we have Mr. Van Gilst with us.

**STATEMENT OF GERALD W. VAN GILST, STAFF DIRECTOR FOR
LANDS, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE**

Mr. VAN GILST. Thank you, Mr. Chairman.

We appreciate this opportunity to testify on H.R. 1573, legislation which would authorize the Secretary of Agriculture to release the State of Kentucky from a reversionary covenant for 47.04 acres in Bell County, Ky., as contained in a deed to the State of Kentucky, dated April 15, 1954. Removal of this covenant is needed to enable the Bell County Board of Education to construct a new high school plant. We support the county's effort in this regard.

The land in question, amounting to 47.04 acres, was part of a 1,423-acre federally owned tract conveyed by quitclaim deed to the Commonwealth of Kentucky, by the Secretary of Agriculture, on April 15, 1954. This conveyance was made under the authority of section 32(c), title III of the Bankhead-Jones Farm Tenant Act, as amended.

The deed contains a reversionary proviso that the land reverts to the United States if it is not used for public purposes. The State conveyed the 47-acre tract to the Bell County Board of Education for the school construction in 1977. This conveyance also contained the reversionary proviso.

The school construction would be financed by revenue bonds issued by the county, estimated to be in the amount of \$3.5 million. The bondholders' investment would be secured by a lien on the building in the event of a default.

However, Kentucky statutes deny bondholders the right to foreclose on the lien and place the building up for sale to recoup their investment. The only other security available would be the right to rent the building if a suitable tenant could be found.

The reversionary clause would prevent the rental of the building to a nonpublic body for a nonpublic purpose, thus denying the bondholder this form of relief.

Because of these complications, the State department of education for elementary and secondary schools has uniformly rejected for school site purposes any land in which the deed contains a reversionary clause.

The bill would also require that any proceeds from the sale, lease, exchange, or other use or disposition of the lands shall be used exclusively for education purposes by the Bell County Board of Education. We believe this meets the public purpose objective of the original conveyance.

We do not object to the removal of the reversionary proviso. However, the bill as written would convey all other right, title and interest in and to the lands in question to the Bell County Board of Education.

We have a concern with this feature because it has recently come to our attention that two coal seams outcrop on the 47.04-acre tract and that other coal seams may exist.

We were unaware of this mineral value last February when we reported on S. 41, a companion bill, before the Senate Committee on Agriculture, Nutrition and Forestry.

We are obligated to reserve those minerals to the United States until such time as they can be appropriately evaluated and possibly conveyed

to the Bell County Board of Education under the provision of section 209 of the Federal Land Policy and Management Act of 1976.

In that regard, we offer an amendment to H.R. 1573 which would reserve those mineral interests which the United States would acquire after the expiration of the reservations in the original deed.

We also have a proposed amendment which reads as follows:

SEC. 3. This conveyance in no way affects the undivided interest of the United States in coal, oil, gas and other minerals (not outstanding or reserved in third parties) reserved in the deed by the United States to the State of Kentucky, dated April 15, 1954, and recorded in Bell County, Ky., (Deed Book 159, pg. 550).

We have discussed the entire amendment with members of the House committee staff, the relevant Senate committee staff, and the attorney representing the Bell County Board of Education. All are aware of the situation and at this time have no serious concerns with the amendment.

Also, I would like to offer a technical amendment to H.R. 1573 which corrects the book and page number where the 1954 deed is recorded.

On page 2, line 4, change "120" to "159" and change "460" to "550."

This concludes my prepared statement.

I will be happy to answer any questions.

Mr. SKELTON. Do you have any problem with the Senate passed bill?

Mr. VAN GILST. Mr. Chairman, we are very sympathetic to the conveyance or the removal of the reversionary clause. But we do have a problem with conveying all interests.

Mr. SKELTON. You are not answering my question.

My question is: Do you have any problem with the Senate passed bill? Have you read the Senate passed bill?

Mr. VAN GILST. Yes.

Mr. SKELTON. Do you have any problem with that?

Mr. VAN GILST. Yes; because it conveys all interests.

Mr. SKELTON. The House bill does, but the Senate bill does not; is that not correct?

Mr. IMHOF. Mr. Chairman, the Senate bill would also convey all right, title, and interest to the United States. The concern of the Department is inspired largely by the Department of the Interior whose prerogative it is under recent legislation to actually release mineral rights on behalf of the United States.

I think the Department is expressing an objection on behalf of the administration in that the proper procedures have not been followed here and that there is a possibility that there may be minerals in the land in question. But as a practical matter, passage of the Senate bill would obviate any difficulty because it would convey all right, title, and interest.

Mr. Van Gilst is conveying the concern of the administration that if there is no need to convey all mineral rights, then perhaps it would be better to amend the bill not to do that.

I believe that is what the point of his testimony is.

Mr. SKELTON. Are there any other objections, Mr. Van Gilst?

Mr. VAN GILST. No.

Mr. SKELTON. Are there any questions? Mr. Wampler?

Mr. WAMPLER. No questions, Mr. Chairman.

Mr. SKELTON. Mr. Van Gilst, we thank you very much.

Let the record show that a quorum is present.

We have before us a motion by Mr. de la Garza to report favorably S. 41, which is an act to require the Secretary of Agriculture to convey any interest held by the United States in certain lands located in Bell County, Ky., to the Board of Education, Bell County, Ky.

All of those in favor of the motion put by Mr. de la Garza, make known by saying aye.

[Chorus of ayes.]

Mr. SKELTON. Opposed, nay.

[No response.]

Mr. SKELTON. Let the record show a quorum is present and it is an unanimous vote.

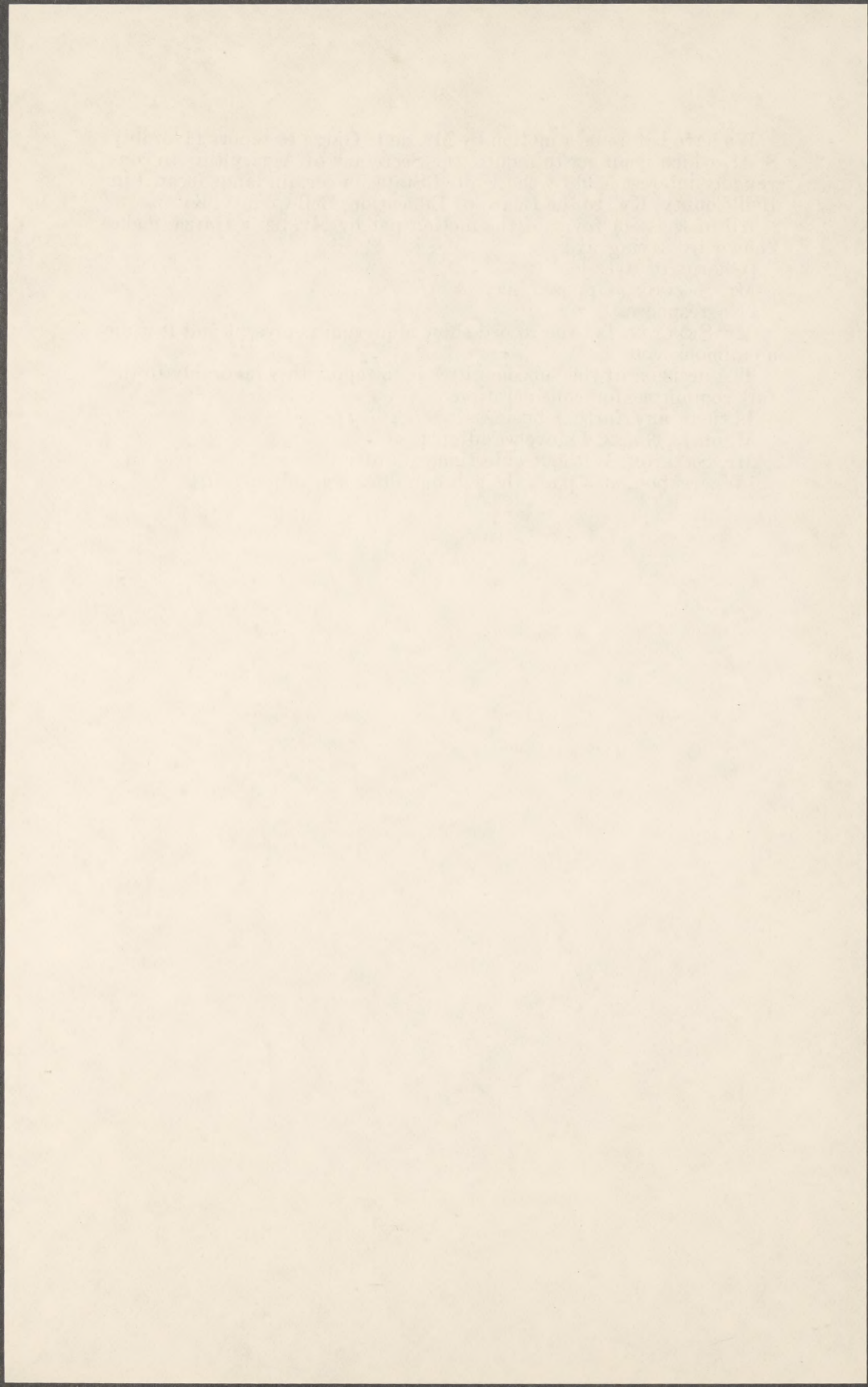
The decision of the subcommittee is to report this favorably to the full committee for consideration.

Is there any further business?

Mr. DE LA GARZA. I move we adjourn.

Mr. SKELTON. Without objection, so ordered.

[Whereupon, at 3 p.m., the subcommittee was adjourned.]



EXEMPT STATE PRISON FARMS FROM PAYING OF MARKETING QUOTA PENALTIES

TUESDAY, JUNE 26, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OILSEEDS AND RICE
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:08 p.m., Hon. Dawson Mathis (chairman of the subcommittee) presiding.

Present: Representatives Stenholm and Findley.

Staff present: Fowler C. West, staff director; John E. Hogan, counsel; Glenda L. Temple, clerk; Gary Norton, James A. Davis, Humberto Ruben Pena, and James C. Tippet.

Mr. MATHIS. The subcommittee will come to order.

We convene these hearings today to consider H.R. 998, to amend the Agricultural Adjustment Act of 1938, as amended, to exempt State prison farms from paying of marketing quota penalties.

Without objection, we will include in the record at this point a copy of the bill and report from the Department of Agriculture, with regard to the bill.

[H.R. 998 and report from U.S. Department of Agriculture follow:]

[H.R. 998, 96th Congress, 1st Session]

A BILL To amend the Agricultural Adjustment Act of 1938, as amended, to exempt State prison farms from paying of marketing quota penalties

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, section 273(d) of the Agricultural Adjustment Act of 1938, as amended, is further amended to add a new sentence as follows: "Effective with the 1978 crops, no penalty shall be collected under this Act with respect to the marketing of any agricultural commodity grown on State prison farms for consumption within such State prison system."

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 18, 1979.

HON. THOMAS S. FOLEY,
*Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of February 8 for a report on H.R. 998, a bill "To amend the Agricultural Adjustment Act of 1938, as amended, to exempt State prison farms from paying or marketing quota penalties."

The Department has no objection to the enactment of this bill.

This bill would exempt monetary penalties on the marketing of any agricultural commodity grown on State prison farms for consumption within such State prison farms effective with the 1978 crops.

There are three agricultural commodities currently under marketing quotas for which this bill would be applicable. They are peanuts, extra long staple cotton, and several kinds of tobacco. This exemption could also apply in future years to the other basic agricultural commodities after expiration of the Food and Agriculture Act of 1977, if marketing quotas are again established for such commodities as a method of supply adjustment.

The information that we have indicated that peanuts is the only agricultural commodity impacted by the exemption provided by this bill. In 1978, there were 304 acres of peanuts produced on State prison farms in Texas in excess of the allotment. We estimate the penalties for the production of these acres at \$95,000. We anticipate that a similar amount of penalties would be involved each year. The projected estimate of penalties for 1978 and the next five years (using the current penalty rate of 25.2 cents per pound) would be approximately \$570,000.

Under the Food and Agriculture Act of 1977, each peanut farm has an established farm poundage quota which may not be exceeded as quota marketings without penalties being assessed. Any peanuts retained or utilized on the farm are considered as marketings of quota peanuts and if the retained or utilized peanuts cause the farm poundage quota to be exceeded, penalties are due. Because the level of production associated with State prison farms is relatively small, it does not constitute a threat to other commercial enterprises.

Enactment of H.R. 998 would not require additional funds.

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,

CAROL TUCKER FOREMAN,
Acting Secretary.

Mr. MATHIS. The Chair has no opening statement.

I am pleased at this time to recognize the distinguished vice chairman of the full committee, the gentleman from Texas, Mr. de la Garza, whose district, I assume, would be most directly affected by the bill we are considering today.

Mr. de la Garza, we would be happy to receive your testimony.

STATEMENT OF HON. E de la GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DE LA GARZA. Thank you, Mr. Chairman.

I am grateful for your subcommittee having scheduled consideration and markup of this bill, H.R. 998, a bill to amend the Agricultural Adjustment Act of 1938, as amended, to exempt State prison farms from paying of marketing quota penalties.

I am glad to announce at the onset, Mr. Chairman, that the Department of Agriculture has no objection to the enactment of this bill.

The bill would exempt monetary penalties on the marketing of any agricultural commodity grown on State prison farms for consumption within such State prison farms effective with the 1978 crops.

Peanuts is the only agricultural commodity impacted by the exemption provided by this bill. This will affect State prison farms throughout the Nation, Mr. Chairman, but I will give you an example. In Texas, which is what prompted the prison officials to ask me to assist them in this effort, there were some 304 acres of peanuts produced on the State prison farms in Texas in excess of the allotment. Why this was done, no one seems to know, except that they planted all of the acres that had heretofore been planted in peanuts. The penalties for the production on these acres is estimated at \$95,000. The projected estimate of penalties for 1978 and the next 5 years would be over \$500,000 and that is the reason for the bill.

The peanuts are produced by inmates on State-owned land and consumed by the inmates in the State prison system. It does not impact the commercial peanut market in any way whatsoever.

OMB has also advised the Department of Agriculture that they have no objection.

Mr. Chairman, the way the bill was drafted, we excluded all commodities, which would include cotton and tobacco. That had not been entirely our interest, but it may seem worthwhile to do so. However, in order not to have any problem with jurisdiction and to keep the bill simply to that which I was requested to do by the State officials, it might be well if you would adopt an amendment devoting it solely to peanuts, to which we have no objection.

Mr. MATHIS. Does the gentleman have such an amendment prepared?

Mr. DE LA GARZA. Yes, I do, Mr. Chairman.

Mr. MATHIS. Without objection, it will appear in the record at this point.

[The amendment offered by Mr. de la Garza follows:]

Section 359 of the Agricultural Act of 1938 is amended by adding a new subsection (k) as follows:

"Effective beginning with the 1978 crop, no penalty shall be imposed under this section with respect to the marketing of peanuts grown on prison farms in any State for consumption within the prison system of such State."

Mr. MATHIS. While the amendment is being brought to the attention of the members of the subcommittee, let me direct a question or two to the gentleman from Texas.

Is there now no provision under law by which the Secretary of Agriculture is authorized to waive these penalties?

Mr. DE LA GARZA. There is a provision, Mr. Chairman, that the Secretary may waive, on his own motion, penalties by individual farms under the present law. Whether it would provide the remedy which they need now would again leave it up to the Secretary.

Our intent was, in order not to have a recurring problem, that it might be well, as it is grown and consumed within the prison system, to directly exempt them from any penalty.

Mr. MATHIS. In the opinion of the gentleman from Texas, this legislation would be essential to avoid having to appeal to the Secretary on an annual basis for a waiver of that penalty—is that a correct statement?

Mr. DE LA GARZA. That is right, Mr. Chairman. That is the reason for wanting to put that exemption into law.

I do not think that the authority of the Secretary is permanent. I think it is in the part of the legislation that needs to be reauthorized periodically.

Mr. MATHIS. I believe I would say to the gentleman that the Secretary would have the authority on individual farms under the legislation passed by the House yesterday and sent to the President, but I also concur with the gentleman that it would require an annual appeal to the Secretary of Agriculture, which is something that could be avoided by the passage of this legislation.

Mr. DE LA GARZA. That is right.

Mr. MATHIS. In examining the gentleman's amendment, I find that I have no problem at all in accepting that, with one caveat. That is, the chairman is reluctant to carry a bill to the floor that specifically

relates only to peanuts. I think the chair would prefer that we have a bill that would apply to all agricultural commodities rather than just flagging this thing as being especially for peanuts.

I wonder, as well, if the gentleman has given any thought to the possibility of placing an amendment in the bill that would restrict these prison farms from expanding their production by leaps and bounds. I do not think that is the intention of the gentleman, or the prison system in Texas, or the prison system in Georgia. But it would seem to me that, in order to avoid any questions being raised by the growers or the processors, we might say that they could expand their production beyond a certain point.

I wonder if the gentleman would have any thoughts on that?

Mr. DE LA GARZA. I see no great problem and would have no objection to that, Mr. Chairman. They only have so many acres of land in the State prison farms, and my assumption would be that this would be their planting acreage. I have no problem at all with that type of an amendment.

Mr. MATHIS. I have no further questions at this point.

Does the gentleman from Texas, Mr. Stenholm?

Mr. STENHOLM. Yes; thank you, Mr. Chairman.

Do you know how many acres there are in the Texas prison farm system?

Mr. DE LA GARZA. Overall acres? I have been gone for a while, but there are several thousand acres because they plant so many to cotton, and so many to edible vegetables, and they have the acreage for hog production and cattle production.

So, solely in the Sugarland area, I think there are 500-some acres—I am not too sure.

What we are dealing with in peanuts is 304 acres, but the State prison farms, I imagine, everywhere, own several thousand acres that they use for production of other crops.

Mr. STENHOLM. That prompts this question. In fact, I think I have the same concern that the chairman voiced in regard to possible expansions in other States if, as I understand this, it will apply to all States.

Mr. DE LA GARZA. I doubt it very much because I spoke with the Peanut Association in Texas—both the producers and the crushers—and they have no objection.

If there were any involvement, it would be that they would stop buying from the private sector. They are not doing that now, and I doubt that the will in the future. They had no objection because it did not affect them one way or another.

Mr. STENHOLM. No one anticipates any expansion in production of peanuts on the State prison farms?

Mr. DE LA GARZA. I doubt it very much because the number of overall acres the State prison farms have has not changed in 100 years.

I might also add this. I do not know how it is in other areas, but more and more the State prison systems are getting away, rather than into, the farm system because, under our new, enlarged civil rights coverage, it may be, in the not too distant future, that you cannot make an inmate work at something he does not like. So, they may be a thing of the past already.

This is to take care of one specific instance, but we thought, why do it every year in the foreseeable future? But the long-established system of having the prison farm where the less offense types could work, be outdoors, and so on, seems to be falling by the wayside, unfortunately.

Mr. STENHOLM. Thank you. I have no further questions.

Mr. MATHIS. Let me direct one additional question to the gentleman from Texas.

Does the State prison system in Texas grow peanuts for the commercial market?

Mr. DE LA GARZA. No.

Mr. MATHIS. These peanuts are only for consumption within the prison system, itself?

Mr. DE LA GARZA. That is what we have in our bill. We would not get involved with it if it impacted on the commercial market.

Mr. MATHIS. I just wanted to make that clear for the record.

Mr. DE LA GARZA. It is solely grown on State prison farms by inmates for their own consumption.

Mr. MATHIS. Before the Chair recognizes the gentleman from Illinois, Mr. Findley, let me recognize in our audience Mr. Ron Deaton with the Foreign Agriculture Service who has a group of agricultural students visiting from Sweden. We are delighted to have you present at the subcommittee hearing this afternoon. Welcome.

The gentleman from Illinois, Mr. Findley.

Mr. FINDLEY. Thank you, Mr. Chairman.

I wonder if the gentleman from Texas could give us any data as to how widespread prison farms still are. Are they still commonplace in most States?

Mr. DE LA GARZA. Mr. Findley, my information is that they are lessening. More are going out of circulation than coming into circulation.

Mr. FINDLEY. I guess the effect of this bill is to just set aside from the regulations of the peanut program peanuts grown on prison farms.

Mr. DE LA GARZA. For their own consumption; yes.

Mr. FINDLEY. Thank you, Mr. Chairman.

Mr. MATHIS. In response to the gentleman from Illinois, I think, there are still a number of State prison systems in the Nation that do grow foodstuffs for the consumption of their own prison population.

Mr. DE LA GARZA. That is right.

Mr. MATHIS. Peanuts, long staple cotton, and tobacco would be the only three commodities, I think, that would be impacted by penalties imposed on marketing quotas. That is what the gentleman from Texas is attempting to do—that is my understanding.

Mr. DE LA GARZA. Mr. Chairman, we said we would deal solely with peanuts for the jurisdictional purposes and also because that was a request made of me by the State prison officials.

You do have cotton. That goes into the commercial market, and I do not know that I would want to exempt them because they should be treated as any other grower—if it goes into the commercial market.

Mr. MATHIS. In response to the gentleman, I think the language in this legislation is very clear that agricultural commodities are restricted to those that are grown for consumption within the prison system.

Mr. DE LA GARZA. That is correct.

Mr. MATHIS. It does not in any way impact on the commercial market and would not, in my estimation, even if it involved long staple cotton or tobacco, have any impact at all on commercial markets because of the language that says specifically, "for consumption within such State prison system."

The Chair has mixed feelings about adding the amendment to restrict it purely to peanuts.

Mr. DE LA GARZA. Mr. Chairman, I have given you the problem. How you handle it, as far as the legislative approach is concerned, we would leave to your wise discretion and in the capable exercise of your duties. You know our problem, and how, it is worded is not important to us.

Mr. MATHIS. In response, let me say to the gentleman that the chairman of the full committee did, in fact, refer this bill to the Subcommittee on Oilseeds and Rice. I am not sure that he understood the ramifications involving long staple cotton and tobacco. Therefore, maybe there should have been sequential referral to the other subcommittees.

But, based on the fact that he has referred the bill to this subcommittee, I felt that it is within the jurisdiction of the subcommittee at least to report it to the full committee. If here is a problem, it would seem to me, at that time when we arrive at the full committee, we could certainly correct it.

But it would seem to me that we might expedite the procedure by simply moving, this afternoon, to report the bill out of subcommittee and save us at least the trouble of trying to get the subcommittee members together again for that purpose.

Mr. DE LA GARZA. We certainly would appreciate that, Mr. Chairman.

Mr. MATHIS. We do have a technical amendment, I am told, that section 273(d) should read "372(d)", but I would move that the staff be instructed to correct all technical amendments that might exist or might need to be corrected in the bill.

The gentleman from Texas, Mr. Stenholm, moves that the subcommittee do report the bill to the full committee with a recommendation that it do pass.

Without objection, it is so ordered.

At this point in the record, I would like to have inserted, without objection, a telegram addressed to the chairman of the subcommittee from W. J. Estell, Jr., supporting passage of the bill.

The subcommittee will stand adjourned, subject to the call of the Chair.

[Whereupon, at 2:25 p.m., the hearing was adjourned, subject to the call of the Chair.]

[The telegram referred to above follows:]

[Telegram]

DEPARTMENT OF CORRECTIONS,
Huntsville, Tex., June 25, 1979.

Hon. DAWSON MATHIS,
Chairman, Subcommittee on Oilseeds and Rice,
House of Representatives,
Washington, D.C.:

I support H.R. 998 to exempt State prison farms from paying of marketing quota penalties. Your efforts in this matter are appreciated.

W. J. ESTELL, Jr.,
Director—Texas Department of Corrections,
For the Texas Board of Corrections.

REVIEW OF PORTERS CREEK, TENN., AND LOWER LLAGAS CREEK, CALIF., WATERSHED PROJECTS

TUESDAY, FEBRUARY 5, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSERVATION AND CREDIT
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 1302, Longworth House Office Building, Hon. Ed Jones of Tennessee (chairman of the subcommittee) presiding.

Present: Representatives Harkin, Hance, Baldus, Panetta, and Hopkins.

Staff present: J. Robert Franks, associate counsel; Peggy Pecore, clerk; Robert Cashdollar, Wayne Fletcher, James Johnson, and Frank Winston.

Mr. JONES of Tennessee. The Subcommittee on Conservation and Credit will come to order.

We are here today to review two projects of watersheds and to hear witnesses on the two projects which require additional expenditures over the \$1 million limit at which the Soil Conservation Service has administrative approval authority.

The subcommittee has an agreement with the SCS that we will be notified and briefed in situations involving the exceeding of the \$1 million limit. This is only the second time such a situation has arisen since I have been chairman of the subcommittee. As before, I wanted to hold a public hearing in order to better carry out our oversight responsibilities, and for that reason we are here again today.

Before I recognize the first witness, I would like to recognize Congressman Panetta from California, who is a member of the subcommittee, for any welcoming remarks that he might have for the Californians.

Mr. PANETTA. Thank you, Mr. Chairman. I will not speak very long, only to welcome you from the district next to mine with regard to one of the projects we are considering. I want also to welcome Congressman Mineta to the Ag Committee.

Obviously, these are important projects for that area. The lower part of Congressman Mineta's district is involved. It is primarily agricultural projects like these that are extremely important to his area as they are to mine.

If they do not protect the watershed in his area, then it all floats down into mine. I am therefore here to listen carefully to the testimony they will be offering.

I welcome them back to Washington and urge the committee to carefully consider their requests.

LOWER LLAGAS CREEK WATERSHED PROJECT

Mr. JONES of Tennessee. Thank you, Leon.

We are delighted to have Norm Mineta before us this morning with the witnesses that he has with him.

Inasmuch as you are not a member of this committee, any time you get unhappy with where you are I suspect we could find a good spot for you over here. I know you are going to do a good job this morning. You may introduce those who accompany you and proceed.

STATEMENT OF HON. NORMAN Y. MINETA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MINETA. Thank you very much, Mr. Chairman. I would first like to introduce, to my left, Fred Angelino. Fred is with the Loma-Prietta Resource Conservation District. To my right is Mr. George Korbay of the Santa Clara Valley Water District. Both have been involved in the work of the Lower Llagas Creek flood control project and are both very, very familiar with it.

Mr. Chairman, I am personally familiar with the efforts since 1960 of the local people in southern Santa Clara County to alleviate flood damage potentials. Floods, in the middle and late 1950's, caused much damage to agriculture and led to local agriculturalists asking the Federal Government for assistance.

Since that time, of course, the character of the community has changed so that the annual impacts are generated not only by damage to agriculture but to existing residential, commercial and industrial developments as well. The damages from just one 100-year flood are currently estimated at close to \$9 million.

I should note that the local communities are enforcing regulations designed to prevent further vulnerable developments in these flood plains. These regulations and practices were adopted and implemented in advance of the use of the Federal flood insurance program in the area.

What we have here, Mr. Chairman, is a request for badly needed assistance in protecting extensive agricultural and existing urban uses from flood damage with the assurance of the local community that the problem is not being worsened by unwise future development.

Even though inflation during a long planning period has increased the estimated project cost sharply, the benefits of the project exceed the cost by a ratio of close to 2 to 1, and I urge your committee's continued support of this Lower Llagas Creek watershed project.

Mr. Chairman, at this point I would be more than pleased to answer any questions you might have. I would also be pleased to have Mr. Mitchell from the Department of Agriculture's Watershed Division, Soil Conservation Service, make comments. I am sure any one of us would be willing to answer whatever questions you might pose.

Mr. JONES of Tennessee. Before we ask any questions, Norm, do either of the gentlemen with you have a statement they would like to make?

Mr. MINETA. No. I think they are going to be responding to any inquiries that may be made.

Mr. JONES of Tennessee. Mr. Mitchell, do you have a statement from the Soil Conservation Service?

**STATEMENT OF JAMES W. MITCHELL, WATERSHEDS DIVISION,
SOIL CONSERVATION SERVICE, U.S. DEPARTMENT OF
AGRICULTURE**

Mr. MITCHELL. Mr. Chairman, it might be well to give you a briefing on where this project has been and what has happened in the meantime.

I will give you a background on some of the increased costs. The project was approved somewhere around April 1969 to begin construction activities. It is a single purpose flood control project having a large aspect of upstream watershed protection. It is therefore important that we get the upstream areas under good conservation in order to protect from not only flood waters but from increased sedimentation and erosion.

The program as originally approved called for 17.2 miles of channel work. Of the 17 miles that were approved in 1969, approximately 1.2 miles in the lower range have been completed.

The Soil Conservation Service took action again in approximately 1974, I am sorry that I do not have the date, when it prepared an environmental impact statement in compliance with the Environmental Protection Act. Preparation of the statement took some time because of some of the developments that took place. The Congressman has already mentioned those developments.

The changes that have taken place in the project are three. There was a slight modification of the watershed boundary due to some road construction that required that we take in a small amount of range area. Second, the design flows that were contemplated when the plan was originally constructed were reevaluated as a result of the boundary change and we have had some design criteria changes in our engineering design features for this kind of channel work.

The original construction cost was approximately \$3,766,700 based on 1967 prices. We are now considering an increased cost of up to \$12,650,000. Inflationary rates can be expected to increase the original cost by \$3,766,700. The remaining \$3.3 million is attributable to engineering criteria changes intended to stabilize the channels.

The Congressman has also mentioned that the project still has a very favorable cost-benefit ratio of 1.1 at 1977 prices.

With that brief background, Mr. Chairman, let me stop and ask if the subcommittee has any questions.

Mr. JONES of Tennessee. The Chair notes that you have submitted a written statement. Without objection, that statement shall be included in the hearing record.

[The briefing paper submitted follows:]

BRIEFING PAPER—LOWER LLAGAS CREEK WATERSHED PROJECT, CALIFORNIA

BACKGROUND

The watershed work plan for Lower Llagas Creek Watershed was completed in September 1967. Installation of the project was authorized in April 1969. The Lower Llagas Creek plan has been amended twice.

The structural program for the Lower Llagas Creek Watershed consists of 17.2 miles of channel work. Construction along the lower most 1.2 miles of Llagas Creek has been completed.

Construction was halted in 1974 when a decision to prepare an environmental impact statement was made. The Lower Llagas plan will remain substantially as shown in the 1967 work plan. To date the sponsors have acquired 60 percent of the landrights at a cost of \$1.9 million.

CHANGES IN THE PLAN

The changes in the plan are slight changes in the watershed boundary, design flows, and channel design criteria. The original construction cost was \$3,766,700 based on 1967 prices. The current estimated construction cost is \$12,650,000.

The price increase is attributed to inflation and changes in SCS engineering design criteria. The design criteria changes are related to modifications in allowable velocity criteria for earth channels and provisions for landscaping of structural measures.

The Engineering News Record Construction Cost Index rose from a 1967 average of 1070 to a December 1977 value of 2669, an increase of 250 percent. Thus, inflation could be expected to increase the original \$3,766,700 construction cost to \$9,350,000, with the remaining \$3,300,000 attributed to engineering criteria changes.

PROJECT BENEFITS

Project benefits were reevaluated to assure that the plan remains economically feasible. The current benefit cost ratio is 1.9:1 based on current normalized prices for agricultural benefits and 1977 prices for other benefits.

BACKGROUND

The project purpose is for watershed protection and flood prevention.

Mr. JONES of Tennessee. Mr. Panetta.

Mr. PANETTA. Thank you, Mr. Chairman.

How much of the project is completed now?

Mr. MITCHELL. There are only 1.2 miles out of 17.2 miles completed.

Mr. PANETTA. How much has been spent to date?

Mr. MITCHELL. Almost \$2 million has been spent of local funds on the project.

Mr. PANETTA. Of local funds?

Mr. MITCHELL. Yes, sir. I am sorry that I do not have the figure for the Federal funds. I can get them for you.

Mr. PANETTA. Then the project is about 10 percent completed or is it less than 10 percent?

Mr. MITCHELL. It is less than 10 percent completed, I would say.

Mr. PANETTA. What produced the engineering criteria changes that were not included in the original designs? Were there in fact design changes, or is it a matter of doing something that was avoided, or set aside in the original design? What produced the additional changes?

Mr. MITCHELL. At the time of the original design the technology concerning the soils that we are dealing with indicated that one would be able to sustain the 6.4 cubic feet per second velocity. We have learned since from a number of watersheds with similar soils that one cannot sustain those kinds of flows. There are therefore additional engineering costs for adding on some grade stabilization structures which will let the water down a lot slower so that it will not have erosive velocities.

I think you can sum that up by saying that experience has taught us that we did not design the watershed with a stable channel based on the technology we had at the time it was designed.

Mr. PANETTA. Have most of the land purchases been made?

Mr. MITCHELL. Let me ask Mr. Korbay.

Mr. KORBAY. About 50 percent of the land has been purchased.

Mr. PANETTA. You have another 50 percent to buy plus the engineering and construction work. Is that correct?

Mr. KORBAY. Yes, sir. It is local funds.

I might say that another feature of the project that has been completed is the upper watershed fire protection. That has been a local cost also of about \$100,000.

Mr. PANETTA. I would like to ask the Department whether on construction projects like this you have any flexibility for inflationary cost increases and design changes. How much flexibility does the Department have in those areas, concerning your contribution?

Mr. MITCHELL. Yes, sir, we do. We are mainly concerned that we conform with the concept of having a justified project. Our policy is that at the time of accepting the construction bid for the project, for example, that the Federal officials, in this case the conservation officials in the State of California, review again the economic justification for the project, assuming there have not been large inflationary costs that bring the project below a unity benefit-cost ratio. If that is the case, we have the authorization to proceed.

Mr. PANETTA. The initial authorization for this project was in the vicinity of \$4 million.

Mr. MITCHELL. Yes, sir.

Mr. PANETTA. You do not have flexibility to go beyond that, do you, based upon your cost increases within this period of time?

Mr. MITCHELL. As the chairman stated in his introduction, the subcommittee has asked us to come forward if any project exceeds its appropriation by \$1 million. Up to the \$1 million basis, we can approve increases.

Mr. PANETTA. In your analysis you state that even with the additional costs of this project there is still a substantial cost-benefit ratio.

Mr. MITCHELL. Yes, sir. It is a good cost-benefit ratio.

Mr. PANETTA. Thank you, Mr. Chairman.

Mr. JONES of Tennessee. Thank you, Mr. Panetta.

I have a question or two that I would like to ask about the project. I know it was halted because of an environmental impact statement. My question to you is, has the environmental problem been cleared up? Is the statement satisfactory now for the completion of the project?

Mr. MITCHELL. We have an environmental impact statement that we feel conforms with the National Environmental Protection Act. We did not have one before. There are some local concerns, whose particulars I do not know, but from the standpoint of the Federal policy, yes, sir, it does meet the Federal standards.

Mr. JONES of Tennessee. There is no problem with the Environmental Protection Agency provided everything else can be worked out; is that correct?

Mr. MITCHELL. Yes, sir.

Mr. JONES of Tennessee. Including funding.

One of you gentlemen said that about half of the land has been purchased. Is that correct?

Mr. MITCHELL. Yes.

Mr. JONES of Tennessee. What problems will you be faced with in purchasing the other 50 percent?

Mr. KORBAY. Mr. Chairman, there are no problems that we can perceive. We must simply finalize the environmental impact statement and our land purchase can proceed.

Our district, the Santa Clara Water District, is fronting the funds for the land purchase and we are prepared to continue to do so.

Mr. JONES of Tennessee. Mr. Mitchell, how many more projects such as this one do we have in the pipeline that are to be retired, or finished, that are this large?

Mr. MITCHELL. There are none that I know of, Mr. Chairman, that call for this much of an expenditure. We do have two New Mexico projects that we have looked at previously that have some funding close to this project but not of the same magnitude.

Mr. JONES of Tennessee. Are they new projects or are they projects already in progress?

Mr. MITCHELL. These are projects that the subcommittee has approved by resolution and are under construction.

Mr. JONES of Tennessee. And are they both in New Mexico?

Mr. MITCHELL. The two that I know of are in New Mexico, yes.

Mr. JONES of Tennessee. Although the number of committee members is rather small this morning, I see that Mr. Hance and Mr. Baldus have arrived.

We are considering the Llagas Creek watershed project, gentlemen, in California. I would like to ask for unanimous consent to file a letter with the Soil Conservation Service concerning this project if there is no objection.

Do you have any questions you want to ask, Mr. Baldus?

Mr. BALDUS. No questions, Mr. Chairman.

Mr. JONES of Tennessee. I gathered that. We have another project to be considered too.

Thank you, Norm, and gentlemen, for being here.

Mr. Mitchell, are you going to stay until we finish?

Mr. MITCHELL. Yes.

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

PORTERS CREEK WATERSHED PROJECT

Mr. JONES of Tennessee. Mr. Mitchell, do you have someone with you from the Department? Will you present the Porters Creek program?

Mr. MITCHELL. Yes. I will also testify on Porters Creek.

Mr. JONES of Tennessee. We also have Mr. Alex Dann, Jr., of Dann, Davis, Davis, Blackburn & Shields, of Memphis, Tenn., representing the farmer in contention here from Hardeman County, Tenn. Mr. Stock is with him.

We are delighted that you are here, Alex. Mr. Mitchell, you may proceed.

STATEMENT OF JAMES W. MITCHELL, WATERSHEDS DIVISION, SOIL CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. MITCHELL. I will just present some background information. Before that, let me introduce Mr. Lou Godby, who is the assistant State conservationist for water resources in Tennessee, who has worked with this project.

Mr. JONES of Tennessee. Lou, welcome. We are glad you are here with us.

Mr. MITCHELL. This is a project that was approved by the Administrator of the Soil Conservation Service on November 4, 1958. The project was approved by the House Committee on Agriculture April 5, 1960, and by the Senate Committee on Agriculture and Forestry April 6, 1960. The work plan was approved for construction activities April 8, 1960.

It is primarily a project that deals with flood damage to crops, pastures, roads, bridges, sediment damages to flood plain lands and active erosion in the upland areas of the watershed.

The original plan called for the installation of 14 floodwater retarding structures and the improvement of 126,200 linear feet of stream channel. The planned works of improvement at that time were to be installed over a 5-year period at an estimated cost of \$1.6 million.

All of the 10 floodwater retarding structures in Tennessee and 2 of the 4 that were going to be built in Mississippi have been installed, and all of the channel improvement has been completed.

Since the installation of the works of improvement called for in the plan, there has been a serious deterioration of the channel conditions in the watershed. It is primarily due to a fact that we noted to be of concern in the lower Llagas Creek that we just discussed. Engineering technology at the time that these projects were planned and constructed called for certain engineering aspects under the design flow of the project. Our experience to date in a number of watersheds that we have recently constructed would have told us that that design criterion was not satisfactory.

The channels have unraveled. They have degraded. The amount of sediment coming from them is of a serious magnitude. In addition to that there is considerable concern, as these channels unravel, that bridges and utilities upstream will be affected. In fact, we know of a particular bridge to which the local sponsors have had to do some serious repairs as a result of the erosion and sedimentation that has taken place from the degrading of the channel.

The problem is an engineering deficiency on the part of the Soil Conservation Service.

Again, we are working with soils that are very, very unstable, and at that time the Soil Conservation Service in conjunction with the sponsors opted to a lesser engineering design criterion with the hope that the vegetative work on the channels would do the job. Unfortunately, that did not hold.

The proposal is to go back in and spend approximately \$2.4 million for the construction of nine grade stabilization structures which will stabilize the channels.

Again, Mr. Chairman, in light of the subcommittee's request that we come before you with any project that exceeds its initial appropriation by \$1 million, we wanted to present these facts and would be glad to answer any questions you may have at this time.

Mr. JONES of Tennessee. Thank you, Mr. Mitchell. I note that you have submitted a printed summary of your statement and without objection, the printed statement will be included in the hearing record.

[The briefing paper submitted follows:]

BRIEFING PAPER—PORTERS CREEK WATERSHED

GENERAL

The Porters Creek Watershed is located in Hardeman County, Tennessee, and Benton and Tippah Counties, Mississippi. The total area of the watershed is approximately 44,600 acres. 37,050 acres is located in Hardeman County, Tennessee, 5,427 acres in Tippah County, Mississippi, and 2,123 acres in Benton County, Mississippi. 825 acres within these Mississippi counties are on U.S. Forest Service land.

Watershed project sponsors are the Porters Creek Watershed District in Tennessee and the Porters Creek Drainage District in Mississippi.

AUTHORIZATIONS

Planning authorization was requested in September 1958 and approved by the Administrator, Soil Conservation Service, on November 4, 1958.

The work plan was signed by the Mississippi sponsors on August 5, 1959, by the Tennessee sponsors August 11, 1959, and by the Administrator of the Soil Conservation Service on November 6, 1959. This work plan was then approved by the House Committee on Agriculture on April 5, 1960, and by the Senate Committee on Agriculture and Forestry on April 6, 1960. Followign these approvals, the work plan was approved for operations on April 8, 1960.

WATERSHED PROBLEMS

Principal problems are floodwater damages to crops and pastures, roads, bridges, and minor fixed improvements; sediment damages to flood plain lands; and active erosion in uplands. Frequent overbank flows and damage from sediment causes delays in farming operations. Indirect damages result from blocked, impassable roads which cause disruption of traffic, mail delivery, and educational programs.

PLANNED WORKS OF IMPROVEMENT

The planned works of improvement consist of the following measures (1) devoting land to uses for which it is suited and giving needed conservation treatment, primarily for watershed protection, (2) stabilizing critical runoff and sediment producing areas (tree planting, minor gully stabilization, and roadbank treatment), (3) installation of 14 floodwater retarding structures, including multiple purpose structure, (10 in Tennessee and 4 in Mississippi), and (4) the improvement of 126,200 linear feet of stream channel. These planned works of improvement will be installed over a 5-year period at an estimated cost of \$1,643,965.

PROJECT INSTALLATION

Land treatment consisting of vegetation of critical areas was installed in Tennessee as follows: 24 acres of wildlife area planting, 128 gully plugs, 24 miles of roadside treatment, 1,800 acres of tree planting, and other conservation measures. A 1977 report estimates that approximately 86 percent of the planned land treatment measures had been applied at that time.

All of the 10 floodwater retarding structures in Tennessee and 2 of the 4 floodwater retarding structures in Mississippi have been installed. All of the channel improvement has been installed.

REMEDIAL MEASURES

The channel improvement is functioning properly except that portions of it are degrading from excessively high velocity flows. Needed stabilization measures are beyond that expected of the project sponsors as part of normal operation and maintenance. Stabilization of the channel is planned through installation of nine grade stabilization structures. The estimated cost of doing this work is \$2,400,000. Since this cost is for new work on the previously modified channel, there are no costs which need to be updated for inflation.

Mr. JONES, of Tennessee. Mr. Godby, do you have a statement you would like to make?

Mr. GODBY. Not at this time.

Mr. JONES of Tennessee. Mr. Dann, do you want to be heard now?

**STATEMENT OF ALEXANDER W. DANN, JR., OF DANN, DAVIS,
DAVIS, BLACKBURN & SHIELDS, MEMPHIS, TENN.**

Mr. DANN. Yes, Mr. Chairman; I am glad you gave me the opportunity.

First of all, gentlemen, let me introduce myself. I am an attorney. I am Alex W. Dann from Memphis, Tenn. I represent a private individual by the name of Mr. C. S. LeNoir, who is a major landowner at the lower end of the channelization project. He is located entirely in Hardeman County, Tenn.

Mr. LeNoir has suffered from the consequences of what appears to be admitted as design defects in the channelization of Porters Creek. My purpose in being here is to be of service to this subcommittee and attempt to shed some additional light on the defects in question, which have been conceded or tacitly admitted.

I believe it is important for the committee to understand that in our professional capacity as attorneys for Mr. LeNoir, in 1973, we filed a lawsuit in the U.S. District Court for the Western District of Tennessee against the two watershed districts involved, excluding, of course, the Benton County phase of it, for the reason that Benton County constituted only a minute part of the overall watershed area.

Our lawsuit was built around the aggregate of operative facts that make up the design deficiency which has been discussed. In our suit we have sought to obtain redress on behalf of Mr. LeNoir for the damages he has incurred as a consequence of siltation into his land, perpetual flooding which occurs during, what we would classify as, ordinarily high waters. These conditions exist as a consequence of the fact that when the channel was designed, the responsibility for the consequences of the delivery of substantial masses of water at high velocities at the lower end of Porters Creek were placed into the unimproved Hatchie River. This placement of the water into the Hatchie River was simply not confronted by the engineers of the Soil Conservation Service.

The Hatchie River is a meandering, snag-clogged, completely impenetrable river, which has been declared, since the project was constructed or since it was approved, a wilderness river. The channelization of Porters Creek is one of the typical ditch-type channelizations which straight line it and deliver large quantities of water at high volumes down to the end of the channelization.

At this point, having nowhere to go, they have no alternative but to impound and back up on the adjacent properties, which include the property of Mr. Charles S. LeNoir.

Mr. LeNoir has sued the Soil Conservation Service unsuccessfully as well and the U.S. Court of Claims, substantially at the suggestion of the Sixth Court of Appeals at the time of an appeal from a dismissal of the suit against the Soil Conservation Service in the district court, on grounds that the district court technically had no jurisdiction over the Soil Conservation Services projects.

In the recent litigation, Mr. LeNoir has claimed damages which are approximately \$1 million. The foundation of the suit and the foundation for the existing suit in the district court is on the theory of inverse condemnation. That is, the taking of private property by a public agency without due process and without just compensation as the consequence of some act or omission by the public agency.

Under the theory of inverse condemnation the defect in design is an element of the perpetual character of the cause of the damage, and it is our position in this case that the corrective measures of simply stepping the channel or putting in retarding structures will not adequately protect the property or cure the conditions of crop damage, flooding and deterioration of the channel banks, and siltation to the point of destruction of the overall channel itself. It is our position that some other form of remedial action should be required and considered.

I find it very difficult to agree that the deficiencies which now appear have only been discovered at this point because of the development of new technology. In the fields of civil engineering and hydrology it would have been a matter of fundamental professional care to assure that any water which was developed through such channelization could be disposed of at the end of the channelization. That is, channelizing directly into an unimproved stream would not be sound engineering practice.

Another problem that we have encountered is that the channelization chose high ground instead of following the natural low ground in the valley where it was to be constructed. The consequence of this is that the lands of our client are, in many instances, below the level of the ground at which the channel is located. As a result when water does flow over the sides of the channel, as it does virtually every time there is high water, there is nowhere for that water to drain off. It must drain uphill in order to get itself off my client's land.

We thoroughly agree with the Soil Conservation Service that remedial action must be taken and taken at once. Our reason for support of this position is that every day there are accumulated damages which are irretrievable and which may prove to be without remedy unless something of a practical and sensible engineering nature is done.

We believe the stepping will slow the channel. We do not believe that the stepping will reduce the volume of the water, which is ultimately going to impound at the lower end of the project, and we believe that the Soil Conservation Service should address itself to a resolution of that problem by whatever means are possible.

The logical explanation of why, in the initial design and construction of the project, nothing was done to remedy the inadequacies of the termination point of the channelization was that that did not rest in the jurisdiction of the Soil Conservation Service. The Hatchie River is within the jurisdiction of the Corps of Engineers. As a consequence, when they got to the edge of their turf, so to speak, they simply left the problem in the lap of the Corps of Engineers, and the corps itself then was confronted with the dedication of the river which needed such improvement and desnagging as a wilderness stream.

My associate, Mr. Stock, is equally familiar with the fact situation I have mentioned and he and I will be available in the event that any member of the committee or you, Mr. Chairman, have any questions to ask.

Thank you for an opportunity to make a statement.

Mr. JONES of Tennessee. Thank you very much, Mr. Dann.

Mr. Stock, do you have any statement to make at this time?

Mr. STOCK. Mr. Chairman, in summary, I would just like to say that our client, Mr. Charles LeNoir, in the late 1950's, owned approximately 3,000 acres of land in Hardeman County and granted 115 acres for an easement. It is our belief that he detrimentally relied on certain documents that were provided by the Soil Conservation Service.

For example, in the late 1960's the Commissioners' report made the following statement:

The Commissioners are of the opinion that all of the lands within the Porters Creek watershed district will be benefited except for a few building lots not used for farming.

In no way did Mr. LeNoir expect his land to be flooded, nor did he expect his land to be covered with sand, nor did he expect the drainage problems that did occur.

Thank you.

Mr. JONES of Tennessee. Thank you, Mr. Stock.

Mr. Dann, I believe you submitted a letter to the Committee on Agriculture outlining the problem you have just described and that we have a copy of the letter. Without objection, the letter you submitted will be made a part of the hearing record.

[The letter submitted follows:]

DANN, DAVIS, DAVIS, BLACKBURN & SHIELDS,
Memphis, Tenn., January 29, 1980.

Mr. BOB CASHDOLLAR,
House Committee on Agriculture,
Longworth Building,
Washington, D.C.

DEAR MR. CASHDOLLAR: This office represents Mr. C. S. LeNoir of Middleton, Tennessee, a landowner within the Porters Creek Watershed District of Hardeman County, Tennessee.

It has been brought to my attention that the House Subcommittee on Conservation and Credit has been requested to grant the Department of Agriculture Soil Conservation Service (S.C.S.) a hearing at which it is the intention of S.C.S. to request Congress to appropriate additional funds for the purpose of correcting certain defective portions of the Porters Creek Watershed Channelization Project in Hardeman County, Tennessee.

This firm is now engaged in litigation for Mr. LeNoir against Porters Creek Watershed District of Hardeman County and its upstream counterpart, the Porters Creek Drainage District of Tippah County, Mississippi. Our suit is on the theory of inverse condemnation, one element of which stems from Project design defects.

We believe that the circumstances surrounding Mr. LeNoir's claims will be of interest to the Subcommittee and that those circumstances may bear materially upon the objectives of the proposed hearing. We request notice of the date of hearing when scheduling has been completed, and an opportunity to attend and appear on behalf of our client if proceedings should take a turn which justifies and permits a comment.

The following is a summary of the information which would be presented.

Mr. LeNoir granted four gratuitous easements across his farmland to the Porters Creek Watershed District in February 1971, totaling 112.76 acres for the purpose of construction of a new and improved channel for Porters Creek. On its part, the Watershed District covenanted to maintain the channel when completed. The Project was constructed under an S.C.S. grant. Upon completion of the Porters Creek Channelization, Mr. LeNoir's land adjacent to the new channel-cut repeatedly became inundated with greater overflows and backed-up flood waters which were slow and difficult to drain and which deposited substantial amounts of sand on Mr. LeNoir's fields which flood waters had cut from banks of the channel upstream. Channelization sharply increased both the

speed of flow and the volume of Porters Creek. Mr. LeNoir's land has become permanently damaged by the process.

Mr. LeNoir has contended that the damage to his land has been and will continue to be the direct result of defects in the original Project design. He has claimed that the Soil Conservation Service failed to conduct adequate hydrological studies of the Project's impact on adjacent lands, if constructed as proposed, before approving the Project. All aspects of the Project design were prepared by S.C.S. He has determined that the Project design failed to consider the impact of enlarged channelization of Porters Creek into the Hatchie River, which would not, itself, be cleaned out to accommodate the additional flow to prevent the back up and prolonged overflow of obstructed flood waters. We have learned that the Big Muddy River which discharges into the Hatchie River immediately upstream of Porters Creek has been channelized recently and similar overflow problems are developing upstream of the mouth of the Big Muddy.

It is Mr. LeNoir's contention that the right-of-way site approved and designated by the S.C.S. in the Project design failed to provide for proper drainage from his land into the Creek. The site for the channel cut approved by the S.C.S. crosses through the highest portion of Mr. LeNoir's fields located on the floor of Porters Creek Valley, instead of through the course of the natural low point of the valley.

It is apparent that unless Mr. LeNoir's frontage on the channel is leveed to accommodate maximum anticipated flooding levels, and structures are designed and built to assure that his land lying and at lower elevations than the natural banks of the relocated channel will be drained or pumped free of run off of the area, his damages will continue to mount from the permanent taking of his use and enjoyment of his property.

Please advise me of the Committee's response. I will appreciate your efforts to keep my firm informed of all developments leading to the proposed hearing.

Sincerely,

ALEX W. DANN, JR.

Mr. JONES of Tennessee. Mr. Mitchell, do you have anything that you want to add at this time?

Mr. MITCHELL. I would like to indicate that there is no flood prevention project in the United States that I know of that will provide—at least in the Soil Conservation Service—100 percent flood protection. There are varying degrees of flood protection provided through these projects. They are worked out very closely and carefully with the local sponsors. Those landowners that are immediately adjacent downstream to a floodwater retarding structure are going to receive a higher degree of protection than those at the lower end of the watershed, particularly if the lower end of the watershed has flooding from another drainage area, such as is the case in the Porters Creek watershed. That is the only statement I am prepared to make right now.

Mr. JONES of Tennessee. Mr. Godby, do you have any statement?

Mr. GODBY. No, I think not.

Mr. JONES of Tennessee. Thank you, gentlemen.

Mr. Harkin, do you have any questions?

Mr. HARKIN. Thank you. Mr. Chairman. I do.

As I understand it, Mr. Dann, your client, Mr. LeNoir, seeks a remedy from the construction of certain levees along Porters Creek. Is that correct?

Mr. DANN. Yes; Mr. Harkin, essentially that is a part of it. Mr. LeNoir's land can be adequately protected by a properly designed channel. If the problem of siltation can be controlled to the point that the channel will not completely fill bank to bank with sedimentation within a period of a couple of years, which seems to be the pattern for this particular part of the channel, his property can be adequately protected by channelization.

It is not our feeling that our man is entitled to anything of a special nature. He is entitled however to a remedy of the conspicuous defects in engineering judgment and design which exist.

Mr. HARKIN. Let me ask you this, Mr. Dann. You said you filed suit in the eastern district court, I believe. Is that so?

Mr. DANN. It is a pending suit.

Mr. HARKIN. It is a pending suit?

Mr. DANN. Yes, sir.

Mr. HARKIN. Has there been any adjudication of any suits at all on behalf of Mr. LeNoir in any courts in the State of Tennessee.

Mr. DANN. No, Mr. Harkin. Our status is that we are in midstream, so to speak, in the litigation. Our district courts in the western district of Tennessee have been overburdened and undermanned, and the problem has been—

Mr. HARKIN. Excuse me, Mr. Dann. Are you saying that with regard to Mr. LeNoir's situation and the case you have just described to us at no time has there been any adjudication whatsoever in any court?

Mr. DANN. There has been an adjudication of the fact that we have a cause of action by our appeal to the Sixth Circuit Court of Appeals which remanded the case to the western district of Tennessee on the legal issue of inverse condemnation. It is that issue which is now pending a hearing that we have been unable to have scheduled.

However the suit in the district court is against the Porters Creek Watershed District of Hardeman County and the Porter Creek Drainage District of Tippah County, not against the Soil Conservation Service.

Mr. HARKIN. Is this a Federal court?

Mr. DANN. It is a Federal court.

Mr. HARKIN. And evidently the Federal court found against your client, did it not?

Mr. DANN. No; it found against our client in the suit against the Soil Conservation Service for the lack of privity between our client and the Soil Conservation Service. There was no contract between the parties, but it remanded for a hearing, for trial, the issue of inverse condemnation against the two drainage districts—

Mr. HARKIN. The district court?

Mr. DANN. Yes; the district court. The suit is now pending in the district court and has not been set for hearing yet.

Mr. HARKIN. What did you say the circuit court sent back to the district court for a finding on the legal issue of—

Mr. DANN. The Sixth Circuit Court of Appeals is the appellate court from which suits which are tried in the district court in the western district of Tennessee are reviewed on appeal.

Mr. HARKIN. As a lawyer I understand that. I am trying to figure out what the legal situation is. Suit was brought in district court.

Mr. DANN. Yes.

Mr. HARKIN. Evidently the suit was against the local watershed district.

Mr. DANN. Correct. It was against all of the watershed districts and the Department of Agriculture.

Mr. HARKIN. And the Soil Conservation Service was also brought in. Were they not?

Mr. DANN. They were in the original suit.

Mr. HARKIN. Then as the suit proceeded, are you saying that the Soil Conservation Service was found not to be a party? Did they ask to be let out of the suit?

Mr. DANN. Yes. They joined in a motion to dismiss the suit as against them.

Mr. HARKIN. And was that upheld?

Mr. DANN. That was sustained on the ground that the district court was the improper court for the purpose of trial of the issue of inverse condemnation against the Federal Government.

Mr. HARKIN. And did you appeal that?

Mr. DANN. We did appeal that and it was then sustained, and in the opinion of the sixth circuit it was clearly suggested that the proper forum would be the Court of Claims, so we moved into the Court of Claims with a suit. In the proceedings which followed it was determined that because there was a lack of privity between Mr. LeNoir and the Department of Agriculture Soil Conservation Service that the Court of Claims did not have jurisdiction over the cause of action, so the surviving litigation is against the two districts. It remains pending in the district court for the western district of Tennessee.

Mr. HARKIN. I think I understand the legal situation much better now. Thank you.

It still seems, however, that the legal remedy he seeks is to prevent the flooding of his land, which means that he needs some levees built. That seems to be the thrust of your letter to this subcommittee.

Mr. DANN. Yes.

Mr. HARKIN. Have you investigated with the Soil Conservation Service what the cost of the levees would be? Do we know, Mr. Mitchell?

Mr. GODBY. No, sir. We have not investigated levees or their cost for that particular part of the watershed.

Mr. HARKIN. What does the Hatchie Creek flow into?

Mr. DANN. The Hatchie River.

Mr. HARKIN. What does the Hatchie River flow into?

Mr. DANN. The Mississippi River.

Mr. HARKIN. I see. And I understand that Porters Creek flows into the Hatchie. The Big Muddy River is evidently upstream from Porters Creek and has been channelized also. Is that something recent?

Mr. GODBY. Yes, sir. It is. It is fairly recent. In fact part of Muddy Creek is under construction right now.

Mr. HARKIN. By channelization?

Mr. GODBY. Yes, sir. It is part of a watershed project.

Mr. HARKIN. How far upstream is that from Porters Creek, 2 miles, 5 miles, 10 miles?

Mr. GODBY. In the vicinity of 5 or 10 miles. I am not sure.

Mr. DANN. I think it is probably on the long side.

Mr. GODBY. I am not sure, sir.

Mr. HARKIN. So the flow into the Hatchie River would be increased, would it not, to the detriment of the people who live downstream? I would assume that, unless something has been done to the Hatchie River.

The only reason I am interested in this is because I have a similar situation in my district, where a stream was channelized. Porters Creek was channelized a long time ago. How many years was it?

Mr. GODBY. It was channelized in 1972.

Mr. HARKIN. That is not too long ago. I had a stream channelized in my district even before that and since that time many more acres in that watershed district have come under cultivation by row cropping, therefore the runoff is much faster than it used to be, and consequently, much more flooding has occurred.

At the same time, upstream, in a similar case, there was another stream channelized which they tell me does not simply increase the flow arithmetically but does it logarithmically. It has to do with the volume, but I do not completely understand it since I am not an engineer.

I know that landowners down below who agreed to this in the 1960's find themselves consistently flooded, which is not what they had agreed to. It is a similar situation.

I just wonder how many more of these may exist around the country, situations in which the streams were channelized in one set of circumstances and then because of increased row cropping—I do not know what the situation is in Tennessee, or what happens with stream channelization up river. Such things can change the whole complexion of the initial action that was taken. Perhaps it is something that this subcommittee should take a look at in hearings with the Soil Conservation Service, to see how many more of these there may be around the country.

Concerning this specific one, I do not know that we can do anything. It seems to me that there are legal resources to be followed, just as people in my district are following. There is really not much that can be done on an equity basis until the legal course is run.

Mr. JONES of Tennessee. Will you yield?

Mr. HARKIN. Yes.

Mr. JONES of Tennessee. In your district, have the cases been in court?

Mr. HARKIN. Yes.

Mr. JONES of Tennessee. With more or less progress than these folks have made here?

Mr. HARKIN. I have to review it. I have not reviewed it for some time.

Mr. JONES of Tennessee. I still have a question about the Big Muddy River. As I understand the Big Muddy River situation, it has been channelized. It was channelized following the completion of the work that was done on Porters Creek. The Big Muddy, as I understand it, although I have not see the maps, flows into the Hatchie River which is a wilderness river.

Mr. GODBY. Yes, sir, that is right.

Mr. JONES of Tennessee. Who did the work on the Big Muddy? Was that done by the watershed people?

Mr. GODBY. Yes. It is part of a watershed project.

Mr. JONES of Tennessee. It is part of the watershed project, but it has no relation to the Corps of Engineers, or anything of that sort. Is that correct?

Mr. GODBY. Yes, sir. Most of the Muddy Creek watershed is in the Mississippi. Only the lower portion, about 7 miles, is within Tennessee.

Mr. JONES of Tennessee. Right. However, the Hatchie River, is a wilderness river, we do not even kill the snakes in there. You do not even pull out a stump or a log or anything else. I do not understand

that kind of engineering myself. That involves making a decision to open two channels into a wilderness river in which the water hardly flows.

I am acquainted with the Hatchie, but I am not acquainted with this particular spot. I do not understand what took place back there.

Mr. GODBY. I might make one comment about the Muddy River. It is a recent construction activity. There were——

Mr. JONES of Tennessee. It is a recent construction activity?

Mr. GODBY. Yes. In fact the Tennessee portion is being completed now.

Mr. JONES of Tennessee. How large is it compared to the Hatchie?

Mr. GODBY. It is smaller. In fact there were design features incorporated into the Muddy Creek design whereby there was no excavation for several miles upstream from the Hatchie, so that the receding water would blend back into the stream system without——

Mr. JONES of Tennessee. You mean the Big Muddy was not channelized all the way?

Mr. GODBY. The lower portion was not. That is right.

Mr. JONES of Tennessee. You just snaked and dragged.

Mr. GODBY. Sediment traps were also designed into the project to hold any sediment movement that might occur during construction. These have been reviewed by several people, including the environmental interests, and they are quite pleased with the results.

Mr. JONES of Tennessee. Even though I do not know much about this project since it is not in my congressional district and I have not been to this area in several years, but evidently Porters Creek is fairly well filled at the mouth, where it flows into the Hatchie River, with sediment at the present time. Is this true or not?

Mr. GODBY. It is not completely filled.

Mr. JONES of Tennessee. I understand that it is not taking the course it was designed to take. It has moved out into another part of the area. Is this correct?

Mr. GODBY. Yes; it was realigned from the original alinement.

Mr. JONES of Tennessee. It has actually occurred by nature. I understand it has moved out into a course it was not engineered to take. Is this not a fact?

Mr. GODBY. It is following the course that the design engineers chose to straighten that part of it. That is, the lower part. It was relined. However, the original channels, the meanders that remained, were allowed to flow into the relocated channels through their natural drainage.

Mr. JONES of Tennessee. Mr. Dann.

Mr. DANN. Mr. Chairman, I am not certain that Mr. Godby is familiar with the physical condition, and so it may well be that he did not understand your question, but the facts of the matter are that adjacent to the property of Mr. LeNoir the streambed has physically broken away from the portion of the channelization which has become clogged with sediment and now has worked its way through a path of least resistance at the lowest points through the woods to the east of the intended path of the channel. It is not following the original rechannelization to the point at which it would intersect with the Hatchie River at certain levels of flows. I believe there may still be water that will pass down the channelization portion of it, but the

bulk of the water flows through the woods at the point at which it breaks out.

Mr. JONES of Tennessee. I have one question, Mr. Dann. Does it still empty into the Hatchie River at that point where it has taken the new course?

Mr. DANN. Yes. It does.

Mr. JONES of Tennessee. Mr. Baldus, do you have any questions?

Mr. BALDUS. I was going to ask about the money. Mr. Chairman.

In the improvement that was approved in 1960, what was the cost then? What was the value of the project, or how much was appropriated then?

Mr. MITCHELL. The cost, Mr. Baldus, in 1972 for the constructed portion of the channel was \$833,000. That was an actual contract cost, not an estimate.

Mr. BALDUS. Then the planned works of improvement will or will not affect more acres? Does that enlarge the scope of the project, or is it actually the same project?

Mr. MITCHELL. It is really the same project. We are talking about the same types of beneficiaries, the same numbers. What needs to be done is to go into the project and put in nine grade stabilization structures in addition to those features that were planned in the original project.

Mr. BALDUS. Was that planned as a stage, or was it known at the time that the additional work would have to be done?

Mr. MITCHELL. No, sir. It was not known. The engineering design at that time called for a certain velocity of flow to be in the channel, a certain frequency of flooding to take place, a certain reduction of benefits to take place. Along with the local sponsors it was thought that we could build the channel under the design that was proposed with the idea of having a vegetative cover on the channels that would take care of the instability problem. The vegetative works did not work. They did not really perform the job. We should have gone in there and done some structural features, such as the nine grade stabilization structures, at that time to resolve the instability problem.

Mr. BALDUS. Do you recall what the cost-benefit ratio was on the project at that time?

Mr. MITCHELL. The original benefit-cost ratio at the time of construction was 2.2 to 1.

Mr. BALDUS. We have two groups here, the planned work and the remedial measures. The planned work is expected to cost \$1,643,000, and the remedial work is expected to cost \$2,400,000, which brings us to \$4 million, or a little over. This seems to me to improve what was less than a \$1 million project. We have not even touched the levees that Mr. Dann is talking about. It seems to me we are getting into deeper water.

Mr. MITCHELL. May I clarify one point, Mr. Baldus. The planned works of improvement shown there in the briefing paper before you indicated that the estimated cost of the total project was \$1.6 million. I gave you a figure of what the construction cost was in 1972.

The \$1.6 million includes more than just the cost of the channel. That includes upland land treatments. In other words, that is the total project cost. I might have misled you before when I gave you an estimated cost.

Mr. BALDUS. In other words, \$1.6 million would be in addition to the original \$833,000. Is that correct?

Mr. MITCHELL. Let me clarify it this way. The cost of the channel right now, if it were to be done and done right, would be the original cost of \$833,000 plus the \$2.4 million that we are proposing for works to stabilize the condition. We are talking about a total project construction cost for the channel of \$2.4 million plus \$833,000 that has already been expended. That is a total construction cost of around \$3.2 million.

Mr. BALDUS. You lost me somehow. There is \$833,000 spent.

Mr. MITCHELL. \$833,000 was spent in 1972 on the construction part of the channel.

Mr. BALDUS. And then you plan on \$1.6—

Mr. MITCHELL. No. The \$1.6 million was a work plan estimate of what the channel work plus the floodwater retarding sites would cost, so it was a total project cost.

I thought you asked just what the cost of the channel was. Excuse me.

You see, the \$1.6 includes, Mr. Baldus, not only the channel work but 14 floodwater retarding sites.

Mr. BALDUS. That includes the \$833,000 that you have spent, does it?

Mr. MITCHELL. Yes, sir.

Mr. BALDUS. That makes that clearer.

That is, in other words, only an addition of \$800,000 for that part, or roughly so. Then the remedial measures of \$2,400,000 are or are not before us in the request? Are they included in this request, Mr. Chairman?

Mr. JONES of Tennessee. I do not think I understood what you said, Mr. Baldus. I was doing some figuring too.

Mr. BALDUS. These are briefing papers. I assume they end up in the request for authorization. Is that correct?

Mr. JONES of Tennessee. It really is not a request for authorization. Our obligation is to hear these projects that involve over \$1 million to be spent. That is the purpose of this subcommittee hearing these two.

What about the cost-benefit ratios? Have you worked out cost-benefit ratios, and on what figures are they based?

The one point I have not yet reached in this other listing is, although I understand that it is a matter of litigation, is the subcommittee has no idea of the cost of any levees that may be required for Mr. Dann's project, so that adds a question to any figures.

Mr. MITCHELL. We ask our State conservationists, whenever they are expending any funds over and above what is in the work plan, to go back through and make sure they have a justified project. The staff in this particular case has taken the figures that were expended at the prices they were expended, in other words, 1972 prices. They added on the \$2.4 million. They updated the benefits to the pricing system that we follow on our procedures, and by capitalizing those benefits they came up with being able to expend a total of \$4 million and still have a one-to-one benefit-cost ratio. That satisfactorily meets our policy of asking them to assure justification of a project.

I might add, for the committee's point, that we do not require economic justification. Some of the types of damage that occur cannot be put into monetary terms or the pricing system, and we have not

allowed for them. In this particular case, one of the major concerns is that if the channel keeps on degrading, there will be serious damage to upstream bridges, town and county, due to the widening of those channels. The supports on the bridges may and fall into the channel. Those kinds of benefit have not been taken into account in talking about the benefit-cost ratio including the \$2.4 million.

We do feel though that the State conservationist has met our policies. He has a rationale and a justification for proceeding with expenditures of \$2.4 million.

Mr. BALDUS. Thank you, Mr. Chairman.

Mr. JONES of Tennessee. Thank you, Mr. Baldus.

Mr. Mitchell, under the remedial measures portion of the statement that I have, the briefing paper—and I do not know all about this that I need to know—I gather that the estimated cost for the completion and bringing up to date of this project will be \$2.4 million. Is that your estimate?

Mr. MITCHELL. That is correct.

Mr. JONES of Tennessee. Would that put it in the kind of condition that you think will protect the land, the bridges, and whatever is in that area?

Mr. MITCHELL. Yes, sir.

Mr. JONES of Tennessee. Have you any more questions, gentlemen?

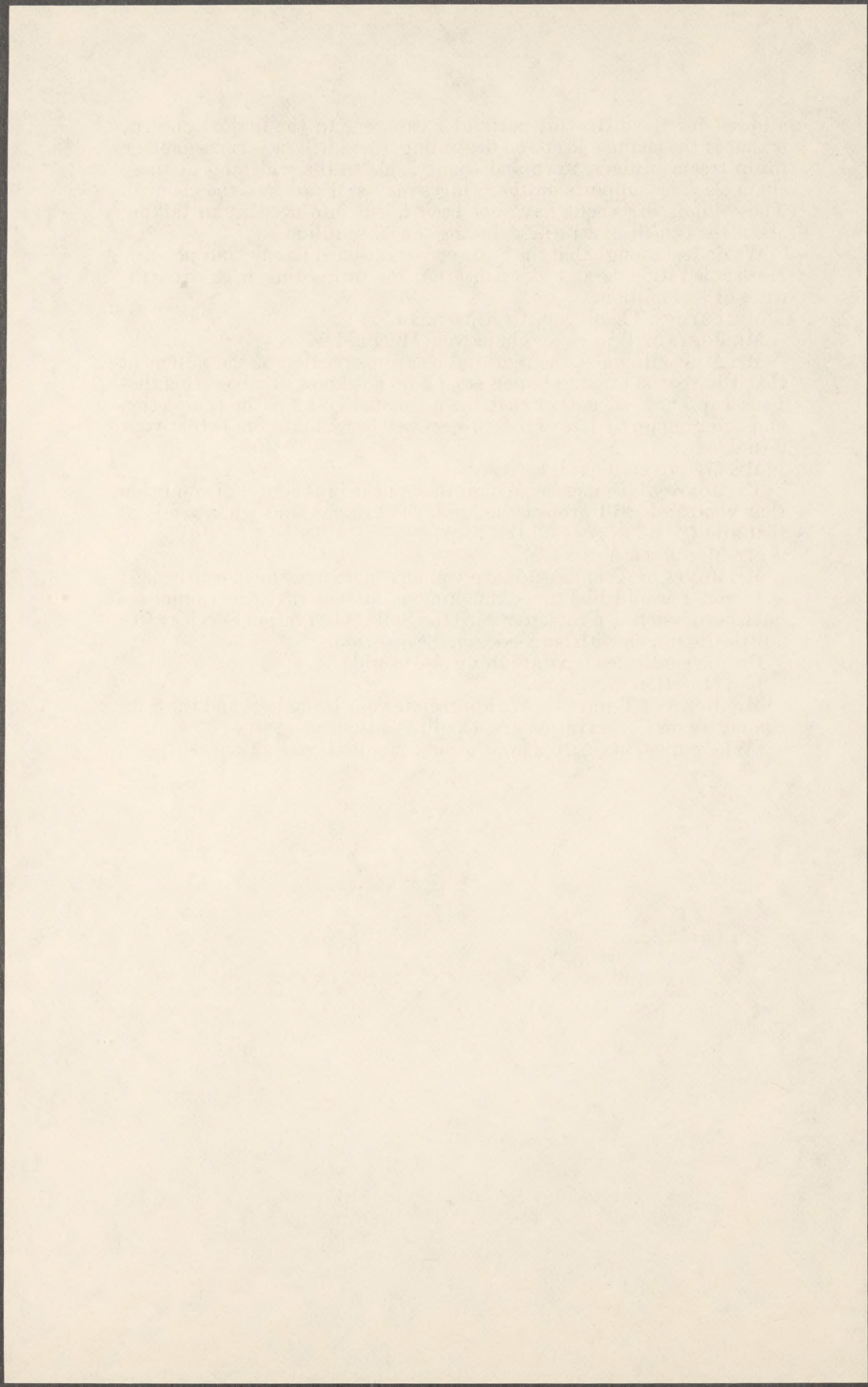
If not, I would like to ask unanimous consent that this committee have permission to file a letter with the Soil Conservation Service after a little discussion with both sides on the question.

Do you gentlemen have anything else to add?

[No objection was heard.]

Mr. JONES of Tennessee. We appreciate your being here and the Subcommittee on Conservation and Credit is adjourned.

[Whereupon, at 11:10 a.m., the subcommittee was adjourned.]



IMPROVING THE QUALITY OF GRAIN FOR EXPORT

WEDNESDAY, SEPTEMBER 10, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF LIVESTOCK AND GRAINS
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1302, Longworth House Office Building, Hon. Charles Rose (chairman of the subcommittee) presiding.

Present: Representatives de la Garza, Jones of Tennessee, Baldus, Sebelius, and Coleman.

Staff present: Robert M. Bor, chief counsel; Christine Abram, clerk; John Bailey, Jerry Jorgensen, and Kathleen Harris.

Mr. Rose. The Subcommittee on Livestock and Grains will come to order.

The purpose of today's hearing is to consider H.R. 5528, a bill to amend the U.S. Grain Standards Act for the purpose of expanding foreign trade by improving and maintaining the quality of grain for export.

Without objection, a copy of the bill will be included in the hearing record at this point.

[The bill H.R. 5528 and the report of the U.S. Department of Agriculture follow:]

[H.R. 5528, 96th Congress, 1st session]

A BILL To amend the United States Grain Standards Act for the purpose of expanding foreign trade by improving and maintaining the quality of grain for export

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 13 of the United States Grain Standards Act, as amended (7 U.S.C. 71-87H), is amended by renumbering present paragraph (c) and (d) and by adding the following new paragraph:

(c) "No person who owns or operates an export elevator at an export port location shall permit the elevator to knowingly add or mix grain dust or any nongrain related material to any grain shipped from the elevator: *Provided*, That grain may be fumigated to preserve its quality and separate lots of grain of the same kind may be blended."

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 18, 1980.

HON. THOMAS S. FOLEY,
*Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the Department's comments on H.R. 5528, a bill "To amend the United States Grain Standards Act for the purpose of expanding foreign trade by improving and maintaining the quality of grain for export."

The Department supports the enactment of H.R. 5528 because it would :

- Tend to reduce the dusty appearance of grain shipped by export port elevators ;
- Tend to reduce the safety risks in loading and unloading operations ; and
- Reenforce the antiadulteration provision of the Federal Food, Drug, and Cosmetic Act.

Current monitoring practices under the United States Grain Standards Act, by Federal and State employees at export port elevators, would provide the necessary manpower to detect flagrant violations of H.R. 5528 that occurred while an elevator was receiving or shipping grain that was being inspected or weighed under the Act. The monitoring practices would probably not detect single or occasional violations, or violations of an ongoing nature that occurred while the elevators were operational but were not receiving or shipping grain that was being inspected or weighed under the Act.

Other than the minimal costs incurred for processing violations, there would be no additional cost to the Department to detect flagrant violations that occurred while an elevator was receiving or shipping grain that was being inspected or weighed under the Act. To monitor all grain handling and storage activities at export port elevators on a continuing basis would require up to 3 staff-years at each of the approximately 90 export port elevators at an estimated annual cost of up to \$5.5 million.

In accordance with the provisions of Public Law 91-190, section 102(2) (C), enactment of this legislation will have no significant impact on the quality of the environment.

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. A more detailed analysis of the bill is enclosed.

Sincerely,

BOB BERGLAND, *Secretary.*

Enclosure.

FEDERAL GRAIN INSPECTION SERVICE LEGISLATIVE REPORT—H.R. 5528

Enactment of H.R. 5528 would be a control of certain mixing and blending practices at export port elevators, in that it would prohibit the admixing by the elevators of grain dust, and nongrain related material other than fumigants, to grain shipped by the elevators. With respect to the admixing of grain dust, the enactment of the bill would :

1. Tend to reduce the dusty appearance of grain shipped by export port elevators.

Grain handled by export port elevators is generally dry and dusty. Dust collected by the elevators while handling the grain is sometimes returned to the grain as the grain is being conveyed to a ship or other carrier. By prohibiting the admixing of grain dust, the enactment of H.R. 5528 would tend to reduce the dusty appearance of the grain shipped by the elevators. The reduction would probably be of such limited quantity that it could not be effectively measured with current grain inspection equipment.

2. Tend to reduce the safety risks in grain loading and unloading operations.

Grain dust particulates contribute to respiratory health problems and elevator explosions. By prohibiting the admixing of grain dust, the enactment of H.R. 5528 would tend to reduce the dusty condition of grain handled by export port elevators and, thereby, tend to reduce the safety risks in loading and unloading grain shipped by the elevators.

3. Enactment of H.R. 5528 would also reenforce the antiadulteration provision of the Federal Food, Drug, and Cosmetic Act.

Grain is a food. The admixing of grain dust and nongrain material with grain could be construed to be an adulteration of food. The Federal Food, Drug, and Cosmetic Act (FFDCA) prohibits the adulteration of food. The Federal Grain Inspection Service (FGIS) is in a position to monitor certain mixing and blending practices at export port elevators. The enactment of H.R. 5528 would reenforce the antiadulteration prohibition of the FFDCA with respect to grain by prohibiting certain mixing and blending practices at export port elevators, and would reenforce compliance in that two Federal agencies—the Food and Drug Administration and the FGIS—would share in the enforcement of the respective prohibitions.

Mr. ROSE. Grain elevator fires and explosions have become a serious concern to grain handlers as well as to Federal agencies responsible for the quality of grain and the safety of elevator employees.

In view of the losses of lives, property, and serious injuries that have resulted from elevator explosions in recent years, I felt the Livestock and Grains Subcommittee should take a look at the problems associated with grain dust.

H.R. 5528, by Mr. Neal Smith, our colleague from Iowa, addresses the grain adulteration problem by prohibiting the reintroduction of grain dusts or any nongrain-related material to grain shipped from an export elevator.

I have several questions that I would like to see the witnesses address today. First, does the addition of grain dust to grain leaving these elevators heighten substantially the possibility of fires and explosions? I am aware that USDA's special task force report on the prevention of grain elevator explosions emphasizes the removal of grain dust during grain handling and is against its reintroduction in response to the safety problems that are intensified by the presence of grain dust.

Second, aside from explosions, how does the reintroduction of grain dust and/or other adulterations of grain affect the quality of our exported grain? Would clean grain positively affect our export sales?

Finally, I would like the USDA to speak on the subject of disposition of the accumulated grain dust. I know that some of it is used in the manufacturing of animal feed and the possibility of producing ethanol is being explored.

How many locations are there in the country that could sustain an industrial process to use this dust? It seems the transporting of this dust to a processing location would mean additional handling costs. How burdensome would these be? Would these additional handlings increase the possibility of ignition?

I hope that many of my questions can be answered so that we can take appropriate steps to resolve the grain adulteration problem.

Our first witness today is Hon. Neal Smith, a Member of Congress from Iowa, the author of the legislation.

Mr. Smith, we are happy to have you and look forward to your statement.

STATEMENT OF HON. NEAL SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

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

I have a statement which I would ask that you put in the record. I would like to ad lib a little bit.

I would like to go back to the background of this matter. Some members of the subcommittee may not remember the history since they were not here at the time.

In about 1970—or a few years before that—we had heard many complaints, when Members of Congress visited other countries, about the quality of the grain coming from the United States and how it was inferior to that of other countries, because it was loaded with dust, dirt, and so forth.

I went down to New Orleans and Houston in 1970. I decided that I would see for myself how that export operation worked. In some of

the elevators there, I noticed that they took the dust and dirt out, as they are required to do, and they showed me their equipment.

However, when I went around to where the ship was being loaded, I noticed the grain as it came off to the belt was laden with dust and dirt. I picked up a handful of it and, lo and behold, the dust and dirt that was in that grain was not even exclusively what had been taken out. In one shipload of corn going to Japan, there was rice hulls, for example, and even some other kinds of dirt that was unidentifiable.

It was obvious that dirt was being put back in after it had been taken out at the point where they were supposed to do so.

Also, at that time, we had had a lot of complaints from local elevators in Iowa and Illinois which had shipped grain to the gulf. Of course, the local elevators could not be there to watch it weighed, and when they came up a couple of hundred bushels short on many cars, they reported it to the railroad. The railroad would not pay for the shortage because it said there was nothing wrong with their cars, but that the shortage was the result of the weighing.

Therefore, I went to the Agriculture Appropriations Subcommittee and got them to provide the Department of Agriculture with the money to send some inspectors down to these export points, and they did send some very good inspectors. These inspectors worked down there for a couple of years and they found all kinds of fraud, graft, misgrading, misweighing, and stealing. They were good inspectors and deserve great credit for a job well done.

I also want to say that Jim Risser, of the Des Moines Register, especially highlighted these stories and secured the necessary public support that it took to support a bill.

The bill that I then drafted covered three things: first, proper grading; second, weighing; and third, prohibiting adulteration.

At first, the Department only supported the grading part. They finally agreed to the weighing part, but they continued to oppose the adulteration part, so legislation dealing with this never has been passed.

However, we are still hearing the same complaints about excessive dust and foreign material. It is now, I think, the No. 1 complaint reflecting negatively upon the reputation of our grain; namely, this foreign material that is in our grain.

Corn is inclined to create some dust by its very nature. As a result of the handling, it will crack, for example. However, that is not prohibited by the bill. Cracked corn would not be involved.

If exporters add the maximum allowable dust and foreign material at the point of export, it is sure to be an inferior product by the time it reaches its final destination.

I just cannot see any justification for including rice hulls and foreign material in grain.

At the same time, we must keep in mind that Canada washes its wheat, for example. That is the reason we hear about the corn from Argentina being so beautiful and the wheat from Canada being so beautiful.

If we had this kind of law here, those companies that do not want to add additional dust would not have to do so for competitive purposes, and we would develop a system of premiums instead of everybody going up to the allowable limit on foreign material.

I think that it is really a crime when I see that corn come out of the combines so beautiful an clean and by the time it gets to a ship down there in the gulf it just does not look like the kind of a product that we ought to be promoting overseas.

You mentioned the dust situation. That is a side product but a very important one because, as the chairman knows, only a couple of years ago two export elevators blew up. This dust is very dangerous. We have had some local elevators that got into trouble too.

However, this bill only affects export elevators.

I think the reputation of our grain is very important to the economy and I think that the time has now come to do the other third part of the bill that we should have passed several years ago. The Department of Agriculture now supports it.

I hope that the subcommittee will report the bill and that the full committee will do likewise.

Mr. ROSE. Mr. Smith, I appreciate your testimony.

Without objection, your full statement will be included in the record at this point.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF HON. NEAL SMITH, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF IOWA

Mr. Chairman and members of the Subcommittee, H.R. 5528 would amend the U.S. Grain Standards Act by adding the following paragraph: "No persons who own or operate an export elevator at an export location shall permit the elevator to knowingly add or mix grain dust or any non-grain related material to any grain shipped from the elevator."

Currently, the Grain Standards Act does not address the problem of return of collected grain dust. The result is an impediment to maintaining quality in grain exports to the detriment of farmers, local elevator operators and our national balance of trade.

Five years ago, I drafted and introduced the first bill in Congress to make major amendments in the U.S. Grain Standards Act for the purpose of prohibiting activities which were leading to losses of overseas markets and resulting in dishonest handling at export points. At that time, the Department of Agriculture objected to two of these provisions: 1) assigning to the Federal Grain Inspection Service the responsibility for weighing at export points, and 2) a prohibition against adulteration of grain at any time after its purchase from the original producer. The weighing provision survived the eventual legislation but the adulteration provision was not included in the House and Senate bills as reported from the Committees.

I felt then and still feel that it should not have been dropped. My interest in this goes back to 1970 when I visited some ships being loaded in New Orleans and Houston and noticed that at some of the elevators fine dirt and dust was being removed at one point, but that when the grain came off the belt into the hold of the ship there was more dirt and dust than had been removed—and it even included in some cases rice hulls and other foreign material which had not originally been in the grain. It was obvious that they were adding whatever amount of foreign material they could and still stay within the foreign material requirements for the grade standards. Subsequent studies revealed this was a common occurrence.

Both foreign buyers and local elevators had also complained about short weights at export elevators. Upon returning, I solicited U.S.D.A. with the help of the agricultural appropriations committee to dispatch some investigators. They found falsified grading and short weights and those matters were then corrected by legislation but the dust and adulteration complaint was not acted upon.

Foreign buyers of our grain still complain about excessive dust and the foreign material in our grain exports. It is now the number one complaint reflecting negatively upon the reputation of our grain. Corn is inclined to create some dust by its very nature as a result of handling and if exporters add the maximum allow-

able dust and foreign material at the point of export, it is sure to be an inferior product by the time it reaches its final destination. I can see no justification for including trash—or for mixing rice hulls with wheat, soybeans or corn. If adulteration were prohibited it would encourage the development of a system of premiums instead of downgrading all grain.

While I feel it is simply wrong to add dirt and dust to a product like grain for economic reasons, it now has developed that it also is a very dangerous practice. A new task force report released by the Department of Agriculture earlier this year concluded that the use of existing technology could show "immediate and dramatic results" in the prevention of dust explosions in grain elevators. The foremost method of prevention called for by this USDA report is the removal of all grain dust from the handling system and the prohibition of returning it back into the grain when it moves out, as many if not most export elevators now do. Those who would prefer to not adulterate find it necessary to do so because their competition does. It would be much better if none engaged in this practice and restore the chance to compete in furnishing a product of better reputation. Reputation of our grain is important to all segments of our economy including the producers who delivered a beautiful dirt free product. I have re-introduced that part of my original bill relating to dust and foreign material. I still think this provision is needed and am glad the Department of Agriculture now supports the enactment of H.R. 5528. I urge its approval. Thank you for your attention.

Mr. ROSE. We thank you for bringing this matter to our attention.

How widespread do you believe the practice is of adding foreign substances to grain, or is it the exception that gives the whole industry a bad name?

Mr. SMITH. No. I do not think it is an exception. It takes place mainly at export points. I think that, one way or another, if you have a 3-percent tolerance, or whatever it is, every export elevator finds that it has to do so in order to be selling for the same price as the competition.

As long as you can add foreign material, that is going to be done.

Mr. ROSE. Are there any questions by members of the subcommittee?

If not, we appreciate your introducing the bill and we appreciate your testimony.

The next witness is Mr. Leland E. Bartelt, the Administrator of the Federal Grain Inspection Service of the U.S. Department of Agriculture.

Mr. Bartelt, we thank you for coming and we are happy to have your testimony, sir.

STATEMENT OF LELAND E. BARTELT, ADMINISTRATOR, FEDERAL GRAIN INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY LES MALONE, ASSISTANT DEPUTY ADMINISTRATOR, PROGRAM OPERATIONS

Mr. BARTELT. Thank you, Mr. Chairman.

I am L. E. Bartelt, Administrator of the Federal Grain Inspection Service. I am pleased to be with you this morning and appreciate the opportunity to offer my views on H.R. 5528, which seeks to amend the United States Grain Standards Act for the purpose of expanding foreign trade by improving and maintaining the quality of grain for export. We appreciate the manner in which your staff has approached this matter.

At the table with me this morning is Mr. Les Malone, my Assistant Deputy Administrator for Program Staff Operations.

You have before you my prepared testimony that I submit for the record. If it is all right with the subcommittee, I would like to briefly summarize the contents of the prepared testimony in the interest of saving time, as well as to provide an opportunity for you and the subcommittee to raise any questions that you might have.

Mr. ROSE. Thank you. Without objection, we will do that. If you will give us a quick summary without even reading from your statement we will appreciate it.

A copy of your full statement will be included in the hearing record at this point.

[The prepared statement of Mr. Bartelt follows:]

STATEMENT OF L. E. BARTELT, ADMINISTRATOR, FEDERAL GRAIN INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

The Congress amended the United States Grain Standards Act (Act) in 1976 and created the Federal Grain Inspection Service. The mission of FGIS is to establish U.S. standards for grain and to establish a uniform national grain inspection and weighing system. This action by Congress illustrated their desire to promote and protect grain commerce in the interest of producers, merchandisers, warehousemen, processors, consumers of grain, and the general welfare of the people of the United States.

An important role of the U.S. grain inspection system is the inspection of grain at some 73 export elevators (excludes 7 floating rigs) located at export port locations in the United States. The proposed amendment to the Act as contained in H.R. 5528 directly impacts on the inspection of grain at these export locations. The enactment of H.R. 5528 would affect certain mixing and blending practices at export port elevators, in that it would prohibit the admixing by the elevator of grain dust or any nongrain related material other than fumigants, to grain shipped by the elevators.

We support the enactment of H.R. 5528. It would improve the appearance of grain exported from the United States. Currently, when dust is reintroduced to grain after it has been removed, the grain tends to take on an unsightly appearance, which obscures the true quality of the lot of grain. Because normal grain handling is generally dry and dusty, elevators are often equipped with dust collection systems that remove the dust during the handling operations and sometimes returns the collected dust back to the grain as it is being conveyed to a ship or other carrier.

I would like to emphasize that this dust in the sample used for official inspection would probably be of such limited quantity that it could not be effectively measured with existing grain inspection equipment. In addition, we currently monitor the loading of grain to ensure that the quality is not changed after the grain is sampled for inspection purposes. In other words, the quality currently depicted on the official export certificate accurately represents the quality of grain loaded aboard of ship or other carrier.

H.R. 5528 would also reduce the health and safety risks in grain loading. At certain levels, grain dust particulates contribute to respiratory health problems and elevator explosions. The prohibition of admixing grain dust would reduce the dusty conditions of grain handling by export port elevators, and thereby, reduce the safety risks in loading grain shipped by the elevators.

The U.S. Department of Agriculture recently conducted a detailed study on the problems of dust fires and explosions in U.S. grain handling facilities. The study consisted of reviewing the history of grain dust fires and explosions, analyzing information concerning 250 explosions, and surveying U.S. grain handling facilities.

In solving the problems of dust fires and explosions in grain handling facilities, many alternatives are available. One of them is the removal of dust from the grain stream and the prohibition of reintroducing the collected dust.

If you wish, I would be pleased to provide copies of the USDA report entitled "Prevention of Dust Explosions In Grain Elevators—An Achievable Goal" to the members of the Subcommittee.

I recommend the enactment of H.R. 5528. However, I have some concerns that the Subcommittee may wish to consider for the purpose of clarification. The

terms "grain dust" and "nongrain related material" are shown in the wording of H.R. 5528. They are technical in nature and are not defined in the bill or in the Act. To achieve clarity, you may wish to have the terms "grain dust" and "nongrain related material" defined. It is our recommendation that the definitions permit the admixing of fungicides and other grain protectants, and the admixing of grain of different kinds and qualities.

This would constitute a change in the proviso of the Bill. We base this recommendation on the fact that some foreign buyers of U.S. grain, for economic reasons, occasionally purchase mixed grain or U.S. Sample grade grain. For example, Poland often purchases U.S. Sample grade corn intended for livestock feed. This enables them to purchase their required feed grain at a reduced price. If the blending of different kinds of grain is prohibited, this market may essentially disappear, because grain received by export port elevators is rarely of the quality required to meet these special contracts.

In addition, the proviso currently addresses only fumigants. While fumigants are an important factor in preserving the quality of U.S. grain, there are other important grain protectants that are not classified as fumigants.

A new area of technology which affects the proviso of H.R. 5528 that you may also wish to consider is that of adding oils, fats, and greases from animal, vegetable, and mineral source to grain. Several groups are investigating the possibility of adding these substances to grain to control dust during the handling operation. Initial reports indicate that these substances adequately control the dust while producing no adverse effect on the quality of the grain. Of course, further studies will be required prior to the grain industry adopting the new practice.

Aside from the dust problem, the mixing and blending of grain takes place throughout the marketing system and involves the quality of the grain. Quality requirements for grain and other agricultural commodities have historically been controlled through the use of grade standards and contract specifications. This method of control has been found to be workable and cost-effective and minimizes the need for legislative controls, which would introduce administration and enforcement costs.

When we consider the complexities and extensiveness of elevator operations, the task of enforcing legislation that prohibits the blending and mixing of grain becomes enormous. To monitor all grain handling and storage activities at export port elevators on a continuing basis would require an estimated 3 staff-years at each of the approximately 73 export port elevators at an estimated cost of \$4.5 million per fiscal year. Even with this increased monitoring activity, we cannot accurately predict whether all violations would be detected.

The final item I would like to address is the term "grain shipped" which apparently applies to all grain (export and domestic) shipped by export port elevators. However, the preamble of the bill refers to expanding foreign trade and refers only to export shipments of grain. Therefore, you may wish to clarify the Bill to specify only export shipments of grain, if this is the intended meaning. Without such clarification, potential problems in administration and enforcement are foreseen.

In conclusion, let me emphasize that we support H.R. 5528 because it would reduce the dusty appearance of grain and reduce the safety risks associated with grain elevator operations. We also request that the specific items I mentioned regarding the blending of grain, grain dust, and nongrain related material be carefully considered by this Subcommittee.

Once more, my colleagues and I are grateful for the opportunity to share our views with you and we are at your disposal any time for further information. We will be happy to answer any questions you might have.

Mr. ROSE. Do you approve of this bill?

Mr. BARTELT. Basically, we are in support of the bill.

Mr. ROSE. "Basically" is not what your letter of July 18 said. It just said flat out that you were in favor of it.

Mr. BARTELT. The only area of real concern, and it is not a really heavy concern, is that I think there is a little bit of question at the very end of the bill where it says: "No person who owns or operates an export elevator at an export port location shall permit the elevator to knowingly add or mix grain dust or any nongrain related material to any grain shipped from the elevator." Then it goes on to say, "Provided, That grain may be fumigated to preserve its quality and separate lots of grain of the same kind may be blended."

I think there is a minor question of definitions on a few of these things. I would like to see them clarified.

The other thing is that they make a proviso for fumigants. I think we should broaden the word "fumigants" to other things that may be important to preserving, storing, or sorting grain.

For instance, currently there is some technology—I think it is about ready for adoption—that is, of adding small quantities of edible oils to certain grains, particularly wheat. I believe FDA is almost at the point of approving it, or may have approved it by now.

I do not believe it is the intent of the author, although I have not talked to him yet, to eliminate those things that may be of value to the industry as a whole.

I would like to see those few things cleaned up in the bill. If they are adequately cleaned up, I have no objection to the bill.

Mr. ROSE. My point of contention is this. I understand that you have submitted as late as yesterday some suggested technical amendments. Is that correct?

Mr. BARTELT. The technical amendments are basically technical. They are primarily suggested from the standpoint of clarifying what I just discussed here.

Mr. ROSE. We just got them yesterday. Is that correct?

Mr. BARTELT. Yes; but my staff has been working with Mr. Smith's staff prior to yesterday and there has been some discussion prior to that.

Mr. ROSE. My point is this. I do not feel that we should go into those technical amendments now, since our chief counsel, Mr. Bor, has just had yesterday to look at them.

You really ought to get these comments to us earlier. Secretary Bergland's letter came to us on July 18. Here it is September 10 and we are getting technical amendments.

Mr. BARTELT. I do not believe the amendments are critical to what I am referring to here.

Mr. ROSE. Is there any other specific point that you want to make about this legislation other than the technical amendments? I am going to ask the subcommittee to consider taking those up when we bring this to the full committee, so that counsel will have a proper time to look at them between now and then.

Are there any other salient points that you want to bring out about this particular legislation?

Mr. BARTELT. Most of what I would say would be a repeat of what Congressman Smith has already said.

Mr. ROSE. You are basically in agreement with the thrust of the legislation if these technical points are ironed out. Is that correct?

Mr. BARTELT. That is correct.

Mr. ROSE. Are there any questions from the members of the subcommittee?

Mr. SEBELIUS. I have one, Mr. Chairman.

I am sorry that I had to leave. The other committee is having some fun. I have to keep an eye on my counterpart over there.

I am reading Mr. Smith's bill. At the present time, is there any requirement for the cleaning of grains that come into export elevators?

Mr. BARTELT. No, there is none.

Mr. SEBELIUS. Therefore, as far as this bill is concerned, as long as they do not add anything back to the grain—in other words, to what-

ever comes out of their pit or their bins—they would not be in violation.

As I read the bill, what we are prohibiting is the adding of anything. If they did clean it and then put it back in, they then would be violating this provision of the law, H.R. 5528.

Mr. BARTELT. I believe, sir, it is confined to the reintroduction of dust or nongrain-related material. At least, that is the way I read it.

Mr. SEBELIUS. Then, all that we are prohibiting by this bill is the sticking of anything in deliberately that is not grain. As long as a man is running his auger or whatever, he is loading with, with the things that came into the elevator without anything added or dumped into it, why then he would not be violating Mr. Smith's bill.

Mr. BARTELT. That is basically the way I understand it. In other words, he could mix some U.S. No. 2 and U.S. No. 3 of any given grain together if he wished to. My example would be better if I said two and four to try to get three, I suppose. I do not believe this bill would prohibit that.

Mr. SEBELIUS. All we are prohibiting by this action is dumping foreign matter back in and loading it with the grain.

Mr. BARTELT. That is my understanding. I was trying to explain earlier that I have a little difficulty with the proviso because there is such a thing as a sale for mixed grain, maybe a mixture of 25 percent barley and 75 percent corn. That is recognized in our standards and this proviso bothers me just a little bit because that is not clear. I do not think it prohibits it but I have some question.

Mr. ROSE. Did you address that with your technical amendments?

Mr. BARTELT. That is correct.

Mr. ROSE. We will consider those.

Are there any other questions from the subcommittee?

[No response.]

Mr. ROSE. I will tell you what I would like to do. This is the last witness. I would like to adjourn this hearing and ask the chairman of the full committee to bring this up at the next possible time in the full committee and discharge the subcommittee from further consideration of this bill.

I would like to bring the technical amendments to the full committee when we consider this legislation. This is not controversial legislation.

Is there any objection to that by any members?

[No response.]

Mr. ROSE. If not, we will take up your technical amendments at the full committee and I will ask the chairman of the full committee today to allow us to bring this forward as quickly as possible.

We thank you for being here.

Mr. BARTELT. Thank you, sir.

Mr. ROSE. Without objection, letters on this legislation will be inserted in the record.

The subcommittee stands adjourned subject to the call of the Chair.

[Whereupon, at 10:25 a.m., the subcommittee was adjourned.]

[The following material was submitted:]

STATEMENT OF ROBERT F. HARBRANT, PRESIDENT, FOOD AND BEVERAGE TRADES
DEPARTMENT, AFL-CIO

I am Robert Harbrant, President of the Food and Beverage Trades Department, AFL-CIO. The Food and Beverage Trades Department represents over 3.0 million workers in the food and related service industries, including the 30,000 American Federation of Grain Millers International Union.

In dealing with occupational safety and health hazards of grain workers, the Food and Beverage Trades Department has consistently promoted the prevention of the recycling of grain dust in grain elevators. There is little doubt that the practice of recycling grain dust contributes greatly to the probability of both explosions and chronic lung problems in grain workers. Therefore, we strongly support H.R. 5528, which would amend the United States Grain Standards Act "for the purpose of expanding foreign trade" by prohibiting the reintroduction of grain dust to the grain before shipping.

Grain dust is explosive. As early as 1918, the Department of Agriculture, then the Bureau of Chemistry, investigated the conditions under which grain elevator explosions occur and concluded that "Every effort should be made to collect and remove the dust from the grinding mill and surrounding atmosphere". The report signaled the beginning of an awareness by the grain industry that mechanical means for dust removal were necessary to minimize the probability of dust explosions. By 1927, grain companies began installing dust collection systems to remove this deadly dust as a preventive measure.

However, it is common practice in grain elevators, both country and export elevators, to collect the dust and then return it to the grain during handling (prior to final weighing and shipping). This practice of repetitively handling small particles produces a drier concentrated collection of small particulates that are more easily ignitable, thus increasing the chances of a dust explosion.

In addition, by returning the dust to the elevator the health hazards associated with grain dust are increased. Recent studies completed both in the U.S. and Canada have concluded that grain workers have a significantly increased risk of lung disease compared to the general population. In a recent study of the grain workers in the export elevators in Superior, Wisconsin-Duluth, Minnesota, the prevalence of chronic bronchitis was significantly higher among grain handlers (48%) than among city workers (17%). There is also strong evidence that grain dust causes allergic lung reactions.

It seems clear, that collecting the dust from the elevators and the prohibition of returning this collected dust to the elevator would be a first step in both preventing the tragic explosions that have plagued this country and preventing the chronic lung problems so prevalent in grain workers. However, current USDA regulations, encourage this practice of recirculating grain dust by permitting grain handlers to add a fixed percentage of grain dust to shipments in order to increase their profits. This regulation is at cross-purposes with the obvious need to keep dust out of grain.

In the interest of the safety and health of our members, we urge you to support the adoption of H.R. 5528 which would prohibit the recycling of grain dust. We also support the technical amendment introduced by Dr. Bartelt, Administrator, FGIS, that would prevent the bill from prohibiting or limiting the ability of export elevators to blend grain or to treat grain to both suppress dust (add edible oil) to destroy insects and fungi injurious to stored grain.

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D.C., September 5, 1980.

HON. TOM FOLEY,
Chairman, Committee on Agriculture, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The National Council of Farmer Cooperatives wishes to make a brief statement for the September 10 hearings on H.R. 5528.

It is difficult to devise a rationale against such a well-intentioned bill as Mr. Smith's H.R. 5528, which is designed to provide a cleaner commodity in U.S. Export channels. However, we hope the Committee will keep three points in mind as they consider this bill.

1. Weight loss due to removing dust which was purchased on the same basis as the grain, may result in discount to producers.

2. Regulatory interpretation of such a law as H.R. 5528 could result in another round of over-regulation.

3. Retrofitting older houses whose dust collection systems automatically reintroduce the dust in the final loading process would be a severe financial trauma—perhaps more than could be borne. They have already been subjected, over the past six or seven years, to an almost endless stream of mandatory changes promulgated by OSHA, EPA, and FGIS. Perhaps in this instance the legislation could be made to apply to new construction or major remodeling programs at export elevators.

We appreciate this opportunity to express our views for the hearing record.

Sincerely,

GLEN D. HOFER,
Vice President, Grain Division.

NATIONAL GRAIN & FEED ASSOCIATION,
Washington, D.C., September 9, 1980.

HON. CHARLES ROSE,
Chairman, Subcommittee on Livestock and Grains, Committee on Agriculture,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The National Grain and Feed Association respectfully submits this statement in opposition to the enactment of H.R. 5528 and requests that it be considered by your subcommittee and made part of the hearing record.

The National Grain and Feed Association is a voluntary association of grain and feed firms ranging in size from the smallest country elevator to the largest grain and feed complex. Included in its members are country and terminal elevators, merchandisers, processors and exporters covering the wide spectrum of the grain and feed industry. Our membership is comprised of 1,250 companies and 46 state and regional grain and feed associations that include upwards of 10,000 grain and feed companies nationwide.

We are opposed to H.R. 5528 because it makes a criminal act out of that which is permitted by the U.S. Grain Standards Act (Act) and is necessary for the efficient marketing of grain in foreign commerce. Thus, instead of "expanding foreign trade by improving and maintaining the quality of grain for export," H.R. 5528 will reduce the accessibility of grain of U.S. origin of the kinds and quality desired by foreign purchasers for which they are willing to pay a price based on that quality.

Under Sec. 4(a) of the Act, the Administrator is authorized to fix and establish standards for kind, class, quality and condition for grains as in his judgement the usage of the trade may warrant and permit. He is authorized to amend or revoke such standards whenever the necessities of the trade may require. Sec. 4(b) requires the Administrator to publish notice of the proposal and give interested persons opportunity to submit data, views and arguments thereon and, upon request, an opportunity to present data, views and arguments orally in an informal manner before establishing, amending, or revoking any standard under the Act. It also provides that no standards established or amendments or revocation of standards under the Act shall become effective less than one calendar year after promulgation unless the public health, interest, or safety require that they become effective sooner.

The Act thus authorizes the Administrator to establish, amend for revoke grain standards in a deliberate manner to facilitate the orderly and timely marketing of grain. H.R. 5528 would deny the Administrator this authority by making it a criminal act for an export elevator at an export port location to do that which was necessary to meet the grain standards so established.

Sec. 16(e) authorizes the Administrator to conduct, in cooperation with other agencies within the Department of Agriculture, a continuing research program for the purpose of developing methods to improve accuracy and uniformity in grading grain. Sec. 17B(a) requires the Administrator to make an annual report to the Agriculture Committees of Congress regarding the effectiveness of the official inspection and weighing system with recommendations for any legislative changes necessary to accomplish the objectives stated in Section 2 of the Act. H.R. 5528 would short-circuit these prior Congressional directives and establish grain standards by legislative fiat.

H.R. 5528 adds a provision to the prohibited acts in the Act for which violators would incur serious criminal penalties of imprisonment up to twelve months or a fine of not more than \$10,000 or both such imprisonment and fine for the first offense and more severe fines and imprisonment for subsequent offenses. The vagueness of the stated prohibited acts is not in keeping with the requirement that criminal prohibitions be defined in clear and unambiguous terms.

From a practical marketing standpoint, H.R. 5528 would appear to prohibit or limit the ability of export elevators at export port locations to blend grain or to add preservatives to the grain. It would also inhibit the development of new technologies such as adding edible oil to grain to reduce dust. Blending of grain is necessary to provide a market for grains of various qualities so that the end product not only meets the characteristics of the grain standard but also meets the requirements of the buyer.

Grain dust is part of the material considered as foreign material in the grain standards and its nutritive characteristics are essentially the same as those for grain. Considering grain dust as a separate and inferior product is not reasonable.

As to the prohibition in the bill of adding any nongrain-related material to the grain, this is adequately provided for in the Federal Food, Drug and Cosmetics Act and the grain standards established by the Federal Grain Inspection Service.

In conclusion, Mr. Chairman, we firmly believe that the quality requirements for grain should continue to be set under the provisions of the U.S. Grain Standards Act and the procedures set forth therein which responsibly reflect the usage of the trading partners to a contract and not be set by legislative fiat. We urge that H.R. 5528 not be enacted.

Sincerely yours,

HARLEY J. DONNELL,
*Chairman, Grain Grades and
Weights Committee.*



