(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, once again, the gentlewoman from Wyoming (Mrs. CUBIN), the subcommittee chair, has properly explained this legislation and the need for it. We support the legislation.

The U.S. Forest Service has been acquiring lands in southeastern Ohio for the Wayne National Forest for many years. Typically, these land purchases are subject to reservation of the mineral estate by the seller for a term of 25 to 40 years.

Upon expiration of the term, the mineral rights revert to the United States. However, until that term expires, the private owner of the mineral rights retains the rights to develop these minerals and many of them lease the rights to local operators who drill wells on the property. The private lessors have no rights to lease beyond the expiration of their mineral rights and thus the mineral leases expire with their reservations.

However, producers in the Wayne National Forest were under the mistaken belief that they could simply continue operating under the same terms they had with the private lessors and simply pay royalties to the Forest Service.

Under the terms of the Federal Oil and Gas Leasing Reform Act, the BLM could not offer noncompetitive leases to these producers. This was not acceptable to the local producers. In 1990, BLM attempted to resolve the problem through an administrative remedy that hinged on drainage compensation agreements. However, after executing seven such agreements, the Department's Solicitor determined that this method violated the competitive leasing law.

In response, under the leadership of Representative NICK RAHALL, Congress enacted, as part of the Comprehensive National Policy Act of 1992, authorization for the BLM to issue noncompetitive leases to the owners of ''stripper wells'' upon reversion of mineral interests.

Most of the eligible operators applied for the federal leases. However, they continued to disagree with BLM's interpretation of the law. The producers contend that the new provision of law actually allowed continuation of their existing private leases, with no changes to the terms and conditions other than paying royalties to the U.S. instead of the former owners. The Department's Solicitor affirmed BLM's position that new Federal leases are required. And, the Department's Board of Land Appeals upheld this position.

H.R. 1467 would prevent BLM from requiring the operators to post bonds or other financial guaranties which the administration opposes. But, the administration does not object to a legislative solution to for the operators in the Wayne National Forest if one can be found that requires the producers to enter into production and reclamation contracts with the BLM, as well as several other conditions. Since the Committee adopted such an amendment, we do not object to the House acting favorably on this bill.

Mr. Speaker, I yield back the balance of my time.

Mrs. CUBIN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Wyoming (Mrs. CUBIN) that the House suspend the rules and pass the bill, H.R. 1467, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

## AMENDING OUTER CONTINENTAL SHELF LANDS ACT

Mrs. CUBIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3972) to amend the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from charging State and local government agencies for certain uses of the sand, gravel, and shell resources of the Outer Continental Shelf.

The Clerk read as follows:

H.R. 3972

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. AMENDMENT.**

Section 8(k)(2)(B) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(k)(2)(B)) is amended by striking ''an agency of the Federal Government'' and inserting ''a Federal, State, or local government agency''.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Wyoming (Mrs. CUBIN) and the gentleman from California (Mr. MILLER) each will control 20 minutes.

The Chair recognizes the gentlewoman from Wyoming (Mrs. CUBIN).

Mrs. CUBIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this measure introduced by our colleague, the gentleman from Virginia (Mr. PICKETT). H.R. 3972 is a reasonable response to efforts by the Minerals Management Service of the Department of Interior to charge State and local governments for the use of sand dredged from the Outer Continental Shelf for beach nourishment projects.

Our colleague, the gentleman from Corpus Christi, Texas (Mr. ORTIZ) led a successful effort in 1994 to amend the Outer Continental Shelf Lands Act of 1953 to allow the Secretary of Interior to dispose of sand, gravel and shell resources beneath the Federal waters.

Depletion of sand resources beneath closer in State waters prompted the amendment, and the National Park Service obtained sand necessary to replenish the Padre Island National Seashore at no cost.

Mr. Speaker, it is evident that several coastal State and local governments will need sand from the Federal OCS for beach replenishment projects on their shorelines, particularly given the nor'easter storms and hurricanes that have racked the Gulf coast and many Atlantic beaches this year, but the MMS insists upon charging non-Federal government entities for such sand, whether it is a public project or not.

Yes, under the current rules the fee is reduced for governmental projects but it is not free, as it is to Federal agencies, and, yes, the fee for the sand is generally only a small fraction of the total cost of such projects.

In the case which prompted the gentleman from Virginia (Mr. PICKETT) to act, I believe it was about two and a half percent, but that still added up to over $200,000, which is a burden on the citizens of Virginia Beach.

We should all understand that the sand dredged from the Outer Continental Shelf is only on loan because as the storms come it goes right back out there. So we could call this a good recycling program if we wanted to do that as well.

In many cases, within a decade or two, the sand used in beach nourishment really is returned by mother nature.

Now it is my turn to have a bachelor of science in humor.

In many cases, within a decade or two, the sand used in beach nourishment is returned by mother nature to offshore shoals.

Mr. Speaker, as a Member from Wyoming, I do not think I need to remind anyone that we do not have any beaches but that sand and gravel resources from public lands in the West are disposed, without charge, to State and local governments for use in public projects.

H.R. 3972 should merely be viewed as the coastal States' equivalent to the 1947 Act governing onshore public lands mineral materials. And, like that law, commercial projects seeking OCS sand, gravel or shell resources should continue to pay the full fair market value of the materials after the enactment of the bill offered by the gentleman from Virginia (Mr. PICKETT).

□ 1200

Mr. Speaker, I urge my colleagues' support of this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, I think now the gentlewoman is drifting over into my area of expertise, and that is American humor, with the argument for this legislation that somehow because we pump the sand up on the beaches from the Federal OCS, the Outer Continental Shelf, that it is just a loan, because then the sand goes back to the Outer Continental Shelf, which is probably accurate. But what is not a loan is the taxpayer dollars to continue to do this year after year after year as we try to defeat nature because of storms and hurricanes and what have you.

I think this bill is seriously flawed in the sense of the kind of revenues that it loses, and it raises questions about

whether or not we are really engaging in products that simply are not feasible when we are trying to allow development and activities on lands that are subject to nature in terms of the storm patterns that develop annually along the eastern sea coast.

I might also mention that the administration has sent both a letter and a statement of administration policy against this legislation for the reasons that I have raised with respect to the cost of this, the direct spending, which they estimate will be about $10 million over the next few years, and they believe that the Secretary ought to be able to continue to charge those fees. They also make their point in the statement of administration policy that ''enactment of H.R. 3972 would thus deny the American taxpayer a fair return on the use of the public resources, as well as fuel the demand for OCS sand and gravel and shell and competitively disadvantage the private onshore sand and gravel suppliers.''

What this means is because the Federal Government is not going to charge a fee, the projects you want to engage in do not really have to have a positive cost-benefit ratio or be feasible because you are getting the Federal Government to pump the sand and not charging the municipality for this project.

Not only are you doing that, but the private sand and gravel people who are in business trying to sell sand and gravel to these people are now disadvantaged, so they will not be able to participate in that market because they cannot sell it for free. So we have kind of come up with what is bad sometimes about government involvement in subsidizing various activities, that not only do we undermine bad decisions being made because the theory is, they used to say well, it is free dollars, it is just Federal dollars, so it does not matter how we design it. We are putting them back into that category, but we are also hurting the business people in the community who this is their business, providing sand and gravel to developers, to municipalities, to landowners and all of the rest.

So I am not in agreement with this legislation and the administration is not in agreement with this legislation.

Mr. Speaker, I include for the RECORD the administration policy on this matter.

U.S. DEPARTMENT OF THE INTERIOR,
MINERALS MANAGEMENT SERVICE,
*Washington, DC, Sept. 23, 1998.*

Hon. GEORGE MILLER,
*Senior Democratic Member, Committee on Resources, House of Representatives, Washington, DC.*

DEAR MR. MILLER: I understand that the Resources Committee is considering various ways to move H.R. 3972, a bill to amend section 8(k) of the Outer Continental Shelf (OCS) Lands Act. In general, the bill proposes to waive the fee provisions associated with making OCS sand, gravel and shell resources available for certain publicly-beneficial beach nourishment and wetlands restoration projects undertaken by State or local government entities. Currently, section 8(k) of the OCS Lands Act authorizes the Secretary of the Interior (Secretary) to charge a reasonable fee for the use of such resources when conveyed non-competitively.

On July 21, 1998, the Minerals Management Service (MMS) testified on behalf of the Department of the Interior (Department) on the proposed legislation and opposed enactment for several reasons. I am writing now to reiterate the Department's opposition to the bill. We continue to feel strongly that it is important to provide the Secretary with the authority to assess a fee. Although the fee typically represents only a small fraction of a project's total cost, in a larger sense it also represents the Federal government's commitment to provide a fair return to the Nation for the use of the public's resources.

As you are aware, Public Law 103–426, passed by Congress in 1994, authorized a negotiated agreement process (in lieu of competitive bidding) to better facilitate a way for OCS sand, gravel, and shell resources to be made available for certain publicly-beneficial projects like beach nourishment and wetlands restoration projects undertaken by Federal, State, or local government agencies. Section 8(k)(2)(B) provides that ''the Secretary may assess a fee based on the value of the resources and the public interest served by development of the resources, except that no fee would be assessed against a Federal agency.''

This valuation method allows the Secretary to determine an appropriate fee that takes into account both the value of the Federal minerals and the public benefits gained by providing affordable access to OCS sand, gravel and shell resources to support public projects. The ''no fee'' exemption for Federal agencies was included to prevent the transfer of funds from one Federal agency to another and to prevent local project sponsors from passing back to the federal government the expense of fees for use of the Federal sand paid under this law (e.g., through a cost-sharing agreement with the United States Army Corps of Engineers).

MMS, as the agency in the Department responsible for administering the OCS sand and gravel program, developed guidelines describing how fees for sand and gravel conveyed pursuant to negotiated agreements would be determined. The MMS methodology provides for a determination of sand values based on references to market values and provides for discounts to reflect the public interest in the fee assessment, reducing the market-based estimate of value by the same percentage amount (typically 65%) used to represent the congressionally-mandated Federal share of project construction costs. Thus, this balancing of resource value with public interest considerations provides for a significant discount for State and local governments, resulting in a quite reasonable fee for the Federal resource.

Further, the Department's OCS Policy Committee (Committee) reviewed the guidelines and urged MMS to adopt them since the approach was reasonable and consistent with the OCS Lands Act. The Committee includes representatives from coastal States, local governments, the environmental community and industry and provides advice to the Secretary on a wide range of issues associated with OCS mineral development. The Committee recommended that the guidelines be made available to the public to enhance the timely dissemination of information and to assist governmental planners as they contemplated costs associated with beach nourishment projects.

Because of the bill's significant policy and budget implications, I urge you to give the issues raised by H.R. 3972 more consideration. First, enactment of this proposal could competitively disadvantage private onshore sand and gravel suppliers even further. Second, by making a Federal resource more readily available to State and local governments, we anticipate that requests for access to OCS sand, gravel and shell resources will rise even more than originally anticipated. This increase could put severe strains on existing MMS resources to undertake the necessary environmental studies, analyses, and administrative work associated with facilitating State and local requests. Given current budgetary resources, an unintended result of the bill could be to put MMS in the unfortunate position of not being able to respond to State and local government requests in a timely fashion or even having to turn down future requests.

Third, the budgetary implications of this expected rise in requests for free OCS sand could be substantial. Although the Congressional Budget Office has indicated that the scoring implications of passing the bill are fairly minimal, our recently-completed analysis indicates otherwise. For example, within the next 5 years, we estimate that 8.5 to 12 million cubic yards of OCS sand will be needed for at least 8 shore protection projects. As currently envisioned, these projects would generate total fees of between $1.3 to $1.8 million. However, there are an additional 24 potential projects (needing between 46 and 74 million cubic yards of sand) that could be implemented during this period and may need access to OCS sand. If any of these projects materialize, significantly more fees could be generated for the Federal Treasury in any given year.

In conclusion, I urge you to defer further action on H.R. 3972. Like other mineral resources that reside on Federal lands, the American public has a right to a fair return on its sand, gravel and shell resources. The provisions currently contained in the OCS Lands Act provide for that right while also ensuring that those States and localities needing OCS sand and gravel can receive the resource in an expedited fashion and pay a price that reflects the public interest served.

An identical letter is being sent to the Honorable Don Young, Chairman, Committee on Resources.

Sincerely,

CYNTHIA QUARTERMAN,
*Director.*

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EXECUTIVE OFFICE OF THE PRESIDENT,
OCTOBER 15, 1998

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies.)

H.R. 3972—OUTER CONTINENTAL SHELF LANDS ACT AMENDMENT (REP. RICKET (D) VA AND 6 COSPONSORS)

The Administration opposes H.R. 3972, which would waive the fee for Outer Continental Shelf (OCS) sand, gravel, and shell available for certain beach nourishment and wetlands restoration projects undertaken by State or local governments. The Administration, however, supports the limited waiver, as passed by the Senate in S. 2131, the ''Water Resources Development Act of 1998,'' since it would waive fees for those Federal projects jointly undertaken by the Army Corps of Engineers in partnership with State and local sponsors.

The Outer Continental Shelf Lands Act authorizes the Secretary of the Interior to charge a reasonable fee for OCS sand, gravel, and shell when conveyed noncompetitively. This fee is based on both the value of the resources and the public benefits gained and, typically, represents only a small fraction of a project's total cost. Most important, the fee represents the Federal government's commitment to provide a fair return to the Nation for the use of public resources, while ensuring that those States and localities

needing OCS sand, gravel, and shell can receive those resources and pay a price that reflects the public interest served. Enactment of H.R. 3972, however, would thus deny the American taxpayer a fair return for the use of this public resource, as well as fuel the demand for OCS sand, gravel, and shell and competitively disadvantage private onshore sand and gravel suppliers.

Mr. Speaker, I reserve the balance of my time.

Mrs. CUBIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I understood that there was a statement of administration policy, but we have not seen it and did not know whether it had been delivered or not.

I think one thing we have to consider here is are all states equal? When the Constitution was established, it was established that all states would be equal. Well, inland states get sand and gravel for government projects from the Federal Government for free. Only the sand would be free. Ninety-eight percent of the costs incurred in these projects would still have to be paid and they would be paid. Those costs are dredging and bulldozing. And all Corps of Engineers projects must pass cost-benefit analysis.

While I think that the gentleman from California does have a good point about this, and one which, frankly, I do not understand, which is why people will rebuild and rebuild in the same place that storms wash away, nonetheless, that is what is going on, and I do not think it is fair to treat coastal states differently than inland states as far as the Federal state of sand gravel and shell resources is concerned. So I continue to urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MILLER of California. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. PICKETT), the sponsor of the legislation.

Mr. PICKETT. Mr. Speaker, I would like to thank the Committee on Resources chairman, the gentleman from Alaska (Mr. YOUNG), and the ranking member the gentleman from California (Mr. MILLER), as well as the gentlewoman from Wyoming (Mrs. CUBIN) the chairman of the Subcommittee on Energy and Mineral Resources and the ranking member, the gentleman from Puerto Rico (Mr. ROMERO-BARCELÓ), for their help and assistance in helping bring H.R. 3972 to the floor.

Mr. Speaker, I introduced this legislation last May because of a new policy initiative by the Minerals Management Service to assess a tax against state and local governments for the use of Outer Continental Shelf sand and gravel for public projects.

This law was enacted during the 103rd Congress to remove procedural obstacles and allow governmental agencies to negotiate and obtain OCS sand and gravel. The Federal Government was exempted from being assessed under this act. In October 1997, MMS formalized its guidelines regarding this charge for OCS sand and gravel when used in shore protection and beach restoration projects by state and local governments. Under this new policy, MMS decided to assess state and local governments a tax for sand and gravel used in these shore protection projects, even in those cases where the projects are authorized by Federal law. I do not believe it was the intent of Congress to impose an additional charge on state and local governments for costly, yet necessary, shore protection projects.

In 1947 Congress passed the Minerals Sales Act. This law allows localities to take mineral resources from public lands for public works projects, such as road construction, without the payment of any kind of a charge. Although localities pay money into an account to reclaim the land from which the sand and gravel is taken, there is no requirement to pay for the material, as in the case of coastal states that use offshore mineral resources for shore protection projects.

Sand and gravel mined from the OCS is reclaimed through a natural hydrodynamic process. Although the cost involved for OCS sand and gravel may not be significant when compared to the overall cost of a shore protection or beach restoration project, it is considerable enough to make such projects less attractive and more costly when undertaken by state and local governments.

An example occurred in my district where a local government recently paid MMS approximately $200,000 for about 1 million cubic yards of OCS sand for a federally authorized project that had already been planned, approved and funded.

Paying this tax caused the local government to reduce by about one-fourth the quantity of sand called for in the original plans and specifications. With a reduced volume of sand, the project will now have a shorter useful life and will require the local government to replace the project earlier than planned at an increased cost.

As the administration seeks to change the Nation's shore protection policy, the costs incurred by state and local governments for OCS sand and gravel will continue to rise dramatically unless this ill-advised tax law is changed.

Historically, the Federal Government has entered into 65–35 cost share agreements with local governments for federally authorized shore protection projects. A recent proposal by the administration, if adopted, will reverse this cost share ratio upon completion of the initial construction project, with the local sponsor paying almost double the share of the project maintenance costs. The typical MMS tax for the local government sponsor for OCS sand and gravel will also double as a result of this policy change.

This excessive and inequitable tax will become a serious and insurmountable burden for local governments. It is clearly another unfunded mandate on state and local government and should be eliminated here and now. I strongly urge the House to adopt H.R. 3972 to restore equity among Federal, state and local government projects by eliminating this unfair tax.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. CUBIN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BALLENGER). The question is on the motion offered by the gentlewoman from Wyoming (Mrs. CUBIN) that the House suspend the rules and pass the bill, H.R. 3972.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## REMOVING RESTRICTION ON DISTRIBUTION OF REVENUES TO CERTAIN MEMBERS OF AGUA CALIENTE BAND OF CAHUILLA INDIANS

Mrs. CUBIN. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 700) to remove the restriction on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Agua Caliente Indians.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. FINDINGS.***

*Congress finds that—*

*(1) among its purposes, the Act entitled ''An Act to provide for the equalization of allotments on the Agua Caliente (Palm Springs) Reservation in California, and for other purposes'', approved September 21, 1959, commonly known as the ''Agua Caliente Equalization Act of 1959'' (25 U.S.C. 951 et seq.) (referred to in this section as the ''Act'') was intended to provide for a reasonable degree of equalization of the value of allotments made to members of the Agua Caliente Band of Cahuilla Indians;*

*(2) the Act was enacted in response to litigation in Federal courts in Segundo, et al. v. United States, 123 F. Supp. 554 (1954);*

*(3) the case referred to in paragraph (2) was appealed under the case name United States v. Pierce, 235 F. 2d 885 (1956) and that case affirmed the entitlement of certain members of the Band to allotments of approximately equal value to lands allotted to other members of the Band;*

*(4)(A) to achieve the equalization referred to in paragraph (3), section 3 of the Act (25 U.S.C. 953) provided for the allotment or sale of all remaining tribal lands, with the exception of several specifically designated parcels, including 2 parcels in the Mineral Springs area known as parcel A and parcel B;*

*(B) section 3 of the Act restricted the distribution of any net rents, profits, or other revenues derived from parcel B to members of the Band and their heirs entitled to equalization of the value of the allotments of those members;*

*(C) from 1959 through 1984, each annual budget of the Band, as approved by the Bureau*