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MISCELLANEOUS LAND BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

S. 691
S. 1028
S. 1240
S. 1451
H.R. 223

NOVEMBER 27, 2001

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MISCELLANEOUS LAND BILLS

TUESDAY, NOVEMBER 27, 2001

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:34 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Ron Wyden presiding.

OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. The subcommittee will come to order. This subcommittee has put a special focus on trying to approach issues relating to the forests and public lands in a fashion that brings people together. Again and again we have seen that if you get people to set aside some of their old views and some of their old theories about how work was done in the past you could make remarkable advances.

Senator Craig and I are especially proud of the fact that we were able, with the help of colleagues, to rewrite the system for paying for schools and roads in resource-dependent communities, and we would like this session to also build on approaches with respect to forestry that help define the common ground and help to bring people together.

This afternoon, we will have a chance to receive testimony on several public lands and national forest bills that do exactly that. S. 691 would convey approximately 24 acres of national forest system lands located within the Lake Tahoe Basin Management Unit in Nevada to the Secretary of the Interior; H.R. 223 would amend the Clear Creek County, Colorado Public Lands Transfer Act of 1993 to provide additional time for the county to dispose of certain lands transferred to it; S. 1028, the Blunt Reservoir and Pierre Canal Land Conveyance Act; S. 1451, to convey approximately 2,800 acres of public land to Clark County, Nevada, for use as a shooting range; S. 1240, to authorize the land exchange and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon in Utah.

We want to welcome our witnesses today, particularly our colleagues. We also want to note that John Cooper, Secretary of Game, Fish, and Parks for the State of South Dakota was scheduled to testify as a witness, but due to a blizzard that shut down his airport he is not going to be with us today. His written statement will be made a part of the official record.

We have three colleagues who all have a great interest in Western and public lands issues, and first we want to recognize a distinguished member of the Democratic leadership who is here, Senator Harry Reid, who we worked with often over the years and appreciate the constructive way he tackles these issues, and Senator Reid, we welcome you for any comments you would like to make.

[A prepared statement from Senators Craig and Johnson follow:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

I would like to thank Chairman Wyden for holding this hearing to begin addressing the backlog of proposed legislation facing this Subcommittee. I particularly appreciate the commitment made, to my staff, to hold a hearing on S. 198, the Harmful Nonnative Weed Control Act of 2000, early next year.

Like most of the five bills that we will be reviewing today, S. 198 is critically needed to help local government deal with a scourge of non-native weeds on both private, as well as public land. Dealing with these weeds are costing the local governments hundreds of millions of dollars each year. S. 198 will provide assistance to eligible weed management entities in carrying out projects to control and eradicate harmful, non-native weeds on public and private lands. It will help leverage additional funding from a variety of public and private sources to control or eradicate weeds through local stakeholders. And most importantly promote healthy, diverse, and desirable plant communities by abating the threat posed by harmful, non-native weeds.

While I do have some questions on several of the bills we will be covering in today's hearing, I will be submitting them to our witnesses for their written responses.

Again, thank you Chairman Wyden for getting on with the business of this Subcommittee.

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Mr. Chairman, I am pleased that we are taking the time to consider S. 1028, the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2001. John Cooper, the Secretary of the South Dakota Department of Game, Fish and Parks has worked extensively on this bill and was supposed to testify in support of it today, but is unable to attend because of the blizzard that hit the state yesterday. Despite his absence, I want to congratulate him on his efforts and for working with Senator Daschle and myself to craft this legislation for his service to South Dakota. Secretary Cooper works tirelessly as a steward of the land and the environment in South Dakota and is to be commended for his work. Senator Daschle has worked extensively to develop a consensus on this issue and I would like to commend him for his leadership.

S. 1028 is the product of more than three years of discussion with local landowners, the South Dakota Water Congress, the U.S. Bureau of Reclamation, local legislators, representatives of South Dakota sportsmen groups and other affected citizens.

S. 1028 would convey certain parcels of Federal land from the failed Oahe project to the Commission of Schools and Public Lands and the Department of Game, Fish and Parks of the State of South Dakota. The conveyance of land would serve several purposes, including the mitigation of lost wildlife habitat. The bill would ensure that the current preferential leaseholders shall have an option to purchase the parcels from the Commission.

The Oahe Unit was originally approved as part of an overall plan for water development in the Missouri River Basin that was incorporated in the Flood Control Act of 1944. The initial stage of the project included a system of main canals, such as the Pierre Canal, running east from the Oahe Reservoir, and the establishment of regulating reservoirs, including the Blunt Dam and Reservoir, located approximately 35 miles east of Pierre, South Dakota.

A total of 17,878 acres of land were acquired from willing sellers for the proposed Blunt Reservoir feature during the 1970's. Additional land was acquired for the Pierre Canal feature. After the growth of opposition to the project, construction on the Oahe unit was in 1977. Subsequently, Congress stopped providing funds for the project.

In response to this situation, the Bureau of Reclamation gave to those persons, and their descendants, who willingly had sold their lands to the project the right

to lease those lands and use them as they had in the past until they were needed by the Federal Government for project purposes. From 1978 to the present, the Bureau of Reclamation has administered these lands on a preference lease basis for those original landowners or their descendants, and on a non-preferential basis for lands under lease to persons who had not previously owned or controlled the land.

Currently, the Bureau of Reclamation administers 12,978 acres as preferential leases and 4,304 acres as non-preferential leases in the Blunt Reservoir. However, the lands are not currently in their original condition. Various stockpiled materials, fences, access roads, road detours, and other items left by the Bureau remain on the land. The Bureau conducts minimum maintenance on these facilities and, in FY 2002, budgeted $90,000 for operation and maintenance activities, and $65,000 for resource management activities on the Oahe Unit.

Moreover, the Oahe project was a part of the overall Pick-Sloan Missouri Basin program, which included four major dams across the Missouri River that caused the loss of approximately 221,000 acres of fertile, wooded bottomland that was productive wildlife habitat. Under the provisions of the Wildlife Coordination Act of 1958, the State of South Dakota has developed a plan to mitigate a part of this lost wildlife habitat. By transferring the non-preferential lease lands to the SD Department of Game, Fish and Parks, S. 1028 would satisfy, in part, this habitat mitigation obligation.

Mr. Chairman, this a balanced bill that has been introduced after long discussion between the interested parties and the state of South Dakota. The bill would address the concerns of those who have been affected for a generation by the Oahe project while protecting wildlife in the area. I urge the Committee and the Senate to pass S. 1028.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Senator REID. Mr. Chairman, thank you very much. There are two issues which I am here to talk about today. One is bill S. 691, which would convey 24.3 acres of land to the Washoe Tribe of Nevada and California.

This bill, which is sponsored by not only me but Senator Ensign, conveys a small parcel of land from the Lake Tahoe Basin Management Unit of the Forest Service to the Secretary of the Interior to be held in trust for the Washoe Tribe. They would use this for noncommercial, traditional tribal purposes.

Mr. Chairman, this is something that the tribe feels very strongly about. When the President came to do the summit in Lake Tahoe 4 years ago, this was a commitment made to the tribe. No one disagrees with this. It is something that should be done.

Keep in mind that the Washoe Tribe in generations past, this lake was their lake, and now we are going to give them 24.3 acres to allow them to do some things that will not only be good for them but also the lake, and the tribal chairman, Brian Wallis, has been back here I do not know how many times on this single piece of legislation. This is important, Mr. Chairman, for a spiritual purpose for the Washoe Tribe.

This lake has long been part of the civilization and culture of the Washoe Tribe. It is fundamental, Chairman Wallis says, and I believe him, to who they are as a people, so I would hope that this committee would give swift approval of this.

The second bill, Mr. Chairman, the State of Nevada is 87 percent owned by the Federal Government. No State in the Union has anywhere comparable to that. Eighty-seven percent of the State of Nevada is owned by the Federal Government. Las Vegas had this tremendous growth, now is about 1½ million people. The things that happen their traditionally are, people go out and shoot. Law enforcement has a shooting range. There were various places that

people could go just for recreational purposes. You cannot do that any more. You wind up shooting people. It is a heavily urbanized area. Nevada is the most urban State in America. Ninety percent of the people of Nevada live in two metropolitan areas, Reno and Las Vegas, and this land that we ask be conveyed has the approval of everyone. It has the approval of the environmental community, it has the approval of the shooters, the sportsmen. There is no one that opposes this. It is a unique thing for Nevada and maybe other places we have so many people agreeing this will be the right thing to do.

This would be for recreation, education, competitive marksmanship events, and training related to firearms. Firearms training facilities would be owned and operated by Clark County.

I would hope that this is something the committee would recognize would be of great public benefit by creating a safe, centralized location for this important purpose. It will enhance public safety by reducing indiscriminate shooting. The facility will also provide economic incentives to Las Vegas in the form of jobs and support services.

Senator WYDEN. I think you have done an excellent job, you and your constituents, in working together to find that common ground. Before you came in we talked about the work that Senator Craig and I have prioritized in terms of trying to find these approaches that illustrate that you can have multiple uses co-existing side by side.

I am going to support your bill very strongly. I want to recognize our colleagues, if they have any questions for Senator Reid, because I know his schedule is tight, and after we have questioning for Senator Reid we will go to our other colleagues. Conrad, do you or Craig have questions?

Senator BURNS. Just on the land, Senator Reid, around Lake Tahoe, to the Washoe Tribe. Did they offer any other land for trade for that area, land of lesser value, maybe?

Senator REID. I say, Senator Burns, the Washoe Tribe is not one of the tribes in Nevada that has huge amounts of land. They have very limited land anyway, so the answer is no. This land, if you were going to sell it, it would probably be worth some money, but of course we are not selling land around the lake, and as I indicated in my testimony earlier, this is something that no one opposes.

The development community around Lake Tahoe thinks this would be good for the lake. The State of Nevada, the Governor supports this. The State legislature supports it. Senator Ensign supports it, and the Democratic and Republican House member in the House of Representatives supports this.

Senator BURNS. The 23 acres is all on the Nevada side of the lake?

Senator REID. Yes, it is.

Senator BURNS. I have no other questions.

Senator WYDEN. Senator Thomas.

Senator THOMAS. Thank you. You mentioned in your testimony that this is religious and cultural, spiritual. There are some other propositions to dispose of lands that are belonging to churches or

this and that. Does this sort of set a precedent? What if you transferred everything that had a cultural purpose to it to whoever?

Senator REID. I would say, Senator Thomas, this is such a unique place, and the transfer of the land is to a people that believe very fervently in their ancestral rights to this land, and I would say that during our entire efforts, and they have been bipartisan in nature, to do something to rehabilitate that lake, the Washoe Tribe, which is the only one that has any rights whatsoever as far as Indians to this land, have not, in any way, stood in our way of doing all the things that need to be done, as happens in other things I have tried to do where Native Americans are involved.

Here, they have been with us shoulder to shoulder. They have helped us, and this in effect was an effort—I will not say it is a compromise, because they have not been greedy in asking for a lot of things, but it was felt that there should be a small area of this lake, which is 74 miles around this lake, to set aside 24.3 acres to indicate to people who come to that lake that there was a time in the past where the Indians controlled this, and people would be able to come to this facility and there would be exhibits and other things that the Indians would do there to show the traveling public that the Washoe Tribe at one time controlled this lake.

Senator THOMAS. And I have no problem with it, but I am sometimes concerned about the precedent. You could say the same thing about Devil's Tower. You could say the same thing about the Medicine Wheel and the Big Horn Mountains, that these are spiritual things for the tribes, and therefore they ought to have them, so I think it is something we ought to think about from time to time.

Senator REID. I appreciate that. I would just say this. President Clinton made a commitment to this, and also the only political appearance that President Bush made in the State of Nevada during his campaign was at Lake Tahoe. It shows that he, I guess, believes in quality, not quantity, because it was enough to carry the State, but he recognized Lake Tahoe as being a place that is a treasure of this country.

It is shared by Nevada and California, but I repeat, President Bush came there, and he came there and the Washoe Tribe was part of the delegation that welcomed him there, I mean, so this is something—I have not personally spoken to the President. Perhaps I should have, but I would almost bet anything that he would favor this.

Senator THOMAS. If he was there and President Clinton was there it is spiritual land, certainly.

[Laughter.]

Senator THOMAS. But you know—and I do not mean to be argumentative, but the very thing you are saying is that this is something the American people—well, if it is the American people, it is just an idea that we ought to keep in mind.

Senator REID. I would say to you, Senator Thomas, I understand the point you are making, and if I thought in any way they were being gluttonous in trying to take too much of the 74 miles around that lake, I would be the first to speak out against it, but this is just a tiny speck, I think a tiny speck to show them respect.

Senator THOMAS. I understand. Thank you.

Senator BURNS. Senator, I have a follow-up question. How much shoreline is in that 23 acres?

Senator REID. You know, I cannot tell you. It is a very little, just a very small amount. I have been there at the site. I can tell you it is not very much.

Senator BURNS. Thank you.

Senator REID. We will make sure that that is part of the record, but it is just a—maybe, I would say, frontage, less than an acre probably, but I would have to get you that exact information.

Senator WYDEN. Senator Reid, we will work very closely with you and our colleagues to move this package just as expeditiously as we possibly can. I think you have done yeoman work with all the stakeholders trying to build a consensus approach. All of us from States in the West, where the Federal Government owns more than 50 percent of the land, know that that is a big challenge. I think you have done an excellent job, and unless you have anything further, we will excuse you.

Senator REID. Thank you very much, Mr. Chairman.

Senator WYDEN. Thank you.

It is very good to have our colleague Senator Bennett. It is always a pleasure to be able to work with you, and why don't you proceed in any way you would like, Bob.

STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

Senator BENNETT. Thank you very much, Mr. Chairman. I appreciate being back here. I keep hoping for the time when I can come back on the committee as a third A, but it is popular enough that everybody else keeps filling up before it comes back to me.

As you know, Mr. Chairman, I introduced S. 1240 last July. Let me give you a little bit of background for this. Its purpose is to help both the National Park Service and the U.S. Forest Service serve the public better at the facility at the mouth of American Fork Canyon in Highland, Utah. This facility would serve both agencies, because it would serve both the Timpanogos Cave National Monument, which is a unit of the National Park Service, and the Uinta National Forest Pleasant Grove Ranger District, which is a unit of the Forest Service, and both services are currently housed in substandard facilities.

There was a visitor's center at Timpanogos Cave, which was destroyed by fire in 1991, and they moved into a trailer in 1992 as temporary quarters, and just as we know there is nothing more permanent than a temporary Government agency, there are few things as permanent as a temporary Government facility, and we are now coming up 10 years with that trailer, and it is still being used. There are approximately 150,000 people a year that go visit the cave. The trailer is easily overrun on many days of high visitation.

In addition, it has been damaged by rockfall. There are some significant maintenance and public safety issues, and it is time to retire the trailer.

Now, the Pleasant Grove Ranger District is located in a 1950's era building that was not designed for today's staffing requirements. This is half a century old now, cannot meet the communica-

tions and computing needs of the Forest Service, and we have an opportunity to combine these two in a single facility, which will mean better agency cooperation and coordination to serve the public better, and it will save some tax dollars all the way around.

So that is the genesis of the bill. In order to construct the new facility we have to acquire 36 acres that are currently in private hands that are on the parcel at the key place where the facility needs to be, and so we propose a land swap, buying these acres with other acres rather than with Federal dollars.

The land valuation will conform with the uniform appraisal standards for Federal land acquisition. It is subject to approval by the Secretary of Agriculture to make sure nobody gets unduly rich on this. The Department of the Interior is instructed to construct the new facility and would be responsible for all associated costs.

So it seems like a fairly straightforward thing to me, and I commend it to the committee's consideration.

Senator WYDEN. Senator Bennett, I think this is a very constructive and very useful piece of legislation. It is not all that dissimilar to a bill that Senator Smith and I did the last session. I am going to support it very strongly and help us move it ahead quickly, and let again recognize our colleagues, Senator Burns and Senator Thomas. No questions?

Bob, anything you want to add further?

Senator BENNETT. No, sir. I appreciate your consideration.

Senator WYDEN. We will look forward to moving it quickly.

Senator BENNETT. Thank you.

[The prepared statement of Senator Bennett follows:]

PREPARED STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

Good afternoon. I thank the committee for holding this hearing today. Earlier this year, I introduced S. 1240, the Timpanogos Interagency Land Exchange Act of 2001. The goal of my legislation is to help both the National Park Service and the United States Forest Service serve the public better through the construction of a new interagency administrative office and visitor center at the mouth of American Fork Canyon in Highland, Utah.

This new facility will serve both the Timpanogos Cave National Monument, a unit of the National Park Service, and the Uinta National Forest Pleasant Grove Ranger District, a unit of the United States Forest Service. Both agencies are currently located in substandard facilities. The visitor center of the Timpanogos Cave National Monument was destroyed by a fire in 1991. In 1992, as a temporary measure, the National Park Service began use of a trailer approximately 20 feet by 60 feet in size. This trailer still serves as the visitor center today. Annual visitation exceeds 125,000 people and the trailer is easily overrun on days of high visitation. Additionally, the trailer has been damaged by rock fall, which presents significant maintenance and public safety issues. The Pleasant Grove Ranger District is located in a 1950's era building that was not designed for today's staffing requirements and cannot meet the communication and computing needs of the Forest Service. The opportunity to house both of these agencies in the same facility will foster better interagency coordination and cooperation, serve the public better, and generate cost savings.

In order to construct the new interagency facility, the Forest Service has identified several parcels, mostly administrative sites, totaling 266 acres that it will exchange for a 36 acre privately owned parcel at the mouth of American Fork Canyon in Highland, Utah. This 36 acre parcel will become the site for the new interagency facility. The Forest Service lands do not possess any outstanding resource values and are adjacent to private land. Land valuation will conform with the "Uniform Appraisal Standards for Federal Land Acquisition" and is subject to approval by the Secretary of Agriculture. The Department of the Interior is instructed to construct the new facility and is responsible for all associated costs.

I believe this is simple legislation that will benefit the public greatly. It is my hope that the committee will approve this legislation at its earliest opportunity. Again, I thank the committee for holding this hearing today.

Senator WYDEN. Thanks for coming.

We are really pleased to have Congressman Mark Udall here as well. He also has worked extensively on public lands issues, and we appreciate your involvement the last session with the county payments bill among other things that are important to this committee, and welcome, Mark. We will make your prepared remarks part of the record, and you just proceed in any way you like.

STATEMENT OF HON. MARK UDALL,
U.S. REPRESENTATIVE FROM COLORADO

Mr. UDALL. Thank you, Mr. Chairman, and I did want to acknowledge the good work you did over here on the school receipts funding issue, and I appreciate the flexibility you put back in the House bill so the various counties could respond to the needs that they see in front of them.

If I could, I would like to ask unanimous consent to include my statement in the record.

Senator WYDEN. Without objection, so ordered.

Mr. UDALL. In addition, I have a letter from the county commissioners who have requested this legislation, if I could include their letter in the record.

Senator WYDEN. Without objection, so ordered.

Mr. UDALL. I appreciate it, and I would note for this committee that the county commissioners have a committee composed of three members, one Independent, one Democrat, and one Republican, which mirrors this committee's composition as well.

Senator BURNS. Which one is chairman?

Mr. UDALL. It rotates, Senator Burns. It rotates.

Senator BURNS. I had a deal like that once.

Mr. UDALL. The bill is a simple amendment to the Clear Creek Land Transfer Act of 1993, and Mr. Chairman, what it would do is provide the county with an additional 10 years to provide for the distribution of lands that the BLM owned in the county, many of them inches in measurement, and the exciting thing about this, to pick up on your initial comments, is that the BLM is working in concert with the county, and the county is actually the real estate agent, if you will, for the BLM, so any net receipts from the sale of these lands by the county returns to the Federal Treasury.

The county has worked very hard to move these lands, but they came to me and said, we need a little bit more time to deal with the mining claims and to deal with all the other aspects that are involved with the sale of these lands, so this would set May 19, 2015 as the new deadline for the county to either transfer or retain these lands, and I hope the committee can support this legislation. It passed out of the House unanimously a couple of months ago.

Mr. Chairman, with that, I am certainly willing and able to answer your questions.

[The prepared statement of Mr. Udall and referenced letter follows:]

PREPARED STATEMENT OF HON. MARK UDALL, U.S. REPRESENTATIVE FROM COLORADO

Thank you, Mr. Chairman, and thank you for holding this hearing on my bill.

I introduced the bill at the request of the Commissioners of Clear Creek County, one of the counties in the District I represent. Attached to my testimony is a letter from the Commissioners regarding the bill and why they are seeking its enactment. I would like to submit that letter for the hearing record.

A similar bill was passed by the House last year, but time ran out before the action on it could be completed before the end of the 106th Congress. So I am particularly glad that you are considering it today.

The bill amends section 5 of the Clear Creek Land Transfer Act of 1993. The effect of the amendment would be to allow Clear Creek County additional time to determine the future disposition of some former Federal land that was transferred to the county under that section of the 1993 Act.

The 1993 Act was originally proposed by my predecessor, Representative David Skaggs.

Its purpose was to clarify Federal land ownership questions in Clear Creek County, while helping to complete consolidation of Bureau of Land Management administration in eastern Colorado, and assisting with protecting open space and preserving historic sites. Let me briefly outline the background and the effect of the bill.

In the course of its planning, the Bureau of Land Management has determined that it would be appropriate and desirable to dispose of most of the lands in northeastern Colorado for which it is responsible. The 1993 Act advanced that purpose by transferring land in Clear Creek County from the BLM to the Forest Service, the State of Colorado, the County, and the towns of Georgetown and Silver Plume.

Even without the 1993 legislation, of course, BLM could have sold all these lands, and the local governments could have applied for parcels under the Recreation and Public Purposes Act.

However, before transferring the lands BLM would first have had to complete detailed boundary surveys. And since these lands included many small, odd-shaped parcels—some measured in inches—BLM estimated that boundary surveys would have taken at least another 15 years to complete, and could have cost as much as $18 million—even though the estimated market value of these lands was only $3 million.

In other words, because the administrative costs were expected to be so much higher than the value of these lands, their disposal under existing law probably could never have been completed.

And this would have been the worst of all outcomes, because, after reaching the conclusion that these lands should be transferred, BLM in effect stopped managing them—to the extent that they could have been managed at all. They were effectively abandoned property—potentially attracting all of the problems that befall property left untended and ignored.

The 1993 Act responded to that situation. Under it, about 3,500 acres of BLM land in Clear Creek County were transferred to the Arapaho National Forest. Another 3,200 acres of land were transferred to the State of Colorado, the county, and the towns of Georgetown and Silver Plume. And, finally, the rest of the BLM lands in Clear Creek County were transferred to the County.

My bill deals only with the lands transferred to the County.

Under the 1993 Act, some of these lands will be retained by local governments for recreation and public purposes. The county is authorized to sell the rest, but under conditions that in effect mean that the county will act as the BLM's sales agent, because the 1993 Act provides that the Federal Government will receive any net receipts from the sale of these lands by the county.

Under the 1993 Act, the county has until May 19, 2004 to resolve questions related to rights-of-way, mining claims, and trespass situations on the lands that have been transferred to it and then to decide which parcels to transfer and which to retain.

While the County has completed the conveyance of some of these lands, they still have several thousand acres to dispose of.

The County is working on completing the job, and the letter from the Commissioners outlines the progress they have made. However, they have found that the process is taking longer than they anticipated, and that an extension of time would be helpful to a successful conclusion.

My bill responds to that request by providing that extension. It would set May 19, 2015 as the new deadline for the County to either transfer or retain these lands. The County Commissioners have indicated to me that they are confident that this will be sufficient time for them to resolve the matter.

That is all that is involved and all that the bill would do. There is no controversy associated with the legislation, and I urge the committee to order it favorably reported for action by the Senate.

CLEAR CREEK COUNTY,
Georgetown, CO, November 20, 2001.

United States Senate, Committee on Energy and Natural Resources, Dirksen Building, Washington, DC.

DEAR SENATE COMMITTEE MEMBERS: We are writing in regards to the House Bill H.R. 223 to amend the Clear Creek County Public Lands Transfer Act. This bill would allow us additional time to determine the future disposition of approximately 6,000 acres of land. This extension of time would allow us to resolve issues related to rights-of-way, mining claims, and trespass situations. Our County has worked diligently to distribute the lands as quickly as possible. However, we have encountered problems with these related issues as well as high staff turnover which has hindered our ability to dispense of the land faster.

To date, our County Lands Department has completed and is planning for the following distributions:

- Approximately 2,000+ acres of land has been successfully distributed.
- Approximately 1,500+ acres of land is planned to be managed and distributed to the Colorado Division of Wildlife and the Big Horn Sheep Society respectively.
- Approximately 2,500+ acres of land remains to be distributed due to rights-of-way, mining, and trespass issues.

As you may know, the bill passed twice in the U.S. House of Representatives unanimously. We have been informed that this bill will be presented to your committee for a hearing on November 27, 2001. There appears to be no opposition or controversy surrounding the bill and we hope that your committee will support this bill. This extension would assist us in concluding the distribution of the land. Thank you and we look forward to hearing from you.

Sincerely,

Clear Creek Board of County Commissioners,

ROBERT J. POIROT, *Chairman,*
JO ANN SORENSEN, *Commissioner,*
FABYAN WATROUS, *Commissioner.*

Senator WYDEN. Mark, thank you, and I think this is another instance of building a good consensus, sort of home grown driven kind of concept with respect to the public lands. I commend you for it, and the work you and your constituents have done. I will support this bill as well, and I recognize my colleagues for any questions.

Senator BURNS. I have only one question. It looks like with a split commission like this are you sure 20 years is enough to get it done?

Mr. UDALL. Senator, they are very interested in results and a pragmatic approach to problem-solving. I think they actually trade off which one is the independent and which one is the Democrat and which one is the Republican. It is one of those kind of counties.

Senator BURNS. I want to know why it takes 20 years to get it done when you can do it in half a day.

Mr. UDALL. Many of these small parcels have a lot of unresolved questions surrounding them. As I mentioned, some of them are literally inches, in some cases measured in yards, and they are working with their small, if you will, county administrative situation, and they wanted to do it right, and they just felt they needed a little bit more time.

Senator BURNS. I do not have any more questions.

Senator WYDEN. Okay. We will try to work to move this as quickly as possible, and thanks for coming over, and I look forward to working with you all.

Mr. UDALL. Thank you, thank the committee.

Senator WYDEN. Our next panel, speaking for the administration, Tom Fulton, Deputy Assistant Secretary for Lands and Minerals Management, Department of the Interior, Abigail Kimbell, Acting Associate Deputy Chief for the U.S. Forest Service, Larry Todd, Director of Operations, Bureau of Reclamation.

Okay, gentlemen, Ms. Kimbell, thank you for coming and working with the subcommittee on this. We will make your prepared remarks a part of the record in their entirety, and I want to begin with you, Mr. Fulton.

STATEMENT OF TOM FULTON, DEPUTY ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. FULTON. Thank you very much, Mr. Chairman, Senator Thomas. I appreciate the opportunity to testify on the two bills that I am testifying on H.R. 223, that Congressman Udall introduced, the Clear Creek County, Colorado Public Lands Transfer Act, and Senator Reid's bill, S. 1451, which provides for the conveyance of public lands in Clark County, Nevada, for use as a shooting range.

The Bureau of Land Management of the Department of the Interior and the administration support H.R. 223 and S. 1451, 1451 with some suggested changes that I will outline in my testimony. I will address both of these bills individually.

H.R. 223 amends section 5 of an Act of 1993, which transferred lands of the Bureau of Land Management to Clear Creek County, and the act has achieved the goal of consolidating BLM lands in Colorado, transferring 14,000 acres to Clear Creek County to the Sounds of Georgetown and Silver Plume. The bill introduced by Congressman Udall applies to only 7,003 acres transferred to Clear Creek County.

The 1993 Act provides that after the county prepared a comprehensive land use plan it might in turn resell some of those lands. The administration recognizes that the county has not yet completed the land use planning of the acreage and needs a statutory extension, and that extension would be accomplished under H.R. 223. The extension would be May 19, 2015.

I agree with the Congressman's view that the complexity of the fragmented county land ownership patterns, which are intermingled with patented mining claims, require more time and effort than initially anticipated, and we are glad to acquiesce to the county's request for an extension.

S. 1451 regards the conveyance of public lands in Clark County, Nevada, for use as a shooting range. It provides the Secretary of the Interior with special disposal authority to convey 2,888 acres of BLM-administered lands to the county for the establishment of a centralized shooting facility.

The Bureau of Land Management has the authority under the Recreation and Public Purposes Act to convey BLM-managed lands to local governments without compensation for recreation and public purposes. However, it is my understand that we are limited, the

BLM is limited in that transfer to 640 acres. Therefore, legislation would be required to transfer land greater than the 640 acres for this public and recreational purpose. Because the land will be used as a target range both for recreational purposes and for training of law enforcement officers, that limitation applies.

We would like to suggest a few changes to this bill to improve the administration if enacted, and we would be pleased to work with the committee to address those concerns. Conveyance of the lands would result in certain administrative costs such as resurvey which would be likely required, since the area would have common property boundaries with other land ownerships that could create use conflicts without a specific, defined property boundary. For this reason, we suggest the bill be amended to include language providing compensation by Clark County to the BLM for survey costs and other administrative costs related to preparation of transfer of title.

Additionally, the United States must avoid potential for hazardous waste liability from any property that reverts to the United States. We suggest an amendment that Clark County be required to clean up any hazardous waste or other contamination prior to the possible reversion to the United States.

That concludes my statement. I would be glad to answer any questions.

[The prepared statement of Mr. Fulton follows:]

PREPARED STATEMENT OF TOM FULTON, DEPUTY ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear here today to testify on two bills: H.R. 223, a bill to amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993; and S. 1451, to provide for the conveyance of certain public lands in Clark County, Nevada for use as a shooting range. The Bureau of Land Management (BLM) supports H.R. 223 and S. 1451 with suggested changes. I would like to address each of these bills individually.

H.R. 223—a Bill To Amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993

H.R. 223 amends section 5 of the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 by extending until May 19, 2015, the time allowed Clear Creek County to sell certain lands that it received from the BLM under the 1993 Act.

The 1993 Act helped achieve the goal of consolidating BLM administration in eastern Colorado by transferring approximately 14,000 acres of land from the BLM to the U.S. Forest Service, to the State of Colorado, to Clear Creek County, and to the towns of Georgetown and Silver Plume.

H.R. 223 applies only to 7,300 acres that were transferred to Clear Creek County. The 1993 Act provides that, after the county prepares a comprehensive land use plan, the county may in turn resell some of those lands. The BLM recognizes that Clear Creek County has not completed the land use planning of the acreage conveyed by the United States and needs a statutory extension. Under H.R. 223, the new deadline would be May 19, 2015.

The complexity of the fragmented county land ownership, intermingled with patented mining claims, requires much more time and effort than was initially anticipated, and will require most—if not all—of the ten-year extension. We understand that Clear Creek County will be able to complete the conveyance of these remaining lands with this extension of time and therefore we support this bill.

S. 1451—Conveyance of Public Lands to Clark County, Nevada for Use as a Shooting Range

S. 1451 provides the Secretary of the Interior with special disposal authority to convey 2,880 acres of BLM administered lands in Clark County, Nevada, to the County for the establishment of a centralized shooting facility in the Las Vegas valley.

In the Recreation and Public Purposes Act (R&PP), Congress recognized the benefit of conveying BLM-managed public lands to local governments without compensa-

tion for recreation and public purposes. Under the R&PP the Secretary can convey up to 6,400 acres of public lands to a political subdivision of a State without compensation for recreation purposes. The R&PP limits conveyances for public purposes other than recreation to 640 acres. Because this land will be used as a target range both for recreational purposes and for training of law local law enforcement officers, the 640 acre limitation appears to apply and this legislation is needed.

We would like to suggest a few changes to this legislation to improve the administration of this bill if enacted and would be pleased to work with the committee to address these concerns.

The conveyance of these lands by the BLM will result in certain administrative costs. For example, a resurvey will likely be required since the area would have common property boundaries with other land ownerships that could create use conflicts without a specific defined property boundary. For this reason we suggest that the bill be amended to include language providing compensation by Clark County to the BLM for survey costs and other administrative costs related to the preparation of patents and transfer of title.

Additionally, the United States must avoid the potential for hazardous waste liability from any property that reverts to the United States under Section 1 (e) (2) of the bill. We suggest an amendment that Clark County be required to clean up any hazardous waste contamination prior to reversion to the United States.

This concludes my statement. I would be happy to answer any questions.

Senator WYDEN. Thank you. Ms. Kimbell. Let us get you one of those microphones.

STATEMENT OF ABIGAIL KIMBELL, ACTING ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Ms. KIMBELL. Thank you for the opportunity to appear before you today, and I am suffering from a bit of a cold, so I apologize ahead of time if I have to stop to clear my throat.

I am testifying today on S. 691 and S. 1240. The Department of Agriculture supports and is facilitating the use of the Washoe Tribe of their historical lands for most of the purposes identified in S. 691. However, the administration has not completed its review of this bill. Once its review is completed, we will provide the committee with a formal position on the bill.

The Department supports S. 1240 with a few minor technical corrections, and would like to thank Senator Bennett for introducing this bill. S. 1240 will authorize the acquisition of land much needed for administrative and visitor facilities at the gateway to the popular recreation destinations in American Fork Canyon, Utah.

More specifically, on S. 691, the administration has not completed its review. We recognize that American Indians certainly have special religious and cultural ties to large areas of Federal lands, and we recognize moral and legal responsibilities to provide access and use for religious and cultural purposes. These responsibilities are addressed in several Federal laws, including the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and others.

At present, the Washoe Tribe holds a special use permit with the Forest Service for most of the uses described in section 1(b)(2). These uses have been analyzed and approved through our special use permitting process, and appear to meet the needs of the tribe. In addition, consideration of fair market value for the conveyance and reversionary interests are concerns identified by the Department in its preliminary review of this bill.

We plan to conduct a more thorough review of the language over the next few weeks, to consult with the Department of the Interior,

and explore additional options. Once that review is completed, we would like to work with the committee and the bill's sponsors to resolve concerns that our review might identify.

Specifically to S. 1240, we would like to work with the committee to address a few minor technical concerns with the bill.

We look forward to working with you and other members of the committee on these important issues, and this concludes my testimony. I would be happy to answer any questions.

[The prepared statement of Ms. Kimbell follows:]

PREPARED STATEMENT OF ABIGAIL KIMBELL, ACTING ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today. I am Abigail Kimbell, Acting Associate Deputy Chief for the National Forest System, USDA Forest Service. I am testifying today on S. 691, a bill to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California, and S. 1240, a bill to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah.

The Department supports and is facilitating the use by the Washoe Tribe of their historical lands for the purposes identified in S. 691. However, the Administration has not completed its review of the bill. Once this review is completed, we will provide the Committee with a formal position on the bill. Until that time, we strongly urge deferral on further action.

The Department supports S. 1240 with a few minor technical corrections and would like to thank Senator Bennett for introducing this bill. S. 1240 will authorize the acquisition of land for much needed administrative and visitor facilities at the gateway to popular recreation destinations in American Fork Canyon, Utah.

S. 691—WASHOE TRIBE CONVEYANCE

S. 691 directs the Secretary of Agriculture to convey 24.3 acres of national forest system land within the Lake Tahoe Basin Management Unit to the Secretary of the Interior to be held in trust for the Washoe Indian Tribe of Nevada and California. The conveyance would be subject to a reservation of a non-exclusive easement on a forest road to continue public and administrative access to adjacent national forest system land. In addition, the bill would grant vehicular access over a forest road to the parcel by tribal members under certain circumstances. The transfer would occur without consideration.

S. 691 limits the use of the land by the Washoe Tribe to traditional and customary uses, prohibits permanent residential or recreational development, prohibits commercial development, and requires compliance with environmental standards. The bill provides for reversion of the interest to the Secretary of Agriculture should the tribe violate the use restrictions.

The Administration has not completed its review of S. 691. We recognize that American Indians have special religious and cultural ties to large areas of the Federal lands, and we recognize moral and legal responsibilities to provide access and use for religious and cultural purposes. These responsibilities are addressed in several Federal laws including the American Indian Religious Freedom Act, the Archaeological Resources Protection Act and others.

At present, the Washoe Tribe holds a special use permit with the Forest Service for the uses described in Section 1(b)(2). These uses have been analyzed and approved through our special use permitting process and appear to meet the needs of the Tribe. In addition, consideration of fair market value for the conveyance and reversionary interests are concerns identified by the Department in its preliminary review of this bill. We plan to conduct a more thorough review of the language over the next few weeks, to consult with the Department of the Interior, and explore additional options. Once that review is completed, we would like to work with the Committee and the bill's sponsors to resolve concerns that our review might identify.

S. 1240—AMERICAN FORK CANYON LAND EXCHANGE

S. 1240 provides for the acquisition of land through an equal value exchange in the State of Utah. Approximately 37 acres of private land near the mouth of Amer-

ican Fork Canyon would be acquired for the construction of administrative and visitor information facilities for the Uinta National Forest and Timpanogos Cave National Monument. The bill identifies five national forest properties in the State of Utah, including bare land parcels and parcels with improvements, that would be exchanged for the 37-acre private land parcel.

The bill requires separate appraisals for each property and authorizes a cash equalization payment in excess of the amount limitation under current law. If cash equalization payments are made to the Secretary, S. 1240 allows the funds to be used to acquire administrative sites within the State of Utah and national forest system lands. S. 1240 also requires the Secretary of the Interior, upon availability of funds, to construct a visitor and administrative facility for the Uinta National Forest and Timpanogos Cave National Monument on the acquired privately owned land.

We would like to work with the Committee to address a few, minor technical concerns with the bill.

Mr. Chairman, we look forward to working with you and the other members of the Committee on these important issues. This concludes my testimony. I would be happy to answer any questions that you may have.

Senator WYDEN. Thank you, Ms. Kimbell. We will have some in just a moment.

Mr. Todd, welcome.

STATEMENT OF LARRY TODD, DIRECTOR OF OPERATIONS, BUREAU OF RECLAMATION

Mr. TODD. Thank you, Mr. Chairman, Senator Thomas. I appreciate the opportunity to present the views of the Department of the Interior on S. 1028. Under the Pick-Sloan Missouri Basin program the Oahe irrigation project in South Dakota was authorized in 1968, but construction was terminated in 1977. This was due to the lack of support from the local conservation district. Construction was not resumed. The lands were purchased from Blunt Reservoir and Pierre Canal features in the 1970's.

Since construction was halted, where we could, Reclamation has leased these lands back to the original owners as preference leases. S. 1028, in general, directs the Secretary to convey these lands to the Commission of Schools and Public Lands of the State of South Dakota. This transfer is on condition that the original landowners, who are the current preferential leaseholders, have the option to purchase the parcels from the commission.

The Department of the Interior believes in the concept of S. 1028, which allows the original landowners to regain title to these lands. S. 1028 directs the transfer of the project land holdings with an estimated value of between $6 to almost $8 million. This is based on a per-acre value of about 19,200 acres estimated at $300 to $400 per acre. However, without appropriate compensation the administration opposes transfer of reclamation project assets out of Federal ownership. Therefore, the administration does not support the bill as written.

We would like to express our appreciation for the work done by the sponsors to address a number of issues that have been raised in the past, and we look forward to working with the sponsors and the committee on the one remaining issue.

That concludes my testimony, and I would be glad to answer any questions.

[The prepared statement of Mr. Todd follows:]

PREPARED STATEMENT OF LARRY TODD, DIRECTOR OF OPERATIONS, BUREAU OF RECLAMATION

Good morning. My name is Larry Todd. I am Director of Operations for the U.S. Bureau of Reclamation (Reclamation). I appreciate the opportunity to present the views of the Department of the Interior (Department) on S. 1028, the "Blunt Reservoir and Pierre Canal Land Conveyance Act of 2001."

S. 1028 directs the Secretary of the Interior (Secretary) to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal—features of the Oahe Irrigation Project in South Dakota—to the Commission of Schools and Public Lands of the State of South Dakota (Commission) for the purpose of mitigating lost wildlife habitat, on the condition that current preferential leaseholders (the original owners of the acquired lands or their descendants) have the option to purchase the parcels from the Commission.

The basic concept of S. 1028—to allow original landowners to regain title to lands that Reclamation purchased in anticipation of a project that was never built—is straightforward and equitable. Further, the sponsors of S. 1028 have addressed a number of the technical issues related to liability, land descriptions and reimbursement of Federal implementation costs—that were raised in the past. However, the Department has concerns with the bill, in particular that it fails to adequately protect taxpayers' interests, as it directs Reclamation to convey the lands to the State without any consideration of the initial taxpayer investment they represent, and cannot support the bill in its current form.

BACKGROUND

In preparation for building the Blunt Reservoir and the Pierre Canal, Reclamation purchased approximately 19,200 acres of land between 1972 and 1977. In many cases, Reclamation leased the land back to the seller. Currently, Reclamation is leasing some 13,000 acres of Blunt Reservoir lands to 19 preferential leaseholders and about 1,100 acres of Pierre Canal lands to 29 preferential leaseholders. Although not reflected in title documents, the sellers expected they would be able to purchase their lands back if they were not needed for the project.

Nearly three decades later, construction has not commenced for the Blunt Reservoir, although some earth-moving has been done for the Pierre Canal. Reclamation supports the conclusion that it is unlikely this project will be built, and, therefore, Reclamation no longer needs to hold title to the acquired lands. Under S. 1028, Reclamation's interest in the more than 14,000 acres currently leased by preferential leaseholders (the original landowners or their descendants) would be conveyed to the South Dakota Commission of Schools and Public Lands, on condition that the original landowners have the option to purchase it back. If a preferential leaseholder declines to purchase the land, the Commission is to convey the parcel to the South Dakota Department of Game, Fish, and Parks for wildlife habitat mitigation. Reclamation's interest in the 5,000 acres currently unleased or leased to other parties would be conveyed to the State of South Dakota Department of Game, Fish, and Parks to be used in mitigation of wildlife habitat lost as a result of Pick-Sloan development.

VALUATION AND PAYMENT

S. 1028, as introduced, directs Reclamation to transfer land holdings worth up to $4-$6 million to the South Dakota State Commission of Schools and Public Lands without any payment from the State. The Administration opposes such transfers of significant Reclamation Project assets to non-Federal entities without compensation. In general, such transfers should be for fair market value of the property. S. 1028 would be subject to the Pay-As-You-Go requirements of the Omnibus Budget Act of 1990.

I would like to express my appreciation for the work done by the sponsors to address a number of technical issues that have been raised in the past. We look forward to working with the sponsors and the Committee to address the outstanding issue that remains.

I would be pleased to answer any questions. This concludes my formal statement.

Senator WYDEN. All right. I have a few questions, and then I want to recognize my colleague as well.

Ms. Kimbell, when do you expect to complete your review of S. 691? I think the question that I have is, given the fact that the U.S. Senate has passed this bill already, it just did not make it all

the way through, it does not seem to me that there is any new material to review. At least I cannot find any new material to review. I think we want to get this done as quickly as possible, and I would like to have you tell us for the record when you expect to complete the review of S. 691.

Ms. KIMBELL. We expect to complete the review within the next 3 weeks, and there have been—certainly there was a change in administration between the time the bill was last heard, and as I understand it, this is the first time there has been a hearing scheduled to address this bill.

Senator WYDEN. All right. Is there anything that you believe is new since the last time the Congress looked at this, just your personal opinion?

Ms. KIMBELL. I am not familiar with the bill that was presented a year ago.

Senator WYDEN. Okay. I hope that you will get up to speed on it, because that is the point of having you come, is to be familiar with issues like this.

Ms. KIMBELL. Well, I am familiar with this bill, certainly, but I am not familiar if there—I am not aware that there are any changes or modifications from what was considered a year ago.

Senator WYDEN. That is our understanding, is there are no changes or modifications, and that is why we would like to have this done expeditiously, and if you have told us that it is going to get done in 3 weeks, that is helpful, and please know that we want to move ahead as quickly as we possibly can.

Another couple of questions for you is, S. 1240, the Utah exchange, authorizes but does not require the Secretary to enter into the land exchange. It is our understanding that you will complete the NEPA process prior to completing the exchange. If significant environmental resources are discovered on the land during the NEPA analysis, would the Federal Government retain those lands, or how would you proceed there?

Ms. KIMBELL. Certainly, NEPA would be conducted to address the proposed land exchange, and I am not sure, Senator, that I understood the final part of your question.

Senator WYDEN. I think what we want to know is, if significant environmental resources are discovered on the land during the NEPA analysis, what would be the Federal Government's rights at that point with respect to retaining the lands?

Ms. KIMBELL. Well, certainly in working out the details of the land exchange there could be lands that might be retained, there could be restrictions applied to the uses of the land, as needed to protect the identified resources.

Senator WYDEN. And you would see informing the public through the NEPA process about significant environmental resources?

Ms. KIMBELL. Certainly.

Senator WYDEN. Okay. S. 1240 also exempts the unit rule described in the uniform appraisal standards for Federal land acquisitions in determining the value of the land. Could you tell us what this is, and why it is exempted?

Ms. KIMBELL. The unit rule is used as a way of combining a set of properties and in a way discounts the values on a set of properties if they are presented as a package. This bill proposes to not

use that unit rule, and to have each of the individual parcels stand alone when they are valued.

Senator WYDEN. Mr. Fulton, a question for you. In your testimony, you requested S. 1451, conveying public lands to Clark County, Nevada, be amended to require the county to reimburse BLM for survey costs and other administrative costs associated with the transfer. Any idea what the total costs would be here?

Mr. FULTON. No, but I am sure we could get that information for the county and for the committee.

Senator WYDEN. Okay. Can we have that within the next 10 days for the record?

Mr. FULTON. Yes, I think so.

Senator WYDEN. Very good.

One question for you, Mr. Todd. Regarding S. 1028, it is our understanding the Bureau of Reclamation has never removed various stockpiled materials that are brought in for the never-finished construction for the dam and other facilities. Fences, road detours, and other items remain on the land, and the property would be conveyed in an as-is condition. Is there a process envisaged whereby these lands eventually would be cleaned up and restored to their original condition?

Mr. TODD. I believe that there are two classes of land that we might be talking about here. One is the easements on Pierre Canal, and to date there has been no maintenance or cleanup of those, and that is something that we certainly would look at.

The other one is that they are as-is condition, and would be transferred as-is, and the cleanup would then I believe go to the State as that responsibility.

Senator WYDEN. Senator Thomas.

Senator THOMAS. Mr. Fulton, in H.R. 223, what is the status of the land now, when it was transferred? What is it?

Mr. FULTON. The land was transferred under 1993 law to the county for their eventual disposal, and it is my understanding that the concern has been the complexity of the land ownership patterns.

Senator THOMAS. What status is it? Is it a lease? Do they own it? Do you own it? Who owns it?

Mr. FULTON. Well, BLM used to own it, and now the county owns it.

Senator THOMAS. They do?

Mr. FULTON. It is my understanding that that transfer is——

Senator THOMAS. I thought one of their—then what difference is it to you what they do with it, if they already own it?

Mr. FULTON. Well, it's the clear title, the transfer of the title from the BLM ownership to the county.

Senator THOMAS. So they really do not own it.

Mr. FULTON. Right. The purpose of the law is to transfer the title and getting the title searches completed is the request of the extension.

Senator THOMAS. So it is still BLM.

Mr. FULTON. It is still BLM, but under the provisions of the law, we are in the process of transferring it.

Senator THOMAS. It is a long process.

Mr. FULTON. It is a very long process.

Senator THOMAS. You indicated, I believe, Mr. Todd, on S. 1028 that you did not support the bill.

Mr. TODD. Yes, that is correct, as it is written now.

Senator THOMAS. Why not?

Mr. TODD. Mainly because there is no compensation given to the Federal Government for the transfer of these lands to the State.

Senator THOMAS. I am not very familiar with it. How did it become Federal land in the first place?

Mr. TODD. These lands were purchased through the reclamation land purchase program under a project, so they were purchased from the landowners in the area back in the 1970's.

Senator THOMAS. Then when nothing happened, they were leased back.

Mr. TODD. They were leased back, yes, that is correct.

Senator THOMAS. I see, and now this proposal would transfer them back to private ownership.

Mr. TODD. It would transfer them back to the State, and then it would give those preferenced lessees an opportunity to buy back those lands.

Senator THOMAS. There would be no revenue to the BLM.

Mr. TODD. No revenue back to the United States, no.

Senator THOMAS. Good reason to be opposed to it, I guess.

Ms. Kimbell, what are the arrangements now with the tribes in terms of using these lands?

Ms. KIMBELL. For the last 2 years the Washoe Tribe has had a special use permit for the use of a 5-acre parcel that includes beach front on Lake Tahoe for cultural and religious purposes, and it includes a camp-out for up to 80 people with some provisions for sanitation and some other things, and the tribe applied for that and was granted a permit both for last year and for this year.

Senator THOMAS. But that was just 5 acres, and now you are talking about 24, or something.

Ms. KIMBELL. Correct.

Senator THOMAS. I guess my inquiry is, could you make an arrangement with them that they could fulfill their needs without a land transfer, without an ownership transfer?

Ms. KIMBELL. Well, we believe we have been fulfilling the requested needs by providing the special use permit, and certainly we could look at other arrangements in the special use permit.

Senator THOMAS. Normally, I am advocate of disposing of some Federal lands out in our country, but as I mentioned to him before, there is a precedent issue here that is a little bit troublesome.

Ms. KIMBELL. And we would like to examine the bill further, but there were some concerns.

Senator THOMAS. I certainly think that some arrangements ought to be made for the tribe to be able to use them. Whether it requires a fee transfer or not is, I suppose, a question.

Thank you.

Ms. KIMBELL. Thank you.

Senator WYDEN. I thank my colleague.

Let me just say to our panel, we are dealing with five bills here, S. 691, H.R. 223, S. 1028, S. 1451, and S. 1240, and in a nutshell, each of these bills moves Federal land into, as far as I can tell, State, county, or private ownership, so we ought to be able to-

gether, working in the administration and Congress, Democrats and Republicans in this committee and Congress, we ought to be able to work on these bills on a bipartisan way and get them done.

I mean, much of this has already been accomplished through a lot of efforts in local communities across the country. In the case of one of Senator Reid's bills it has already passed U.S. Senate once. Our final request is that you work with us so that in a matter of weeks we can move these bills ahead. They are all important, constructive approaches in the spirit that Senator Craig and I have really called for in terms of trying to address the issues before this subcommittee.

Do you all have anything you would like to add, or otherwise we will excuse you and end the hearing.

Mr. FULTON. Thank you.

Mr. TODD. Thank you.

Senator WYDEN. All right. The subcommittee is adjourned.

[Whereupon, at 3:14 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF JOHN L. COOPER, CABINET SECRETARY, DEPARTMENT OF GAME, FISH AND PARKS, STATE OF SOUTH DAKOTA

Mr. Chairman and members of the Subcommittee, my name is John L. Cooper. I am the Cabinet Secretary for the State of South Dakota, Department of Game, Fish and Parks. I want to thank you for the opportunity to present testimony in strong support of S. 1028, which is before you today.

In order to better understand the goals and objectives of S. 1028, please allow me to present brief background information regarding the history surrounding the status of the lands known as the "Blunt Reservoir" and "Pierre Canal" lands.

S. 1028 is a culmination of more than 2 years of discussion with local landowners, the South Dakota Water Congress, U.S. Bureau of Reclamation, local legislators, representatives of South Dakota sportsmen groups and affected local citizens and landowners. It lays out a plan to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the Oahe Irrigation Project, South Dakota, to the Commission of School and Public Lands of the State of South Dakota for the purpose of mitigating lost wildlife habitat and provides the option to preferential leaseholders to purchase their original parcels from the Commission.

The Oahe Unit was originally approved as part of the overall plan for water development in the Missouri River Basin which was incorporated in the Flood Control Act of 1944. Subsequently, Public Law 90-453, 90th Congress, dated August 3, 1968, authorized construction and operation of the Initial Stage. The primary purposes of the Oahe Unit as authorized was to provide for the irrigation of 190,000 acres of farmland, conserve and enhance fish and wildlife habitat and promote recreation and tourism along with other stated goals related to the general plans set out in the Secretary of the Interior report dated June 1965.

The project came to be known as the Oahe Irrigation Project and the principal features of the initial stage of the project contained the Oahe pumping plant located near Oahe Dam to pump water from the Oahe Reservoir, a system of main canals, including the Pierre Canal, running 22 miles east from the Oahe Reservoir, and the establishment of regulating reservoirs, including the Blunt Dam and Reservoir located approximately 35 miles east of Pierre, South Dakota.

Under the Act of August 3, 1968, 42,155 acres were authorized to be acquired by the Federal government in order to construct and operate the Blunt Reservoir feature of the Oahe Irrigation Project. Land acquisition for the proposed Blunt Reservoir feature began in 1972 and continued through 1977. A total of 17,878 acres were actually acquired from willing sellers.

The first land for the Pierre Canal feature was purchased in July 1975 and included the 1.3 miles of Reach 1B. An additional 21-mile reach was acquired from 1976 through 1977, also from willing sellers.

Organized opposition to the Oahe Irrigation Project surfaced in 1973 and continued to build until a series of public meetings was held in 1977 to determine if the project should continue. In late 1977, the Oahe project was made a part of President Carter's Federal Water Project review process.

The Oahe project construction was then halted on September 30, 1977, when Congress did not include funding in the FY1978 appropriations. Thus, all major construction contract activities ceased and land acquisition was halted.

The Oahe Project remained an authorized water project with a bleak future and minimal chances of being completed as authorized. Consequently, the Department of the Interior, through the Bureau of Reclamation, gave preference to those persons who had willingly sold their lands to project acquisition the right for them and their descendents to lease those lands and use them as they had in the past until needed by the Federal government for project purposes. These lands have come to be known as "preferential lease lands."

During the period from 1978 until the present, the Bureau of Reclamation has administered these lands on a preference lease basis for those original landowners or their descendants and nonpreferential lease parcels for any lands under lease to persons who were not preferential leaseholders. Currently, the Bureau of Reclamation administers the Blunt Reservoir lands as 13,775 acres being preferential leases and 5,462 acres being non-preferential leases. I have previously provided your Subcommittee staff copies of GIS maps noting both the location and the purchased acreage amounts acquired by the Bureau of Reclamation (BOR) and currently managed as "preferential" and "non-preferential" lease lands.

As I noted previously, the Oahe Irrigation Project is directly related to the overall project purposes of the Pick-Sloan Missouri Basin program authorized under the Flood Control Act of 1944. Under this program, the U.S. Army Corps of Engineers constructed four major dams across the Missouri River in South Dakota. The two largest reservoirs formed by these dams, Oahe Reservoir and Sharpe Reservoir, caused the loss of approximately 221,000 acres of fertile, wooded bottomland which constituted some of the most productive, unique and irreplaceable wildlife habitat in the State of South Dakota. This included habitat for both game and non-game species, including several species which are now listed as threatened or endangered. Meriwether Lewis, while travelling up the Missouri River in 1804 on his famous expedition, wrote in his diary, "Song birds, game species and furbearing animals abound here in numbers like none of the party has ever seen. The bottomlands and cottonwood trees provide a shelter and food for a great variety of species, all laying their claim to the river bottom."

Under the provisions of the Wildlife Coordination Act of 1958, the State of South Dakota has developed a plan to mitigate a part of this lost wildlife habitat as authorized by Section 602 of Title VI of Public Law 105-277, October 21, 1998 known as the Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration Act. The State's habitat mitigation plan has received the necessary approval and interim funding authorizations under Sections 602 and 609 of Title VI.

The State's habitat mitigation plan requires the development of approximately 27,000 acres of widlife habitat in South Dakota. Transferring the 5,462 acres of non-preferential lease lands in the Blunt Reservoir feature to the South Dakota Department of Game, Fish and Parks would constitute a significant step toward satisfying the habitat mitigation goal as agreed upon by the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the South Dakota Department of Game, Fish and Parks.

Both the Blunt Reservoir and Pierre Canal non-preferential lease lands offer considerable opportunities for development of a natural resource base which would benefit the general public and the local economy. Located within a 15-30 minute drive of Pierre, these productive lands offer management options for a multitude of wildlife and recreational activities including aquatic, wetland, riparian and upland habitat development. They would offer upland bird, waterfowl and deer hunting in addition to hiking, biking, walking, camping and watchable wildlife activities. Opportunities for water-based recreation, such as canoeing and fishing, could be developed with appropriate water management and small dam development. Several sportsmen and conservation groups have expressed a strong interest in partnering with my Department to develop this natural resource base.

I would like for the Subcommittee to note that as we developed this legislation many meetings occurred among the local landowners, South Dakota Department of Game, Fish and Parks, business owners, local legislators, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, as well as representatives of sportsmen groups. It became apparent to all of us who worked on this issue that the best balance for the local economy, tax base and wildlife mitigation issues would be to allow the preferential leaseholders to have an option to purchase the land from the Commission of School and Public Lands after the preferential lease parcels are conveyed to the Commission. This option will be available for a period of 10 years after the date of conveyance to the Commission. During the interim period, the preferential leaseholders shall be entitled to continue to lease from the Commissioner under the same terms and conditions they have enjoyed with the Bureau of Reclamation. If the preferential leaseholder fails to purchase a parcel within the 10-year period, that parcel will be conveyed to the South Dakota Department of Game, Fish and Parks to be credited toward the 27,000-acre habitat mitigation plan. Frankly, there is an issue of "fairness" for the former owners of this land who ended up having their farms and ranches placed into a sort of "federal limbo" for the past 24 years.

In summary, Mr. Chairman, the State of South Dakota, the Federal government, the original landowners, the sportsmen and all wildlife will benefit from this bill. It provides for a fair and just resolution to the private property and environmental

problems caused by the construction and/or planned construction of the now defunct Oahe Irrigation Project some 25 years ago. I believe we have waited long enough to right some of the wrongs suffered by our landowners and our wildlife resources. S. 1028 offers a great opportunity to settle a variety of concerns and move forward with a plan to better the area for both public and private interests.

My Governor, my Department and the various interests I represent here today are hopeful that your Subcommittee will view S. 1028 favorably and see it as it was developed—a consensus piece of legislation aimed at solving several long-term problems affecting central South Dakota. Our goal is to strongly support a bill that will allow meaningful wildlife habitat mitigation to begin, give some certainty to local landowners who sacrificed their lands for a defunct federal project they once supported, ensures the viability of the local land base and tax base, and provides well maintained and managed wildlife habitat and recreation areas which provide a variety of outdoor experiences for our citizens and visitors.

On behalf of the State of South Dakota, I certainly urge your support and passage of S. 1028. Thank you for the opportunity to present my views before you today.

STATEMENT OF DARLA POLLMAN ROGERS, MEYER & ROGERS, PIERRE, SD

Members of the Subcommittee, my name is Darla Pollman Rogers. I am an attorney in private practice in Pierre, South Dakota, and I represent preferential leaseholders in the Blunt Reservoir and Pierre Canal areas. Thank you for the opportunity to present testimony to you on behalf of the preferential leaseholders.

The preferential leaseholders strongly support S. 1028. Since becoming aware of legislative proposals concerning the Pierre Canal and Blunt Reservoir lands, as a group the preferential leaseholders have spent many hours negotiating for and providing input into S. 1028. Please allow me to give you a brief background of the history surrounding the long struggle this small group of landowners has had in attempting to regain ownership of their land.

The Blunt Reservoir land and the Pierre Canal land were originally part of the Oahe Unit, James Division, of the Oahe Irrigation Project (hereinafter called the "Oahe Project"), which was authorized as a component of the Pick-Sloan Plan to provide multi-purpose use of the Missouri River water in South Dakota. The Oahe Project was authorized and funded by Congress nearly 30 years ago, but the project never materialized. The government did, however, acquire land for the project, and the Pierre Canal and Blunt Reservoir lands were among the thousands of acres acquired by the federal government.

I use the word "acquire" because the circumstances of the acquisitions were, at best, misleading. The landowners did not want to give up land that was an integral part of their operations. They were told, however, that they could sell their land to the Government voluntarily, or it would be condemned. If they sold voluntarily, they could lease the land back from the Bureau of Reclamation (which administered and managed the land), at a lease rate that would not increase, until the project was completed (thus the term "preferential" leaseholders). These landowners were also told that if for some reason the project was not completed, they would be able to purchase their land back at the same price they were paid for it.

You may ask how I know what representations were made to the original landowners. I know because they have told me, and I know because I was personally involved. My father, Leonard Pollman, was an original landowner, and we are preferential leaseholders today. In fact, my father's case is a good example of the unfulfilled promises made to the original landowners at the time they gave up their land. My father did not want to go through costly condemnation litigation, so he reluctantly agreed to sell his land to the Government, after he was told he could lease it back at the same lease rate until his land was needed for the project. In the event the land was not used, he was told he could buy it back for the same price for which he sold it. He asked the representative from the Bureau to please put that assurance in writing. Attached hereto as Exhibit A* is a copy of the written "assurance" of the Bureau representative, Arthur E. Mischke. The original lease, dated December 19, 1973, was for $3,700.00. The "maximum rate" of $3,700.00 has steadily increased over the years, and today is nearly double that amount.

Similar representations were made to other landowners at the time of sale. Attached hereto as Exhibit B is another "assurance" made by a Bureau representative to Duane and Barb Winkler, landowners in the Blunt Reservoir area. As in the case of Mr. Pollman, the annual leaseback rate has more than doubled over the years, yet their Land Purchase Contract has not become null and void.

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*Exhibits A and B have been retained in subcommittee files.

It is important to know the sincere and honest intentions of these landowners. They did not wish to be uncooperative, but they wanted to protect their interest in the land they were in essence being forced to sell, for as long as possible.

That is still the intent of these same landowners today. After all these years, they are still trying to reacquire their land. While most of them have leased the land since the government acquired it, the lease rates have not remained the same, but have increased dramatically over the years. And to date, these landowners have still not had the opportunity to buy back their land, as promised.

In 1981, deauthorization of the Oahe Project was considered by this very committee. These same landowners testified at a hearing in front of the Subcommittee on Water and Power of the Committee on Energy and Natural Resources, United States Senate, as follows:

> Their (the original landowners') position is that they should have the first chance to buy back their land . . . This dispositional scheme must be written into the deauthorization legislation itself.

The landowners were supported in their position by the South Dakota Legislature, which passed a Concurrent Resolution in 1980 favoring disposing of the land acquired for the Oahe Project by first offering it to the original landowners. Unfortunately, the matter was not resolved in 1981.

The issue of deauthorization of the Oahe Project resurfaced again in January 1998, in the form of S. 1341. The Secretary of the South Dakota Department of Game, Fish and Parks sent a letter to the preferential leaseholders (among others) concerning deauthorization of the Pierre Canal and Blunt Reservoir features of the Oahe Project and transferring those lands in Fee Title to the State of South Dakota for wildlife mitigation. The landowners were invited to a public hearing in late January 1998, and many landowners attended the meeting. They were told, in essence, that acquisition of the Pierre Canal and Blunt Reservoir by South Dakota Game, Fish and Parks was part of a much larger effort to restore wildlife habitat that was destroyed by the construction of the Missouri River Dam. The ultimate effect of S. 1341 would have been that these preferential leaseholders would have lost their land, probably within a ten-year period.

So the struggle began all over again. The preferential leaseholders had numerous meetings with each other, with Game, Fish and Parks and with their South Dakota Congressional delegates. Senator Daschle understood the long struggle of these landowners and their unique situation and agreed to champion their cause. S. 1178 was the result of said meetings, and it was introduced to you in October 1999. We supported S. 1178, but unfortunately, it did not survive the political process.

Since the defeat of S. 1178, the meetings among landowners, Game Fish and Parks, South Dakota Congressional Delegates, the Commissioner of School and Public Lands, and the Bureau of Reclamation have continued. With Secretary John Cooper acting as facilitator, we stayed in touch intermittently in 2000, and then held a series of working sessions in 2001. The result of these efforts is before you today in S. 1028. In many respects, it is similar to S. 1178. Under S. 1028, the Blunt Reservoir feature of the Oahe Project will be deauthorized. The preferential lease land will be transferred to the South Dakota Commission of School and Public Lands, and the preferential leaseholders in the Blunt Reservoir and Pierre Canal areas will have the opportunity to buy back the land that was acquired from them for a project that never materialized. Non-preferential lease parcels, unleased parcels, and preferential lease parcels that are not repurchased by the original landowner (or his or her descendants) are conveyed to Game, Fish and Parks for the purposes of wildlife habitat mitigation.

S. 1028, however, is a better bill than its predecessors, because in this round of negotiations, the interested parties tried to resolve all concerns and questions that were articulated with the introduction of S. 1178. For example, the terms "nonpreferential leaseholder" and "preferential leaseholder" were redefined to make sure there are no arguments or questions about who fits into the categories. The issue of liability is addressed in S. 1028, to response to concerns raised by the Bureau. The Bureau participated in the working sessions and submitted the liability language included in the bill. Revisions were made in response to concerns of county officials. Funding clarifications were made in response to concerns of the Commissioner of School and Public Lands. A perpetual easement along the Pierre Canal land for future water development was added to appease water development concerns.

S. 1028 is the end result of countless hours of drafting and redrafting, which has come about as the result of input, negotiations, and compromise of all parties directly affected by deauthorization of the Blunt Reservoir feature of the Oahe Project. A true consensus has been reached in this bill. My clients, this small group of pref-

erential leaseholders who have struggled all these years to have the opportunity to repurchase their land, are in full support of S. 1028. It is an appropriate resolution of a long-standing situation.

On behalf of the preferential leaseholders of the Blunt Reservoir and Pierre Canal lands, I urge your support and passage of S. 1028.

Thank you for the opportunity to present this testimony.

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