PUBLIC LAND POLICY: ACTIVITIES IN THE 92ND CONGRESS

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INTRODUCTION

In June 1970 the Public Land Law Review Commission (PLLRC) published its final report which contains some 400 recommendations. 1/

A number of major legislative proposals have been introduced in this session of Congress to implement the recommendations of the PLLRC report.

Congressman Wayne Aspinall, chairman of the PLLRC and the House Interior Committee, has introduced H.R. 7211 which would provide an "umbrella" land law, leaving more specific legislation for the future.

Senator Henry Jackson, a member of the PLLRC and chairman of the Senate Interior and Insular Affairs Committee, has introduced S. 921, which sets forth public land policy as well as reform in the mining laws. Several other members have sponsored bills that also call for sweeping change in the public land laws.

This report briefly summarizes the core concepts of the several bills, the positions taken on them by special interest groups, and relevant reports and their recommendations.

Not all possible elements of public land legislation are included here; this report deals primarily with public land policy bills generated by the PLLRC report. Among the related subjects that are omitted here or are covered in other CRS reports are: Clearcutting and other management practices on National Forests, wilderness proposals, national land use planning, the Alaska pipeline, oil shale, land conveyances, Wild and Scenic Rivers, predator control, open

beaches, coastal zone management, the Golden Eagle program, reclamation lands, and reorganization plans for a Department of Natural Resources.

LEGISLATION PASSED

A few bills on public land policy have been enacted by the 92nd Congress, and extensive hearings have been held on others.

Toward the end of the session, Congress passed a bill to protect wild horses and burros.

A bill to settle the Alaska Native Land Claims passed in both Houses just before adjournment.

Wild Horses and Burros

Legislation requiring the protection, management, and control of wild, free-roaming horses and burros on public lands was enacted late in the session. S. 1116 passed in the Senate on July 29, 1971; H.R. 9890 passed in the House on October 4, 1971; S. 1116 was reported by the Conference Committee on November 29, passed in the House on December 2, passed in the Senate on December 3, and was signed by the President on December 15, 1971.

A legislative history of S. 1116 is provided in Senate Report No. 92-242, pages 2 and 3, as follows:

> National attention was focused on the plight of the wild horses and burros of the public lands of the western United States during the 1950's. At that time, widespread objection was raised to the use of motorized vehicles or aircraft in the pursuit of the animals. The campaign against these activities was culminated on September 8, 1959, when President Dwight D. Eisenhower signed into law Public Law 86-234 which prohibits the use of aircraft or motorized vehicles to hunt certain wild horses or burros on land belonging to the United States.

During the latter part of the 1960's, widespread publicity about the hunting of wild horses and burros served to once again focus national attention and led to increased interest in legislation at a Federal level for their protection. In the 91st Congress, legislation was introduced by Senator Frank Moss which would have designated the Spanish Barb and Andalusian wild mustangs as endangered species. The bill, S. 2166, was referred to the Senate Committee on Commerce but no further action taken.

The first comprehensive measure to provide for the protection of all wild horses and burros or lands administered by the Bureau of Land Management was introduced in the second session of the 91st Congress by Senator Clifford Hansen. The bill, S. 3358, would have placed all free-roaming horses and burros under the exclusive jurisdiction of the Secretary of the Interior for purposes of management and protection. The bill was referred to the Senate Interior and Insular Affairs Committee but no action was taken.

Four measures were introduced in the Senate in the beginning of the 92d Congress which were patterned after the comprehensive nature of S. 3358. Hearings on the four measures, S. 862 by Senator Gaylord Nelson, S. 1090 by Senators Mike Mansfield and Mark O. Hatfield, and S. 1119 by Senator Frank Moss, were held on April 20, 1971, before the Public Lands Subcommittee of the Interior and Insular Affairs Committee. Following a staff study and consultation with representatives of the Department of the Interior, the committee considered S. 1116 in executive session on June 16, 1971. Following the adoption of a number of committee amendments, the measure was ordered reported to the Senate on June 16, 1971.

Basic provisions of H.R. 9890 were discussed by Congressman Aspinall in a floor statement (Congressional Record, Oct. 4, 1971, page H9057) as follows:

H.R. 9890 is a clean bill which incorporates all of the amendments adopted by the Committee on Interior and Insular Affairs during the consideration of H.R. 5375 and related bills. H.R. 9890 was passed by the committee by unanimous voice vote. The broad appeal and support for the measure, as reported out by the full committee, is indicated by the 115 House Members cosponsoring the bill in addition to its author, Mr. Baring. A bill essentially similar in purpose but differing somewhat in detail was passed by the Senate on July 29, 1971. It is S. 1116.

The two amendments merely provide that the various State fish and game commissions will be consulted by the Secretary when administering the provisions of the bill, specifically with respect to the establishment of ranges and the allocation of forage.

Mr. Speaker, there is no doubt that additional protection is needed if substantial numbers of wild horses and burros are to be preserved on the public lands as a living symbol of the West. Their numbers have decreased in recent years and undoubtedly will continue to decrease unless steps are taken to reverse this trend. I think that H.R. 9890 will do this but what is even more important, from a humanitarian point of view, is that it will, if properly enforced, eliminate much of the present unnecessary brutality associated with the rounding up and shipping of these animals prior to processing for pet food. This commercial processing is now prohibited.

I am not one of that growing group of idealists that thinks that wild horses and burros should be permitted to increase without limit. As with all animals, whether domestic or wild, there must be provision for a balance between available forage and animal use. H.R. 9890 makes provision for this balancing of range capacity and use. It is also my feeling, and I think that of the committee, that all animal use, including domestic livestock, other wildlife and wild horses and burros, must be considered and where necessary their numbers reduced in order to maintain proper forage and habitat conditions. To me the maintenance of proper forage and habitat is absolutely vital for without this we will not have wild horses and burros, wildlife or domestic livestock on the public lands.

Besides providing the necessary management tools to maintain a proper balance on the public lands, H.R. 9890 authorizes, but does not require, the establishment of ranges for wild horses and burros; it provides for the elimination of old, sick, or weak animals; it establishes a nine member joint advisory board to consult with and advise the Secretaries of Agriculture and Interior on wild horses and burros; it establishes a procedure under State law for one claiming ownership of a wild horse or burro; and most important of all, it sets clear penalties for anyone selling, harming, killing, or harassing wild horses and burros, and it totally prohibits the processing into commercial products any wild horse or burro.

The objective of H.R. 9890 is to provide maximum protection to these animals without intensive management. Only in this way can their wild characteristics be retained.

On October 15, 1971, the Senate disagreed to the House amendments and requested a Conference. The bill reported from the Conference Committee was approved by the President on December 15, 1971.

Alaska Native Land Claims

Bills to settle the 104-year-old question of Native land claims passed in both the House and the Senate, and the President signed H.R. 10367 into law on December 18, 1971.

Background

The legal history of the Alaska Native land claims dates back to 1867--the date that the United States bought Alaska from Russia for $7,200,000. During the 104 years that have elapsed since the purchase, little effort has been made to settle the question of Native rights.

No treaties between the Alaska Natives and the Federal Government have ever been made, as was done with the native American Indian tribes in the lower 48 states.

The United States purchase of Alaska did not include the land itself, but only its right to tax and to govern. The Government recognized at that time, in accordance with long-standing Federal Policy and Supreme Court precedent, that the land belonged to the original occupants--the native Eskimos, Indians and Aleuts. By the Organic Act of 1884, Congress established a territorial government

and acknowledged the natives' rights to the land, stating: "The Indians ... shall not be disturbed in the possession of any lands actually in their use or occupancy or now claimed by them."

Congress, however, postponed the matter of conveying title to the Natives. Until the Statehood Act of 1958, there was no great threat to the Native land rights. In that Act, Congress provided that the "State and its poeple do agree and declare that they forever disclaim all right and title ... to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts." But in the same Act, Congress granted to the State the right to select 103 million acres of land from the public domain, which at that time made up almost 99 percent of the total area of Alaska.

Subsequently, the State selected lands clearly used and occupied by native villages, and proceeded to claim, under the Statehood Act, royalties from Federal oil and gas leases on the native lands. The natives protested; in 1962 they organized their own newspaper to voice their aspirations and protect their interest, and in 1966 formed the statewide Alaska Federation of Natives.

The conflict was heightened by the large-scale oil strike on the North Slope on land the State had claimed from Eskimos at Barrow. In January 1969, Secretary Udall issued a 2-year "land freeze," (Public Land Order 4582), which said, in part: "This action will give opportunity for Congress to consider how the legislative commitment

that the Natives shall not be disturbed in their traditional use and occupancy of the lands in Alaska should be implemented."

This order was amended and extended to the end of the first session of the 92nd Congress. It withdrew all unreserved public lands in Alaska until the Native land claims are resolved.

The complexity of the problem was clearly pointed out by Senator Jackson in the floor debate (Congressional Record, Nov. 1, 1971, page S17276):

> The legal issues involved in the land claims controversy are complex. The unresolved status of the claims creates difficult problems concerning Native livelihoods and opportunity, the fiscal and economic vitality of the State, and the proper conservation and development of Alaska's resources. The urgency and complexity of these issues require the certainty, the flexibility, and the detail of a legislative settlement.

He also acknowledged the century-old delay:

> The legal history of the Alaska Native land claims is a one of inaction and postponement. In part, this history of delay results from the absence of treaties between Alaska Natives and the Federal Government. In larger measure, however, the delay has been due to the complex social, legal, and institutional problems which are involved in a settlement of this magnitude.

Legislative Proposals

The two bills considered by the Conference Committee were S. 35 and H.R. 10367.

On October 20 the House passed H.R. 10367, granting Alaska natives $925 million and 40 million acres of land. The roll call vote was 334 to 63.

An amendment sponsored by Congressmen Udall and Saylor to provide for land use planning was rejected by a 177 to 217 recorded teller vote. The Udall-Saylor amendment would have required that 125 million acres be set aside as "national interest study areas" and that a Federal-State planning commission be established to review land selections made by natives and by the State.

The proposed amendment was strongly supported by the Alaska Coalition--a small group of environmental and conservation organizations, including the Sierra Club, Friends of the Earth, Environmental Action, and the National Rifle Association. The amendment was opposed by the Alaska Federation of Natives and the National Council of American Indians.

On November 1 the Senate passed its version of H.R. 10367 (similar to S. 35) by a roll call vote of 76 to 5. The bill would grant Alaska natives $1 billion and 40 million to 50 million acres of land to settle their claims.

The bill offers two options for selecting the land: "Option A" would give the natives 40 million acres of land near their villages. "Option B" would give them title to 30 million acres and control over an additional 20 million acres, including subsurface mineral rights.

The House version contains no options for land selection. It would give the natives the opportunity to select 18 million acres, followed by selection of lands by the State of Alaska, followed by a final selection of 22 million acres by the natives.

A brief background explanation of S. 35 by Senator Jackson was published in the Congressional Record, Nov. 1, 1971, page S17276, as follows:

> S. 35, as ordered reported by the committee with an amendment in the nature of a substitute, is based upon the language of S. 1830 as passed by the Senate in the 91st Congress. The major changes adopted by the committee this year would:
>
> First, provide for the establishment of regional corporations;
>
> Second, insure that villages located on lands tentatively approved for transfer to State of Alaska receive title to those lands;
>
> Third, give the Native people the option of choosing one of two land-grant proposals;
>
> Fourth, increase the amount of land to be granted to 40 million acres under one option, and 30 million acres, plus 20 million acres of permit lands under the second option;
>
> Fifth, give the Native people in Alaska now living on reservations the choice of acquiring title to their reservation lands;
>
> Sixth, establish a joint Federal-State Land Use Planning Commission;
>
> Seventh, create a North Slope Corridor to be reserved under Federal jurisdiction and to be managed for recreation and transportation purposes; and
>
> Eighth, reserve and classify public land areas of potential national significance and require the Secretary of Interior to make recommendations to the Congress with respect to the suitability of these areas for additions to the national park and wildlife refuge systems.

> There have, in addition, been a great many changes made in the bill to deal with specific problems or potential inequities which were brought to the committee's attention during the hearings on this measure in the current Congress.
>
> The bill, as amended by the committee and as ordered reported to the Senate, represents a fair and a just settlement. It accommodates the major interests and objectives of the Native people, the State of Alaska, the Federal Government, and the general public in a manner that is reasonable.

The Committee report on S. 35 (Senate Report 92-405) emphasized that the provision for the North Slope recreation and transportation corridor did not grant approval for the pipeline. The provision merely guarantees that any activities in that area "will be compatible with public recreation and stringent environmental controls."

During the floor debate an amendment offered by Senator Metcalf to protect Federal control of lands selected by the natives in National Wildlife Refuges--especially future sale of these lands--was adopted by voice vote.

Unlike the debate on the House side, there was no criticism that the bill failed to provide for land use planning and thus protect Federal interests in withholding lands for future National Parks, Wildlife Refuges, and similar uses.

Finally, just before adjournment, the conference report on H.R. 10367 was agreed to in both the House and the Senate on December 14, 1971.

On December 13, the major provisions of the conference report were published in the Congressional Record, pages H 12352-H 12353, as follows:

B. Major provisions

The major provisions of the conference report are set out below:

1. Land.

(a) The Natives will receive title to a total of 40,000,000 acres, both surface and subsurface rights, divided among the some 220 villages and 12 Regional Corporations.

(b) The villages will receive the surface estate only in approximately 18½ million acres of land in the 25 township areas surrounding each village, divided among the villages according to population.

(c) The villages will receive the surface estate in an additional 3½ million acres, making a total of 22 million acres, divided among the villages by the Regional Corporations on equitable principles.

(d) The Regional Corporations will receive the subsurface estate in the 22 million acres patented to the villages, and the full title to 16 million acres selected within the 25 township areas surrounding the villages. This land will be divided among the 12 Regional Corporations on the basis of the total area in each region, rather than on the basis of population.

(e) An additional 2 million acres, which completes the total of 40 million, will be conveyed as follows:

(1) Existing cemetery sites and historical sites will be conveyed to the Regional Corporations.

(2) The surface estate in not more than 23,040 acres, which is one township, will be conveyed to each of the Native groups that is too small to qualify as a Native village. The subsurface estate will go to the Regional Corporations.

(3) The surface estate in not more than 160 acres will be conveyed to each individual Native who has a principal place of residence outside the village areas. The subsurface estate will go to the Regional Corporations.

(4) The surface estate in not to exceed 23,040 acres will be conveyed to Natives in four towns that originally were Native villages, but that are now composed predominantly of non-Natives. These conveyances will be near the towns, but far enough away to allow for growth and expansion of the towns. The subsurface estate will go to the Regional Corporations.

(5) The balance of the 2 million acres, if any, will be conveyed to the Regional Corporations.

(f) If the entire 40 million acres cannot be selected from the 25 township areas surrounding the Villages because of topography or restrictions on the acreage which may be selected from within the Wildlife Refuge System, lieu selection areas will be withdrawn by the Secretary of the Interior as close to the 25 township areas as possible.

2. Money.

The Natives will be paid $462,500,000 over an eleven-year period from funds in the United States Treasury, and an additional $500,000,000 from mineral revenues received from lands in Alaska hereafter conveyed to the State under the Statehood Act, and from the remaining Federal lands, other than Naval Petroleum Reserve Numbered 4, in Alaska. Most of the $500,000,000 paid to the Natives would otherwise be paid to the State under existing law, and the State has agreed to share in the settlement of Native claims in this manner.

3. Corporate Organization.

(a) The Natives in each of the Native villages will be organized as a profit or nonprofit corporation to take title to the surface estate in the land conveyed to the village, to administer the land, and to receive and administer a part of the money settlement.

(b) Twelve Regional Corporations will be organized to take title to the subsurface estate in the land conveyed to the villages, and full title to the additional land divided among the Regional Corporations. The Regional Corporations will also receive the $962,500,000 grant, divided among them on the basis of Native population. Each Regional Corporation must divide among all twelve Regional Corporations 70 percent of the mineral revenues received by it.

Each Regional Corporation must distribute among the Village Corporations in the region not less than 50 percent of its share of the $962,500,000 grant, and 50 percent of all revenues received from the subsurface estate. This provision does not apply to revenues received by the Regional Corporations from their investment in business activities.

For the first five years, 10 percent of the revenues from the first two sources mentioned above must be distributed among the individual Native stockholders of the corporation.

(c) Natives who are not permanent residents of Alaska may, if they desire, organize a 13th Regional Corporation, rather than receive stock in one of the 12 Regional Corporations. The 13th Regional Corporation will receive its pro rata share of the $962,500,000 grant, but it will receive no land and will not share in the mineral revenues of the other Regional Corporations.

4. Other Major Provisions.

(a) *Land Use Planning.*

A Joint Federal-State Land Use Planning Commission is established. The Planning Commission has no regulatory or enforcement functions, but has important advisory responsibilities.

(b) *National Interest Areas.*

The Secretary of the Interior is authorized to withdraw from selection by the State and Regional Corporations (but not the Village Corporations) and from the operation of the public land laws up to, but not to exceed, 80 million acres of unreserved lands which, in his view, may be suitable for inclusion in the National Park, Forest, Wildlife Refuge, and Wild and Scenic River Systems.

(c) *Interim Operation of the Public Land Laws.*

The Secretary is authorized, where appropriate, under his existing authority, to withdraw public lands and to classify or reclassify such lands and to open them to entry, location and leasing in a manner which will protect the public interest and avoid a "land rush" and massive filings on public lands in Alaska immediately following the expiration of the so-called "land freeze".

(d) *Reservation of Easements.*

Appropriate public access and recreational site easements will be reserved on lands granted to Native Corporations to insure that the larger public interest is protected.

(e) *Attorney and Consultant Fees.*

Fees to attorneys and consultants are limited to $2 million. All contracts based on a percentage fee related to the value of the lands and revenues granted by this Act are declared unenforceable.

(f) *Valid Existing Rights.*

All valid existing rights, including inchoate rights of entrymen and mineral locators, are protected.

(g) *National Petroleum Reserve No. 4 and Wildlife Refuges.*

No subsurface estate is granted in Naval Petroleum Reserve Numbered 4 or in the National Wildlife Refuges, but an in lieu selection of subsurface estate in an equal amount of acreage outside these areas is provided for the Regional Corporations.

(h) *National Forests.*

Appropriate limitations are placed on the amount of lands which may be granted from National Forests to Native villages located in the National Forests.

C. *Other issues*

1. In sections 7 and 8 of the conference report authorizing the creation of Regional and Village Corporations, the conference committee has adopted a policy of self-determination on the part of the Alaska Native people. The conference committee anticipates that there will be responsible action by the board members and officers of the corporations and that there will not be any abuses of the intent of this Act. The conference committee does not contemplate that the Regional and Village Corporations will allow unreasonable staff, officer, board member, consultant, attorney, or other salaries, expenses and fees. The conference committee also contemplates that the Regional and Village Corporations will not expend funds for purposes other than those reasonably necessary in the course of ordinary business operations.

2. The Senate amendment to the House bill provided for the protection of the Native peoples' interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The conference committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.

3. Villages located on the Pribilof Islands present a special problem because the fur seals which frequent the islands are the subject of an International Treaty. It is the conference committee's recommendation that the Secretary, after consultation with the Secretary of Commerce, the State and the Planning Commission, reserve the appropriate rights and interests in land to insure the fulfillment of the United States' obligations under the Treaty.

4. Under the provisions of subsection 12 (c)(3) ". . . the Regional Corporation may select only even numbered townships in even numbered ranges, and only odd numbered townships in odd numbered ranges." This language is meant to insure "checkerboard" selections by the Regional Corporations. The State of Alaska would then be permitted to concurrently select lands in the alternate townships not subject to selection by the Regional Corporations.

The effect of this provision of the bill is to limit the selections of the Regional Corporation to townships 2, 4, 6, 8, 10, et cetera, North or South of a principal or special base line, in ranges 2, 4, 6, 8, 10, et cetera, East or West of a principal or special meridian. With respect to odd numbered ranges, East or West of a principal or special meridian, i.e. Range 1 West, Range 1 East, Range 3 West, Range 3 East, et cetera, the Regional Corporation could select from townships 1, 3, 5, 7, 9, et cetera, North or South of a principal or special base line. The numbering system of the townships and ranges is the system used by the United States Land Survey System.

It is recognized that if a principal or special meridian or base line should intersect an area withdrawn for selection, a slightly modified selection pattern might result; however, those cases seemed so limited as to not do substantial violence to the intended "checkerboard" selection system contemplated.

5. Section 20 provides for the compensation of attorneys and consultants for services and expenses in the representation of Natives, Native Villages, or Native Associations in claims pending before any state or Federal court or the Indian Claims Commission which are dismissed pursuant to this Act, or in the preparation of this Act and previously proposed legislation to settle the Alaska Native claims based upon aboriginal title, use, or occupancy. The Chief Commissioner of the Court of Claims must determine the amount of the claims, within the limits of funds authorized. It is intended that payment for such services shall only be compensated from the funds provided therefor by this section, and penalties are provided in the event other reimbursement is paid.

Under the provisions of subsection 20(g), the Chief Commissioner is also authorized to allow and certify for payment such amounts as he determines are reasonable, but not more than $600,000 in the aggregate, for actual costs incurred by Native Associations in advancing land claims legislation. Attorney or consultant fees or expenses may not be paid from this sum. The penalty provisions of subsection 20(f)(2) would be applicable to any violation of this section. An attorney or consultant who has already been paid by a Native Association could of course return the payment and submit a claim under the attorney/consultant part of the section.

LEGISLATIVE PROPOSALS NOW PENDING

A small number of bills, based largely upon recommendations of the Public Land Law Review Commission, were considered in Congressional hearings. Several other bills of minor significance have had no action.

Principal Policy Bills in the House

The following section deals with the three principal public land policy bills upon which hearings were held in the House. They are H.R. 7211, H.R. 9911, and H.R. 10049.

H.R. 7211. Public Land Policy Act of 1971.

This bill, introduced by Congressman Aspinall on April 6, 1971, was designed to lay the groundwork for other public land reform legislation to come later. Critics of the 50-page bill claim that it is overly complicated, that it gives too much emphasis to the "dominant use" concept, or that it doesn't go far enough in reforming the mining laws. Some prefer the more limited Administration bill, H.R. 10049. Others feel that the Aspinall bill should be extended and strengthened.

As an aid to understanding the provisions of H.R. 7211, a brief outline and a detailed summary of the bill were included in the published hearings, pages 54-59. 2/

As stated in Sec. 2, the bill has three purposes:

1. To provide a planning system
2. To establish supplementary administrative procedures
3. To provide assistance to regional, state, and local governments

It would establish national and subsidiary advisory boards, and provide for the establishment of regional, state, district, and local advisory committees.

Regional coordination is strongly emphasized. Section 8 establishes a Federal Public Land Use Coordinating Committee for each of 10 public land regions.

Section 9 provides for the establishment of an Interstate Land Use Coordinating Commission. Funds for the two bodies would be authorized at $25 million annually.

Alaska is given special consideration. Section 11 establishes, with concurrence by the State of Alaska, a Joint Federal-State Natural Resources and Regional Planning Commission to coordinate the use of public lands in Alaska.

The planning of public land use is covered in Sec. 14. It establishes mandatory planning procedures, including consultation through advisory bodies and hearings; provides for notice of proposed plans, and time limits within which various actions shall be taken. It also provides guidelines on environmental quality, transfer out of Federal ownership, and multiple-use and sustained-yield management (including recognition of the dominant use principle in certain instances).

Congress is given increased control over withdrawals and reservations. Section 15 provides for specific limitations on executive withdrawals as to both acreage (5,000 acres) and term (10 years).

It reasserts Congressional responsibility for other withdrawals, and establishes periodic review and justification for withdrawals.

The bill also provides for judicial review by a U.S. District Court for any person suffering legal wrong and any dissatisfied person who submitted views in the course of land management procedures under the Act.

H.R. 9911. Public Domain Lands Organic Act of 1971

On July 20, 1971, Congressman Saylor introduced H.R. 9911. The bill is somewhat similar to S. 921 introduced by Senator Jackson. Like the Jackson bill, it contains a Title on mineral leasing to reform the mining laws.

A section by section analysis of H.R. 9911, as it appears on pages 107-109 in the hearings, is reproduced here; 3/

TITLE: "PUBLIC DOMAIN LANDS ORGANIC ACT OF 1971"

(Section-by-Section Analysis)

TITLE I—PUBLIC LAND ADMINISTRATION

Section 101. States that the purposes of public land administration are to maintain the integrity of ecosystems and environmental quality, and to permit appropriate industrial development under principles of multiple use and sustained yield.

Section 102. Defines various terms, including public lands (those administered by the Bureau of Land Management), multiple use, sustained yield, qualified governmental agency, and qualified individual.

Section 103. Sets forth goals in administering non-mineral resources of the public lands, including environmental quality, multiple use, sustained yield, coordinated and interdisciplinary planning, open public planning, adequate resource availability, and disposal at fair market value under competitive conditions.

Section 104. (*a*) Directs Secretary of Interior to develop regulations for classifying public lands that may be disposed of because they are not needed for federal purposes and are more valuable for residential, commercial, industrial, or agricultural purposes (excluding forage crops or surplus crops), with consideration to be given in classifications to questions of ecology and environmental quality.

(*b*) Requires hearings on disposal regulations, with 60 days notice and 60 days subsequently for receipt of final comments.

(*c*) Requires 60 days notice in Federal Register and local newspapers of proposed disposals, with public hearings on request.

(*d*) Requires notification of Congressional Committees on Interior and Insular Affairs of proposed disposals of over 1440 acres, with disposals blocked if either Committee objects.

Section 105. States that all existing classifications are subject to review and reclassification under this Act.

Section 106. Directs Secretary to review all roadless areas of 5000 acres or more on public lands by 1980, with recommendations to be forwarded to Congress on suitability for inclusion in National Wilderness Preservation System and status quo maintained while question is before Congress.

Section 107. Directs Secretary to establish boundaries for public lands (called National Resource Lands), with names conferred on units and maps and signs provided.

Section 108. Authorizes Secretary to sell tracts not exceeding 5120 acres that have been classified for disposal at not less than fair market value, with competitive bidding required in case of private parties.

Section 109. Makes sale of public land contingent on existence of local land use plans and zoning controls which impose restrictions to assure best use of the land.

Section 110. Reserves mineral title to United States in case of all lands subject to disposal.

Section 111. (*a*) Authorizes Secretary to acquire additional public lands by various means to provide access or to facilitate management of lands already in public ownership.

(*b*) Authorizes Secretary to exchange lands classified for disposal to acquire needed lands, and to pay or receive money payments to equalize values.

Section 112. Provides punishment for misdemeanors involving violation of regulations governing public lands, with trials to be before U.S. Commissioner.

Section 113. Authorizes BLM to designate officers to enforce public land regulations and to make arrests, with any U.S. officer authorized, however, to make eye-witness arrests.

Section 114. Secretary authorized to promulgate regulations needed to carry out purposes of Title I.

Section 115. Authorizes Secretary to appoint regular or ad hoc advisory boards.

Section 116. Authorizes appropriation of sums necessary to carry out purposes of Title I, with appropriated funds remaining available until expended.

Section 117 (*a*) Subject to valid existing property rights, some 20 major historic disposal statutes are repealed in whole or part, including Homestead Act, Taylor Grazing Act, Desert Land Act, Small Tract Act, and O & C Act.

(*b*) Provides that all other laws inconsistent with this Act are repealed also.

Section 118. (*a*) Provides for a system of payments in lieu of taxes in place of revenue sharing on public lands, with a limitation, however, of payments in any one county of 25% of the revenues derived from public lands there.

(*b*) Authorizes the Secretary to have appraisals done of public lands for purposes of determining payments in lieu of taxes, with payment of only 25% of revenues derived from public lands authorized in those cases where revenues from those lands have averaged less than $2.00 per acre in previous 5 years, unless this would result in payments of less than 90% of tax equivalency.

Section 119. Provides for appointment of Director of BLM by President with advice and consent of Senate, with appointment to be made from Civil Service rolls, and removal only for cause or disability.

Section 120. Provides that all revenues derived from public lands, that are not distributed in lieu of taxes, shall be placed in the Land and Water Conservation Fund to be used for acquiring additional public lands and for rehabilitating public lands.

TITLE II

Section 201. This title is to be cited as the "Federal Land Mineral Leasing Act of 1971."

Section 202. Defines various terms, including "Federal Lands" which means all federally owned lands, except lands held in trust for Indians or owned by them under federal restrictions, and lands within the following protective systems: National Park System, the system of National Wildlife Refuges and Ranges, National Wilderness Preservation System, national system of Wild and Scenic Rivers, and national forest and BLM areas classified as Primitive, Roadless, Natural, or Scenic areas.

Section 203. Authorizes Secretary to issue mineral leases for prospecting and mining development on Federal lands to extent consistent with various goals which are set forth which include environmental quality, coordinated, interdisciplinary planning, multiple use and sustained yield, public participtaion in planning, adequate mineral supply and payment of fair market value, with adequate opportunity for a fair return on investment, maintenance of competition, and efficiency in operations.

Section 204. Authorizes Secretary to decline to issue mineral leases wherever he finds that exploration or development might cause loss in noncommercial values, such as soil erosion, scenic defacement, watershed destruction, and damage to fisheries and wildlife, that could outweigh values of commercial production.

Section 205. (*a*) Provides that Secretary may only offer mineral leases on lands under other federal Departments with the concurrence of the head of that department, both with respect to the advisability and terms and conditions proposed in so far as they affect that other department.

(*b*) Before issuing leases on federal mineral interest in nonfederal lands, Secretary must offer private owner opportunity to comment. Secretary can impose conditions in such cases with respect to conservation and compensating private owner for improvements affected.

Section 206. Authorizes Secretary to consult with other public agencies, advisory boards, and public in deciding where, when, and how to issue mineral leases.

Section 207. Directs Secretary to publicize mineral leasing proposals with terms and conditions described and comment invited.

Section 208. (*a*) Authorizes Secretary to lease by competitive bid where competition exists and consistent with goals of this Title. Authorizes the Secretary to extend preferences to operators dependent on continued access to public resources, including opportunity of matching highest bids.

(*b*) Authorizes Secretary to negotiate payment agreements with operators of oil and gas wells on adjacent lands that are draining pools under federal lands.

Section 209. (*a*) Directs Secretary to reserve right to extract helium from all gas produced under federal leases.

(*b*) Provides that oil shale deposits shall not be leased until techniques are developed to prevent damage to watersheds and the environment, with receipts on ultimate development to be deposited as miscellaneous receipts in federal treasury.

Section 210. Directs Secretary to put terms and conditions in leases to serve various goals: good business practice, conservation, environmental protection, ecological balance, public welfare, and proper land use. Requires provisions in leases dealing with following subjects: cancellation and forfeiture, relinquishment, bonds and deposits, assignments, renewals and extensions, removing improvements, rentals and royalties, penalties, reinstatements, nondiscrimination, worker safety, site rehabilitation, pollution prevention, settling disputes, payments in kind, inspection of operations and books, joint enterprises, suspension, waiver, and royalty reduction owing to conservation restrictions, reasonable diligence, workmanlike performance, disposal and use of surface estate, use by third parties, unitization, and approval of rehabilitation plans.

Section 211. Authorizes Secretary to issue regulations on limiting amount of lease holdings that may be held by any one party, and in any one area and as result of any one sale.

Section 212. (*a*) Repeals various previous mining acts, either in whole or part, including the Mining Law of 1872, the Mineral Leasing Act of 1920, the Mineral Leasing for Acquired Lands.

(*b*) Provides that rights established under repealed mining laws shall be convertible into leases under this Title, with those not converted subject to immediate condemnation after 1977, and settlements appealable to the Court of Claims.

(*c*) States that specified portions of certain existing mining laws continue to remain in effect, mainly those relating to the distribution of receipts.

H.R. 10049. National Resource Land Management Act of 1971.

H.R. 10049, the Administration bill, was introduced by Congressman Kyl on July 22, 1971. In essence, it provides an Organic Act for the Bureau of Land Management without attempting extensive reforms in public land laws. It would, however, repeal the homestead laws and certain settlement laws.

In comparing H.R. 7211 and H.R. 10049, Harrison Loesch, Assistant Secretary, Department of the Interior, made the following statement during the House hearing: 4/

> The Department agrees with certain basic objectives of H.R. 7211. These include establishment of statutory goals and objectives, comprehensive land-use planning, management under principles of multiple use and sustained yield, environmental protection, intergovernmental coordination, public participation and sound administrative procedures.
>
> We believe that enactment of three administration proposals--National Resource Land Management Act of 1971, H.R. 10049 I referred to previously, the National Land Use Policy Act of 1971 and the Department of Natural Resources--would achieve these objectives effectively and directly.
>
> But the Department believes that certain provisions of H.R. 7211 would induce confusion and probably hamper effective public land management. These include establishment of detailed statutory procedures and requirements, arbitrary limitations on the administrator's authority, and detailed statutory governmental structure.
>
> For these reasons, the Department recommends that H.R. 7211 not be enacted.

Under H.R. 10049, all lands under the jurisdiction of the Bureau of land Management, except the Outer Continental Shelf, would be given the new name: "National Resource Lands." This would be in keeping with other names now in use, such as National Forests, National Parks, National Grasslands, and National Seashores.

The Act would require the Secretary of the Interior to manage the National Resource Lands under the principles of multiple use and sustained yield, with emphasis on the protection of environmental quality. It also calls for a land inventory and land use planning.

H.R. 10049 would considerably increase the Bureau of Land Management's enforcement authority. It would empower the Secretary to designate certain BLM employees as special officers with the authority to make arrests on the National Resource Lands. Fines of up to $10,000 or up to one year in prison, or both, for violation of regulations would be authorized.

Neither State's nor Federal rights would be curtailed. Provisions for public hearings are included. Acquisition and sale of land would be possible under certain conditions.

All or parts of several laws would be repealed, including those related to homesteads, desert land entry, town sites, abandoned military reservations, public lands in Oklahoma, patents for private claims, sale of isolated tracts, Pittman Act grants, and Indian allotments.

Summary of House Hearings

Hearings on H.R. 7211 were held by the House Subcommittee on Environment in the Committee on Interior and Insular Affairs on July 26-30, 1971. These hearings were originally scheduled for the single bill but were eventually broadened to include H.R. 9911 and H.R. 10049.

On the opening day of the hearings, Chairman Aspinall pointed out that only 3 of the 12 executive agencies he had invited in April to comment on his bill had replied.

Four witnesses from executive departments and agencies testified at the hearings. All opposed various aspects of the Aspinall bill.

Interior Assistant Secretary Harrison Loesch, argued that the bill would cause confusion and hamper public land management.

J. Phil Campbell, Under Secretary in the Department of Agriculture, and John McGuire, associate chief of the U.S. Forest Service, objected to classifying lands for "dominant use" and to certain new administrative procedures the bill would establish. They contended that these provisions might remove some of the protection now given the national forests under the Mineral Leasing Act for Acquired Lands.

Objection to the "dominant use" principle was also expressed by several other witnesses representing conservation organizations.

Commercial users who benefit directly from the public lands were, in general, more favorable to the bill. The American Mining Congress (AMC) supported the bill's provision that incentives be furnished for the discovery and development of additional domestic sources of

minerals, including offshore sources. The AMC, however, pointed out that mining activity could not maintain "the existing quality of the environment" as specified in H.R. 7211.

Representing the timber interests, the National Forest Products Association, came out in favor of the bill, except on certain details such as the proposed advisory mechanism. They said it would be helpful to have national goals to provide adequate timber supplies more clearly defined.

The American Farm Bureau Federation endorsed the bill and stressed the importance of public lands to the livestock industry in the western states. It was one of the few organizations that did not take exception to the Aspinall definition of "dominant use."

Principal Policy Bills in the Senate

This section deals with the four principal public land policy bills that were covered in Senate hearings. They are S. 921, S. 2401, S. 2450, and S. 2542.

S. 921. The Public Domain Lands Organic Act of 1971

This bill was introduced by Senator Jackson on February 23, 1971. At the opening day of the Senate hearings on Sept. 21, Senator Jackson made these comments on his bill:

For years, the Congress has legislated extensively concerning specifically designated categories of public lands such as national forests, parks, recreation and wilderness areas, while scant attention has been paid to the so-called public domain lands administered by the Bureau of Land Management. Title I of my bill, S. 921, relates to these lands, and it is to this bill that my remarks are primarily directed.

The public domain lands comprise one-third of the Nation's land area. They are endowed with a variety of natural habitats, outstanding scenery, valuable mineral deposits and extensive timber and grazing reserves. Yet the laws which govern their use are archaic and no longer meet the need for protecting environmental quality.

We now understand that decisions which involve our natural resources cannot be made without regard for the complex interrelationships and multiple use concepts which shape our environment.

Authority over the public domain lands dates back 159 years to the establishment of the General Land Office in 1812. In 1934 the Taylor Grazing Act of 1934 established the Grazing Service. In 1946 the General Land Office was combined with the Grazing Service to form the Bureau of Land Management in the Department of the Interior.

In 1964, Congress passed the Classification and Multiple Use Act, a temporary authority providing the BLM with criterion to undertake a systematic classification of lands for retention or disposal. Under this Act, 150 of the 451 million acres of land under the authority of the BLM were classified. This program included ample opportunity for public participation in the decision-making process.

The classification authority of the BLM has now expired and the administration of the public domain lands has reverted to a hodgepodge of management practices under existing statutes.

Title I of S. 921 and S. 2401, submitted by the Secretary of the Interior, are designed to place the public domain lands under sound management practices and each establishes the maintenance of environment quality as a basic criterion for the administration of these lands. The primary emphasis in each of these measures is the assurance that public domain lands will be managed on the concept of multiple use and sustained

yield of the wide variety of valuable natural resources which they contain. Each measure provides for public participation in the administrative process.

One aspect of public lands administration which has met with increasing criticism is the present system of exploration and development of the Federal mineral values on our public lands. Under the Mining Law of 1872 location activities can be conducted without the knowledge of public officials who have authority over the land. No environmental safeguards are required. As a result, access roads are constructed and heavy machinery is moved into an area often without regard for the delicate ecology of the natural areas. And, to compound the devastation, no restoration or reclamation efforts are required once the mining activities are complete.

...

As originally introduced Title II of S. 921 affected all federally owned minerals by repealing the 1872 Mining Act and other laws relating to the disposition of Federal minerals, including the Mineral Leasing Act of 1920.

The primary objective that my colleagues and I were seeking was to modernize the laws relating to the management of the public lands and minerals estate which belong to all the people. The main target was to place on a leasable basis the so-called hardrock minerals now subject to location and patent under the antiquated mining law of 1872. Leasing has been the method of disposing of oil and gas values since 1920.

I now feel, however, that there is a better way to achieve the goals we are seeking than to place all minerals under a single leasing act as the original Title II of S. 921 would do.

On September 9th I introduced an amendment to Title II of S. 921. Since we are primarily concerned with the mining law of 1872, my amendment is limited to the minerals subject to that act. The Mineral Leasing Act has been operating reasonably well for 50 years, and the Secretary of the Interior has authority and discretion to provide environmental safeguards pursuant to that law. He has virtually none under the mining law. The environmental provisions of S. 921 are left intact and this authority should give the Secretary the management tools he needs to protect the land resources and

at the same time insure that the needed minerals on our public lands are developed.

The amendment will assure that the individual or small mining concern continues to have a fair opportunity for access and to participate in mineral activity on the public lands.

The proposal calls for a prospecting permit to be issued to a qualified applicant who, if he makes a valid discovery, will be entitled to a preferential lease for the area where the deposit is located. This will protect the small companies and allow them to continue much as they are today, but the land managers will have an opportunity to exercise greater control over the activities on the land.

The States will benefit by receiving 37 1/2 percent of all revenues received under the new leasing system where they previously received none.

S. 2401, National Resources Land Management Act of 1971

This is the Senate version of the Administration bill. It was introduced by Senators Jackson and Allott on August 3, 1971. Like its counterpart in the House, H.R. 10049, the bill is essentially an organic act, defining the responsibilities of the Bureau of Land Management and providing guidelines for the administration of public domain lands.

S. 2450, Public Land Policy Act of 1971

S. 2450 was introduced by Senator Allott on August 5, 1971 to provide "umbrella" legislation for the public lands. In most respects it is similar to the Aspinall bill, H.R. 7211. But the Allott bill is a revised and slightly shorter version.

The Department of Interior and the Office of Management and Budget recommended enactment of S. 2401, the administration bill, in lieu

of S. 2450. The Department of Agriculture also opposed enactment of S. 2450.

S. 2542, Mineral Development Act of 1971

This bill was introduced by Senator Bible on Sept. 17, 1971 to establish a system for the development of mineral resources on the public lands of the United States and to assist in carrying out the policy expressed in the Minerals Policy Act of 1970 (Public Law 91-631).

S. 2542 is a companion bill to H.R. 10640, introduced by Congressman Aspinall on Sept. 14, 1971. The bill is strongly supported by the American Mining Congress.

The principal features of S. 2542 were outlined in a statement presented at the Senate Interior Committee hearings on Sept. 22nd by Mr. Charles F. Barber in behalf of the American Mining Congress. Mr. Barber's section-by-section analysis of this bill is included here:

> Title I--Purpose
>
> Title I states that the purpose of the bill is to provide for the development of mineral resources of the public lands consistent with Congressional policy as expressed in the Mining and Minerals Policy Act of 1970. It also contains definitions of terms used in the bill.
>
> Title II--Existing Unpatented Mining Claims
>
> Title II of the proposed bill provides for the orderly elimination of existing unpatented mining claims and mill sites which are property rights protected by the Constitution. It provides that the owner of an unpatented claim may abandon the claim within the year following the effective date of the act and file a new

claim under the provisions of Title III of the Act. If he does not do so, he must file a declaration of interest within three years with the Secretary of the Interior and an application for patent based on discovery of a valuable mineral deposit within five years, or the claim will be null and void. These provisions will accord reasonable protection for existing mining claims and thus meet the Constitutional requirement. At the same time, the bill imposes new requirements so that within a period of three years the federal land offices will have a record of all existing mining claims of possible continuing validity and within five years the public domain will be cleared of all unpatented mining claims located under the 1872 Act except those claims for which applications for patents are pending.

Title III--New Mining Claims

Title III of the proposed bill provides for a new kind of mining claim which would be located and maintained only in accordance with Federal laws and regulations. It eliminates the provisions of existing law which permit the States to impose additional and different requirements for the location and maintenance of mining claims--a feature of existing law which has led to much confusion and considerable unnecessary abuse of the surface of the land. I refer in particular to the now pointless discovery pit provisions which still prevail in some states.

The new mining claim provided by the bill would have characteristics different from the present unpatented mining claims in the following respects:

1. Insofar as possible the new mining claim, which may be as large as eighty acres in size, must conform with legal subdivisions of public land and where it does not, the Land Office must be furnished a map of the mining claim which contains a tie to a mineral monument or a permanent natural object.

2. Location notices and other documents relating to the location and maintenance of the mining claim would be filed with the Land Office of the Bureau of Land Management in addition to being recorded in the county or district recording office.

3. The location procedures noted above would permit federal agencies and other interested parties to determine readily the existence of unpatented mining claims and their exact location.

4. The exercise of rights under a mining claim would be conditioned on the holder furnishing a bond to secure payment of damages to the surface resources and tangible improvements.

5. The present distinction between lode and placer deposits would be eliminated and both types of deposit would be located in the same manner.

6. The new mining claim would not have extralateral rights.

7. Annual labor requirements would be substantially increased. Work of value of $5.00 per acre would be required in each of the first five years. This would increase to $10.00 per acre for the second five years and $15.00 for the third. After 15 years $20.00 per acre would have to be spent each year to hold the mining claim. These requirements are at a level sufficiently high to discourage the holding of claims where the mineral potential is other than substantial.

8. The holder of a mining claim, in lieu of performing annual labor, could pay the United States an amount equal to the amount that must be expended for annual labor. This follows a provision of British Columbia law which has worked well in practice and avoids the necessity of performing annual labor where in fact the work is unlikely to be productive as such or where the costs of gaining access to the claim to perform it are excessive. It also would have the effect of making unnecessary periodic disturbance of the land where the conditions are such that it would not serve the end of mineral development.

9. The annual labor requirements would be made more stringent in other respects. For example: failure to file an affidavit of annual labor or make a payment in lieu of annual labor would cause the claim to be null and void. Material false statements in affidavits of labor would cause the mining claim to be voidable by a proper proceeding instituted by the United States or by

a subsequent locator. These provisions are designed to prevent fraudulent avoidance of the annual labor requirement.

10. A patent for a mining claim could be obtained either (a) by proof of discovery of a "valuable mineral deposit" as defined in the bill*, or (b) if the owner of the claim files a plan of development with the Secretary of the Interior, and the Secretary approves such plan and thereafter equipment and facilities are acquired and installed in substantial compliance with the plan of development.

    This latter provision implements the recommendation of the Public Land Law Review Commission and it is believed will probably be the provision under which most mineral patents will be granted in the future. It meets the owner's requirements of secure title at the time he seeks financing for the development of the mineral property. The alternative basis for the grant of a patent--proof of discovery of a valuable mineral deposit--continues the provisions of existing law. This provision will serve primarily the interests of the individual prospector and small operator--enterprising men of a class who have contributed enormously to the development of the mining industry but who typically are unable these days to finance the development of their claims.

    By providing a mechanism for the issuance of a patent at a time short of the completion of a plan for development, such prospectors will be more secure in their reward for discovery and more likely to continue to devote their energies to the high risk business of searching out and locating valuable mineral deposits.

11. The purchase price for lands covered by a mineral patent would be substantially increased. Under

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*Title III, Sec. 7(b). A valuable mineral deposit is one "which would justify a person of ordinary prudence in performing work or making expenditures on or for the benefit of the claim or claims containing such deposit with the reasonable expectation of developing a profitable mining operation."

the present mining law, the payment of $5.00 per acre for lode claims, for example, is nominal. The proposed bill provides for the payment of $50.00 per acre for the mineral deposits in the mining claim plus the appraised fair market value of the remaining interests in the land owned by the United States to be conveyed by the patent.

12. The bill provides for the payment of a royalty of 2% of the mine value of the minerals mined, but not more than 5% of the net income, before income taxes, allocable to the minerals for which said royalty is payable. The provision for the payment of royalties is supported by the American Mining Congress with great reluctance, for the effect of such a provision will necessarily increase the costs of mining and, concomitantly, increase the cut off grade of ore which will be mined. The imposition of fixed royalties thus works contrary to the principle of conservation that would require that, once a mine is opened, the available minerals should be fully extracted. The potential loss of minerals because of the imposition of royalties can be of particular importance in the mining of low grade halo type porphory copper deposits typical of most of the operating properties in southern Arizona. To the extent that copper, lead and zinc, for example, are not produced in the United States because of the imposition of royalties, additional quantities of these metals will have to be imported to meet domestic requirements. Notwithstanding the foregoing, we support the royalty provision out of deference to the conclusions reached by the Public Land Law Review Commission which thoroughly considered all aspects of the problem and concluded that royalties should be payable.

13. Instead of the mineral patent granting full title in the lands as provided by the present mining law, the proposed bill provides that the patent would state that the lands could be used only for mining, mineral exploration, development, processing or uses reasonably incident thereto. Use of the lands for other purposes without the consent of the Secretary of the Interior after notice by the Secretary to the owner of the land to discontinue the unauthorized use would result in the land under the patent reverting to the

United States. The effect of the reverter would also assure that the land would ultimately revert to the United States on the conclusion of the extraction of the contained minerals, for the land could not be used for any purpose unrelated to mining by the owner of the patent.

14. Finally, the bill makes it clear that the owner of a mining claim is not exempt from and must comply with applicable federal, state and local laws relating to protection of the environment.

Title IV--Records

Title IV of the proposed bill provides for records with respect to unpatented mining claims which must be maintained by the Land Office of the Bureau of Land Management. For the first time the Land Office would have readily available information concerning all patented and unpatented mining claims and would be able to maintain public records so that this information would be readily available to federal agencies and other interested parties.

Title V--Other Lands Required for Mining

There is no provision in the present law authorizing the Secretary of the Interior to grant the owner of a mining claim other lands needed for mining his claim, other than by the use of a mill site, which was recognized as inadequate by the Commission, or by various laws providing for the exchange of lands under certain conditions, the sale of small tracts, etc. Title V would authorize the Secretary of the Interior directly to sell at the appraised fair market value other lands owned by the United States to persons having an interest in mineral deposits which are reasonably necessary for mining, processing and related operations with respect to such mineral deposits. Although the United States would receive the appraised fair market value for lands sold or exchanged, provision is made in the proposed bill that patents issued under Title V for lands sold or exchanged would contain a reverter clause similar to the reverter clause to be included in mineral patents, providing that the lands would revert to the United States if used for an unauthorized purpose.

Title VI--Use of the Surface

Title VI would amend various laws to make their provisions conform with other Titles in the proposed bill. These amendments would broaden the liability for surface damage and limit provisions of the present law permitting free use of timber on public land. It also continues the provisions of existing law excluding "common varieties" of sand, stone, gravel, etc., from the operation of the act, broadening the definition, however, to include all such materials as are "primarily valuable as construction materials". This will eliminate the principal source of disputes under the existing definition; all materials primarily valuable as construction materials would be excluded from the scope of S 2542.

Title VII--Administrative Procedure Act

Title VII would require that the provisions of the proposed bill be administered in conformity with the Administrative Procedure Act.

We believe that the proposed Mineral Development Act of 1971 provides a comprehensive and workable substitute for the Mining Law of 1872 which would faithfully carry out Congressional Policy as set forth in the Mining and Mineral Policy Act of 1970. It is also consistent with and follows closely the findings and recommendations of the Public Land Law Review Commission. We believe that S 2542 is the best proposal for revision of the mining laws now pending before this Committee and urge its approval by the Committee. The American Mining Congress stands ready to assist the members of the Committee and the staff with respect to any provisions of the proposed bill with respect to which further study is deemed to be required.

Summary of the Senate Hearings

The Senate Committee on Interior and Insular Affairs held hearings on S. 921, S. 2401, S. 2450, and S. 2542 on September 21-22, 1971.

Selected parts of Chairman Jackson's opening remarks were quoted earlier under the discussion of his bill, S. 921.

Leadoff witness was Thomas L. Kimball, chairman of the newly formed Public Lands Conservation Coalition. The ad hoc group was organized on July 29, 1971 to represent the interests of 16 member organizations in regard to proposed public land legislation growing out of the recommendations of the Public Land Law Review Commission.

Original members of the coalition are:

American Forestry Association
Defenders of Wildlife
Federation of Western Outdoor Clubs
Friends of the Earth
Izaak Walton League of America
National Association of State Foresters
National Audubon Society
National Recreation and Parks Association
National Wildlife Federation
North American Wildlife Foundation
Sierra Club
Society of Range Management
Sport Fishing Institute
Wilderness Society
Wildlife Management Institute
Wildlife Society

Coalition chairman Kimball is also executive director of the National Wildlife Federation.

In his prepared statement, Kimball endorsed S. 921, with some recommended changes. He said that the bill sets out two significant and praiseworthy goals: the establishment of an organic act for the Bureau of Land Management and the replacement of the Mining Act of 1872 with a mineral leasing system.

Other members of the Coalition panel pointed out that the Bureau of Land Management does not have a basic statutory charter for its operations since the Classification and Multiple Use Act of 1964 expired. "BLM now operates under some authority lingering on from the Act and under a patchwork quilt of ancient disposal laws and piecemeal reform Acts," they explained.

Don A. Nichols, representing the Utah Mining Association, recommended that the subjects of public lands administration and mining laws be divided into two separate bills. He said that many of the provisions in Title I of S. 921 are worthy of support but views the overall impact of the bill as one of "creating a virtual czar of the Secretary of Interior with respect to public lands."

Nichols also expressed the mining industry's opposition to any type of Federal leasing system that would apply to the so-called locatable minerals, primarily, but not exclusively limited to metallic ores. "We know of no reasonable leasing method that could be properly applied without sharply inhibiting the future supply of this nation's domestic minerals," he stated.

The second day of hearings was devoted to representatives of the American Mining Congress, the Western Oil and Gas Association, and individual commercial firms.

Charles F. Barber, representing the American Mining Congress, came out in strong support of S. 2542. He characterized it as "a twentieth century substitute for the Mining Law of 1872."

The major part of Barber's statement was quoted earlier in this report under the discussion of S. 2542. He said the American Mining Congress supports the provision for the payment of royalties "with great reluctance" because it will "increase the cost of mining, and, concomitantly, increase the cut off grade of ore which is mined."

John Ross, American Petroleum Institute, emphasized the national energy crisis. He stated, "as an indication of the importance of public land to an adequate energy supply, 29 percent of all estimated reserves of onshore petroleum liquids lie beneath the public lands, as does a similar share of onshore natural gas reserves. He also pointed out that "an estimated three-fourths of all known deposits of oil shale are also found in the publicly owned domain." Ross called for an approach that would protect the public lands "without rendering them hopelessly unproductive."

Other Bills Under Consideration

A wide variety of minor bills are pending action in the Committee on Interior and Insular Affairs. Many of these bills relate to

wilderness proposals, land conveyances, proposals for Wild and Scenic Rivers, boundary changes, and administrative improvements. Such bills do not fall within the purview of this report.

On the other hand, a few bills such as those on grazing management on public lands warrant mention even though there has been no action on them as yet.

Grazing on the Public Lands

A bill was introduced to amend section 315B of title 43, United States Code, to provide the cost factors which shall be taken into consideration in determining the grazing fees which will be imposed for use of public lands.

Bills to amend the Taylor Grazing Act of 1934 were also introduced. The following description of the bills is taken from the Conservation Report No. 20, page 214, published by National Wildlife Federation:

> On June 9, 1971, Sen. Gordon Allott (Colo.) and 13 colleagues introduced S. 2028 and Congressman Wayne N. Aspinall (Colo.) and 8 colleagues introduced H.R. 9002, identical bills modifying the present system of establishing fees for grazing on public domain lands under management of the Bureau of Land Management. The bills, referred to the Senate and House Committees on Interior and Insular Affairs, would amend the Taylor Grazing Act. Sen. Allott told the Senate that the bill is a refinement of suggestions received by the Senate Interior Committee in hearings in 1969 plus recommendations of the Public Land Law Review Commission. He also said it meets the approval of Public Lands Committees, the American National Cattleman's Association and the National Wool Growers Association as well as the Executive Committee of the Public Lands Council. It establishes a statutory fee formula based upon the value of public land grazing as determined by a Government-Industry study in 1966, updated each year in relation to the rancher's

ability to pay and the comparative value of forage in his area. Sen. Allott, in an explanation, said the bill would make equitable allowance to reflect the value of a permittee's investment in the federal range and the public benefit therefrom. In addition, a permittee or licensee would have reasonable assurance of the continuance of his tenure as long as the lands are devoted primarily to grazing. National and state advisory boards, representing all public land user interests, would be established.

Working Capital Fund for BLM

A bill (S. 2743) to establish a working capital fund for the Bureau of Land Management was introduced by Senator Jackson and Senator Allott on October 26. The proposed legislation would authorize a $3 million fund as initial capital needed to more efficiently finance certain BLM service programs. The bill is patterned after the Act which provides such a fund for the U.S. Forest Service.

Suits to Adjudicate Disputed Land Titles

S. 216, a bill to permit suits to be brought against the United States in U.S. District Courts to adjudicate disputed land titles, was introduced by Senator Church on January 26, 1971. The bill would amend Sections 1346, 1402, and 2408a of Title 28, United States Code.

Hearings were held by the Senate Public Lands Subcommittee on September 30, 1971, but have not been published yet. Budget, Agriculture, and Interior recommended against enactment.

MAJOR REPORTS AND THEIR RECOMMENDATIONS

The report of the Public Land Law Review Commission, "One Third of the Nation's Land," still stands as the principal current publication in its field. It was released June 23, 1970, after nearly six years of intensive research and an expenditure of almost $7 million.

The first 15 recommendations in the Summary chapter of "One Third of the Nation's Land," pages 9 and 10, deal with planning future public land use. Because they are so pertinent to legislation now pending, the 15 recommendations are reproduced here:

> 1. Goals should be established by statute for a continuing, dynamic program of land use planning. These should include:
>
> Use of all public lands in a manner that will result in the maximum net public benefit.
>
> Disposal of those lands identified in land use plans as being able to maximize net public benefit only if they are transferred to private or state or local governmental ownership, as specified in other Commission recommendations.
>
> Management of primary use lands for secondary uses where they are compatible with the primary purpose for which the lands were designated.
>
> Management of all lands not having a statutory primary use for such uses as they are capable of sustaining.
>
> Disposition or retention and management of public lands in a manner that complements uses and patterns of use on other ownership in the locality and the region. *Page 42.*
>
> 2. Public land agencies should be required to plan land uses to obtain the greatest net public benefit. Congress should specify the factors to be considered by the agencies in making these determinations, and an analytical system should be developed for their application. *Page 45.*
>
> 3. Public lands should be classified for transfer from Federal ownership when net public benefits would be maximized by disposal. *Page 48.*
>
> 4. Management of public lands should recognize the highest and best use of particular areas of land as dominant over other authorized uses. *Page 48.*

5. All public land agencies should be required to formulate long range, comprehensive land use plans for each state or region, relating such plans not only to internal agency programs but also to land use plans and attendant management programs of other agencies. Specific findings should be provided in their plans, indicating how various factors were taken into account. *Page 52.*

6. As an essential first step to the planning system we recommend, Congress should provide for a careful review of (1) all Executive withdrawals and reservations, and (2) BLM retention and disposal classifications under the Classification and Multiple Use Act of 1964. *Page 52.*

7. Congress should provide authority to classify national forest and BLM lands, including the authority to suspend or limit the operation of any public land laws in specified areas. Withdrawal authority should no longer be used for such purpose. *Page 53.*

8. Large scale, limited or single use withdrawals or a permanent or indefinite term should be accomplished only by act of Congress. All other withdrawal authority should be expressly delegated with statutory guidelines to insure proper justification for proposed withdrawals, provide for public participation in their consideration, and establish criteria for executive action. *Page 54.*

9. Congress should establish a formal program by which withdrawals would be periodically reviewed and either rejustified or modified. *Page 56.*

10. All Executive withdrawal authority, without limitation, should be delegated to the Secretary of the Interior, subject to the continuing limitation of existing law that the Secretary cannot redelegate to anyone other than an official of the Department appointed by the President, thereby making the exercise of this authority wholly independent of public land management operating agency heads. *Page 56.*

11. Provision should be made for public participation in land use planning, including public hearings on proposed Federal land use plans, as an initial step in a regional coordination process. *Page 57.*

12. Land use planning among Federal agencies should be systematically coordinated. *Page 60.*

13. State and local governments should be given an effective role in Federal agency land use planning. Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state or local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning. *Page 61.*

14. Congress should provide additional financial assistance to public land states to facilitate better and more comprehensive land use planning. *Page 63.*

15. Comprehensive land use planning should be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act of 1965. Such commissions should come into existence only with the consent of the states involved, with regional coordination being initiated when possible within the context of existing state and local political boundaries. *Page 64.*

FOOTNOTES

1/ Highlights and reactions to the report are presented in CRS multiliths 70-202 EP and 71-63 EP.

2/ Public Land Policy Act of 1971. Hearings before the Subcommittee on the Environment of the Committee on Interior and Insular Affairs. House of Representatives. July 26-30, 1971. Serial No. 92-20.

3/ op. cit.

4/ Ibid. p. 111