SENATE—*Friday, July 16, 1982*

(Legislative day of Monday, July 12, 1982)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, LL.D., D.D., offered the following prayer:

Our Father in Heaven, we thank Thee this morning for the common blessings of life—for eyes to see, ears to hear, hands to touch, feet to walk, lungs to breathe, and hearts to beat. We thank Thee for minds to think, for wills to choose, and for emotions to feel. We thank Thee for that incomparable computer, the brain, and for the central nervous system with its incredible capacity for instantaneous reaction and response. Truly, we are fearfully and wonderfully made.

Forgive us, gracious Lord, for the sin of presumption which takes these incalculable gifts for granted and rarely appreciates them until they are inoperative.

We thank Thee, dear Lord, for family friends, and colleagues. Help us to appreciate them and love them as we will wish we had done if we lost them. In Jesus' name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

Mr. STEVENS. I thank the Chair.

THE JOURNAL

Mr. STEVENS. Mr. President, I ask unanimous consent that the Journal of the proceedings of the Senate be approved to date.

The PRESIDENT pro tempore. Without objection, it is so ordered.

TRIBUTE TO THE PRESIDENT PRO TEMPORE, SENATOR STROM THURMOND

Mr. STEVENS. Mr. President, I feel constrained to comment on the fact that the distinguished President pro tempore of the Senate, Senator STROM THURMOND of South Carolina, is once again in the chair despite the fact that we recessed at a late hour last evening and we are commencing at a very early hour this morning. I want to take this occasion to point out to Senators that in my career in the Senate I cannot remember a President pro tempore who was as dedicated to the task of being part of the management of the Senate as my distinguished friend and colleague, the Senator from South Carolina.

SENATE SCHEDULE

Mr. STEVENS. Mr. President, after the usual preliminary activities this morning, the Senate will resume consideration of S. 1867, the reclamation bill, following three special orders and a period of routine morning business.

It is my understanding that morning business has been limited to 10 minutes; is that correct?

The PRESIDENT pro tempore. The Senator is correct.

Mr. STEVENS. Mr. President, I estimate that we should be back on the bill no later than 9:30 a.m., and Members of the Senate should be aware of the fact that rollcall votes are expected throughout the day. It is possible, as we resume the consideration of the Exon amendment which is now pending, that we could have a vote between 10 and 10:30 a.m.

The majority leader indicated his intention last night that the Senate should finish this bill today. We hope that will be at a reasonable hour. We know that many Senators have made reservations to go west from Washington, D.C., but again Senators should be aware that, if necessary, the Senate will remain in session today until late tonight and possibly on Saturday because the intention of the leadership is to finish the reclamation bill before recessing for the weekend.

RUSSIANS IN THE PACIFIC

Mr. STEVENS. Mr. President, I have been concerned for some time about the growing Soviet naval presence in areas we have traditionally considered to be our own backyard. They are in the Caribbean Ocean on a regular basis. They are also increasing their forces in the Pacific Ocean in a way which should alarm anyone concerned about our maintaining free trade in the Eastern Pacific.

Last year, by way of example, a *Kara*-class missile cruiser from the northern port of Petropavlovsk skirted the Aleutian Islands and then went by Oregon and Hawaii. It is not unusual for Soviet reconnaissance bombers to probe Alaska's airspace to test the Alaskan Air Command's air defenses.

The July 19, 1982, issue of U.S. News & World Report has an informative and timely article on the Soviet naval and air forces in the Pacific Ocean. I urge you to read it. I ask unanimous consent that the text of the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From U.S. News & World Report, July 19, 1982]

RUSSIANS IN PACIFIC—U.S. PUSHES BACK

(By Robert Kaylor)

Moscow's naval might is on the rise across the vast sweep of ocean. But American commanders are resolved to meet strength with strength.

A steady buildup of Soviet sea power confronts U.S. naval forces with an increasingly formidable task in protecting vital Western trade routes across the Pacific and Indian oceans.

From the Horn of Africa to the vulnerable sea-lanes off Japan, to the shores of the U.S. itself, a modernized Soviet Navy is plying ocean expanses that only a decade or so ago were considered virtually a private domain of America's powerful Pacific fleet.

Moscow also is buttressing Soviet naval strength by lining up land, sea and air bases and supply depots in nations near maritime choke points in Africa, the Mideast and the Far East.

Russian ships and planes now range from facilities in Ethiopia, South Yemen and Vietnam and from Soviet-held islands just off northern Japan.

There is more to the buildup than just the visible projection of Soviet sea power. Military experts say a prime objective of the Kremlin is to enable the Soviet Navy to interdict critical Western trade routes in the Indian and Pacific oceans if the need arises.

Through those waters pass one quarter of Mideast oil for the non-Communist world—10 to 12 million barrels per day—and all U.S. sea trade with Asia, now greater than that with Western Europe.

The Soviet buildup in the two oceans is a mounting worry to U.S. strategic planners and to Asian friends who rely on America's defensive umbrella. But until recently, efforts to counter the Russian fleet have been hamstrung by U.S. budget constraints and by an unwillingness of some allies to assume a greater share of the defense burden.

According to military analysts, the Soviet Pacific Fleet, based at the Soviet port of Vladivostok on the Sea of Japan, is the largest of Moscow's four geographically divided naval forces. It surpasses even the Northern Fleet, which would combat Atlantic Alliance forces in the North Atlantic.

"The Soviet buildup in the Pacific is more dramatic than at any other place in the world," says Adm. Robert L. J. Long, who commands U.S. Pacific forces from his headquarters in Honolulu. Says Long of the overall balance of naval forces in the region: "Right now, we are in a virtual standoff as far as having enough to win."

Western experts see Soviet naval power aimed at three strategic targets in the Pacific and Indian oceans:

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Approaches to the Persian Gulf and adjoining Middle East waters, through which flows most of the West's oil imports from the Arab world.

The Russians have added a new naval base on Ethiopia's Dahlak Islands in the Red Sea to existing facilities at the South Yemeni port of Aden and on Socotra Island, which commands Indian Ocean approaches to the Gulf of Aden.

Japan, which depends on the Mideast for 70 percent of its oil imports.

With little military capability of its own, Japan is within easy range of Soviet bombers based near Vladivostok. Soviet Krivak-II frigates regularly sail around Japan's islands, sometimes holding target practice a few miles outside Japanese territorial waters. The Russians also are believed to have built up troop strength on the Kurile Islands, the northern islands they took from Japan at the end of World War II.

The South China Sea, where a permanent task force of a half-dozen Soviet warships operates from Vietnam's Cam Ranh Bay, one of the finest natural harbors in the world.

The base, built by the U.S. during the Vietnam War, now is a major support, communications and intelligence center for Moscow. It lies across the South China Sea from the large U.S. naval base at Subic Bay in the Philippines. The Pentagon has warned that Soviet reconnaissance flights over the Pacific theater originate from Cam Ranh Bay.

The reach of the Soviet Pacific fleet extends even to the United States. Last fall, a Kara-class missile cruiser from the North Pacific port of Petropavlovsk led a task force on a cruise that skirted the Aleutians, swung south to near the Oregon coast, then passed the Hawaiian Islands before heading for home.

American military men say Soviet nuclear-armed submarines, at least one of which operates within a few hundred miles of the U.S. West Coast, have missiles trained on American targets. Backfire bombers can fly missions as far south as the Philippines or as far east as the Aleutians. They give the Russians what one U.S. official describes as a "significant new direction in their attack capability."

GETTING THERE

Distances and obstacles involved in countering the Soviet threat often strain U.S. Navy resources to the maximum. It takes 25 days for an aircraft carrier to reach a potential battle zone near the Persian Gulf from bases on the West Coast. This means that more than half of a normal cruise of 80 to 100 days would be spent just getting to and from battle stations.

Over all, the U.S. maintains a slight numerical superiority in the number of large surface warships in the region—97 to about 80 for the Soviets. The biggest American advantage lies in its aircraft carriers, ships carrying up to 100 airplanes each and the backbone of American naval might for four decades.

Seven of the Navy's 12 flattops are kept on alert for Asian duty, even though actual deployment can mean stripping other theaters of operation or cutting back on maintenance.

But with 130 submarines, the Soviets have nearly a 2-to-1 edge in undersea craft operating in the Pacific and Indian oceans. Their surface fleet also continues to expand, with more than a dozen major combat ships added to Soviet forces over the past five years.

Last year, a new Kara-class cruiser and several destroyers joined the fleet. Also operating in the Pacific is the *Ivan Rogov*, a first-of-its-kind amphibious ship that uses hovercraft to ferry combat troops ashore.

Russian diplomats say the role of their Pacific Fleet is to protect Soviet trade routes and fishing grounds, bolster support for "liberation" movements in southern Africa and defend against American submarines.

U.S. and allied officials see more sinister motives. The Soviet goal, says one senior U.S. official, is to "outlast us throughout the theater, building to such a high level of forces that the U.S. will finally throw in the towel and not try to keep up in an area so far from home."

The fall of the pro-Western Shah of Iran in 1979 and the Soviet invasion of Afghanistan underscored the need to improve America's capability to counter the Soviet threat to the Persian Gulf region. As a result, agreements have been reached to permit U.S. use of military facilities in Egypt, Oman, Somalia and Kenya. President Reagan has earmarked about 4 billion dollars in his 1983 budget proposal for a 250,000-man Rapid Deployment Force, which could be sped to the region in an emergency.

DIEGO GARCIA

Center of U.S. activity in the Indian Ocean is the British-owned island of Diego Garcia. The V-shaped atoll encloses a lagoon that has been dredged deep enough to handle the largest aircraft carriers. The island is home to about 5,000 American military men and construction workers, plus a few British sailors.

Once used only to grow coconuts, Diego Garcia now bristles with antennas, fuel storage tanks and buildings. A 12,000-foot runway soon will be able to accommodate emergency landings for B-52 bombers flying surveillance missions over the Indian Ocean from bases in Australia. Navy antisubmarine planes regularly use the strip now.

Claims of sovereignty over Diego Garcia by the newly elected socialist government of Mauritius could pose a long-range threat to continued use of the facilities by the United States. The British, however, reject the claim and have assured Washington that it presents no problem for the future.

American commanders emphasize that the U.S. has no intention of yielding supremacy in Asian oceans to the Soviets. "We intend to maintain a permanent naval presence in the Indian Ocean for the foreseeable future because of the importance of that area for the U.S. and its allies," says Long, the Navy's Pacific commander.

Nevertheless, one big source of U.S. concern is lack of support by some allied nations for American efforts to counter the Soviets.

Under American pressure to play a more active defense role up to 1,000 miles from its shores, Japan is buying some long-range, U.S.-made patrol planes and has begun expanding air and port facilities on Iwo Jima. But a recent poll showed that 81 percent of the Japanese people oppose any increase in the nation's self-defense forces.

In the Philippines, where the U.S. Subic Bay Naval Base provides major logistical support for operations in the Indian Ocean, political opponents of President Ferdinand Marcos decry the U.S. military presence.

PRO-CON CAMPS

American analysts have divided the 30-odd countries on the shores of the Indian Ocean into what they regard as pro-U.S. and pro-Soviet camps. Those sympathetic to the Russian presence, such as India's Indira Gandhi, often voice their opposition to the Americans by calling for designation of the ocean as a "zone of peace."

The pro-American camp generally sees the need to balance the Soviet buildup. Thailand, for instance, has purchased a half-billion dollars in American arms during the past three years and permits U.S. marines to stage landing maneuvers on its beaches.

Despite lack of support by some nations, the vast distances from home ports and the large number of potential hot spots that must be covered, U.S. commanders generally are heartened by moves to improve America's military posture in the region. They say that proposed new defense spending could provide immediately greater stocks of ammunition and fuel and more warships in the future.

Admiral Long reflects that cautious optimism. While warning that results of a showdown with the Soviets might be too close to call, he says that the outlook "now is significantly brighter than it was a couple of years ago."

VINEYARDS OF THE PACIFIC NORTHWEST

Mr. STEVENS. Mr. President, in past years connoisseurs of fine wine have felt obliged to look across the Atlantic Ocean for a world-class grape for world-class wine. No longer must Americans live in "palate deprivation." Let us look to the Pacific Northwest of the United States for the perfect grape, the perfect texture, yes, the perfect wine.

Recently, the vineyards of Idaho, Washington, and Oregon have taken their places in the world of fine wine and are being recognized as world-class wine regions. Americans who appreciate the fruits of the vine no longer have to look across the sea; they merely have to look to the great Northwest.

The U.S. Senate is privileged to have among its numbers one who is a pioneer in wines of the Northwest. The distinguished Senator from Idaho, Senator SYMMS, has made the Senate aware of the fine quality wine that Idaho and the Northwestern States have to offer. Last year, he and his family were kind enough to share a glass of Idaho's famous St. Chapelle wine with the Members of the Senate. After that experience I must say that Idaho wine may soon rival Idaho potatoes with respect to recognition and appreciation.

Mr. President, New Yorker magazine of June 28, 1982, contained an article regarding vineyards in the Northwest. The article describes the winery of St. Chapelle. My good friend from Idaho has good reason to be proud.

The country and the world should know about the progress the Northwest is making in this industry. Maybe some day the Matanuska Valley in

Alaska will surprise the world with a world-class grape.

I ask unanimous consent that the text of the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GOOD NEWS FROM THE NORTHWEST

(By Alexis Bespaloff)

Anyone looking for something new in wine need not go beyond the borders of this country: The vineyards of Washington, Oregon, and Idaho—often referred to as the Pacific Northwest—are beginning to take their place among the premium-wine regions of the world.

Though the Northwest has less than 10,000 acres planted with traditional wine-producing grapes (California has 340,000), there are already more than 50 wineries in Washington, Oregon, and Idaho. It's hardly surprising that many people are still unfamiliar with these wines: Most wineries in the region bottled their first wines less than six years ago, and even the oldest date back only twenty years. But some of the best examples from the Northwest are starting to arrive here; there are now more than 30 wines from six wineries in general distribution in New York.

It's easy for those of us with a sketchy sense of geography to assume that the vineyards of the Pacific Northwest (some of which are actually quite a distance from the ocean) are simply an extension of those in California. Northwestern wine-makers, however, are quick to point out that their wines have more in common with those of France and Germany than with the richer, more powerful wines of California. What's more, the climatic conditions and specific varieties cultivated in Washington, Oregon, and Idaho differ from one another, so the wines of each state are best considered separately.

In January 1962, David Lett, a young man with a degree in philosophy from the University of Utah, was waiting in San Francisco to begin his first semester in dental school. One day he toured the Napa Valley, visiting Mayacamas and the old Souverain winery (now Burgess Cellars). "It was rainy," he recalls, "but it was romantic, and I decided I'd rather grow grapes than teeth."

So he took up oenology at the University of California at Davis, gradually focusing his attention on Pinot Noir. "I wanted to produce the great American Pinot Noir," he says, "and I felt that California did not have the right climate for this grape." He eventually moved to the Willamette Valley, in northern Oregon, and in 1966 planted the first wine grapes there since Prohibition. "My oenology professor tried to dissuade me," says Lett. "He told me I'd be frozen out every spring, rained out every fall, and that I'd have athlete's foot up to my knees." In 1980, at a blind tasting of French and American Chardonnays and Pinot Noirs organized in Beaune by Burgundian shipper Robert Drouhin, the 1975 Pinot Noir from Lett's winery the Eyrie Vineyards, came in second, two-tenths of a point after a 1959 Chambolle-Musigny and well ahead of a 1961 Chambertin Clos De Bèze.

Five years before Lett's first planting in the Willamette Valley, Richard Sommer, who was interested primarily in Riesling, established Hillcrest Vineyard near Roseburg, about 180 miles south of Portland; he produced his first wines in 1963. Although a few others have also established wineries near Roseburg, most Oregon vineyards are in the Willamette Valley within a 45-mile radius south and west of Portland.

In 1970, there were 7 wineries in Oregon and about 85 acres of grapes; today, there are nearly 40 wineries and more than 2,000 acres. Dick Erath, who had been a home wine-maker in California, planted vines near the Eyrie Vineyards in 1969, and later joined Cal Knudsen to set up the Knudsen Erath winery. Bill Blosser and his wife, Susan Sokol, founded the Sokol Blosser winery near Knudsen Erath; they produced their first wines in 1977, as did Joe and Pat Campbell at Elk Cove Vineyards. Bill Fuller, who had been production manager at the Louis Martini winery, in the Napa Valley, for several years, established Tualatin, in the Willamette Valley, in 1973. "I didn't want to be just another winery on winery row," he says, "and I also felt that in Oregon I could produce a light, delicate European style of wine that California wasn't making."

The short, cool growing season in Oregon favors early-ripening varieties such as Pinot Noir, Chardonnay, and White Riesling (as the Riesling of Germany is labeled in Oregon). Other varieties planted there include Gewürztraminer, Pinot Gris, Müller-Thurgau, and Muscat Ottonel, varieties found primarily in Germany and Alsace. Notably absent, except in very small quantities, are three varieties widely planted in California—Cabernet Sauvignon, Merlot, and Sauvignon Blanc.

While waiting for the Tualatin vineyards to bear, Fuller bought grapes in Washington. He was the first Oregon wine-maker to do so, and many others followed his lead. As a result, a number of Oregon wineries now produce Chardonnay, Pinot Noir, and White Riesling from Oregon grapes, and Cabernet Sauvignon, Merlot, Sauvignon Blanc, and Semillon from Washington grapes. The origin of the grapes must be clearly stated on the label, of course; in fact, Oregon has particularly strict labeling requirements. If a wine is labeled with the name of a grape, at least 90 percent of the wine must be made from that grape; the federal minimum is only 51 percent. (The sole exception is Cabernet Sauvignon, which may be blended with up to 25 percent of such Bordeaux varieties as Merlot and Cabernet Franc.) Generic names, such as Chablis and Burgundy, are not permitted in Oregon.

Many Oregon wineries are still experimenting with different grapes—Dick Erath, for example, has planted five vines each of 60 varieties—and most wine-makers are still defining their individual styles. "The Oregon wine industry is still in an experimental stage," says Bob McRitchie, wine-maker at Sokol Blosser. "We haven't settled down yet, and we shouldn't."

Oregon wines are generally lighter-bodied, more delicate, and more restrained in varietal character than those from California, but the best of them have an elegance, balance, and style that make them easy to drink. Unfortunately, the overall level of wine-making in Oregon is not yet as high as that in California, and a number of wines I tried were flawed or undistinguished. The wines I liked included three Pinot Noirs (those of the Eyrie Vineyards are not available here)—the subtle, complex Knudsen Erath 1979 ($9.50), the restrained, elegant Elk Cove 1979 Reserve ($15.49), and the well-made, balanced Sokol Blosser 1978 ($9.50). "Pinot Noir is hard to grow and hard to sell," says Bill Blosser, "but we think it's the grape that will make Oregon's reputation."

I also liked the Sokol Blosser Chardonnay 1979 ($11.30), an attractive, restrained, and nicely structured wine. The Tualatin Chardonnay 1980 ($9.69, available in July) is also appealing, with a distinctive, toasty bouquet that suggests aging in new oak. Another distinctive wine, made primarily from Washington grapes, is the rich, spicy, intense 1979 Merlot of Knudsen Erath ($7.75).

Washington has long been a major producer of Concord grapes, which are used to make juice and jelly, but there were relatively few wine grapes available in the late 1950s, when Dr. Lloyd Woodburne, a professor at the University of Washington, began to make wines "in a garage on Saturday afternoons." He persuaded a few friends to take up amateur wine-making, and they became so pleased with their results that they took bottles of their wines to the growers from whom they had been buying grapes. The growers were so impressed that they stopped selling grapes to Woodburne and began to make wine themselves. Woodburne and his friends formed Associated Vintners in 1962, planted a few acres of their own, and produced their first commercial harvest in 1967. The winery that later became Chateau Ste. Michelle also produced its first varietal wines in 1967. Of the 7,400 acres of wine grapes now planted in Washington, nearly 3,000 belong to Chateau Ste. Michelle.

Although the first wineries were located near Seattle, so that sales could be made directly to consumers, almost all the Washington vineyards are situated 200 miles southeast of Seattle, in the Yakima Valley and the adjoining Columbia Basin. This area, protected from the Pacific rains by the Cascade mountain range, was a semi-arid desert before extensive irrigation was introduced. "The only thing you could grow there was sagebrush," recalls one farmer. The area is now one of the nation's principal agricultural regions, and the vineyards established there are planted with such red varieties as Cabernet Sauvignon, Merlot, and Pinot Noir, and such whites as Chardonnay, Johannisberg Riesling, Gewürztraminer, Chenin Blanc, Semillon, and Sauvignon Blanc. The days are longer there than they are in California ("We get 15 percent more day per day," says Joel Klein, Ste. Michelle's winemaker), and the cold desert nights enable the grapes to retain their natural acidity. As a result, the grapes grown there are high both in sugar (which fermentation transforms into alcohol) and in acid, which gives the white wines a crisp, lively taste.

Chateau Ste. Michelle is the only Washington winery whose wines are widely available in New York. Although its annual production of about 225,000 cases makes it by far the biggest winery in the Northwest, many of its varietal wines are of relatively recent origin. It first planted Chardonnay in 1973, and its first Sauvignon Blanc (now labeled "Fumé Blanc") was bottled in 1977.

Attractive whites from this large, modern winery include a dry, elegant, and lively Semillon-Blanc 1981 ($5.69); a light-bodied but assertive, grassy Fumé Blanc 1980 ($7.29), with fresh acidity; a fairly dry, crisp Chenin Blanc 1980 ($6.89); a well-balanced, stylish Chardonnay 1980 ($9.39); an unusually crisp and lively Johannisberg Riesling 1981 ($6.29), whose relatively dry taste would make it a good dinner wine; and an appealing, semisweet, and distinctive Muscat Alexandria ($6.95). A dry Rosé of Cabernet 1980 ($4.95) displays the slight weediness of this variety, and a Cabernet Sauvignon 1977

($8.99) is an attractive, medium-weight wine with restrained varietal character.

Ste. Chapelle, Idaho's first winery, is situated in the Snake River Valley 35 miles west of Boise. It was named in honor of the thirteenth-century church on the Ile de La Cité, in Paris, and the unusual new winery has tall, narrow stained-glass windows that are replicas of those in Paris.

Wines were first produced in Idaho in 1976, and there are now 420 acres planted at Ste. Chapelle, primarily in Riesling and Chardonnay. "If we were in California, we would have been just another winery," says Bill Broich, a partner in the winery, "but I figure we have less competition selling Idaho wine—that is, once we persuade people we can grow grapes as well as potatoes."

Broich has a special interest in Chardonnay, and his balanced and elegant 1980 ($13.10) is a particular success that combines varietal character with subtle oak nuances. It represents a deliberate stylistic change from his previous Chardonnays, which were richer, more powerful wines, higher in alcohol and oak flavors. "One day I realized that even though my Chardonnays were winning gold medals in competition, I had trouble drinking them with dinner," Broich explains.

Ste. Chapelle's 1981 Johannisberg Riesling ($7.99) ia an appealing wine with a slightly honeyed bouquet and a taste that balances fruit and acidity. (The 1980, still around, is also excellent.) Even more impressive is another 1981 Idaho Riesling, labeled "Special Harvest" (available in late July at about $14)—more intense in flavor, yet fresh and lively despite its higher proportion of natural grape sugar.

All the wines suggested above are stocked by local distributors, but not many stores offer a wide selection. Three that do are Yorkville Wine and Liquor Corporation (1392 Third Avenue, at 79th Street, 288-6671); Manley's Liquor Store (35 Eighth Avenue, between Jane and 13th Streets, 242-3712); and Acker, Merall & Condit Company (2373 Broadway, near 86th Street, 787-1700).

I've focused primarily on wineries that market their wines here, but there are several others whose wines are worth looking for if you visit the West Coast, including Associated Vintners and Preston Wine Cellars, in Washington, and such Oregon producers as Adelsheim, Amity, the Eyrie Vineyards, Shafer, and, for its delicious fruit wines, Oak Knoll.

Mr. STEVENS. Mr. President, I reserve the remainder of our leadership time.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. I ask unanimous consent that the minority leader's time be reserved for his control at any time during the day.

The PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR NUNN

The PRESIDENT pro tempore. The Senator from Georgia.

Mr. NUNN. Mr. President, is there a special order in the name of the Senator from Georgia?

The PRESIDENT pro tempore. The Senator is correct.

THE CRIME CONTROL ACT OF 1982, TITLE IV—HABEAS CORPUS REFORM

Mr. NUNN. Mr. President, this morning I want to continue to stress my concern over the outrageous abuse of habeas corpus petitions. As we have tried to impress upon our colleagues for some time now, Senator CHILES and I see a dire need for reform of our habeas corpus laws. Every day, our criminal justice system suffers the burden of blatant misuse of the writ of habeas corpus by convicted felons. Judges on all levels of our justice system have for years spoken of the urgent need to change our present habeas corpus laws. Criminals are being allowed to take advantage of the writ of habeas corpus as a swift and effective means to continually floodgate our criminal justice system, even after they have already received a "full and fair hearing" on the very issues of which they so vehemently complain.

Take note of the time wasted and the burdensome litigation that the case of Martin against Wainwright forced upon our criminal justice system. The defendant was convicted as a result of a robbery in 1970. He was subsequently sentenced to a term of imprisonment of 6 months to 20 years. After his conviction was affirmed on direct appeal in the State system, he filed a petition for habeas corpus in Federal district court raising the very same issues which had already been fully and fairly examined and decided in his State appeal. The Federal court denied the petition on its merits. This order was appealed to the Court of Appeals for the Fifth Circuit, which affirmed, and to the U.S. Supreme Court which denied certiorari.

Martin subsequently filed a second petition for habeas corpus in Federal court in 1975, alleging that his sentence was illegal because he was not given credit for time served (at that time, State law did not require it). In response, the State pointed out that Martin had not even attempted to exhaust State remedies on this issue, despite his previous extensive appellate litigation in the State system. He never pursued it on appeal despite doing so on other issues. By following this strategy, Martin could effectively force the Federal courts to consider on the merits each of a potential myriad of State issues in separate and time-consuming habeas corpus proceedings. After full consideration on the merits a second time, the Federal courts denied the petition because it did not state a Federal claim. The fifth circuit affirmed the denial, finding that the issue was one controlled by State law.

The perplexing problem evident here is that the court should never have been forced to consider the merits of the second petition because this issue was not even appealed in State court. The matter was not presented and fully litigated in State court, despite Martin's opportunity to do so. Habeas relief should have been barred since, had there been error, the State appellate process was the proper remedy, particularly so on a question of State law. Although the State ultimately won the case twice on the merits, it should have never been burdened by litigation of this type.

Mr. President, as I mentioned yesterday, and emphasize again, the time has come to reform our habeas corpus laws. Such reforms would help eliminate these repetitive and unnecessary petitions which daily exact such a heavy and costly toll from our criminal justice system. In the fight against crime, we can simply not afford to pay this price any longer. I again urge the Senate to promptly act to consider and adopt the proposals for habeas corpus reform in S. 2543, the Crime Control Act of 1982.

Mr. NUNN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR LEAHY

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for special orders still pending be reversed.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDENT pro tempore. A special order for the Senator from Vermont to speak for 15 minutes.

Under the previous order, the Senator from Vermont (Mr. LEAHY) is recognized.

Mr. LEAHY. I thank the Chair.

THE FOOD AND NUTRITION SERVICE

Mr. LEAHY. Mr. President, last month I wrote to the Secretary of Agriculture regarding what I thought was outrageous behavior on the part of the Food and Nutrition Service. I

wrote to Secretary Block because I had been in a meeting with him and President Reagan earlier at which time both he and the President had asked me and several other members of the Senate Agriculture Committee for bipartisan support in some of the difficult issues coming before our committee.

We had pledged that support, and he had also pledged bipartisan help from his Department. The Department of Agriculture or at least the Food and Nutrition Service went just the opposite. My letter is self-explanatory.

Mr. President, I ask unanimous consent to have printed in the RECORD the full letter.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,

Washington, D.C., June 22, 1982.

Hon. JOHN R. BLOCK,
Secretary, U.S. Department of Agriculture, Washington, D.C.

DEAR SECRETARY BLOCK: It is with some regret that I draw to your attention the unfortunate recent behavior by officials of the Food and Nutrition Service. As you may have heard by now, officials of the Food and Nutrition Service refused to provide information requested by staff on my behalf in regard to an upcoming food stamp markup. It is my understanding that the Administration's positions on the various issues before the Committee were provided to majority staff prior to markup but that minority staff were refused information for several weeks.

I know that you would not have tolerated this behavior, had you been aware of it. It runs directly contrary to the spirit of bipartisan cooperation expressed to me and several other Senators by the President in recent White House meetings that you attended. Failure to receive timely information from the Department certainly makes rational, informed policy decisions much more difficult for Members of Congress. I trust that you will assure that this will not happen again in the future.

Sincerely,

PATRICK J. LEAHY,
U.S. Senator.

Mr. LEAHY. Mr. President, I have not received a reply from Secretary Block about my complaints that the service was unwilling to talk with Democratic members of the Senate Agriculture Committee or myself as ranking minority member of the Nutrition Subcommittee regarding their plans and nutrition programs even though we were in the process of voting on those plans.

Therefore, I sent him another copy of the letter in case he has missed the first one. I sent that down by messenger, but I have not heard back on that yet either.

So what I will do is place these remarks and the letter in the RECORD. When the RECORD comes back on Monday I will have framed that page in a nice wooden frame with clear glass on it and I will have the framed page of the RECORD sent down by messenger. Hopefully before this administration leaves I will receive a response.

I do that because having served during three adminstrations, two Republicans and one Democratic, I have never seen partisan activity as bad as that I've complained about to Secretary Block.

HARRY CHAPIN

Mr. LEAHY. Mr. President, I rise now to discuss a personal matter. A year ago today a dedicated, good, generous, loving American was killed in a tragic automobile accident in Long Island, N.Y. Harry Chapin was not even 40 years old when he died, but he was already known as a unique entertainer, folk singer, and the preeminent balladier of our country.

He was also a friend of the hungry everywhere, a friend unmatched in this world. Harry Chapin gave daily of himself for his friends and also for the millions of hungry in our country and throughout the world.

At his death the Senate Chamber and the Chamber of the House or Representatives heard unprecedented eulogies from Member after Member extolling this man and his work. They talked of him taking his wife Sandy's dream of a Presidential Commission on World Hunger from idea to Presidential enactment. They talked of the hundreds of thousands of dollars he gave away in his personal effort to eradicate hunger.

And these eulogies were matched by news articles around the country praising Harry.

At that time I also spoke of his generosity, his talents, and his love. It was, Mr. President, the most difficult and emotional speech I have made in this Chamber, and I shall not attempt to repeat the things I said then. I will simply say that I am thankful that Harry's organization, World Hunger Year, continues his work.

Mr. President, I rise today to say that Harry Chapin is still missed and that his views and dedication are needed even more today than while he was alive. The problems of the hungry increase and his commitment becomes all too rare in both public and private life.

I rise also to say how much all the Leahy family, my wife, Marcelle, our children, Kevin, Alicia, and Mark Patrick, and I, miss our friend Harry.

Mr. President, In conclusion, I ask unanimous consent to have printed in the RECORD a eulogy I gave for Harry Chapin in New York at his memorial service.

There being no objection, the eulogy was ordered to be printed in the RECORD, as follows:

SENATOR PATRICK LEAHY'S EULOGY FOR HARRY CHAPIN

It is only appropriate that we do a eulogy for Harry in the form of stories. At the same time, it is kind of frightening because I have the feeling of Harry looking over my shoulder, and I know that he could do the story so much better. It is also hard to pick out which of the hundreds of Harry Chapin stories one should tell. In his songs, Harry would solve that problem the same way that Hubert Humphrey used to. Harry would just simply tell them all.

There are so many stories: Trying to get Harry to a concert at the last minute with him leaning out the window of the car explaining to the police officer that he's the star so it's okay to go straight to the door. Sitting with him after concerts discussing the problems of the world into the early hours of the morning. Him telling our six-year old son to call him Harry because all his friends call him Harry. Sitting at our home in Vermont or in Washington and realizing the enormous breadth and caring of Harry and Sandy and their family.

All of these come to mind, but I think that they all revolve in one way or another around Harry's work in bringing together a Presidential Commission on World Hunger. Harry's wonderful and loved wife, Sandy, came up with the idea of a Presidential Commission on World Hunger and gave Harry the formidable task of getting it done. All of us in Washington explained to him that the President was opposed to more Presidential commissions, that it would be impossible. There were logistical and partisan reasons and so forth and so on why it wouldn't be done. Harry said that's nice and now here's how we are going to go about getting it done. And we did. We roamed the halls of Congress—the House and the Senate—and lined up co-sponsors, passed resolutions in favor of it and finally went down to see the President about it. Harry rode down with me and one other U.S. Senator, and we arrived at the gates of the White House with Harry in the back seat and the two Senators in the front, "appropriately." Secret Service officers opened the gates ever so slightly and came out and asked who we were. The other Senator explained who he was, that he was there to see the President of the United States, I explained that I was Pat Leahy, the U.S. Senator from Vermont and was there to see the President. We were asked for identification and rather shamefacedly had to admit that we had none.

At that point the Secret Service man looked in the back seat and spotted Harry. A big smile went across his face, and he said, "Harry Chapin. Good to see you. What are you doing here?" Harry said that he was down to see the President. The Secret Service asked him if he would vouch for these two unknown in the front seat. Harry magnanimously agreed to vouch for our good conduct. The doors opened, and we were ushered in to see the President.

Even then at that meeting, after President Carter agreed to go along with the World Hunger Commission, Harry would not stop. He continued to hammer into the President the reasons for it. The President sat there trying to explain to him that he agreed, he agreed, but Harry wasn't going to let him off that easy. He wanted not only for him to agree, he wanted him to be committed. That's the difference between Harry Chapin and those who simply give lip service to a cause.

Harry sought and got commitments. And it is because of that that we are here today. Because of that and because of our love for Harry and Sandy and Jamie and John and Jason, Jenny, Josh, Steve, Tom and James and all of his family.

And we are here not just because we have lost a very dear friend, but because the hungry of the world have lost their most constant friend.

There is a Vermont eulogy which says: "The passing of a dear friend, like the falling of a great pine, leaves a vacant space against the sky."

Let us remember that vacant space and let us fill it by fulfilling his commitment.

Mr. LEAHY. Mr. President, I ask unanimous consent to have printed in the RECORD an article from Wednesday's Washington Post quoting the lyrics of "Remember When the Music" by Harry Chapin.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LYRICS

"Remember When the Music," words and music by Harry Chapin. This was one of Chapin's favorite songs, featured on his last album, "Sequel." It was also the last song sung at his memorial service following Chapin's death in a car crash one year ago Friday.

Remember when the music came from
wooden boxes strung with silver wire
And as we sang the words it would set our
minds on fire
For we believed in things and so we'd sing
Remember when the music brought us all
together to stand inside the rain
And as we joined our hands we'd meet in
the refrain
Though we had dreams to live and we had
hopes to give
Don't you remember when the music was
the best of what we dreamed of
For our children's time
As we sang we worked for we knew that
time was just a line
A gift we saved, a gift the future gave
Oh all the times I listened and all the times
I heard
All the melodies I'm missing and all the
magic words
And all those potent voices and the choices
we had then
How I'd love to find we had that kind of
choice again
Remember when the music was aglow on
the horizon of every newborn day
And as we sang the sun came up to chase
the dark away
And life was good for we knew we could
Remember when the music brought the
night across the valley
As the day went down
And as we'd hum the melody we'd be safe
inside the sound
And so we'd speak for we had dreams to
keep
I dream that something's coming and it's
not just in the wind
It's more than just tomorrow, it's more than
where we've been
It offers me a promise, it's telling me
"begin"
I know we're needing something worth be-
lieving in
Remember when the music came from
wooden boxes strung with silver wire
And as we sang the words it would set our
mind on fire
For we believed in things and so we'd sing,
and so we'd sing . . .

Mr. LEAHY. Mr. President, last, I ask unanimous consent to have printed in the RECORD an article from the Rolling Stones magazine on Harry Chapin.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HARRY CHAPIN, 1942-81

(By Dave Marsh)

Harry Chapin often described himself as a "third-rate folk singer," and judging from most of the reviews he received in these pages and elsewhere, he wasn't only kidding. Yet Harry Chapin was something more than that. For many who knew him, he was a legitimate hero, not so much for his music as for his consistent and conscientious willingness to fight the right battles, to stand up for a just cause, no matter how hopeless.

When his friends and political associates—from Marty Rogol and Bill Ayres of World Hunger Year to Ralph Nader and Representative Tom Downey—spoke of Chapin after his death in an auto accident on the Long Island Expressway July 16th, the word they all used was fearless. "It was the one quality of Harry's that I admired most," said Rogol. "Harry was never afraid. Not just physically. Where most people feared embarrassment, being laughed at or rejected, Harry just went right ahead. He just wanted to know what was right and what was the best way to accomplish it. That's real courage".

As Chapin was the first to acknowledge, such bravery isn't cool, for it lacks the necessary arm's-length distance from the world and its problems. And it was the lack of cool that gave Chapin his negative image. It always gnawed at him that he never got particularly good reviews. He made jokes about what the critics had to say: that he was preachy and didactic, a simplistic and woeful singer, a careless craftsman in the studio, emotionally overwrought onstage. I still can't see that these criticisms were wrong, but I also know they weren't entirely correct, either.

Harry Chapin's function in the music world was not to be cool. He was *supposed* to be awkward and overtly unhip; he was supposed to stand in contrast to the glibness and callousness of many of his peers. If the ungainly accents and sputtering diction of some of Chapin's songs can't kill their power, that is because more important things than simple aesthetics are at work in those tunes, and because Chapin wasn't working in a pop context of craftsmanship and cool but from the folk-music traditions of the American left.

Harry Chapin was a pure product of the Fifties world of Greenwich Village and Brooklyn Heights, Born on December 7th, 1942, he was the second son of Big Jim Chapin, a jazz drummer with Tommy Dorsey's and Woody Herman's bands. From the time they were in grammar school, Harry and younger brothers Tom and Steve performed together in various groups, Harry at first playing trumpet but later switching to guitar.

After high school, Harry studied at the Air Force Academy, from which he dropped out, then at Cornell University, where he flunked out twice. In 1964, he re-formed the family group, adding his father on drums. The Chapin Brothers played the usual rounds of Village clubs and folk-scene hangouts and recorded an album, *Chapin Music*, on the Rockland Music label. But the band broke up when Tom and Steve returned to school, and Harry soon turned his attention to film, eventually making several documentaries, including *Legendary Champions*, a boxing film that earned him an Oscar nomination in 1969.

A year later, at the height of the singer-songwriter boom, Chapin resumed his musical career. After playing the Village Gate in New York for the entire summer of '71, he was signed to Elektra Records. In 1972, he scored his first hit, "Taxi," from his debut LP, *Heads and Tales*. Ten more albums followed, yielding a handful of other hits, notably "Cats in the Cradle," "W*O*L*D," "Sniper" and last year's "Sequel," a follow-up to "Taxi."

An eclectic artist, Chapin also wrote a Broadway play, *The Night that Made America Famous*. Though the show on a multimedia musical that combined elements of theater and rock & roll with advanced film and lighting techniques—closed shortly after opening on Broadway in February 1975, it nonetheless won a pair of Tony nominations. A 1977 revue, entitled *Chapin*, was styled after Jacques Brel's *Alive and Living in Paris* and enjoyed a seven-month run at the Improvisation Theatre in Hollywood. It also played in several other cities, and, according to Chapin's manager, Ken Kragen, will now be revived. Although he never sold a spectacular number of records, Chapin toured a great deal and his concerts were always well attended; it's estimated that his benefits alone netted more than $5 million for various charities.

On July 23rd, Harry Chapin's family and friends held a memorial service for him at Grace Church in Brooklyn Heights. There was some fine singing that afternoon by such musicians as Tom and Steve Chapin, Oscar Brand, Steve Goodman, Mary Travers and Peter Yarrow, and Harry's idol, Pete Seeger. Along with family members and politicians, fans and *paparazzi*, they sang and celebrated, and some of the best singing and celebrating came during Harry's songs: "Circle," "Remember When the Music" and a new tune, "Jubilation," that may be the best thing he ever wrote.

These songs weren't Chapin's patented stories, the expended moralistic fables that earned him his reputation. But they were the tunes that struck closest to the true spirit of the man—simple folk songs appropriate to any gathering of the faithful, whether sung around a campfire or at a mass rally. And they stung my eyes, because I knew for once what they were created for, and I knew for certain that they were very good songs indeed.

If Harry Chapin was more than a third-rate folk singer, he was less than a pop star of the highest order. Even so, the immediate response to his death, in the media and among his fans, was overwhelming. It was as if he reached out and touched lives in a permanent and irrevocable way. This was true of fans (one speaker at the Brooklyn service was a railroad brakeman), of journalists (the finest eulogy to Chapin was written by former sportswriter Tony Kornheiset, a friend from Long Island, in the *Washington Post*) and, most of all, of Congressmen.

Three of the speakers at Grace Church were members of Congress. Representative Tom Downey, the young Long Island Democrat, was an obvious colleague, but Representative Ben Gilman is a more conservative, older New York Republican. Gilman

was there because, through his work with Chapin on Jimmy Carter's Presidential Commission on World Hunger, he came to cherish Harry as the best kind of American citizen. Most eloquent of all, though, was Senator Patrick Leahy of Vermont, the only Democratic Senator that state has ever elected, and a man who attributes his narrow victory in 1980 to Harry Chapin's campaign work for him. Leahy was the chief mover in the Senate effort to pass a resolution in support of the hunger commission, and because Chapin also had a vacation home in Vermont, the two had grown personally close, Leahy's eulogy was well written and moving, but what I'll always recall was what he said before he read it: "You know, I think I've shed more tears in the last few days than at any other time in my adult life."

On the floor of Congress, the reaction was very similar. No other singer—not Bing Crosby, nor Elvis Presley, nor John Lennon—has ever been so widely honored by the nation's legislators. Nine senators and thirty congressmen paid tribute to Harry Chapin on the floor, and not all of them were the kind of liberal Democrats on whose behalf Harry had campaigned so long and hard last fall. No less a conservative than Senator Robert Dole of Kansas, not exactly known for his political generosity of spirit, called Chapin "a liberal and a liberal in the best sense of the word. He possessed a spirit of generosity and optimism that carried him through his various commitments with a great sense of seriousness and purpose. . . . What he was really committed to was decency and dignity."

Harry Chapin was just the sort of man who would inspire tributes even from ideological foes. He believed deeply in all those corny virtues and ideals that the rest of us are too cynical, jaded or just plain scared to admit that we, too, cherish. "He constantly talked about reinventing America," remembered Bill Ayres, the writer and broadcaster who in 1975 founded World Hunger Year, an educational and research organization, with Chapin. "In his vision, the Constitution established a democratic process in which people were being asked not just to vote, but to be informed and involved." And Chapin acted on that belief.

Though he is best known for his activism on the hunger issue, Chapin was also a member of the Cambodia Crisis Committee and raised money for the Public Interest Research Group and Congresswatch (two Ralph Nader organizations), as well as Consumer Action Now. In addition, he campaigned on behalf of such past and present senators as Leahy, Mo Udall, Frank Church, Gary Hart and Alan Cranston. And on Long Island, where he lived with his wife, Sandy, and their five children (Jamie, Jason, Jono, Jenny and Josh), he was a member of the boards of Hofstra University, the Long Island Association, Long Island Cares (a local hunger effort), the Action Committee for Long Island (a convocation of businessmen), the Performing Arts Foundation, the Long Island Philharmonic and the Eglevsky Ballet.

Chapin focused on hunger at least partly because it touches on so many other crucial issues, from the political power of multinational corporations to basic land reform. "Harry was big on empowerment," said Ayres. "The idea of World Hunger Year isn't simply to put food in people's mouths but to help them change their lives, to get people involved in their own desire to help themselves. Harry wanted to reach both people who are hungry and people who feel left out of the political process. He did not want to motivate people through guilt; he wanted to combine a sense of awareness of responsibility with a sense of life."

Chapin's elder brother, James, summed Harry up more succinctly. "Most great men appear greater because they maneuver to diminish other people. But if Harry was a great man, and I think he was, it's because he really did feel better when everybody else felt better. He always remembered that the average person isn't you or me or even an American worker but someone living in the slums of Rio or Bombay."

Chapin worked with unique focus and effectiveness in lobbying Congress to endorse the creation of the Presidential Commission on World Hunger. He succeeded partly because so many congressmen were nonplussed by such energy and commitment from a celebrity, but also because some would have done anything to get rid of is pestering. In his eulogy, Leahy recalled a meeting with President Carter, at which the president agreed to create the commission. "Harry would not stop. He continued to hammer the reasons for it into the president. Carter sat there trying to explain that he agreed, he agreed, but Harry wasn't going to let him off that easy. He wanted not only for him to agree, he wanted him to be committed. That's the difference between Harry Chapin and those who simply give lip service to a cause."

Unfortunately, the hunger commission was ineffective. Except for Chapin. His unique combination of celebrity and commitment created a real congressional constituency for his ideals and dreams, and he was still putting together plans for hunger legislation and public-food-policy initiatives when he died.

Ralph Nader called Harry Chapin "the most effective outsider I've ever seen in this town," and that was due mostly to Harry's conviction that all his work—musical and political, atistic and charitable—should not be "event-oriented" but committed to a process in which each segment leads naturally to the next, and into which others can be enticed and pulled along. It worked at all sorts of levels from the fundraising radiothons he and Ayres staged in ten cities over the years, reaching an audience of 15 million people, to the new chapter of World Hunger Year recently created in Arizona.

The question now is what happens without Harry Chapin? At meetings, Chapin used to stress the involvement of others, not only by good-naturedly disparaging himself, but by pointing out that "if I should walk across the street and get hit by a taxi tomorrow, what's left of this organization?" It was one of his greatest hopes that other musicians would get involved in the hunger issue in the way that some have become involved in antinuclear activism, for instance. James Taylor and Gordon Lightfoot, among others, have appeared at World Hunger Year events in recent years, and in early July, just a few weeks before Chapin's death, Kenny Rogers donated more than $150,000, the entire proceeds from a show at the Capitol Center in Largo, Maryland, to the organization. But none of these performers is likely to bring a continuous and persistent focus to bear on hunger or political issues, none of them is likely to subordinate his career to the cause of feeding the world (or, as Harry surely would have corrected me, helping the world to feed itself), social justice and more perfectly ordered democratic institutions in America. Those were the causes at the center of Harry Chapin's work, which was not so much a career as a vocation. And as with all vocations, they belong to the man who hears the calling. In this regard, Chapin really is irreplaceable, and even a great many rock stars and ordinary citizens working together won't make up for what we have lost.

To continue Harry's work, and to make certain that his family's needs are met, Ken Kragen has announced the formation of the Harry Chapin Memorial Fund. The fund has been given an initial $10,000 contribution by Elektra Records, and it will be further endowed by a benefit performance on August 17th at the Nassau Coliseum in Uniondale, Long Island. Kenny Rogers, who is also managed by Kragen, will headline, and according to Kragen, rock managers Irving Azoff and Jerry Weintraub have volunteered their support.

Promoter Ron Delsener, who conceived the Nassau Coliseum show, caught the true Chapin spirit when he said, "Harry did a benefit for everybody else, now it's time for us to do one for him." And all around the country, according to Kragen, people who bought advance tickets for Chapin's late-summer concert tour are refusing to take their money back.

Chapin used to warm his friends and political associates against what he called "event psychosis"—the kind of thing he and Ayres nearly stumbled into in 1974 when they wanted to stage "another Bangla Desh concert" for the relief of victims of the Sahelia drought. One's most fervent hope at this time, then, is that all the organizing going on around the causes that Harry Chapin supported endures, that people remain committed, because Chapin was right: it is getting harder and harder to "remember when the music was the best of what we dreamed of." Harry Chapin may have been naive to think things could be that simple again, but only a real fool would deny that this dream is at the heart of what drew us all to music. This is one of those times when the line gets drawn.

Mr. LEAHY. Mr. President, that concludes my remarks about this remarkable American, but I note that I will be speaking in future days in future times while I am a Member of the Senate about Harry Chapin both as a friend but also as not just a friend but the friend of the hungry throughout the world.

I can only reiterate what I said earlier this morning. There is never a time that they needed friends more or a time that those friends seem so scarce.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COHEN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VITIATION OF SPECIAL ORDER FOR SENATOR STAFFORD

Mr. STEVENS. Mr. President, I ask unanimous consent that the special order remaining be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for 10 minutes where Senators may speak for 2 minutes each.

Mr. STEVENS. Mr. President, I ask unanimous consent that the time for morning business be extended until the Senator from Idaho (Mr. McCLURE) terminates it.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair, in his capacity as a Senator from the State of Maine, suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, on behalf of the Senator from Idaho (Mr. McCLURE) I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

A LETTER TO THE HONORABLE DANIEL M. FRIEDMAN, CHIEF JUDGE OF THE UNITED STATES COURT OF CLAIMS

Mr. THURMOND. Mr. President, as my colleagues are aware, the Congress enacted a law earlier this year which combines the U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals to create the U.S. Court of Appeals for the Federal Circuit. The trial jurisdiction of the Court of Claims will fall to a new article I forum known as the U.S. Claims Court. These changes take place in October of this year. I ask unanimous consent that the following letter from John Everhard, a practitioner before the Court of Claims, to the chief judge of the court, the Honorable Daniel M. Friedman, be placed in the CONGRESSIONAL RECORD. Mr. Everhard, a retired military officer, has practiced before the court for a number of years and, as evidenced by his letter to Chief Judge Friedman, has found that to be a particularly rewarding experience. His comments are a fitting tribute to all the judges and staff of the Court of Claims for their years of fine work at the court.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

KING & EVERHARD,
Washington, D.C., June 23, 1982.

Hon. DANIEL M. FRIEDMAN,
Chief Judge, U.S. Court of Claims, Washington, D.C.

DEAR CHIEF JUDGE FRIEDMAN: On the occasion of my final appearance in argument before the United States Court of Claims, I reserved the last minutes of my time to express to the panel my feelings as a member of the bar of this Court, and I would like to repeat those sentiments to you. While I may have occasion to appear before the Court of Appeals in the future, it will not be the same.

In my humble judgment, the United States Court of Claims filled a unique and special niche in our system of equal justice for all. As a practitioner before the Court, and as an officer of the Court, I found that the relationship between bench and bar—the Government counsel and private practitioner, the Judges, the trial judges and their personnel, Mr. Peartree and his staff, the librarian and her staff all worked together in harmony with a single objective—to resolve the issues involved in litigation in such a manner as to achieve justice.

In other Courts, I have seen counsel commit inexcusable impositions upon the Court; and have seen judges mistreat counsel as well. In my personal experience, this has never happened in the United States Court of Claims. I believe that you and your brothers on the bench, and all the people connected with the Court have a right to be proud of the record of this Court; for my part, the opportunity to be a part of the Court of Claims has been the crowning experience of my legal career. My contributions were insignificant, yet, rewarding to me. I look forward to practicing before the new Claims Court and the Court of Appeals. But I will never forget what it has meant to me, personally and professionally, to have been a part of the United States Court of Claims.

Sincerely,

JOHN A. EVERHARD.

CONCLUSION OF MORNING BUSINESS

Mr. WALLOP. Mr. President, what is the pending business?

The PRESIDING OFFICER. Is there further morning business? If there is no further morning business, morning business is closed.

FEDERAL RECLAMATION LAW

The PRESIDING OFFICER. The Senate will now resume consideration of the pending business, S. 1867, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 1867) to amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 1937

(Purpose: To reduce the ownership and leasing acreage allowances)

The PRESIDING OFFICER. The pending question is amendment No. 1937 by the Senator from Nebraska (Mr. EXON), on which there is a 1-hour time limit, to be equally divided and controlled by Senator EXON and Senator WALLOP.

Mr. EXON. Mr. President, on behalf of my colleague (Mr. ZORINSKY), I ask unanimous consent that he be added as a cosponsor to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, today, the Senate is debating an important matter of public policy, the Federal reclamation policy. A threshold decision for the Senate is who shall benefit from this Federal subsidy? Let us remember, above everything else, that it is a Federal subsidy, in the opinion of this Senator a worthy one as long as it is kept within due bounds.

The Reclamation Act of 1902, the basis of the program being debated here today and yesterday, was designed to reclaim arid western land at public expense in an effort to increase our productive food base as well as provide homes for people. Since this was a publicly supported program, authors of the act hoped to limit the benefits through acreage limitation and offering the program to as many individuals as possible. Furthermore, the act was designed to discourage speculation in western lands at public expense. Representative Francis G. Newlands, of Utah, sponsor of the 1902 Reclamation Act, outlined this policy behind the program very well. He said:

> The very purpose of this bill is to guard against land monopoly and to hold this land in small tracts for people of the entire country, to give each only the amount of land that will be necessary for the support of a family.

The issue before the Senate today, Mr. President, is whether we should reaffirm or reject those original worthy goals. I submit that the reclamation policy established by Congress in 1902 is still sound policy today. In fact, it is this fundamental policy which provides the foundation and the strength of the entire reclamation program. Certainly, the reclamation program is in need of updating. To be sure, agriculture has changed over the past several years. Larger acreages are required for efficient farming operations. The Senate Energy and Natural Resources Committee bill, however, is overly generous in its expansion of the reclamation law's acreage limitations.

On this question, I believe the Senate must seriously examine whether the law's acreage limitation is being expanded to accommodate changes in family farming operation or we are changing the limitations merely to accommodate large corporate operations, which are grossly out of compliance with existing law.

I hope the Senate would not lose sight of the polestar consideration of this debate. That is providing irrigation assistance to those farmers in the arid West who cannot afford to develop the needed water to sustain an ever-increasing demand upon the agricultural sector of this Nation. Concern for the prosperity of the family farm

is not merely a romantic attachment to the past. The trend toward larger farms threatens the opportunity for owner-operated farming in rural areas. Small communities in the Western States are based upon family farm operations and those communities prosper when earnings from the neighboring land are spent on goods and services purchased in the local area. Our Nation has an important need to maintain the economic viability and values of our rural communities and the Federal irrigation program has fostered these goals.

Mr. President, narrow arguments that the Federal reclamation program must now be expanded to support large corporate farming interests certainly overlook the major policy issue at stake in this debate. The Federal reclamation program exists to provide water for farmers in an effort to sustain the opportunity for individuals and the quality of life in our communities, which has been important to this Nation's past and is even more important to its future. Such goals of the reclamation program remain steady and important today.

Mr. President, I come before the Senate today to urge my colleagues to seek only to strengthen the initial goals of the reclamation laws. We must insure that Federal irrigation assistance will continue to encourage family farm development and the viability of rural communities. Rather than change the law only to bring into compliance a very small number of large corporations who have been violating the law, the Senate must seek changes in this law to make sure that we have a viable economic unit using Federal irrigation water.

This is a Federal subsidy which must be targeted to the most needy of the reclamation farmers. In most instances, without this Federal assistance, agricultural production so important to our economic and international trade would either drop or be taken up by monopolistic agribusiness interests. We must insure that our reform of the reclamation law will be a fair distribution of this Federal subsidy. We must insure that the program does not subsidize those businesses which already have the competitive edge in terms of resources and capital.

Mr. President, as many in this body are aware, the Department of the Interior has, under a Federal court order, developed regulations to implement the requirements of the 1902 Reclamation Act. Those regulations must go into effect later this fall unless the Congress enacts changes to the reclamation law. A draft environmental impact statement was prepared prior to implementation of those regulations.

It is interesting to this Senator that the Department's EIS has demonstrated that only 2.5 percent of the Nation's reclamation farm operations are in excess of 960 acres. This remaining 2.5 percent of farm operations controls 31 percent of the land in the reclamation program. Included in this small percentage of operations in excess of 960 acres are the 435 largest operations, which control 1.6 million acres, or nearly 20 percent of the entire western land under the Federal irrigation program.

Who are the owners of some of these large operations in the program? To name a few, there is the Southern Pacific Land Co., which owns about 107,000 acres; the J. G. Boswell Co., which owns some 100,000 acres; the Slayer Land Co., which owns about 29,000 acres; Tenneco West, Inc., which owns about 64,000 acres; Chevron USA, Inc., which owns about 13,000 acres; and Getty Oil Co., which owns about 4,000 acres.

Two years ago, when this body debated this very same matter, then-Secretary of the Interior Andrus noted that, for example, the Kings River district had 10 of the largest landowners owning a total of over 200,000 acres, about 20 percent of the land served by Federal irrigation water. In Westlands Water District, the top 10 landowners own over 180,000 acres out of about 575,000 acres in that district.

I cannot support the committee's bill without amendments to bring the measure in line with the purpose and intent of the reclamaton laws.

Several approaches to the acreage limitation have been suggested. Recently, the most frequently discussed proposal would limit the availability of this Federal subsidy by placing economic disincentives in the law. The committee's bill, for example, imposes a so-called full cost concept on acreage above the limitations established in the bill. The House measure also imposes a similar, although not identical, full cost concept to excess lands in return for the delivery of Federal irrigation water.

Certainly, in these recent days, Washington has become preoccupied with finding new revenue sources. Facing the largest Federal budget deficits in history, it is tempting to turn each piece of legislation into a new source of Federal revenues. However, the Congressional Budget Office has indicated that this program will not be a moneymaker of any significance. In light of the estimated insubstantial budget impact of the committee bill, I am concerned that the important goals of the program are being lost sight of behind the thin veil of revenue gains.

I do realize that this full cost measure is an effort to provide a cost recovery aspect to the reclamation program. The administration has certainly been supportive of finding revenues in each and every possible legislative proposal in an effort to offset the $100 billion-plus deficit projected under the President's budget for this next fiscal year.

I believe, however, that the cost recovery measure in this bill is only cosmetic. It is a thin veil disguising the true nature of the committee's bill. It is being used to bait unsuspecting Members into believing that it will be fine to expand Federal irrigation assistance to profitable, corporate agribusiness interests because "they will pay for it."

Mr. President, the Congressional Budget Office has indicated that, at best, the committee's full cost proposal will provide additional annual receipts of $10 to $12 million.

In beating the politically popular full cost drum, the committee's bill diverts the attention of Members from the fact that the bill's primary purpose is to stretch the law out to cover those special interests which have been out of compliance for many years. Rather than propose that those out of compliance must meet the requirements of the law, the bill changes the law to recharacterize those special interests as now being in compliance. Rather than reject those who have flouted that law, the bill would endorse these past abuses by amending the reclamation law to accommodate those abuses.

Mr. President, irrigated agriculture continues to be the principal aspect of the reclamation program. We must not lose sight of that fact. We must not allow ourselves to be sidetracked by secondary issues.

The very heart of Federal assistance to irrigated agriculture has been the acreage limitation. Unfortunately, due to neglect and procrastination on the part of the Congress, a uniform and diligent enforcement of the law has not been made and special interests have resisted compliance with the law.

I believe that the most effective approach to limiting this Federal subsidy is to simply "cap," if you will, the eligible acreage. Under the committee's proposal, full cost recovery is practically nonexistent since the excessive expansion of the acreage limitation brings nearly all of the special interests now in noncompliance, within the law. Furthermore, those large corporate operations which are in excess of the committee's limitations can "buy" into the program by paying for construction costs with a full cost interest charge. This is no limitation at all but, rather, merely provides an economic disincentive for those unable to afford full cost. Such an approach merely suggests that the Federal irrigation assistance program is not for the family farmer but for anyone without limitation, as long as they can afford to pay.

Mr. President, the amendment which I offer to S. 1867 is designed to be a "family farm" amendment to place a cap of 960 acres on the amount

of land, owned or leased, which is eligible to receive Federal irrigation water. My proposal is plain and simple. No Federal water will be delivered at all above the 960-acre limit. Of course, this is class I land, and equivalency will provide adjustments for differences among the various Western States.

I do not believe that the acreage limitation needs to be expanded as generously as the Energy Committee's recommended 2,080 acres. The House-passed bill has set a limit of 960 acres. Two years ago former Interior Secretary Andrus supported a limit of 960 acres. This year, Secretary Watt has recommended a limit of 960 acres, although coupled with unlimited leasing. In Secretary Watt's December 10, 1981, statement to the Energy Committee he flatly indicated that "at some point a landholding can be too large to fit within the traditional farm concept," and he recommended that "a landholding above 960 acres should not be granted an unlimited Federal subsidy."

Expanding the acreage limitation beyond 960 acres exceeds the bounds of the reclamation law's initial purpose: To aid family farms which cannot afford to provide for their own irrigation system. Any changes in the 1902 act should only reflect adjustments in acreage to sustain a viable economic family farm. Anything beyond the 960 acreage limit only stretches the law to accommodate past abuses by special interests which have sought to avoid the law over the past years. Changes to the 1902 act are needed, but must strengthen the initial purposes to prevent land speculation at public expense, to distribute the benefits as widely as possible, and to encourage family-sized farms. These goals are valid yet today and worthy of support.

As recent public outcrys against the so-called safe harbor tax leasing proposals have indicated, the American public is in no mood to have the Federal Government subsidize large, profitable corporations.

This amendment is designed to maintain Federal assistance to irrigated agriculture in the 17 Western States, while targeting this program to those family-sized farm operations which truly need Federal help in sustaining viable, productive agricultural operations in these arid States. Rather than expand the reclamation law merely to bring into compliance those special interests which have fought the reclamation laws limitations over the past several years, my amendment seeks only to update the acreage limitations to make sure that we are supporting a viable economic unit consistent with the law's purpose to aid the family farm which cannot afford to pay for an irrigation program.

An acreage limitation of 960 acres of class I land, or its equivalent, is not unduly restrictive.

This limitation is adjusted for the various classes of land that would come under the act. This equivalency concept would translate into acreages which are larger than the 960 limitation for class I land to allow for differences in productive capacity, growing season, and other important factors. Average equivalency figures provide some insight into this adjustment. Considering the four classes of land that would be administered by the Secretary of the Interior under the irrigation assistance program, averages of these four classes have been worked out by the Bureau and provide some perspective on this matter.

For example, under a class I limitation of 960 acres, the actual limitation for the Pacific Northwest which includes the States of Washington, Oregon, and Idaho, would be about 1,368 acres. In the Michaud Flats project in Idaho, this would actually mean a limitation of about 1,623 acres. For the upper Colorado region which encompasses Colorado, Wyoming, and Utah, the actual limitation would be around 1,400 acres. In the upper Missouri region which includes South Dakota, North Dakota, Montana, and Wyoming, the limit would be about 1,535 acres. In the lower Missouri region which includes Kansas and my State of Nebraska, the limit would be about 1,229 acres. In California, the equivalent acreage would be around 1,265 acres. I cite these figures only to show that the 960 acre limitation proposed in my amendment is not nearly as restrictive as some would lead us all to believe.

In addition, Mr. President, my amendment would prohibit unlimited leasing.

Leasing has historically been one of the principal devices used by large landowners for avoiding the acreage limitations in the past. Although no specific provisions of the 1902 reclamation law addresses the issue of leasing, it was the intention of the law that the acreage limitation not be circumvented through this device. An acreage limitation is no limitation if unlimited leasing provides for the delivery of Federal water above and beyond the intended restrictions.

I do know, as a reclamation State Member, that leasing is an important means of entry for new farmers as well as a good way to provide some extra income to a small farmer.

It is this aspect, providing opportunity for new farmers, which the acreage limitation is aimed at providing and protecting. If we allow a monopoly on land holdings, if we permit the expansion of the acreage limitation without meaningful limits on leased lands, we effectively reduce the opportunities for new farmers.

Leasing, as I have noted, has an important role in the reclamation program, but its place must be carefully limited.

The amendment which I offer today, would permit a qualified recipient to own or lease acreage in any combination up to the 960 acre limitation. I believe that this approach provides the flexibility needed for farmers to adjust the size of their farming operations for the purpose of maintaining an economic unit that will provide the margins necessary to survive the many uncertainties in farming.

The allowance of unlimited leasing, even at full cost as the committee's bill would propose, is no limitation at all for those who can pay so-called full cost. This is a limitation however, on those small farmers who cannot afford to pay the full cost price. This disincentive, as the committee would so characterize this proposal, is only a disincentive to those whom the Reclamation Act was originally intended to benefit.

A simple cap on the total number of acres, owned and leased, which may be served with Federal reclamation water, would more clearly draw the line and express the Congress intent that this program is not unlimited, but rather, is for assisting the family farmer who cannot afford to build his own irrigation system.

Mr. President, I would hope that the Senate will support this approach. Further, I would hope that the Senate would agree that the objectives of the Federal reclamation law are still valid purposes which should be maintained. Let the Senate go on record for strengthening the law to continue irrigation assistance to the family farmer and to insure a fair distribution of this limited Federal subsidy. During the debate on this bill, the Senate will choose between encouraging self-reliant family farmers or modern feudal landlords; agricultural production or land speculation; rural communities or company towns; lifetime commitments to the land or short-term capital gains. The choice is ours.

Mr. President, I reserve the remainder of my time.

Mr. ZORINSKY. Mr. President, I support the amendment by my junior colleague from Nebraska. S. 1867 makes several important changes in the existing reclamation law. However, one of the most notable changes is the new acreage limitation. Existing law allows any individual to own up to 160 acres of land and receive project water.

There is no question that the 1902 act needs to be reformed. This is especially true concerning acreage limitation. Our country—and our agriculture—has changed dramatically since 1902. In 1902, for an individual to own up to 160 acres of land and receive

project water was a reasonable law. However, in 1982 the 160-acre limitation is outmoded. This limit is not operative in today's agricultural economy and it should be increased to provide a decent standard of living for reclamation land farmers. On that point there is general agreement among those who know and understand the agricultural economy in the reclamation States.

However, the question is "by how much should the old 160-acre limitation be changed." I believe that the combined limit of 2,080 acres owned or leased is too generous. A cap of 960 acres on the amount of land, owned or leased, which is eligible to receive Federal irrigation water is a much more reasonable and sensible approach to reclamation acreage limitation reform. The combined limit of 2,080 acres would help to destroy the Federal reclamation program which was aimed at promoting and sustaining family-size farms in the 17 Western States. The 1902 act was formulated for development of the family farm. The intent of Congress was to spread the benefits of federally subsidized water as widely as practical among family-sized farms.

In establishing a new acreage limitation to reflect current and anticipated agricultural economics, I believe it is important that we do not abandon the policy for which the basic reclamation law was enacted. The lower limit of 960 acres would be sufficient for nearly all ongoing farm operations.

The combined limit of 2,080 acres would reverse the family farm foundation of current reclamation law, and encourage the consolidation of farm operations. It would also violate the express intent of Congress contained in the 1981 farm bill that "no agricultural-related program be administered in a manner that will place the family farm operation at an unfair economic disadvantage."

Therefore, I strongly support a 960-acre limitation. Current farm practices indicate that 2,080 acres is entirely too generous. Reclamation reform must recognize modern agricultural practices without forgetting the original purposes for the Reclamation Act. The 960 acres is just and reasonable—it is a limitation that is fair for today's farmer without doing any injustice to our future agricultural needs.

Mr. EXON. Mr. President, how much time do I have remaining on my half hour?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. EXON. Three minutes remaining. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I rise in opposition, obviously, to the amendment of the Senator from Nebraska.

The Senate yesterday had an extensive and wide-ranging debate on the issue of acreage limitations in the pending reclamation reform bill. During the debate on the two Lugar-Proxmire amendments, the distinguished Senator from Nebraska, Senator EXON, indicated he would propose another formulation of acreage limitation to replace the provisions in the bill.

At the outset of the debate on his amendment, I thank him on behalf of the committee, and I am sure, on behalf of other Senators for his cooperation last evening in laying before the Senate his amendment. This is critical and it is time-sensitive legislation. The Senator knows well that there is a court order which requires that it either be changed or be implemented according to the 1902 law. I do not think any of us would care to see this country's agriculture thrust into that kind of a turmoil.

I appreciate his assistance in laying before the Senate his amendment last night to be the pending business at the early hour this morning, because it facilitates the business of getting on with the bill.

I also wish to say that the committee recognizes the very strong and continuing interest that Senator EXON has had in reclamation reform legislation. In that light I am certain his amendment is offered in a constructive spirit, and I think we all recalled his enthusiastic participation in the 2-day debate of similar legislation, S. 14, in the fall of 1979 during the last Congress.

Having made these genreal remarks regarding the Senator's participation in the debate, I am compelled to turn to the substance of his amendment in a much less complimentary way.

In fact, on the merits of that amendment I can only be extremely critical of the philosophy behind it.

The criticism is based on the comparison of the Exon amendment to the committee bill before the Senate, and also in comparison to the two amendments offered by Senators LUGAR and PROXMIRE yesterday which this Senate overwhelmingly rejected by votes of 39 to 58 and 56 to 39 on tabling.

Let me, if I may, proceed to summarize the more troubling elements of the Exon amendment, and to compare it if we will to those we rejected yesterday so overwhelmingly in the Senate. I guess the first question that arises is whether this is an economic measure or a matter of social legislation.

I think the Senator's remarks here indicate that this is no longer and can no longer be considered an economic one. It is entirely one of philosophy.

It places an absolute limit on farm sizes of 960 acres. By so doing it encourages inefficient operations. It would prohibit leasing above the cap and provide for no full cost recovery of water in any of these projects.

The bill's primary purpose as reported by the committee has been misrepresented, I think perhaps unknowingly, by the Senator from Nebraska. The primary purpose of that bill is to make family farming a viable enterprise so that people do not have to use it as supplemental income to whatever jobs they have in town.

The primary purpose of that bill is to reflect an environmental impact statement prepared under the Democratic administration which shows optimum farm size efficiencies ranging up to 2,941 acres in Moon Lake, Wash.

The primary purpose of the bill is to say to farmers on reclamation projects that you can indeed make a living as a farmer—and not as a farmer-welder, not as a farmer-clerk, not as a farmer-post office employee, not as a farmer-something else, but as a farmer, and as a family farmer. That is what we sought to achieve.

Some areas and some farmers with small families may well be able to make a living with 960 acres. There is nothing to force them into a larger acreage holding. If you have a family in the farming business and they have two or three children, sons and daughters who marry and want to go into farming as a lifetime career, under the Exon amendment that is simply not possible to do in the reclamation project. I do not think it is the Senator's desire to do that. When the kids grow up and marry, 960 acres is not going to support four families or three families or probably two families, a father and his wife, son or a daughter and her husband or his wife.

That is really what is at issue here, not some kind of punitive thing. The Senator speaks with sinister language of special interest and other things. My special interest is in seeing to it that someone who lives and farms and seeks to have his family grow in a reclamation district, as farmers elsewhere in America, is capable of conducting that life fully, wholly and completely in agriculture if that is his choice. That is simply not possible under the terms of the amendment of the Senator from Nebraska.

From the taxpayers' standpoint it provides no relief, as most other have suggested including the committee, that is necessary for the absolute subsidy if such exists in the delivery of irrigation water.

It also provides for two classes of farmers in America: Those who happen to be on farms in reclamation districts and those who happen to farm elsewhere, and those who may be lucky enough to share in some of the benefits the State of Nebraska delivers to people with its water storage projects.

I ask the Senator if the State of Nebraska has an absolute farm size cap on State water projects?

Mr. EXON. No, the State of Nebraska does not have. We do not have the excessive corporate farming operations in Nebraska and those contributing are less selfish in their approach than what appears to be under the bill.

Mr. WALLOP. With all due respect, let us talk about these corporations and these sinister groups that the Senator mentioned.

There is no district now, to the knowledge of the Senator from Wyoming, where those "in excess" landholdings, particularly the ones that the Senator talked about, Westlands, are not under recordable contracts which stipulate under that contract, that those excess lands be disposed of within 10 years. The Secretary of the Interior is given absolute power of attorney to sell those lands if they are not disposed of. What the Senator is talking about, is a threat that no longer exists. That is the problem I have. While we raise those up as a specter for the rest of the Senate to fear and to suppose, and that somehow or another, if we do not deal with them, these processes will go on under the committee bill. Under the court order and under the recordable contract, those corporations are done in their large and excessive landholding.

One of the problems, and one of the reasons why this process takes 10 years, is if they had simply disposed of those landholdings overnight those farmers who lease from them would have been out of business overnight. The large segment of the population that farms in those areas would simply have been put out of business by an unreasonable court decision or by an unreasonable administrative decision. We should strive to keep those leaseholders in farming, and get them into some kind of position where they might be able to buy those landholdings.

I might say these very corporations, of which the Senator speaks, are now under recordable contracts would have substantially completed the disposal of those lands by now had it not been for the delay caused by the court decision and the court's consideration.

So those are the specters, which are truly formidable if they are real, but they are merely specters, they are chimeras, they do not exist.

What we are talking about now are real family farmers, family corporations, and others who can exist and can survive as families farming in districts in which they grew up.

The Nebraska water deliveries reflect a rational, reasonable approach of a State whose primary industry is agriculture. It is one of the great agricultural States of the Nation. They are doing what we seek to do with these projects, simply make family farming survivable.

The editorial writers who pose as reporters for the Washington Post simply have not studied these kinds of issues in detail. One of the problems some people have—and I said it yesterday and I will say it again—is when they live in an irrigation district that has been created under the reclamation law, whose lands once possessed water, and whose title to those waters still exists, have no means of getting it except through delivery systems built by the reclamation project.

Mr. President, it is not a question of how one does it. One is captive to the good or bad management of the Federal Government in the reclamation district in which you happen to live. It is a very troublesome thing to have water, own water, and not be able to get it because of mismanagement, poor management, or inefficient management. I dare say if the Senator takes a look at the cost of water developed in State projects in Nebraska versus any reclamation projects reasonably similar in the area, he will find that his State, as does mine, delivers water substantially cheaper and more efficiently, and with a good deal more cooperation between the farmers and the water district in which they operate than do any who live in the reclamation project.

I do not accuse the folks employed by the Bureau of malfeasance or anything else. They have other obligations given to them by this Government, which is not the case generally in the State water projects.

We are still trying to do something to farmers, create an inefficient class, create a class which can only earn its living partially in agriculture, take jobs from people who might work in tractor factories, farm machinery factories, or other kinds of manufacturing outlets or business outlets in the communities near which they farm.

It ought to be our purpose, it really ought to be our purpose, to assure the economic viability of farming, if it is within the reach of a family to do it.

In that draft EIS, where they studied those 18- to 20-odd districts, some of those farms have gross sales per acre as low as $34. Some of them have it as high as $1,100 or $5,000. That happens to be wine-growing areas in California. It is what makes, according to that impact statement, a farm of optimum efficiency. The factor which the Senator from Nebraska, I believe, fortunately and prudently includes, the factor of equivalency, will not take care of this distinction as it is drawn in the draft EIS.

The committee bill seeks not to provide great bountiful things for the large corporations and agribusinesses, but to make it simply possible for those who seek to have water from a reclamation district to farm a unit of sufficient economic viability so that can indeed be their profession, their career, and something to which their family can move on.

Under the amendment to the bill which the Senator from Nebraska proposes, a family cannot get water delivery if it owns in excess of 960 acres. That simply means either a couple whose children have grown have to move off their farm to make room for their children if they seek to farm, or tell their children to move and farm somewhere else.

I doubt seriously if that is the Senator from Nebraska's real purpose but I ask him to consider if that is not in fact the effect that his amendment would have.

We seek the same thing. I know his allegiance and his dedication to family farming, which is no different from mine. It is no different from that of any Senator from an agricultural State, who can appreciate the value of family farming to this country.

It is a question of definition. The economics, as the Senator admits, have been taken out of the argument by the amendment, therefore, it becomes a social policy concerning what makes a family farm of optimum efficiency and what makes it possible for families to continue to exist in the areas in which they grew up.

That, I suggest, would be damaged irreparably by the adoption of the amendment of the Senator from Nebraska. I hope this Senate will support the committee's position which provides for full cost recovery above the acreage limitations, which provides for efficient operation, which does not provide for an absolute farm limit of 960 acres leased or owned. Those are the points which the Senator ought to keep in mind.

The very reasons we rejected the Lugar-Proxmire amendment and the Proxmire-Lugar amendment are tenfold in play with the amendment of the Senator from Nebraska. I hope this Senate rejects that amendment, given the spirit in which it is offered. I know the philosophy from which it comes, which I respect and admire. I simply do not think it achieves what the Senator hopes it would achieve.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. HUMPHREY). Who yields time?

Mr. WALLOP. Mr. President, in the absence of anybody seeking the floor, I suggest the absence of a quorum, with the time charged to both sides.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have listened with great interest to my friend and colleague from Wyoming, for whom I have great respect.

Let me see if I can put this in perspective the best I can in the 2 or 3

minutes remaining of the time in effect as of now.

First, I speak for the family-sized farmers of Nebraska. I think I speak for the family-sized farmers of the Nation in proposing this amendment. I speak specifically for the official position of the Farmers Union and the National Grange, two of the most widely respected family-sized farm organizations in these United States.

I would like to submit for the RECORD, Mr. President, from the Department of the Interior, a document, entitled "Distribution of Farm Operations." I ask unanimous consent that it be printed in the RECORD.

There being no objection, the table ordered to be printed in the RECORD, as follows:

DISTRIBUTION OF FARM OPERATIONS AND ACREAGE BY SIZE OF FARMS, WESTWIDE

Size of farm operations	Number of farm operations	Cumulative percent	Irrigable acres		Cumulative percent
			Total	Mean	
1 to 160	35,498	74.5	1,948,320	55	23.0
161 to 320	5,810	86.7	1,343,859	231	39.0
321 to 640	4,494	96.1	2,013,683	448	62.8
641 to 960	607	97.4	487,420	803	68.6
961 to 1,280	399	98.3	433,463	1,086	73.7
1,281 to 1,920	396	99.1	605,275	1,530	80.8
1,921 plus	435	100.0	1,618,630	3,721	100.0
Total	47,638		8,450,651	177	

Mr. EXON. Mr. President, what this shows is that 97.4 percent of all of the farm operations under the national reclamation project are 960 acres or less.

I would also like to say, Mr. President, in response to the family size farm pleas that we are hearing, the Department of Interior report shows that, under the 960-acre limit on the proposed rules, farmers could achieve 95 percent of maximum efficiency in all of 18 districts, that is reclamation districts, and 98 percent efficiency in farming operations in all but two of these districts.

Yes, Mr. President, it is true that the 960-acre amendment that is before us is an amendment that would allow no one to receive Federal subsidies above and beyond that. It is also true, Mr. President, that there was a 160-acre limitation when this bill was originally written and passed in 1902.

I would simply say once again that going beyond the 960-acre limit, which I happen to feel is too high, but going beyond that is a subsidy to a very few large corporate landowners that should not be a part of the bill that we are seemingly about to pass. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. EXON. I reserve the remainder of my time.

Mr. McCLURE. Mr. President, how much time does the Senator from Wyoming have remaining?

The PRESIDING OFFICER. He has 11 minutes and 57 seconds.

Mr. McCLURE. Will the Senator yield 5 minutes to me?

Mr. WALLOP. I am happy to yield 5 minutes to the Senator from Idaho.

Mr. McCLURE. Mr. President, I think the issue is clearly stated. I do not think there is any disagreement on the basis of what it is the Senator from Nebraska seeks to achieve nor what the committee has sought to achieve. There is a difference of judgment of how much is enough and at what point do you cross the line and get into that which is too much.

I wish the Senator had been able to sit with me in the hearings that we held in some of the Western States and heard the working farmers come in to testify in support of an acreage limitation larger and more flexible than that which has been asked for in the amendment offered by the distinguished Senator from Nebraska. I say to the Senator that these were not large conglomerates, these were not oil businesses, they were not Arab sheiks, and they were not wealthy Dutch landowners. These were working men and women, families that live on the land, till the land, make their livelihood from the land, and support their families from the land. They were saying that the 1902 act is archaic.

One of the things that is a little perplexing to those of us who have grown up with this sort of thing and had to live with the Government as our landlord in the West, is that the 160 acre limitation was not a limitation on farm size as much as might have been thought by some people, because that meant 160 acres per farm family member.

As a practical matter, that meant 160 acres for the husband, 160 acres for the wife, 160 acres for each of the kids, 160 acres for each of the kids' wives, and so on. So the aggregation that many people will talk about as being a violation of the 160 acre limitation was really an adaptation of the 160 acre limitation to modern farm practices.

In 1902, if a farmer wanted to get out there—and believe me it is a hard business to break the land out of the sagebrush and get started, he would not make much money. Generally, it takes about the third generation of farmers to make any money at it. The first guy gets the sagebrush ripped out, the second guy gets the ditches put in, and the third guy finally makes a go of it.

But in 1902 it was a horse and a walking plow. As agriculture modernized, as it did across the West, they began getting mechanical equipment and it meant that they could farm more land. That is one of the miracles of agricultural production in this country, is that as they mechanized they became more efficient, just as was true in the industrial revolution in other sectors of our economy. The unit cost of production went up, but the total number of units increased dramatically and, as they increased dramatically, the unit cost of production went down. And, therefore, we have had abundant, and perhaps too abundant, cheap food for the American people, the greatest bargain in the world today, because of the miracle of the efficiency of the American farmer.

Now that miracle of efficiency did not just occur on nonreclamation lands, but it did not occur exclusively off the reclamation lands either. That meant the farmers had to buy more equipment and larger equipment and as they bought those tractors that are built in the eastern industrial sectors of this country, they had to buy more land and farm more land in order to effectively utilize the machinery they were forced to buy in order to stay competitive, and farm families increased in size.

At some point, we must recognize that what we are trying to do in this legislation is get away from the building-block concept that allows an almost infinite multiplication of 160 acre units depending upon how many members of the family you can get involved, to put a real cap on the size.

So much of this has come from the other side. So much of the discussion has been that you are quick to take the lid off. Well, I say to the Senator, we are trying to put a real lid on; a lid that is meaningful and real, not the kind we have had in the past; a lid

that says that this will be for a qualified entity, a qualified recipient, the real limitation.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McCLURE. Will the Senator yield 1 more minute?

Mr. WALLOP. I am happy to yield 1 additional minute to the Senator.

Mr. McCLURE. How you achieve that becomes another question. Incidentally, 2 years ago the Senate in passing S. 14 adopted a 1,280 acre limitation. We elected in the committee this time to say, "All right, you can own 1,280 acres." There is unlimited leasing under the present law. There is no limit at all under present law. We put a limit on leasing and we said, "If you own any more than that, if you lease any more than that, you are going to pay the cost of the money that the Government has invested for your share of that project for irrigation."

Now that seems to me to be reasonable. But too many people who have looked at this have looked at it as if we are trying to take the lid off. But we are trying to put a realistic, livable lid on for the working men and women that work on our Nation's farms. I have had a lot of Idahoans, who came in and testified in my hearings in Boise, who said, "Please, Senator, do not let the Government tell me how hard I can work." We had people who said, "Do not let the Government limit my capacity to increase my efficiency and prosper."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WALLOP. I yield 1 more minute to the Senator.

Mr. McCLURE. I have tried as best I know how throughout all of this debate to indicate that, as the Senator knows, there is a great deal of misunderstanding across the Eastern United States, perhaps, or at least in the urban centers of the country, about what farming is all about. But you know what the cost of a tractor is today. You know what the cost of equipment is today.

How does a young farmer get into this business? How does he buy the equipment that is necessary? If he is not lucky enough to be born into a farm family, how does he get started? He has to have a lot of debt. And in order to have that debt it had better be spread over several acres and it had better be allowed to be as efficient as possible or he simply is not going to make it in farming today.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. McCLURE. I thank the Senator for yielding.

Mr. WALLOP. Mr. President, what is the time situation?

The PRESIDING OFFICER. Four minutes and 30 seconds remain.

Mr. WALLOP. How much time remains to the Senator from Nebraska?

The PRESIDING OFFICER. Nine seconds.

Mr. WALLOP. Does the Senator from Nebraska wish to have a minute or so to summarize out of my time?

Mr. EXON. I thank my friend for his courtesy. I can summarize in 60 seconds, and if there is nothing further on that side, we are ready to go to a vote.

Mr. President, let me summarize in this fashion: It seems to me that we are talking about what makes up a family-size farm. If a family-size water-subsidized farm exceeds 1,568 acres in the State of Idaho and 1,400 acres in the State of Wyoming, then I think that is above and beyond what most of us would consider a true family-size farm operation.

I rest my case and hope that the Senate will accept the reasonable amendment I have offered.

Mr. WALLOP. Mr. President, I have a letter which I wish to read into the RECORD from the Department of the Interior, signed by the Assistant Secretary, Donald P. Hodel, dated July 15, 1982:

JULY 15, 1982.

Hon. JAMES A. McCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We understand that an amendment to S. 1867 may be offered by Senator Exon during the floor debate on the reclamation reform legislation. This amendment would strike the full cost provisions of the bill, as reported, and provide an acreage limitation cap at 960 acres. Above this limit, farms would not be able to receive any irrigation water under the reclamation program.

The Administration opposes the enactment of such an amendment.

We support the concept contained in S. 1867, as reported, that there should be some limitation on ownership above which water users pay full cost. The payment of full cost for excess lands will have the effect of removing the Federal subsidy associated with these lands, while still retaining the traditional farm concept. At the same time, this approach allows the farm operator the increased flexibility to expand his operation if he desires to do so.

Once an individual farm is paying for water at the full cost rate, we do not feel it is appropriate for the Federal Government to place absolute limitations on farm size. These are matters which should be left to the free market. When the Government has received full repayment, there would appear to be no justification for any further limitations.

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

Sincerely,

DONALD P. HODEL,
Secretary.

I will make one last observation. Two-thirds of the farmers the Senator from Nebraska identifies as being under 960 acres, are farmers who require supplemental income to their existence in order to make an adequate living for their families. What we seek is to make that number change upward from two-thirds, hopefully, to 100 percent.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Nebraska yield back his time?

Mr. EXON. I think my time has expired. If not, I yield it back.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

QUORUM CALL

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. METZENBAUM. Objection, Mr. President.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll.

The assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 38 Leg.]

Baker	Humphrey	Stevens
Exon	McClure	Symms
Goldwater	Metzenbaum	Wallop

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

The assistant legislative clerk resumed the call of the roll.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Senators and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays have been ordered and the clerk will call the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from Connecticut (Mr. WEICKER), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. PRESSLER) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Alabama (Mr. HEFLIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 81, nays 4, as follows:

[Rollcall Vote No. 219 Leg.]

YEAS—81

Abdnor	East	Melcher
Andrews	Exon	Metzenbaum
Armstrong	Ford	Mitchell
Baker	Glenn	Moynihan
Baucus	Goldwater	Nickles
Bentsen	Gorton	Nunn
Boren	Grassley	Packwood
Bradley	Hart	Pell
Brady	Hatch	Pryor
Burdick	Hatfield	Randolph
Byrd, Harry F., Jr.	Hawkins	Riegle
	Helms	Roth
Byrd, Robert C.	Hollings	Rudman
Chafee	Huddleston	Sasser
Chiles	Humphrey	Schmitt
Cochran	Jackson	Simpson
Cohen	Jepsen	Specter
Cranston	Kassebaum	Stafford
D'Amato	Kasten	Stennis
Danforth	Kennedy	Stevens
DeConcini	Laxalt	Symms
Denton	Leahy	Tower
Dixon	Levin	Tsongas
Dodd	Long	Wallop
Dole	Lugar	Warner
Domenici	Mathias	Zorinsky
Durenberger	Mattingly	
Eagleton	McClure	

NAYS—4

Garn	Proxmire
Johnston	Quayle

NOT VOTING—15

Biden	Heflin	Percy
Boschwitz	Heinz	Pressler
Bumpers	Inouye	Sarbanes
Cannon	Matsunaga	Thurmond
Hayakawa	Murkowski	Weicker

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

VOTE ON AMENDMENT NO. 1937

The question is on agreeing to the amendment of the Senator from Nebraska. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. EAGLETON (after having voted in the affirmative). Mr. President, on this vote I have a pair with the distinguished Senator from Nevada (Mr. CANNON). If he were present and voting, he would vote "nay." I have previously voted "aye." I withdraw my vote.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mr. HAYAKAWA), the Senator from Illinois (Mr. PERCY), and the Senator from South Dakota (Mr. PRESSLER) would vote "nay."

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Alabama (Mr. HEFLIN), and the Senator from Marlyand (Mr. SARBANES) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 22, nays 65, as follows:

[Rollcall Vote No. 220 Leg.]

YEAS—22

Bradley	Huddleston	Nunn
Burdick	Inouye	Pell
Chiles	Kennedy	Proxmire
Dixon	Leahy	Riegle
Dodd	Levin	Tsongas
Exon	Metzenbaum	Zorinsky
Hart	Mitchell	
Hollings	Moynihan	

NAYS—65

Abdnor	East	Mattingly
Andrews	Ford	McClure
Armstrong	Garn	Melcher
Baker	Glenn	Nickles
Baucus	Goldwater	Packwood
Bentsen	Gorton	Pryor
Boren	Grassley	Quayle
Brady	Hatch	Randolph
Byrd, Harry F., Jr.	Hatfield	Roth
	Hawkins	Rudman
Byrd, Robert C.	Helms	Sasser
Chafee	Humphrey	Schmitt
Cochran	Jackson	Simpson
Cohen	Jepsen	Specter
Cranston	Johnston	Stafford
D'Amato	Kassebaum	Stennis
Danforth	Kasten	Stevens
DeConcini	Laxalt	Symms
Denton	Long	Thurmond
Dole	Lugar	Tower
Domenici	Mathias	Wallop
Durenberger	Matsunaga	Warner

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Eagleton, for.

NOT VOTING—12

Biden	Hayakawa	Percy
Boschwitz	Heflin	Pressler
Bumpers	Heinz	Sarbanes
Cannon	Murkowski	Weicker

So Mr. EXON's amendment (No. 1937) was rejected.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. WALLOP. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to be proposed?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, I yield myself 5 minutes off the bill.

While Senators are here, I think it is important to know that we know of now only two additional substantive amendments. If Senators have other amendments, I do not mean to say that what they might offer would not be substantive; I simply say that the only amendments which now will be offered are two that Senators have been working on, one by the Senator from New York (Mr. MOYNIHAN) and one by the Senator from Michigan (Mr. LEVIN) whom I see now is on his feet.

I believe that we can dispose of the two aforementioned amendments. The Senate has been pretty expressive up to now as to what it sees contained within this bill and perhaps Senators might be able to go home for the weekend this afternoon. It all depends on the moods of others who may wish to carry the procedure on.

But the committee is quite prepared to continue debate until a final vote can be taken on the bill.

Mr. SYMMS. Mr. President, if the Senator will yield, when he says "go home," does he mean after passage of the bill?

Mr. WALLOP. Yes, I an referring to passage of the bill, I am assuming we can finish the bill within the early hours of the afternoon if the Senate is permitted to.

I also assume, from my conversations with the majority leader, that we will finish this bill before the weekend begins. So I would seriously hope we might be able to move it expeditiously.

If the Senator from Michigan is ready with his amendment, I am prepared to resume the debate.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, yesterday during the debate on the Bumpers amendment Senator BUMPERS mentioned the cost estimate prepared by the Congressional Budget Office on S. 60, establishing a competitive oil and gas leasing system within the Department of Interior. S. 60 was referred to the Energy Committee earlier this year but has not been the topic of hearings before that committee as of this time. As a result, neither the administration nor other interested groups has had the formal opportunity to air the issues involved in this bill.

The Congressional Budget Office prepares cost estimates on bills which are reported by the authorizing committees to the Senate, in which it analyzes the potential budget impact of the legislation. However, in this case, CBO prepared a cost estimate on a bill

which has not yet been reported by the committee at the request of Senator BUMPERS. As a result, the estimate is based solely on best available information to date. My staff has reviewed the cost estimate and believes that if all conditions assumed in the estimate were to occur, that the conclusions reached could result. However, I want to stress the point regarding assumptions based on best available information.

CBO notes within the cost estimate itself that:

It should be noted that any estimates of the acreage leased and the bonuses received are highly uncertain . . . For example . . . under the acreage assumptions specified, a $5 change in the bonus payment assumption would change the estimated gross Federal receipts by $270 million over the fiscal year 1983-87 period.

In addition, a recent GAO study on the same sort of competitive leasing approach contained in S. 60 concluded that "a competitive system might not bring in a significant amount of revenue and could actually not even offset losses in filing fees now obtained through noncompetitive leasing.

Mr. President, there are a number of uncertainties in trying to estimate the impact of a bill of this kind on the Federal Treasury. We do not know how the market would respond to a change in policy which has been in place since the 1920's. We do not know for sure what will occur in the oil market in the next several years which will undoubtedly have an effect on onshore leasing activity. We do not know if the assumptions regarding the number of tracts which are bid are overly optimistic. What I am saying, Mr. President, is that there are many unknown factors in just how this amendment would affect Federal receipts.

I want to reiterate that I have no criticisms as to the accuracy of the CBO cost estimate on S. 60. My purpose here is to underscore the many uncertainties involved. As I have already pointed out, CBO specifically includes a reference to these uncertainties within the cost estimate itself. These unknown factors and the fact that the proposal has not enjoyed the opportunity of examination through hearings and discussion should weigh into the consideration of this amendment.

UP AMENDMENT NO. 1093

Mr. LEVIN. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN) proposes an unprinted amendment numbered 1093:

At the end of the bill add the following:

SEC. 18. Within one year of the date of enactment of this Act, the Secretary of Agriculture, with the cooperation of the Secretary of the Interior, shall transmit to the Congress a report on the production of surplus crops on acreage served by irrigation waters. The report shall include:

(1) data delineating the production of surplus crops on lands served by irrigation waters;

(2) the percentage of participation of farms served by irrigation waters in set-aside programs, by acreage, crop, and state;

(3) the feasibility and appropriateness of requiring the participation in acreage set-aside programs of farms served by irrigation waters and the costs of such a requirement; and

(4) any recommendations concerning how to coordinate national reclamation policy with agriculture policy to help alleviate recurring problems of surplus crops and low commodity prices.

Mr. LEVIN. Mr. President, this amendment is a very straightforward amendment. It basically reflects the concern that I and others in this body have that we are using federally subsidized water to produce crops which, in other programs, we are paying people not to produce, crops that we already have in surplus, and because of the concerns that I have in that area I was going to offer an amendment which would restrict——

Mr. WALLOP. Mr. President, may we have order, please?

The PRESIDING OFFICER (Mr. ANDREWS). The point is well taken. The Senate is not in order. Those Senators wishing to converse and those staff members wishing to converse please retire to the cloakrooms.

Mr. LEVIN. Mr. President, because of that concern I was intending to offer an amendment which would place some limitation on the use of federally subsidized water to produce those crops where we have other programs in which we are paying people not to produce this very same crop.

During the course of this debate I discussed this matter with the managers of the bill. There are obviously complications in setting such limits, and rather than pursuing that amendment I have instead offered this pending amendment which will require the Secretary of Agriculture, in cooperation with the Secretary of the Interior, to report to us on both the production of surplus crops on acreage which is served by federally subsidized water, and this amendment sets forth what that report will include so that we can find out to what extent we are subsidizing water to grow crops which we already have in surplus in this country, and also as part of this amendment we will be receiving recommendations as to how to coordinate national reclamation policy with agricultural policy so that we avoid the anomaly of spending money to produce crops where we already have too many of those crops, and have to try to reduce their production in other parts of the country.

I thank the manager of the bill, both the managers of the bill and the members of the committee. I understand this amendment is acceptable to them.

Mr. WALLOP. Mr. President, I want to compliment the Senator from Michigan, both for the thrust of what he is seeking to do and the cooperative manner in which he discussed it with us.

One of the great problems we have is the breadth of season in this country. Surely anybody who was going to be required to participate in a set-aside would have to know this before his planting season begins. Planting season starts much earlier in the State of Texas than it does in the State of Wyoming. Somehow or other we are going to have to find out how to do that and what the effects are.

I compliment the Senator. The House has addressed this in a more stringent fashion. I believe the Senator from Michigan's proposal is much more effective, and the majority is willing to accept it.

Mr. GOLDWATER. Mr. President, will the Senator yield? I would like to know what crops the Senator from Michigan is referring to so that I might have a better idea of where irrigated land might be contributing to the surplus.

Mr. WALLOP. I will let the Senator from Michigan explain for himself if he disagrees with me, but I believe he is talking about those crops which would be designated by the Secretary of Agriculture as "in surplus." If there was a set-aside program, then the set-aside would be participated in by those receiving federally subsidized water. But what he is talking about is a study to determine the feasibility of this and the effect of irrigated crops on surpluses and other things.

There is nothing in the amendment which the Senator seeks except direct study by the Secretary of Agriculture and the Secretary of Interior.

Mr. GOLDWATER. I did not understand it only applied to the study. I thought it was immediately applicable to lands.

Mr. WALLOP. We would have a problem had that been the case because I do not know how we can do that, and I believe we cannot even consider it until we see the results.

Mr. GOLDWATER. When you are talking about surpluses you are talking about wheat and grain and items, such as that. Where we have irrigated land we do not grow that kind of crop.

Mr. WALLOP. I again state that I compliment the Senator and I appreciate what he has done, and as far as the majority is concerned, we are quite willing to accept the amendment.

Mr. JACKSON. Mr. President, I am pleased to associate myself with the remarks of the floor manager of the bill, Mr. WALLOP.

I, too, compliment my colleague from Michigan for offering this amendment. It covers an area where there has been a lot of discussion and not too much light on the subject. I hope that out of this study we will have some better answers to the questions that have been raised.

We have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment (UP No. 1093) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JACKSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1094

Mr. JACKSON. Mr. President, I call up an amendment which is at the desk, unprinted.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington (Mr. JACKSON) proposes an unprinted amendment numbered 1094.

Mr. JACKSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 27, line 23, strike "mortgage" and insert in lieu thereof the following: "debt (including, but not limited to, a mortgage, real estate contract, or deed of trust)".

On page 31, lines 6 and 7, strike "mortgage" and insert in lieu thereof the following: "a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust)".

Mr. JACKSON. This is a technical amendment to clarify the meaning of the term "mortgage," which is used at two places in the bill. It has come to my attention that farmers utilize security agreements such as real estate contracts or deeds of trust in addition to mortgages. I believe it was not the intention of the committee to treat these various security arrangements differently and therefore, I am offering this technical amendment to clarify that other mortgage-like security arrangements are to be treated in the same manner as mortgages.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Washington.

Mr. METZENBAUM. Mr. President, is it not the fact that on each amendment there is a half hour allocated for the proponents and a half hour for the opponents?

The PRESIDING OFFICER. The Senator is absolutely correct.

Mr. METZENBAUM. Has all time been yielded back?

Mr. JACKSON. I yield back my time.

The PRESIDING OFFICER. The time has not been yielded back on the amendment. The Senator from Washington yielded back his time.

Mr. WALLOP. The Senator from Wyoming would merely state he is willing to accept the amendment, and to simply says that the Senator from Washington is quite correct. The committee did not intend to distinguish between these various types of contracts and mortgages. I think it is a constructive addition, and I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back, and the question is on agreeing to the amendment of the Senator from Washington.

QUORUM CALL

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk resumed and concluded the call of the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 39 Leg.]

Andrews	Gorton	Mitchell
Baker	Jackson	Stennis
Cranston	Mattingly	Symms
Denton	McClure	Wallop
Goldwater	Metzenbaum	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absentees.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee (Mr. BAKER) to direct the Sergeant at Arms to compel the attendance of absent Senators. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from Virginia (Mr. WARNER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. PRESSLER) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Ohio (Mr. GLENN), the Senator from Alabama (Mr. HEFLIN), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 82, nays 4, as follows:

[Rollcall Vote No. 221 Leg.]

YEAS—82

Abdnor	Ford	Melcher
Andrews	Goldwater	Metzenbaum
Armstrong	Gorton	Mitchell
Baker	Grassley	Moynihan
Baucus	Hart	Nickles
Bentsen	Hatch	Nunn
Biden	Hatfield	Packwood
Boren	Hawkins	Pell
Bradley	Helms	Pryor
Brady	Hollings	Randolph
Burdick	Huddleston	Riegle
Byrd, Robert C.	Humphrey	Roth
Chafee	Inouye	Rudman
Chiles	Jackson	Sasser
Cochran	Jepsen	Schmitt
Cohen	Johnston	Simpson
Cranston	Kassebaum	Specter
D'Amato	Kasten	Stafford
Danforth	Kennedy	Stennis
DeConcini	Laxalt	Stevens
Denton	Leahy	Symms
Dixon	Levin	Thurmond
Dole	Long	Tower
Domenici	Lugar	Tsongas
Durenberger	Mathias	Wallop
Eagleton	Matsunaga	Zorinsky
East	Mattingly	
Exon	McClure	

NAYS—4

Byrd, Harry F., Jr.	Garn	Quayle
	Proxmire	

NOT VOTING—14

Boschwitz	Hayakawa	Pressler
Bumpers	Heflin	Sarbanes
Cannon	Heinz	Warner
Dodd	Murkowski	Weicker
Glenn	Percy	

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is present.

UP AMENDMENT NO. 1094

The PRESIDING OFFICER. The question is on agreeing to the Jackson amendment.

The amendment (UP No. 1094) was agreed to.

Mr. BAKER. I move to reconsider the vote.

Mr. JACKSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1095

(Purpose: To apply full cost pricing on certain Corps of Engineers projects with costs allocated to irrigation and conservation storage and for other purposes)

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I yield to the Senator from Ohio for a brief statement.

Mr. METZENBAUM. Mr. President, I did not know the Senator was on the floor. The Senator may go ahead.

Mr. MOYNIHAN. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an unprinted amendment numbered 1095.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 24, line 9, strike out the first comma and insert in lieu thereof a dash and designate the matter that follows as clause (1).

On page 24, line 14, strike out the period and insert in lieu thereof "; and".

On page 24, between lines 14 and 15, insert the following:

(2) any repayment contract entered into by the Secretary after the enactment of this Act, including any existing contract which is renewed, supplemented, or otherwise amended to grant supplemental or additional benefits shall provide for the payment of full cost as defined in subsection 2(b) for that portion of a landholding in excess of 960 acres: *Provided, however,* That operation and maintenance and contract administrative costs shall be adjusted annually.

(c) The Secretary shall submit to Congress not later than one year following the enactment of this Act a detailed plan which provides for the repayment of costs allocated to irrigation storage or conservation storage at water resources projects constructed by the Army Corps of Engineers. Such plan shall indicate for each project how the Bureau of Reclamation intends to recover the cost allocated to conservation storage and irrigation storage and shall include detailed estimates of revenue resulting from existing and probable future contracts pursuant to the changes in law made by this section.

(d) The Inspector General shall submit to Congress not later than one year following the enactment of this Act a detailed report of the actual distribution of benefits among project purposes relative to the original cost allocations for each of the projects constructed by the Army Corps of Engineers and exempted from the application of reclamation law pursuant to subsection (a) of this section. Such report shall include recommendations to the Secretary on administrative, regulatory, and/or statutory means of adjusting cost allocations for operation and maintenance to more accurately reflect the actual utilization of the project.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. I thank the Chair.

Mr. President, I can state the purpose of this amendment with brevity and, I hope, clarity. As the distinguished Presiding Officer knows, there a number of organizations in the U.S. Government which involve themselves with water projects. Of those, there are at least three. Their practices vary somewhat considerably, and have done so for the longest period of time. The initial enterprise of the Federal Government was, of course, the Bureau of Reclamation and it has as its primary purpose the reclaiming, as the title says, of the desert land of the Middle and Far Western States for purposes of agriculture use. Any schoolchild of the late 19th century, looking at a map of our country, would have seen, not very far west of the Mississippi, a brownish area on the map that would extend all the way to the Rocky Mountains, entitled "The Great American Desert."

It was, of course, the purpose of Theodore Roosevelt in proposing the Bureau of Reclamation to turn that desert green and, indeed, that has been done in one of the miracles of our Nation. This has also been the case beyond the Rocky Mountains where, with even greater fecundity, the heat traps of the valleys in eastern California have been made immensely productive.

Mr. President, it is an enormous benefit that has accrued to persons for whom public water is made available through public works. From the beginning, there has been a sense that these benefits should only apply to persons farming limited acreages and also that there should be a recovery of cost. In the most elemental sense, the benefit comes about from projects too large for any individual to undertake, but the benefit is real and paying back is normal and is equitable. There ought not to be a class of citizens especially favored by Federal expenditures as against those who must pay for those favors.

I congratulate the managers of the legislation before us. The Reclamation Reform Act of 1982 does, indeed, address itself to abuses in acreage and abuses in repayment that have begun to offend more than just a small portion of the American public.

I rise, Mr. President, for the purpose of bringing equity and consistency to the Federal water programs to the degree that the Corps of Engineers carries out water projects which provide irrigation benefits.

This amendment proposes that the same acreage limits apply and the same cost recovery processes apply.

I do this as the ranking member of the Subcommittee on Water Resources of the Committee on Environment and Public Works. It is part of the disbursal of these reponsibilities in the Government that is reflected in our committee system also.

The Bureau of Reclamation is, of course, a particular responsibility of the Committee on Energy and Natural Resources, once known as the Interior Committee, established for the purpose of making the great American desert green. It has gone on to other matters, but it has held on to its earlier water resources development function in the Bureau of Reclamation statute confined to 17 States.

The Soil Conservation Service, when I last located it, was in the Department of Agriculture and it carries out irrigation projects, too. And, finally, the first of all these enterprises is the great and honored and world famous Corps of Engineers, which has constructed from its founding in the first decade of the 19th century most of the major water projects of our country, most of the great dams of our country.

Mr. President, our purpose is simply to say that where the Corps of Engineers has developed a water resource and there are irrigation benefits and there are costs allocated by the corps—for example, 35 percent of the benefits can be ascribed to arise from the irrigation activities—that those costs should be recovered by the same acreage limits and the same repayment formula that would apply to the Bureau of Reclamation.

I bring this matter to the floor simply because the Energy Committee has jurisdiction over the Bureau. It does not have jurisdiction over the corps. Our committee does. I am on the subcommittee and ranking member of the group that actually oversees corps projects.

We have the object of equity and consistency. This is the same purpose which has animated the distinguished Senator from New Mexico, Senator DOMENICI, and I in the general water legislation we have had before this body for 3 years now.

The simple proposition is that local cost-sharing and interest rates should not vary among projects providing the same kind of benefits.

I might offer the analogy of "judge shopping," as lawyers sometimes say, trying to find a judge more likely to give a favorable verdict. We ought not to have irrigation programs available from different parts of the same Federal Government, spending moneys from the same Federal budget but with this particular program free of any cost repayment requirement—that one requiring partial cost, this one requiring full cost. The principle of equity suggests consistency.

A multipurpose project built by the Corps of Engineers which provides flood control benefits is indistinguishable as far as the flood control aspects of a project from a multipurpose project built by the Bureau of Reclamation.

If the Federal Government establishes a policy that requires local sponsors of flood control to pay 35 percent of construction costs during construction, it is only fair and equitable to apply that policy to the three Federal agencies that construct flood control projects which are, of course, the Army Corps of Engineers, the Bureau of Reclamation, and the Soil Conservation Service.

The Reclamation Reform Act raises the question of Federal pricing policy on projects providing irrigation and storage of water. This amendment simply applies the policy adopted by the Committee for Bureau of Reclamation projects to a limited number of corps projects whose original authorizing statutes required the repayment of construction costs allocated to irrigation.

I make the point that these projects are very limited in number, that the overwhelming impact of this amendment will be prospective; it has to do with future projects.

The committee bill exempts 37 corps projects from the application of reclamation law and another 20 corps projects will remain under reclamation law. Among the 37 projects exempted, a total of 20 had irrigation costs specifically allocated at the time of project authorization.

Now, the total cost of the 37 projects amounted to some 232 million nominal dollars, and many of these projects were built in the late 1940's, early 1950's. They would cost more today, of course. Of the $232 million reimbursable to the Federal Government under the existing practice of excluding any interest charge and allowing the users 40 years to pay, only $70 million has been brought under contract and only $18 million has been repaid.

Mr. President, this is not an attractive story. Contracts were provided and payment was not made or scarcely made in some cases.

Among the 11 projects in the Willamette River Basin, for example, only $2 million in repayment contracts have been signed, although $45 million was allocated to irrigation and reimbursable to the Federal Government under the statute authorizing the projects.

Of the $2 million in repayment contracts that have been signed, only $185,000 has been repaid.

Mr. President, there is a limit to the great barbecuing that is going on out there. In that Willamette Basin, there are 11 projects, $45 million in benefits, $185,000 in payments. There are harsh words for this kind of behavior, and I am not going to use them, because I believe that the committee has recognized this principle with respect to the Bureau of Reclamation. I simply ask that the same principles apply to the Corps of Engineers.

We do not want States or localities shopping around for the opportunity not to meet the clear understanding of these contracts, of an obligation to repay for benefits received, and repay in very generous terms, and in some cases a smaller group not pay at all.

Mr. President, I believe that the managers of the legislation know that this have very little retrospective impact, only in cases where there have been changes in the original contract and benefits have accrued as part of the change. This simply brings into harmony the practices of the corps with those which will now be the practices of the Bureau of Reclamation.

Section 8 of the committee bill exempts certain Corps of Engineers projects from the application of reclamation law. My amendment does not in any way alter this exemption. The committee also specified that all repayment obligations on these Corps of Engineers projects would continue to remain in effect. My amendment supports this provision. It will not impose any contractual obligations on users of corps projects which are not required under existing law.

On a number of Corps of Engineers projects along the Columbia and Missouri Rivers, private irrigators receive permits from the corps to withdraw water from the reservoirs. These users meet three conditions: The private diverter possesses valid water rights under State law, the diversion does not interfere with the operation of the project, and the same quantity of water was available before the project as after the project.

These users have no repayment obligations under existing law. My amendment will not impose any obligations on these users. My concern is only with those corps projects that have construction costs specifically allocated to irrigation. For these projects, the repayment obligation of irrigators who contract with the Bureau of Reclamation to use the project is established by the statue authorizing the project. This is the law. My amendment does not expand this obligation.

Under my amendment, if an existing contract is amended or renewed in such a way as to provide additional or supplementary benefits, and full cost is applied to land above the limit, it is my extent that the calcuation of full cost only should apply to the remaining balance on the principle of construction costs. In no way do I intend to apply full cost pricing retroactively on principle already paid by the irrigator. If an irrigation district has paid out its share of construction costs, it will not be subject to the full cost provisions unless additional project features are added.

In preparation for this debate, I wrote letters of inquiry to Secretary of Interior James G. Watt and Director of Civil Works of the Army Corps of Engineers Gen. E. R. Heiberg III. I ask unanimous consent to have printed in the RECORD a summary of the information provided to me.

The material provides, in the most specific detail, the information about the projects that would be affected and those that would not. I also ask unanimous consent to have printed in the RECORD a table from a report of the National Water Commission issued in June 1973. It very graphically shows the absolute chaos of the Federal practices with respect to cost sharing on flood protection, navigation, hydroelectric power, municipal and industrial water supply, irrigation, water quality, recreation, fish and wildlife enhancement. It is medieval in its complexity and variance, and obviously the managers of the measure would like to see some consistency, which they are right in seeking. I should simply like to bring the Corps of Engineers under the general rubrics which they establish.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ADDITIONAL INFORMATION ON CORPS OF ENGINEERS PROJECTS EXEMPTED BY S. 1867 AND MOYNIHAN AMENDMENT

A. Exempt projects:

The Committee bill exempts 37 Corps projects from the application of reclamation law (Table I).

Another 20 Corps projects will remain under reclamation law (Table II).

Among the 37 projects, a total of 20 projects had irrigation costs specifically allocated at the time of project authorization.

B. Repayment status of exempt projects:

Total cost of the 38 projects amounted to $232 million in nominal dollars. Many of these projects were built in the late 1940s and early 1950s.

Of the $232 million reimbursable to the Federal government under the existing practice of excluding any interest charge and allowing the users 40 years to repay, only $70 million has ever been brought under contract and $18 million has been repaid.

Over $17 million of the $18 million came from payments by irrigators in the San Joaquin Valley using the Pine Flat, Success, Terminus and Isabella dams.

Among the 11 projects in the Willamette River Basin, only $2 million in repayment contracts have been signed although $45 million was allocated to irrigation and reimbursable to the Federal government under the status authorizing the projects. To date, $185,000 has been repaid.

CORPS PROJECTS EXEMPTED FROM RECLAMATION LAW UNDER S. 1867

* 1. Cottage Grove (OR)
* 2. Dorena (OR)
* 3. Fern Ridge (OR)
* 4. Blue River (OR)
* 5. Fall Creek (OR)
* 6. Detroit-Big Cliff (OR)
* 7. Lookout Point (OR)
* 8. Hills Creek (OR)
* 9. Cougar (OR)
* 10. Green Peter-Foster (OR)
* 11. Wynooche Lake (WA)
12. Lower Granite (WA)
13. Little Goose (WA)

14. Lower Monumental (WA)
15. Ice Harbor (WA)
16. Willow Creek (OR)
17. Cascadia (OR)
18. Holley (OR)
19. Gate Creek (OR)
20. John Martin (CO)
* 21. Trinidad (CO)
22. Almo (AZ)
* 23. Belton (TX)
24. Tat Momolikot (AZ)
* 25. Pine Flat (CA)
* 26. Terminus (CA)
* 27. Success (CA)
* 28. Isabella (CA)
29. Coyote Valley (CA)

MAINSTEM COLUMBIA AND MISSOURI PROJECTS

* 1. Fort Peck (MT)
* 2. Garrison (ND)
* 3. Oahe (SD)
4. Big Bend (SD)
5. Fort Randall (SD)
6. Gavins Point (SD)
7. John Day (OR)
8. McNary (OR)

CORPS PROJECTS INTEGRATED WITH RECLAMATION PROJECTS (NOT EXEMPT FROM RECLAMATION LAW UNDER S. 1867)

1. Harlan County (NE)
2. Kanopolis (KA)
3. Wilson Lake (KA)
4. Applegate (OR)
5. Ririe (ID)
6. Lost Creek (OR)
7. Lucky Peak (ID)
8. Elk Creek (OR)
9. Days Creek (OR)
10. Catherine Creek (OR)
11. Canton (OK)
12. Conchas (NM)
13. Waurika (OK)
14. Santa Rosa (AZ)
15. Black Butte (CA)
16. New Hogan (CA)
17. Buchanan (CA)
18. Folsom (CA)
19. New Melones (CA)
20. Hidden (CA)

(* Denotes projects with costs allocated to irrigation.)

DESCRIPTION OF STUDIES REQUIRED BY MOYNIHAN AMENDMENT

The amendment will require the preparation of two reports. The first requires the Secretary of Interior to set forth a plan on how reimbursable costs will be recovered on the exempt projects not yet covered under repayment contracts. This will not apply to projects where all allocable construction costs are already under contract or indeed have been paid.

The second report will be submitted to Congress by the Inspector General of the General Accounting Office. The GAO is required to examine the actual distribution of benefits from each of the 37 projects and compare such a distribution to the original allocation of costs for the project. The Inspector General is required to make recommendations to Congress on how the cost allocations should be adjusted to then update the annual operation and maintenance charges to the project's beneficiaries.

CALIFORNIA PROJECTS

The exemption of the 37 projects is traced back to the difficulties of four California projects: Pine Flat, Success, Terminus, and Isabella. The Energy Committee did not receive testimony on the other 33 exempted projects during its hearings on S. 1867.

For three years before these projects were authorized in 1944, Congress and the President debated whether the Corps of Engineers or the Bureau of Reclamation should construct and operate the projects. Some in Congress characterized the projects as essentially for flood control although they admitted the projects has substantial irrigation benefits. Others, including the Secretary of Interior Harold Ickes, believed that there were primarily irrigation projects and therefore reclamation law should apply.

By the time the projects were authorized by Congress as Corps projects, it seemed as if a compromise had been reached: the Corps would design and construct the projects and the Bureau of Reclamation would apply reclamation law and contract with the beneficiaries for the repayment of construction costs. However, the large landholders owned all water rights and therefore had no intention of surrending lands in return for use of a Federal project. Although the projects would provide substantial flood control and irrigation benefits, they were not indispensable as far as actual irrigation water supply was concerned.

The application of reclamation law has been in doubt since 1944. Litigation commenced in 1963 and is still going on. S. 1867 and the Moynihan amendment exempt the four controversial California projects from the application of acreage limitation. The Federal government has been repaid for most of its construction costs, albeit without interest:

	Amount reimbursable	Amount repaid to date	Balance due
Pine Flat	$14,260,000	$11,461,798	$2,798,702
Terminus	2,688,000	1,169,502	1,518,007
Success	1,329,000	541,277	788,008
Isabella	4,576,000	4,576,000	0

PROJECTS OUTSIDE OF THE RECLAMATION STATES

My amendment is not intended to affect any Corps of Engineers projects in the states outside the reclamation states. I insert for the RECORD a copy of the policy on repayment now followed by the Corps.

DEPARTMENT OF THE ARMY, OFFICE OF THE CHIEF OF ENGINEERS

WATER RESOURCES POLICIES AND AUTHORITIES
DIGEST OF WATER RESOURCES POLICIES

17-6. *Irrigation.*

a. *Storage.* Storage of water for irrigation on agricultural lands, whether to meet the entire needs or to supplement natural supplies, may be provided. Section 8 of the Flood Control Act of 1944 provides that Corps reservoirs may include the irrigation purpose upon the recommendation of the Secretary of the Interior in conformity with Reclamation Law. Section 8 also provides that the Secretary of the Interior may provide needed irrigation works to make use of irrigation storage. The Chief of Engineers considers that Section 8 applies only in the 17 western states to which the Reclamation Law applies.

b. *Cost Sharing.* The Corps of Engineers considers that, outside of the 17 western states, a non-Federal public entity should be required to assume one-half of the costs of reservoir capacity allocated to irrigation. This policy is analogous to the established Corps policy for reclamation by drainage. It is identical to the position adopted by the Department of Agriculture for reservoir capacity allocable to irrigation. However, the total costs of storage allocated to provisions for future irrigation and municipal water supply combined should not exceed the 30 percent of total reservoir costs stipulated in the Water Supply Act of 1958. The non-Federal entity requesting irrigation capacity as a project purpose should provide a firm expression of intent to use and pay for such storage, should obtain necessary water rights, or their equivalent, from the state, and possess legal power to contract with the Federal government. Non-Federal interests are required to assume responsibility for 100 percent of the O&M costs allocated to irrigation.

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

Hon. JAMES G. WATT,
Secretary of the Interior,
Washington, D.C.

DEAR SECRETARY WATT: Following the Memorial Day recess, the Senate will commence debate on S. 1867, the Reclamation Reform Act. As the ranking minority member of the Water Resources Subcommittee of the Committee on Environment and Public Works, I am particularly interested in Section 8 of the bill regarding the exemption of certain Corps of Engineers projects from both the acreage limitation and the repayment provision of the reclamation law.

While the concern of various witnesses and the Administration seems to be strictly with the application of the acreage limitation, the Committee bill also exempts certain Corps projects from "other provisions of the Federal reclamation laws." Nowhere in the Committee record can I find a statement estimating the loss of revenue in repayment obligations, existing or future, that may result from this total exemption from all the terms of the reclamation law to certain beneficiaries of Federally-provided irrigation water.

For example, this may include projects for which the Bureau of Reclamation has the authority under the 1944 Flood Control Act to market irrigation water but for which it has not entered into repayment contracts by the date of enactment. Moreover, Section 8(b) appears to preserve all existing contracts. However, if these contracts were to be renegotiated or otherwise amended, their status would seem uncertain at best under the terms of S. 1867. Subsection 8(a)(1) covers projects whose authorizations provide explicit statutory authority to apply reclamation law, but what might be the effect on those projects for which Congress assumed the 1944 Flood Control Act would apply?

The Corps of Engineers has provided me with some information on the projects affected by Section 8 of S. 1867, but they indicated that the Bureau would be in a better position to fill in the necessary details for most of the projects. I therefore request that the enclosed tables be completed, and in addition, that the effect of the Section 8 language on existing and future repayment obligations be explained for each project. You will note that the project list provided by the Corps does not coincide with the list included in your Department's reply to Senator Jackson's December 18, 1981 letter.

If the issues of acreage limitation and repayment obligations are to be treated separately, then some judgement must be made as to the appropriate cost of the water received by irrigation beneficiaries of Corps projects. Under the terms of S. 1867, the concept of "full cost" is introduced into reclamation law for the first time. How might

it apply to repayment of future obligations by users of Corps of Engineers projects in the absence of an acreage limitation requirement?

Given the likelihood of Senate debate on S. 1867 after the Memorial Day recess, I would hope that the information I have requested could be provided no later than June 7th. Should there be any difficulty in meeting this deadline, please inform me in advance.

Thank you for your assistance and cooperation.

Sincerely,

DANIEL PATRICK MOYNIHAN.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, D.C., June 4, 1982.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOYNIHAN: Thank you for your May 26, 1982, letter to Secretary of the Interior James G. Watt requesting information regarding the exemption from the provisions of Reclamation law that would be provided to Corps of Engineers projects by Section 8 of S. 1867 as reported by the Senate Energy and Natural Resources Committee. Your request is directed primarily to the effect of the exemption provided in this section on the existing or future repayment obligation of the irrigation water users to pay costs of Corps projects allocated to irrigation. You also request information concerning the Corps projects which would be exempt from the acreage limitation provisions of Reclamation law under S. 1867 and the application of the "full cost" principle provided in the bill to Corps projects which would be exempt from acreage limitation. You enclose a list of Corps of Engineers projects which was supplied to you by the Corps for which you request this information.

In regard to the existing and future repayment obligations for costs of Corps projects allocated to irrigation, it is our understanding and belief that Section 8(b) of S. 1867 would continue in effect the provisions of law requiring the repayment of costs of Corps of Engineers projects allocated to irrigation. While we do support the exemption of Corps of Engineers projects from the acreage limitation provisions of Reclamation law under certain circumstances, we do not believe that irrigation beneficiaries from Corps projects should be relieved of paying the irrigation costs associated with those projects. We understand that it was the intent of the Senate Energy and Natural Resources Committee in including language in its report on S. 1867, Senate Report No. 97-373, on page 12, to assure that these obligations to pay these irrigation costs continue in effect. The Senate report states as follows: "Section 8 was amended to delete a subsection which created ambiguity in the exemption for Corps of Engineers projects, and to add a clarification to continue obligations for the repayment of certain construction, operation, maintenance and administrative costs allocated to conservation or irrigation storage." Similar language is in the report of the House Interior and Insular Affairs Committee on H.R. 5539, House Report 97-458, page 20, dealing with the provision exempting Corps of Engineers projects from Reclamation law.

We construe Section 8(b) of S. 1867 to assure that the Secretary of the Interior's authority to contract with water users for irrigation water supplies from Corps of Engineers projects continues in effect and is not inhibited in any way. Obligations of water users to pay costs associated with irrigation water service from Corps projects under existing contracts would continue as would obligations of water users to pay such costs that might be assumed under future contracts. In our judgment the provisions of S. 1867 dealing with Corps of Engineers projects would not reduce the repayment that would be received by the United States from water users for costs of Corps projects allocated to irrigation or conservation storage.

We have reviewed the list of Corps of Engineers projects you submitted with your letter and have noted the status of each project insofar as the application of Reclamation law to each project under S. 1867. We have noted the status of each Corps project on the attached list under S. 1867 by a series of footnotes explaining the conditions which apply.

In regard to the application of the "full cost" principle provided in S. 1867 to Corps of Engineers projects, we believe this principle would apply to Corps projects in the same manner as it would apply to Reclamation projects. If a project is exempt from acreage limitation, there is no excess land in that project; therefore, there would be no application of "full cost" to any water deliveries. If a Corps project is exempt from acreage limitation by provisions of S. 1867, it is our view that the "full cost" pricing provisions of the bill would not be applicable to that project.

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

Sincerely yours,

ROBERT N. BROADBENT,
Commissioner.

TABLE I—STATUS

Project name	Authorized	Construction in progress	Project completed	Project under study	USBR status
Missouri River Division					
Fort Peck			X		(3)
Garrison			X		(3)
Oahe			X		(3)
Harlan County			X		(4)
Kanopolis			X		(4)
Big Bend [1]			X		(3)
Fort Randall [1]			X		(3)
Gavins Point [1]			X		(3)
North Pacific Division					
Days Creek		X			(4)
Cottage Grove			X		(5)
Dorena			X		(5)
Fern Ridge			X		(5)
Blue River			X		(5)
Fall Creek			X		(5)
Elk Creek [2]		X			(4)
Applegate			X		(4)
Catherine Creek		X			(4)
Ririe			X		(4)
Willow Creek		X			(5)
Lost Creek			X		(4)
Cascadia		X			(5)
John Day			X		(3)
Detroit-Big Cliff			X		(5)
Lookout Point			X		(5)
Hills Creek			X		(5)
Cougar			X		(5)
Green Peter-Foster			X		(5)
Holley		X			(5)
Gate Creek		X			(5)
McNary			X		(3)
Southwestern Division					
Canton			X		(4)
Conchas			X		(4)
John Martin			X		(5)
Waurika			X		(4)
Trinidad			X		(5)
Santa Rosa		X			(4)

TABLE I—STATUS—Continued

Project name	Authorized	Construction in progress	Project completed	Project under study	USBR status
South Pacific Division					
Black Butte			X		(4)
New Hogan			X		(4)
Buchanan			X		(4)
Hidden			X		(4)
Pine Flat			X		(5)
Terminus			X		(5)
Success			X		(5)
Isabella			X		(5)
Coyote Valley			X		(5)

[1] Accommodate water withdrawal by permit, irrigation use not allocated.
[2] Construction stopped in 1975. Current activity limited to updating and continuing design, plans, and specifications so construction can be resumed.
[3] The Department of the Interior has established the policy in respect to private irrigation diversions from Corps of Engineers reservoirs on the mainstem of the Columbia and Missouri Rivers that Reclamation law will not apply when such diverter's water supply is not dependent at any time upon the existence and operation of the Federal project facilities and the diverters would have an assured water supply for irrigation without the Federal project. A copy of this policy statement is attached. In administering this policy it is necessary to determine if the private diverter holds a valid natural-flow water right under State law, whether the quantity of water under the water right would be available for diversion without the Federal project whenever needed for irrigation, and whether the diversion interferes with the operation of the Federal project. At the present time there are no contracts in effect for diversions of water by private irrigators from Corps reservoirs on the mainstem of the Columbia and Missouri Rivers. In our opinion all existing diversions from these rivers are covered by the policy indicated above. It is our view that under S. 1867 the private irrigation diversions from these reservoirs would not be subject to the acreage limitation provisions of Federal Reclamation law.
[4] Projects authorized, under construction or in operation by the Corps of Engineers and are or will be integrated with Federal Reclamation projects. Reclamation law dealing with repayment of irrigation costs and acreage limitation apply and will continue to apply under S. 1867 when projects are intergrated with Reclamation projects.
[5] Authorized or constructed and operated by the Corps of Engineers. Projects are not and will not be integrated with Federal Reclamation projects. Under S. 1867 irrigation water deliveries from these projects will not be subject to acreage limitation. Irrigators are or will be required to contract and pay for irrigation water made available to them from the Corps projects.

[Memorandum]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 27, 1970.

To: The Secretary.
From: Assistant Secretary—Water and Power Development.
Subject: Policy declaration on private irrigation projects on Federal reservoirs.

Uncertainties in the minds of private irrigators along Federal reservoirs in both Columbia and Missouri River Dam systems have required a clear policy enunciation concerning the application of Federal Reclamation Law to the private diversion of water. To remove these uncertainties the enclosed letter has today been sent to the Governors of the ten affected States. Copies of the letters to the Governors have been sent to the affected Congressional delegations. A news story will be released on Tuesday, April 18, a copy of which is enclosed.

The letter states in essence, that when a private irrigator has a valid natural flow water right which entitles him to an assured supply of water during the entire irrigation season he is not a beneficiary of the Federal project and thus not subject to Federal Reclamation Law (i.e., primarily the 160-acre limitation).

Conversely when any part of his water supply is dependent on Federal storage project he is a beneficiary and thus subject to Federal Reclamation Law.

JAMES R. SMITH.

SALE OF WATER FOR NONPROJECT IRRIGATION PURPOSES FROM CORPS OF ENGINEER RESERVOIRS—MISSOURI RIVER BASIN

Associate Solicitor, Reclamation and Power, finds the following conclusions are required by applicable law:

1. Under state and federal law the right to the use of waters stored in mainstem reser-

voirs of the Corps of Engineers cannot be acquired without the consent of the United States unless such right was acquired prior to the construction of such reservoirs.

2. Stored water in Corps reservoirs, to the extent otherwise available, may be sold by the Secretary of the Interior for nonproject irrigation use for a charge to include a share of that part of the construction cost allocated to irrigation and the operation and maintenance charge.

3. The Federal Reclamation Laws, including the "excess land" provisions, will apply to contracts with the Secretary of the Interior for the sale of nonproject irrigation water.

Cases:

Arizona v. *California*, 373 U.S. 546. (1963).

Ashwander v. *Tennessee Valley Authority*, 297 U.S. 228 (1936).

Turner v. *Kings River Conservation District*, 360 F. 2d 184 (9th Cir. 1966).

United Stated v. *Corlach Live Stock Co.*, 339 U.S. 725 (1950).

East Side Canal & Irrigation Co. v. *United States*, 76 F. Supp. 836 (C. CI. 1948).

Van Tasel Real Estate & Live Stock Co. v. *Cheyenne*, 49 Wyo. 333, 54 P. 2d 906 (1936).

Bailey v. *Tintinger*, 45 Mont. 154, 122 Pac. 575 (1912).

Federal Land Bank v. *Morris*, 112 Mont. 445, 16 P. 2d 1007 (1941).

Opinion: 41 Op. Atty. Gen. 377 (1958).

Legislation and Reports:

Act of August 3, 1968 (Pub. L. No. 90-453).

Act of December 22, 1944 (58 Stat. 887).

Act of August 4, 1939 (53 Stat. 1187).

H. Doc. No. 163, 90th Cong., 1st Sess. (1967).

S. Doc. No. 247, H. Doc. No. 475, S. Doc, No. 191, 78th Cong., 2d Sess. (1944).

Hearings on H.R. 4485 before House Comm. on Flood Control, 78th Cong., 2d Sess. (1944).

S. Dak. Code §§ 61.0106, 61.0102 (7), 61.0121, 61.0123 (1960 Supp. Vol. I).

N. Dak. Code Ann. § 61.0403 (1960).

Mont. Code Ann. §§ 89-808 to 812 (1947).

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 27, 1970.

Hon. FRANK L. FARRAR,
Governor of South Dakota,
Pierre, S. Dak.

DEAR GOVERNOR FARRAR: As you have been previously advised, the Department has had under intensive review the question of whether the water service contract provisions of Federal reclamation law, including requirements relating to repayment charges and acreage limitation, apply to private irrigation diversions (those diversions undertaken and financed independent of Federal reclamation law) from main-stem Corps of Engineers dams and reservoirs on the Missouri River and on the Columbia River Systems. The Corps' dams and reservoirs on the main stem of the Missouri were constructed under authority of the Flood Control Act of 1944. The Columbia and Snake Rivers dams, with the exception of Bonneville, which is not affected here, were constructed under authority of the Rivers and Harbors Acts of 1945 and 1946, and the Flood Control Act of 1950.

The question concerning applicability of Federal reclamation law to water for irrigation purposes obtained from these projects by either private diversions or federally authorized and financed projects derives from Section 8 of the Flood Control Act of 1944 and the interpretation of that section by then Attorney General Rogers in his decision of December 15, 1958, concerning the Isabella and Pine Flats reservoirs on the Kern and Kings rivers, respectively, in California. Section 8 as enacted by the Congress provides that hereafter, whenever it is determined that, ". . . any dam and reservoir project operated under the direction of the Secretary of War may be utilized for irrigation purposes, the Secretary of the Interior is authorized to construct, operate, and maintain, under the provisions of the Federal reclamation laws . . ." the works he considers necessary for such purposes and that, "Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes only in conformity with the provisions of this section, . . ."

The Attorney General has held in the decision mentioned above that construction of special irrigation works, such as a distribution system, is not a prerequisite to application of the Federal reclamation requirements. On the basis of the foregoing, we necessarily conclude that all irrigation diversions from Corps dam and reservoir projects affected by Section C of the 1944 Act must be examined and evaluated as to the applicability of Federal reclamation law.

Having reached this conclusion, it is necessary to determine the circumstances which require the application of Federal reclamation law, including payment and land limitation contracting provisions, to privately financed irrigation diversions from those Corps of Engineers' reservoirs. In this respect, it seems obvious that in any case where a private divertor's assured water supply is dependent, in whole or in part, on the existence of Federal project facilities, he must be required to enter into a water service contract with cost repayment provisions as required by Section 9(c) of the Reclamation Project Act of 1939 and be subject to the land limitation provisions of Section 5 of the Reclamation Act of 1902 and Section 46 of the Omnibus Adjustment Act of 1926.

In administering the law, therefore, it will be necessary to determine in each case of private diversion whether the quantity of water to be diverted is covered by valid natural-flow water rights derived under State or other applicable laws and regulations, and whether that quantity would in fact be available for diversion at all times needed for the irrigation of the lands upon which it is proposed to be put to beneficial use, independent of any Federal project facilities. If the finding is that the diverter's water supply is not dependent at any time during the irrigation season upon the existence or operation of Federal project facilities, and if the diversion does not interfere with the authorized purposes of the Federal project, the diverter will not be restricted, nor will he be required to enter into a contract with the Secretary of the Interior under reclamation law.

Whenever the finding is that the diverter's water supply is dependent on project facilities, the diverter will be required to enter into an appropriate contract with the Secretary of the Interior. In the latter case, the contract will treat with availabilities of water, rates of payment of an equitable portion of the construction and operation and maintenance costs of the project irrigation features, availability of and rates for irrigation pumping power, limitation on the acreage of land eligible to receive water, and other matters as required by reclamation law and policy.

In neither case will the diverter be relieved of the requirement for obtaining an appropriate permit from the Corps of Engineers for crossing reservoir right-of-way with irrigation works.

The above information has been furnished to those on the enclosed list.

Sincerely yours,

JAMES R. SMITH,
Assistant Secretary of the Interior.

INTERIOR ANNOUNCES POLICY REGARDING PRIVATE IRRIGATION FROM CORPS OF ENGINEERS PROJECTS

Only those irrigators obtaining water from Corps of Engineers reservoirs in the Missouri River Basin and Columbia River Basin systems whose supply is dependent upon existence of Federal project facilities are subject to the provisions of Federal reclamation law, the Department of the Interior has announced.

James R. Smith, Assistant Secretary of the Interior for Water and Power Development, informed the Governors of the Missouri River Basin and Pacific Northwest States of the findings resulting from an intensive legal review of the matter.

The review dealt with the question of whether the provisions of Federal reclamation law, including requirements relating to repayment charges and acreage limitation, should apply to irrigators who divert water from Corps of Engineers dams and reservoirs in the two basins and whose diversion and distribution facilities are constructed and financed independently of Federal authorization.

"It has been determined that the provisions of Federal reclamation law do not apply to a private irrigator when the water to be diverted is covered by a valid natural-flow water right under state law, and whose water supply is not dependent at any time during the irrigation season upon the existence or operation of Federal project facilities," Assistant Secretary Smith said.

"Of course, the diversion must not interfere with the authorized purpose of the Federal project.

"On the other side of the picture, whenever there is a finding that the diverter's water supply is dependent on project facilities, the diverter will be required to enter into a contract with the Secretary of the Interior as provided by reclamation law."

The requirement that a diverter obtain an appropriate right-of-way permit from the Corps of Engineers for crossing U.S. Government-owned reservoir share lands will continue to apply in all cases. The permit will contain a stipulation that its issuance does not preclude the Secretary of the Interior from requiring the diverter to enter into a water service contract.

In the course of the review conducted by the Solicitor of the Interior Department, the office of Assistant Secretary Smith, and the Bureau of Reclamation, meetings were held in Omaha, Nebraska, and Portland, Oregon, in January and February with representatives of the governors of the states in the the two basins.

MAY 4, 1982.

Gen. E. R. HEIBERG III,
Director of Civil Works, Army Corps of Engineers, Washington, D.C.

DEAR GENERAL HEIBERG: The Administration is supporting legislation moving through the House and the Senate that would substantially amend the provisions of the 1902 Reclamation Act. In both the House bill, H.R. 5539, and the Senate bill, S. 1867, a provision has been included to

exempt Corps of Engineers projects from the repayment requirements and acreage limitations of the Reclamation Act.

I would like to know more about the Corps projects affected by this proposed legislation. In particular, how much repayment revenue will be foregone, how much was the Federal investment for water storage allocated to irrigation, and how many irrigation users benefit from the project?

This information is absolutely essential to the debate on the merits of the proposed legislation. As you know, a central issue in amending the Reclamation Act is the magnitude of the Federal subsidy. I am concerned that the Corps of Engineers' projects may be exempted from repayment requirements and acreage limitation in the absence of any firm data on how much money is at stake and who may be the beneficiaries of the exemption policy.

Although the Senate Energy Committee has not filed its report on the bill, the full Senate debate on S. 1867 could proceed within weeks. Thus, I would hope that the Corps could provide this information as soon as possible but not later than May 14, 1982. To make matters more simple, I have enclosed a table suggesting the data I believe to be of value.

I thank you for your assistance and look forward to hearing from you shortly.

Sincerely,

DANIEL PATRICK MOYNIHAN.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., May 18, 1982.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOYNIHAN: I am responding to your recent letter requesting information on the impact current proposed legislation amending the 1902 Reclamation Act may have on U.S. Army Corps of Engineers projects.

It is general Corps policy to apply Reclamation law to those projects in the 17 Western states which have irrigation as an authorized purpose. In those projects, the Corps generally receives from the Bureau of Reclamation (USBR) the need for and value of irrigation to be used in project formulation and justification. After the project becomes operational, the irrigation feature is normally turned over to USBR so it can market the water in accordance with its policies and procedures. For this reason, the Corps records on repayment requirements and irrigation beneficiaries are limited.

Your letter asked three specific questions which I will address as follows:

a. How much repayment revenue will be foregone? We cannot answer this question because only the USBR can ascertain what the current unrecovered irrigation revenues might be. In addition, because of the language of Section 104(c) of S. 1867, it is not at all clear which of those Corps projects including the irrigation function, might be subject to exemption from Reclamation law.

b. How much was the Federal investment for water storage allocated to irrigation? The dollar value computed from Table II for completed projects is about $290 million and the current estimated dollar value for those projects currently under construction from Table III is about $9 million. As indicated by the footnotes, however, the "total" amount is unknown.

c. How many irrigation users benefit from the project? The Corps limited information on this question is identified in Tables II and III. In order for you to get a complete answer to this question, it will be necessary for you to contract the USBR.

You also requested we provide certain specific information in tabular form. This information is attached in Tables, I, II, and III. The projects listed are those Corps projects in the 17 Western states which contain irrigation storage space or from which irrigation water is withdrawn.

I hope this information will suffice for your purpose. If I can assist you further, please let me know.

Sincerely,

E. R. HEIBERG III,
Major General, USA,
Director of Civil Works.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D.C., June 18, 1982.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOYNIHAN: This is in further reply to your letter of May 4, 1982, concerning the impact that current proposed legislation (S. 1867) amending the 1902 Reclamation Act may have on U.S. Army Corps of Engineers projects.

In my earlier letter of May 18th, because of time constraints, I was unable to provide a positive response to your question on how much repayment revenue would be foregone should the proposed bill become law. Since then, the Office of Chief Counsel has reviewed the provisions of Section 8 of S. 1867, as reported by the Senate Committee on Energy and Natural Resources on April 29, 1982, and concluded that enactment of the section would not result in the United States foregoing any intended repayment revenues for water storage allocated to irrigation anywhere in the United States. Its enactment would, moreover, simply clarify, confirm, and leave unaltered the particular circumstances of Corps project irrigation use where specific Federal statutes and commonsense dictate that reclamation law requirements should be applicable.

I have also used this time to provide more complete information on the three tables previously furnished. These revised tables, dated June 11, 1982, are inclosed.

Sincerely yours,

E. R. HEIBERG III,
Major General, USA,
Director of Civil Works.

TABLE I.—STATUS

Project name	Authorized not under construction	Construction in progress	Project: Completed	Project: Under study
Missouri River division:				
Fort Peck			X	
Garrison (L. Sakakawea).			X	
Oahe			X	
Harlan County			X	
Kanopolis			X	
Big Bend[1]			X	
Fort Randall[1]			X	
Gavins Point[1]			X	
Wilson			X	
North Pacific division:				
Days Creek	X			
Cottage Grove			X	
Dorena			X	
Fern Ridge			X	
Blue River			X	
Fall Creek			X	
Elk Creek[2]		X		
Applegate			X	
Catherine Creek	X			
Ririe			X	
Willow Creek		X		
Lost Creek			X	
Cascadia	X			
Wynoochee			X	
John Day			X	
Detroit-Big Cliff			X	
Lookout Point			X	
Hills Creek			X	
Cougar			X	
Green Peter-Foster			X	
Holley	X			
Gate Creek	X			
McNary			X	
Lower Granite			X	
Little Goose			X	
Lower Monumental			X	
Ice Harbor			X	
Lucky Peak			X	
Southwestern division:				
Canton			X	
Conchas			X	
John Martin			X	
Waurika			X	
Trinidad			X	
Belton			X	
Santa Rosa (Los Esteros).		X		
South Pacific division:				
Black Butte			X	
New Hogan			X	
Buchanan			X	
Hidden			X	
Pine Flat			X	
Terminus			X	
Success			X	
Isabella			X	
Coyote Valley (L. Mendocina).			X	
Folsom			X	
Tat Momolikot (Santa Rosa Wash).			X	
Alamo			X	
New Melones			X	

[1] Accommodate water withdrawal by permit, irrigation use not allocated.
[2] Construction stopped in 1975. Current activity limited to updating and continuing design, plans, and specifications so construction can be resumed.

TABLE II.—COMPLETED PROJECTS

Project name	Year authorized	Year completed	Total cost of project (thousands)	Total Federal cost (total cost less reimbursables) (thousands)	Acre-feet of storage reserved for irrigation: Percent	Acre-feet of storage reserved for irrigation: Total storage (J—joint, S—specific)	Percent of project cost allocated to irrigation	Approximate number of irrigation beneficiaries	Amount reimbursable under existing reclamation law (thousands)
MISSOURI RIVER DIVISION									
Fort Peck	1944	1944	$159,900	$48,602	72.0	[1] J13,649,000	21.5	USBR (1) [2]	[3] $34,185
Garrison (Lake Sakakawea)	1944	1955	294,915	86,692	73.0	[1] J17,560,000	19.9	USBR (13) [2]	[3] 58,688
Oahe	1944	1962	344,571	91,216	72.0	[1] J16,789,000	18.1	USBR (110) [2]	[3] 62,367

TABLE II.—COMPLETED PROJECTS—Continued

Project name	Year authorized	Year completed	Total cost of project (thousands)	Total Federal cost (total cost less reimbursables) (thousands)	Acre-feet of storage reserved for irrigation: Percent	Acre-feet of storage reserved for irrigation: Total storage (J—joint, S—specific)	Percent of project cost allocated to irrigation	Approximate number of irrigation beneficiaries	Amount reimbursable under existing reclamation law (thousands)
Harlan County	1941	1952	46,971	35,416	18.0	$150,000	24.6	USBR	[3] 11,555
Kanopolis	1938/44	1948	12,577	12,577	37.0	[5] $162,000	([5])	USBR	([3])
Big Bend [6]	1944	1964	107,187	3,708		0	0	(68) [2]	([7])
Fort Randall [6]	1944	1953	198,066	70,004		0	0	(67) [2]	([7])
Gavins Point [6]	1944	1955	49,231	13,504		0	0	(20) [2]	([7])
Wilson	[8] 1944	1964	20,015	20,015	29.0	J225,000	0	([9])	([7])
NORTH PACIFIC DIVISION									
Cottage Grove	1938	1942	2,460	NA		([10])	30.0	([10])	746
Dorena	1938	1949	14,305	NA		([10])	38.0	([10])	5,514
Fern Ridge	1938	1941	4,686	NA		([10])	43.0	([10])	2,014
Blue River	1938	1969	31,324	NA		([10])	27.0	([10])	8,490
Fall Creek	1938	1965	21,055	NA		([10])	40.0	([10])	8,372
Applegate	1962	1981	96,320	93,437	76.0	J65,000	2.1	124	2,063
Rinie [11]	1962	1978	38,230	32,463		USBR	15.1	Less than 100	5,767
Lost Creek	1962	1977	148,546	113,410	70.0	J315,000	1.5	Less than 100	2,179
Wynoochee	1962	1972	24,980	5,260	25.0	J14,900	2.0	0	575
John Day	1950	1968	[12] 511,000	112,075		0	0	0	0
Detroit-Big Cliff	1938	1953	66,867	21,187		([10])	7.6	([10])	5,076
Lookout Point	1938	1955	97,473	49,575		([10])	1.5	([10])	1,465
Hills Creek	1938	1962	48,973	26,931		([10])	9.4	([10])	4,593
Cougar	1950	1964	60,462	38,738		([10])	5.4	([10])	3,274
Green Peter-Foster	1950	1967	90,157	34,142		([10])	6.9	([10])	6,196
McNary	1945	1957	[12] 333,231	64,996		0	0	0	0
Lower Granite	1962	1975	[12] 341,804	76,531		0	0	0	0
Little Goose	1945	1970	[12] 63,850	2,382		0	0	0	0
Lower Monumental	1945	1968	[12] 256,618	51,744		0	0	0	0
Ice Harbor	1945	1962	[12] 38,259	1,809		0	0	0	0
Lucky Peak	1946	1961	[13] 19,080	19,080		0	0	0	0
SOUTHWESTERN DIVISION									
Canton [14]	1938	1948	10,800	7,862	16.7	S61,000	16.7	0	1,804
Conchas	1936	1939	15,800	15,800	57.0	J259,600	49.0	USBR	7,742
John Martin	1936	1948	15,200	15,200	58.0	S357,000	0	USBR	([15])
Waurika	1963	1977	67,100	25,800	6.5	S18,800	.2	USBR	134
Trinidad	1958	1977	45,000	39,000	17.5	S20,000	17.5	USBR	6,400
Belton [14]	1946	1954	18,400	16,300	36.0	S45,000	4.3	0	790
SOUTH PACIFIC DIVISION									
Black Butte	1944	1963	14,500	8,714	100.0	J150,000	39.9	USBR	5,786
New Hogan	1944	1964	15,906	10,148	100.0	J310,000	36.2	Stockton East Water District	5,758
Buchanan	1962	1975	25,258	16,140	100.0	J140,000	36.1	Chowchilla Irrigation District	9,118
Hidden	1962	1975	30,555	25,177	100.0	J85,000	17.6	Medria Irrigation District	5,378
Pine Flat	1944	1954	39,068	24,800	100.0	J1,000,000	36.5	Kings River Water Association	14,260
Terminus	1944	1962	19,060	16,372	100.0	J142,000	14.1	Kaweah Delta W. C. District	2,688
Success	1944	1961	13,993	12,664	100.0	J80,000	9.5	Lower Tule River Irrigation District.	1,329
Isabella	1944	1959	22,000	17,424	100.0	J570,000	20.8	Various	4,576
Coyote Valley (Lake Mendocino)	1950	1959	17,550	9,600	57.0	J70,000	NA	Various	NA
Folsom [16]	1944	1956	100,000	63,000	100.0	J1,000,000	NA	NA	NA
Tat Momoliket (Santa Rosa Wash)	1965	1974	10,600	NA	100.0	S19,500	NA	NA	NA
Alamo [17]	1944	1968	14,780	14,780	22.0	J230,000	NA	NA	NA

[1] Joint storage with flood control, navigation and hydropower.
[2] Number of permits granted for direct access to project.
[3] Amount not repaid by irrigation users to be paid by future power sales, repayment scheduled by USBR.
[4] Current industrial withdrawal from irrigation storage administered by USBR.
[5] Storage will be reallocated from flood control when irrigation project operable.
[6] Accommodate water withdrawal by permit, irrigation use not allocated.
[7] No reimbursement anticipated under authorized operational plan.
[8] Authorized as a USBR project. Transferred to Corps for construction in 1956 (Public Law 84–505).
[9] Studies in 1967 indicate irrigation not feasible.
[10] Irrigation storage of 1,640,000 acre-feet has been filed on for irrigation use by USBR. Because of the projects being planned and operated as a system (Willamette Basin), none of the irrigation storage is either separable or project specific and costs are not allocated on a project basis. Total number of users is estimated to be less than 200 at this time.
[11] Project turned over to USBR.
[12] Irrigation is authorized as only an "incidental" purpose. No cost is allocated to the function nor storage reserved.
[13] Provides irrigation storage during low runoff years when storage in Anderson Ranch and Arrow-rock (2 BUREC projects) would not be sufficient.
[14] Irrigation storage space under contract to municipal and industrial users until need for irrigation develops.
[15] Up to 357,000 acre-feet is used for storage of irrigation water when it is available.
[16] Project operated and maintained by BUREC upon completion of construction.
[17] Operated as part of USBR Colorado River water system.

TABLE III—PROJECTS UNDER CONSTRUCTION

Project name	Year authorized	Year to be completed	Estimated total cost of project (thousands)	Total Federal cost (total cost less reimbursea-bles) (thousands)	acre-feet of storage reserved for irrigation: Percent	acre-feet of storage reserved for irrigation: Total storage (J—joint, S—speciric)	Percent of project cost allocated to irrigation	Approximate number of irrigation beneficiaries	Amount reimbursable under existing reclamation law (thousands)
NORTH PACIFIC DIVISION									
Elk Creek[1]	1962	1985	$137,682	$108,848		0	6.0	Less than 100	$8,717
Willow Creek[2]	1965	1983	38,824	38,824		0	0	0	0
SOUTHWESTERN DIVISION									
Santa Rosa[3] (Los Esteros)	1954	1983	43,400	43,400	44.5	S200,000	44.5	USBR	0
SOUTH PACIFIC DIVISION									
New Melones[4]	1944,1962	1985	380,000	174,100	68.0	J164,000	26.0	USBR	100,200

[1] Construction stopped in 1975. Current activity limited to updating and continuing design, plans, and specifications so construction can be resumed.
[2] Project is authorized with irrigation as a purpose. When contracts for water use are negotiated, joint use storage will be available. Since all irrigation is future development, no costs have been allocated to the irrigation purpose.
[3] Transfer of storage between Sumner Lake and Santa Rosa. Local sponsor to continue repayment costs associated with Sumner Lake.
[4] Project will be transferred to BUREC upon completion of construction.

DATA ON IRRIGATION ALLOCATIONS AND REPAYMENT OF IRRIGATION COSTS FOR CORPS OF ENGINEERS PROJECTS

Listed below are Corps of Engineers projects in the 17 Western states which store water for irrigation use and the repayment status of the irrigation allocations of these projects. The projects listed were identified in the June 14, 1982, letter from the Commissioner of Reclamation to Senator Daniel Patrick Moynihan as projects which are "(c) Authorized or constructed and operated by the Corps of Engineers. Projects are not and will not be integrated with Federal Reclamation projects. Under S. 1867 irrigation water deliveries from these projects will not be subject to acreage limitation. Irrigators are or will be required to contract and pay for irrigation water made available to them from the Corps projects." In addition to those projects identified in this category in the June 4 letter to Senator Moynihan the list includes other Corps projects in the 17 Western states that fall into this category and their repayment status.

PROJECT

Cottage Grove, Dorena, Fern Ridge, Blue River, Fall Creek, Willow Creek, Cascadia,[1] Detroit-Big Cliff, Lookout Point, Hills Creek, Cougar, Green Peter-Foster, Holley,[1] Gate Creek: [1] These projects are located in the Willamette River Basin in Oregon. A portion of the Federal Costs of each is allocated to irrigation. Irrigation water deliveries are made under water service contracts with individual water users and contracting entities. Currently there are 137 contracts in effect which provide for the delivery of over 40,000 acre feet of water for irrigation purposes each year. The rate charged for water is $1.25 per acre foot. The number of contracts in effect and the water sold varies from year to year. From 1955 through May 30, 1982 a total of $189,420 had been collected for irrigation water sold from these Corps reservoirs.

John Martin: Located in the Arkansas River Basin in Colorado. There are no contracts in effect for irrigation water deliveries from this reservoir.

Trinidad: Located on the Purgatorie river in Colorado. The Bureau has contracted with the Purgatorie Water Conservacy District for repayment of total amount of the irrigation allocation for Trinidad Dam of $6.4 million over a 40-year period.

Pine Flat, Terminus, Success, Isabella: Located in Central Valley of California. Districts have contracted to repay the entire irrigation allocation of these projects either in a lump sum payment or over a 40-year repayment period. The total irrigation allocation for each project and the amount paid is as follows:

	Allocation	Paid	Balance due
Pine Flat	$14,260,000	$11,461,798	$2,798,702
Terminus	2,688,000	1,169,502	1,518,007
Success	1,329,000	541,277	788,008
Isabella	4,576,000	4,576,000	

Wynooche Lake, Lower Grunite, Little Goose, Lower Monumental, Ice Harbor, Wash.; Belton, Tex.; Tat Momolikot, Almo, Ariz.: The following Corps projects in the 17 Western states were not listed in the list submitted with Senator Moynihan's May 26, 1982, letter and consequently were not included in the tabulation in the June 4 response to Senator Moynihan. These projects are in the same category as those listed above. There are no contracts in effect for irrigation water deliveries from these Corps projects.

The Corps projects on the mainstem of the Missouri River namely Fort Peck, Garrison and Oahe, provide irrigation storage benefits. A portion of the costs of these projects is allocated to irrigation which is assigned to appropriate units. Mainstem storage costs assigned to specific Reclamation units of the Pick-Sloan Missouri Basin Program (PS-MBP) are included with the total costs of the units and are reimbursable to the United States from the water users or other projects revenues. Unassigned PS-MBP irrigation costs will be assigned to future projects when constructed and will be reimbursable to the United States over the repayment period for those units. A portion of the mainstem storage space set aside for irrigation has been contracted for by industrial water users for interim water supplies which will bring a substantial amount of revenue to the United States. Mainstem storage assignments to Reclamation units for which contracts with the United States are in effect include the following:

Garrison Diversion Unit	$19,410,000
Oahe Unit	19,357,000
Fort Clark Unit	115,000
	38,922,000

In addition an estimted $30,000,000 will be returned to the United States from sales of water from mainstem irrigation storage for industrial use.

The following Corps projects are or will be integrated with Reclamation projects and the costs allocated to irrigation for these projects are reimbursable to the United States from the water users or from other projects revenues.

Elk Creek, Willow Creek, Catherine Creek: These projects are authorized or under construction. No contracts are in effect.

Canton, Waurika, Ririe, Kanapolis: No contracts in effect for these projects which are in operation.

Applegate: In operation in 1981. There are 139 contracts in effect. Total revenue received $20,477. May be integrated with future Bureau project.

Lost Creek: In operation in 1981. There are 12 contracts in effect. Total revenues received $4,510. May be integrated with future Bureau project.

Lucky Peak: In operation since 1966. Provides supplemental supply in Boise Project area. Since 1966 $170,973 in revenues received for irrigation water.

Harlan County, Conchas, Santa Rosa, Black Butte, New Hogan, Buchanan, Hidden, Folsom, New Melones: Integrated with Reclamation projects. Cost allocated to irrigation reimbursable to the United States under contracts with water user entities or from other projects revenues.

TABLE 15–1.—MAXIMUM FEDERAL COST SHARES FOR CONSTRUCTION AGENCIES

Purpose: Agency [1]	Percentage of costs: Construction	Land, easements and rights-of-way [2]	Operation, maintenance and replacement
Flood protection:			
Bureau	100	100	100.
SCS	100	0	0.
Corps:			
Local flood protection.	100	0	0.
Large reservoir	100	100	100.
Navigation:			
Bureau	100	100	100.
Corps	100	0 [3]	100.
Recreation; small boat harbors.	50	0	100.
Hydroelectric power:			
Bureau	0 [4]	0	0.
Corps	0 [4]	0	0.
Municipal and industrial water supply:			
Bureau	0	0	0.
SCS	50	0	0.
Corps	0	0	0.
Irrigation:			
Bureau	Variable	Variable	0.
SCS	50	0	0.
Corps	Variable	Variable	0.
Water quality (low flow augmentation): Corps.	100	100	100.
Recreation: fish and wildlife enhancement:			
Bureau	50 and 100 [4]	50	0 and 100.[5]
SCS	50	50	0.
Corps	50 and 100 [4]	50	0 and 100.[5]
Drainage:			
Bureau	Variable	Variable	0.
SCS	50	0	0.
Corps	50	50	0.

[1] Authorized but not constructed and not in service.

[1] Bureau = Bureau of Reclamation, SCS = Soil Conservation Service, Corps = Army Corps of Engineers.

[2] When federal lands are involved, they are provided to the project without charge.

[3] Costs of lands, easements, and rights-of-way for navigation reservoirs are borne by the Federal Government.

[4] Hydroelectric power users may have benefited from unwarranted allocation of joint construction costs to other project purposes and from repayment arrangements with low interest rates.

[5] The 2 percentages represent the maximum Federal shares of separable and joint costs, respectively.

TABLE 15–2.—MAXIMUM FEDERAL COST SHARES FOR GRANT AGENCIES

Purpose: Type of facility: Agency	Percentages of costs [1]: Construction	Land, easements and rights-of-way	Operation, maintenance and replacement
Pollution abatement:			
Collection sewers:			
HUD	50–90	50–90	0
FHA	50	50	0
EDA	[2] 50–80	[2] 50–80	0
Treatment plants and interceptor sewers:			
EPA	75	0	0
FHA	50	50	0
EDA	[2] 50–80	[2] 50–80	0
Water supply:			
Conveyance and reservoir:			
HUD	50	50	0
FHA	50	50	0
EDA	[2] 50–80	[2] 50–80	0

[1] Cost share percentages shown in the table are taken from the respective agencies' legislative acts.

[2] EDA can pay up to 100 percent of eligible costs on a project for American Indians.

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C., July 14, 1982.

DEAR COLLEAGUE: When the Senate considers the Reclamation Reform Act (S. 1867), I intend to offer an amendment relating to Corps of Engineers projects in the reclamation states. My amendment has two purposes: first, to clarify that all repayment obligations on these projects must be met for existing and future contracts; and second, to require that the pricing policy for repayment of construction costs allocated to irri-

gation storage at Corps of Engineers projects be consistent with the policy set forth in S. 1867 for projects constructed by the Bureau of Reclamation.

The Committee did intend to require repayment obligations to remain in effect on the projects exempted by Section 8 of the bill. However, the status of future obligations was left in considerable doubt by the Committee's language. My amendment will clarify this point.

Furthermore, S. 1867 introduces the concept of "full cost" for the first time in reclamation law. Full cost is the interest charge and principle on construction cost and annual operation and maintenance costs. Under the Committee bill, full cost is applied only to lands defined to be in excess of the acreage limitation of 2080 acres.

Without the acreage limitation, there will be no excess lands utilizing storage at Corps of Engineers projects on which to apply full cost. According to a June 4, 1982 letter I received from Commissioner of the Bureau of Reclamation Robert Broadbent, "[i]f a Corps project is exempt from acreage limitation by provisions of S. 1867, it is our view that the 'full cost' pricing provisions of the bill would not be applicable to that project."

Thus, a farming operation of 10,000 acres using reservoir storage at a Corps project would continue to repay the Government without interest while an identical farming operation using a Bureau of Reclamation project would, in theory, pay full cost on water received for the portion of the landholding in excess of 2080 acres. In both cases the payments to the Federal government relate exclusively to reimbursable construction costs and associated operation and maintenance costs, as established by the authorizing statute of the project. Thus, there is no justification for a dual pricing system for identical reimbursable Federal expenditures.

Therefore, my amendment would establish a maximum acreage on Corps of Engineers projects above which full cost pricing will apply. The limit will be consistent with the limit imposed on reclamation projects. The amendment is prospective in that it will not affect existing contracts unless those contracts are renegotiated to provide additional or supplementary benefits. It will apply to all new contracts.

My amendment will not in any way reverse the exemption of projects from reclamation law granted by S. 1867 as reported by the Energy Committee. Nor will my amendment permit the government to break any contracts now in force. The amendment will not affect Corps of Engineers projects outside the 17 reclamation states.

I would be pleased to have you join me as a co-sponsor of this amendment. Should you have any questions, please do not hesitate to contact me or Debra S. Knopman of the Environment and Public Works Committee staff (x43597).

Sincerely,

DANIEL PATRICK MOYNIHAN.

Mr. MOYNIHAN. Mr. President, I reserve the remainder of my time, and I am happy to hear from the distinguished manager of the bill, my friend from Wyoming.

Mr. WALLOP. Mr. President, I appreciate what the Senator from New York is seeking to do. But, like so many issues involving water, there are problems that go beyond the surface. Indeed, much like the topic itself of which we speak, there is much that goes above, beneath, and around the surface.

What the Senator from New York says, that there are no contracts for repayments, is quite right, because they have not been able to sell any irrigation water. So, while those have been cost allocated to irrigation, there is no cost to the Government for the delivery of water. It has not been able to sell the water. At such time as there is a demand for the water, there will be a recovery contract applied. So all is not always what it seems in these things.

I wanted to say that so any Senators, who may be listening in their offices, may understand that tables are one thing and reality is quite another.

Mr. President, I oppose the amendment of the Senator from New York, with full respect for what he seeks to do.

The effect of the amendment would be to apply a de facto acreage limitation upon Corps of Engineers projects where such a limitation was never meant to be applied.

S. 1867 is clear, in those instances where costs were allocated to irrigation or conservation storage and there are contracts with the Secretary, where the costs are to be recovered. On some projects the costs were paid when the storage contracts were originally signed. Costs of operation and maintenance are also to be recovered, as is clear in section 8(b) of the committee bill. In fact, the committee specifically amended the original version of S. 1867 to insure that the Secretary's authority to contract with water users in order to recover costs is maintained.

Application of the full cost pricing to those projects might as well be like authorizing them to raise the interest rate on my mortgage which I signed 10 or 20 years ago.

Surely, the Senator from New York, in a sense of equity, would not seek to do that and would not approve it, if the banks of New York were to apply such mortgage rate differentials 10 or 20 years down the road.

The effect of this amendment is not clear. Farms which have storage rights in the Corps of Engineers reservoirs covered by the committee bill have been built on the premise that acreage limitations do not apply. They had that premise when they began. Application of full cost is simply substituting one limitation for another, and I do not think, if no limitation were intended to be applied in the first place, that in the second place it is appropriate that we do that.

The committee bill does not exempt farmers from paying an appropriate share of the costs. I restate that: The committee bill does not exempt farmers from paying an appropriate share of the costs. The committee bill, in and of itself, does not exempt Corps of Engineers projects from acreage limitations. But what the committee bill does do is clarify the law. The Congress never meant the limitations of reclamation law to apply to corps projects unless the project, by act of Congress, has been made a Federal reclamation project or the Secretary of the Interior has provided project works for the delivery of a water supply for agriculture.

It must be kept in mind, neither the Bureau of Reclamation nor the Corps of Engineers sell water. It is simply not their water to sell. They sell the service, but they do not own the water. That is a point which is very much lost on people who do not live with this.

Mr. JOHNSTON. Mr. President, I am in opposition to the Moynihan amendment. This amendment would revise section 8 of the Reclamation Reform Act to provide that users of irrigation water from a Corps of Engineers project would be subject to the acreage limitations of the act, and would be required to pay full cost for all water used to irrigate land in excess of those limitations.

Section 8 of the reclamation bill is designed to clarify the relationship between projects built by the Corps of Engineers and those built by the Bureau of Reclamation. This relationship was confused in a recent Ninth Circuit Court of Appeals decision in *United States* v. *Tulare Lake Canal Co.*, 535 F. 2d 1093 (9th Cir. 1982). That decision interpreted section 8 of the 1944 Flood Control Act to require that any flood control project or reservoir built and operated by the Corps of Engineers which has an irrigation function would be subject to Federal reclamation law.

In my judgment, the Ninth Circuit misread the intent of section 8 of the 1944 act, although that provision is not without its ambiguities. What Congress apparently tried to say in the Flood Control Act was that if the corps added new features to a project solely for purposes of irrigation, then reclamation law would apply to the lands served by those irrigation features. In Tulare Lake, however, the Ninth Circuit read section 8 to apply to all corps projects which provide irrigation functions, even if these irrigations projects are an incidental by-product of a flood control project. I believe this reading misinterprets section 8 of the Flood Control Act and ignores the distinction between flood control projects and reclamation projects.

Section 8 of the reclamation reform bill would correct the reading of the court in Tulare Lake and would clarify the distinction between flood control and reclamation projects. Essentially section 8 provides that the acreage limitation of the law does not apply to

projects constructed by the Corps of Engineers unless by express statutory language Congress has designated the project as a reclamation project, or in addition to project works constructed by the corps, the Secretary of the Interior has provided works for control or conveyance of an agricultural water supply to the lands in question.

Mr. President, I support section 8 of the reclamation bill. I believe it provides a much-needed clarification to a very rational distinction—that between irrigation projects and flood control projects. For this reason, I must oppose the Moynihan amendment.

Mr. MOYNIHAN. Mr. President, will the Senator yield?

Mr. WALLOP. I yield.

Mr. MOYNIHAN. It is my understanding that what the corps is selling is the storage of the water.

Mr. WALLOP. The storage of the water, but they do not sell the water. The water right is not——

Mr. MOYNIHAN. But they do not own the dam.

Mr. WALLOP. True enough, but that water can be released before storage if somebody wants——

Mr. MOYNIHAN. But farmers want it stored.

Mr. WALLOP. Fine and dandy. And that cost of delivery can be contracted for. But there was never any consideration in the authorization of these corps projects that these farms would be subject to some kind of acreage limitation, in that neither the corps nor the Bureau owns the water. It simply is not theirs to sell. And it is, as the Senator from New York stated, a service. They can store and deliver water on demand, water that belongs to the farmers who have contracted for the service. A contract is an ancient right in this country.

Those costs associated with such service are being returned in accordance with the conditions that were established by Congress.

The committee bill clarifies that intent, but adoption of the amendment by the Senator from New York would put us right back where we started with a cloud of uncertainty facing the water user.

Furthermore, subsection (c) of the amendment directs the Secretary to submit to Congress a detailed plan for marketing of all water stored for irrigation purposes at Corps of Engineers reservoirs. Inasmuch as needs and demands change over time, the best that any Secretary will be able to do is inform Congress how much water is available. It takes two to sign a contract and it would be difficult to predict with certainty future water uses.

I recall that shortly after the first Arab oil embargo, grand plans were proposed for developing energy resources utilizing Missouri River mainstem water. That is up in our country, primarily in the State of Montana with which I am familiar. None of those plans have come to fruition. Yet, if the Secretary had been directed at that time to come up with a plan and projected revenues as contemplated under subsection (c), it would have painted a rosey picture indeed. It has not come to pass.

The section does not call for a study of opportunities for the recovery of costs; rather it mandates a plan for the marketing of all water stored for irrigation purposes. This is simply an impossible task. It is not achievable.

Mr. President, the Moynihan amendment would apply to all lands benefitting from Corps of Engineers projects and could lead to the imposition of new costs on people who benefit from corps projects. This amendment would attack the longstanding congressional mandate that flood control, navigation, environmental, and fish and wildlife benefits accrue to the Nation at large and not a select population which would now be targeted by the Inspector General.

The amendment invites the Inspector General to ignore the "ultimate development concept" which is so necessary to the rational development of water resources. These projects are built for the future and in fact may take 20, 40, 60 years between first construction and completion. Examples are many, such as Columbia Basin, Central Valley, Garrison, and so on. Other projects by their very nature must never end. Navigation, flood control, power production, and erosion control must continue—year in and year out.

So, in effect, to order the Inspector General to "freeze" these projects and examine the distribution of project benefits in the here and now does not and cannot reflect the real world of long-term resource development.

Subsection (d) calls for an Inspector General's report on projects exempted from acreage limitations pursuant to the committee bill with recommendations as to adjusting the original cost allocations to reflect the actual utilization of the project.

This will be an absolutely extraordinary task as it may apply to all Corps of Engineers water resource projects constructed in the United States.

I am sure the Senator does not mean for it to have such a sweeping effect, but in point of fact that is about all the corps would be doing for the next decade.

● Mr. COCHRAN. Mr. President, I am opposed to the effort of the Senator from New York to amend a critical and needed provision of this bill, the exemption for Army Corps of Engineers projects throughout the United States.

To refresh my colleagues' memories, this provision is virtually identical to the language contained in a bill, H.R. 5539, that was approved by the House in May of this year by a vote of 228 to 117. The Energy and Natural Resources Committee approved this provision along with the rest of the bill by a nearly unanimous vote of 18 to 1.

The purpose of section 8 is to clarify that merely because a flood-control dam or reservoir built and operated by the Army Corps of Engineers provides conservation storage, it is not for that reason alone subject to Federal reclamation law. Instead, reclamation law can only apply lawfully under any one of two criteria: First, explicit statutory language designates the project as a reclamation project, or second, in addition to project works constructed by the corps, the Secretary of the Interior has provided works for an agricultural water supply.

The corps exemption was put in the reclamation bill to clarify the existing law that was confused by the Ninth Circuit Court of Appeals in *United States* v. *Tulare Lake Canal Company*, 535 F.2d 1093 (9th Cir. 1976). The Tulare Lake care misread the intent of the Congress in section 8 of the Flood Control Act of 1944 by concluding that all or any corps projects having an irrigation function are, without more, subject to reclamation law. Put simply, Army Corps of Engineers projects in my State of Mississippi, and in Arkansas, Louisiana, even projects in Florida, which provide or facilitate irrigation for agricultural purposes, could be subject to the Federal reclamation law, unless this exemption is enacted. The parties to the Tulare Lake litigation brought a motion before the Ninth Circuit in the summer of 1980 to reconsider the 1976 decision on the basis of two Supreme Court decisions handed down in 1978 and 1980, U.S. against California and Bryant against Yellen.

Again, the Ninth Circuit upheld its earlier decision in a very recent opinion of May 1982. This law must be clarified once and for all by the Congress. Our distinguished colleague from California, Senator HAYAKAWA, has detailed for us the history of the efforts to apply reclamation law to corps projects in California. Now, the Ninth Circuit would apply that same law to corps projects everywhere. I urge my colleagues to study Senator HAYAKAWA's remarks in the RECORD, as well as the additional views of our distinguished colleague MALCOLM WALLOP, beginning on page 33 of the committee report, which amplify the unique problems of California corps projects.

Further evidence of the energy committee's purpose and intent in writing the corps exemption may be found on page 16 of the committee report on S. 1867. To quote the report language:

It is also the intention of the committee that this exemption does and shall apply to

all corps projects outside the 17 reclamation States. It is the general intent of this section to eliminate the shadow of applicability of the reclamation law to Corps of Engineers projects in any case in which the intent of Congress concerning such applicability is not clearly and explicitly set forth in statutory language.

In conclusion, I strongly urge my colleagues, whether they are from the North, East, South, or West, to support both the bill and most especially the committee's language in section 8. All of us who have farmers in our States who are receiving a benefit from a Corps of Engineers operated dam, reservoir, dike, canal, et cetera are facing the incredible possibility of landholdings breaking up and burdensome costs imposed, spurred on by an entirely incorrect judicial interpretation of Congress intent. We must, as responsible legislators, once and for all remove this cloud which hangs over the heads of our farmers. Section 8 of S. 1867 will remove that cloud.●

Mr. WALLOP. Mr. President, I have a letter from the corps, which I wish to read into the RECORD, at least the pertinent parts of it. This letter was sent to Chairman MCCLURE of the Senate Energy and Natural Resources Committee, and I quote:

DEAR MR. CHAIRMAN: This is to confirm the Department of Army's continued support for enactment of Section 8 of S. 1867, 97th Congress, the Reclamation Act of 1982, as reported by your committee. This is also to inform you, however, that the Department of Army is opposed to additions to Section 8 of your bill that reportedly will be considered during floor debate on the measure.

Section 8 of your bill specifies that Federal reclamation law provisions shall apply to lands receiving benefits from a Federal water resources project constructed by the Army Corps of Engineers only where the Congress has by Federal statute explicitly provided that the affected project is designated, made a part of, or integrated with a Federal reclamation project—

And I might add that there are many of those that are integrated.

or where the Secretary of Interior, pursuant to Federal reclamation law, has provided control, or conveyance facilities for an agricultural water supply for the lands involved. Section 8 of your bill also specifies that all obligations shall remain in effect that require water users, pursuant to contracts with the Secretary of Interior, to repay the share of construction costs and to pay the share of the operation and maintenance and contract administration costs of a Corps of Engineers' project which are allocated to conservation or irrigation storage.

The Department of Army finds that Section 8 of your bill is a concise statement of the scope of coverage that Congress has consistently intended for Federal reclamation requirements at Corps of Engineers' projects. Moreover, it would not jeopardize any past or present payment requirements to the Secretary of Interior for irrigation storage at Corps' projects or any congressionally intended future payment requirements for such storage pursuant to the authorizations for the projects.

The issue of Federal reclamation law coverage at Corps of Engineers' projects has, unfortunately, become very confused in recent years. There is no need for any improvement on or additions to the necessary and eminently justified resolution of this issue that will be provided by enactment of Section 8 of S. 1867, as reported by your committee.

You have defined and preserved the repayment requirements intended by Congress for irrigation storage at Corps' projects. No additional definitions or provisions for such requirements are, therefore, necessary and might only serve to fester further confusion.

The Department of Interior has informed us that it is continuing its efforts to identify customers for water stored for irrigation purposes at Corps' projects and will be expanding its marketing of such water as demand develops or project control or conveyance facilities are provided. No legislative enactment is, therefore, necessary or advisable to expedite this effort.

The Department of Army would be pleased to respond to any congressional committee request for reports on benefits, costs, or other pertinent information on projects constructed by the Corps of Engineers. No legislative enactment is, therefore, necessary to obtain such information readily.

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

Mr. President, I ask unanimous consent that this letter be included in the RECORD, as well as the letter of the Secretary of the Interior who has written in opposition to the amendment and which states essentially the same thing.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE ARMY,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., July 15, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is to confirm the Department of Army's continued support for enactment of Section 8 of S. 1867, 97th Congress, the Reclamation Act of 1982, as reported by your committee. This is also to inform you, however, that the Department of Army is opposed to additions to Section 8 of your bill that reportedly will be considered during floor debate on the measure.

Section 8 of your bill specifies that Federal reclamation law provisions shall apply to lands receiving benefits from a Federal water resources project constructed by the Army Corps of Engineers only where the Congress has by Federal statute explicitly provided that the affected project is designated, made a part of, or integrated with a Federal reclamation project; or where the Secretary of Interior, pursuant to Federal reclamation law, has provided control or conveyance facilities for an agricultural water supply for the lands involved. Section 8 of your bill also specifies that all obligations shall remain in effect that require water users, pursuant to contracts with the Secretary of Interior, to repay the share of construction costs and to pay the share of the operation and maintenance and contract administration costs of a Corps of Engineers' project which are allocated to conservation or irrigation storage.

The Department of Army finds that Section 8 of your bill is a concise statement of the scope of coverage that Congress has consistently intended for Federal reclamation requirements at Corps of Engineers' projects. Moreover, it would not jeopardize any past or present payment requirements to the Secretary of Interior for irrigation storage at Corps' projects or any congressionally intended future payment requirements for such storage pursuant to the authorizations for the projects.

The issue of Federal reclamation law coverage at Corps of Engineers' projects has, unfortunately, become very confused in recent years. There is no need for any improvement on or additions to the necessary and eminently justified resolution of this issue that will be provided by enactment of Section 8 of S. 1867, as reported by your committee.

You have defined and preserved the repayment requirements intended by Congress for irrigation storage at Corps' projects. No additional definitions of provisions for such requirements are, therefore, necessary and might only serve to fester further confusion.

The Department of Interior has informed us that it is continuing its efforts to identify customers for water stored for irrigation purposes at Corps' projects and will be expanding its marketing of such water as demand develops or project control or conveyance facilities are provided. No legislative enactment is, therefore, necessary or advisable to expedite this effort.

The Department of Army would be pleased to respond to any congressional committee request for reports on benefits, costs, or other pertinent information on projects constructed by the Corps of Engineers. No legislative enactment is, therefore, necessary to obtain such information readily.

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

Sincerely,

ROBERT K. DAWSON,
Deputy.
(For William R. Gianelli, Assistant Secretary of the Army, Civil Works).

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 14, 1982.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We understand that an amendment to S. 1867 may be offered by Senator Moynihan during the floor debate on the reclamation reform legislation. This amendment would require the application of the full cost provisions of the bill to all water deliveries from Corps projects to landholdings over 960 acres. It would also require the Secretary to provide a plan for marketing all water stored in Corps projects for irrigation purposes and a review by the Inspector General of the cost allocations for the Corps projects.

The Administration opposes the enactment of such an amendment.

We believe that the reclamation reform legislation should only apply to reclamation projects and those specific Corps projects which Congress has previously determined

to be subject to Reclamation law. Questions relating to the pricing of water received from Corps projects are more properly addressed at the time Congress considers the enabling legislation for specific projects since it may or may not be appropriate to charge full cost for water from Corps projects when such projects were built primarly for purposes other than irrigation.

The objectives of the water provisions contained in Senator Moynihan's amendment can be achieved without legislation. The Department is continuing in its efforts to identify customers for irrigation water from Corps reservoirs and will expand marketing of Corps project irrigation water as demand develops or as project conveyance features are constructed. Similarly, the data on those projects exempted from the reclamation law can be readily obtained from the administering agency without being legislatively mandated through the Inspector General's office.

For these reasons, the Administration is unable to support this amendment.

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

Sincerely,

JAMES G. WATT,
Secretary.

Mr. WALLOP. Mr. President, I reserve the remainder of my time.

Mr. MOYNIHAN. Mr. President, may I ask how many minutes remain on the amendment?

The PRESIDING OFFICER (Mr. DENTON). The Senator from New York has 11 minutes 21 seconds remaining.

Mr. MOYNIHAN. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MOYNIHAN. I thank the Chair.

I reply in simple terms, and I hope they are not abrasive because I cannot imagine there is a Member of this body with whom I have more friendly relations than the manager of the legislation, the Senator from Wyoming.

But I would say this is the aftermath now of 5 years of involvement with water matters, a subject new to me, I quickly acknowledge, in a sense, that Federal water programs are not conspicuous in my part of the Nation save by their absence.

The city of New York, for example, is now building a $1 billion water supply tunnel without a penny from the Federal Government, with bonds, revenue bonds, sold, and not just the bonds paid but the interest.

But I say there is a constant and disturbing pattern of rhetoric associated with water projects, and that is by those who stand to benefit the most, and the rhetoric simply says, "Don't make us pay. These are national projects."

When the point is raised with regard to urban water supply projects, then we hear, "No, no, those are local projects." Indeed, as I say, the city of New York is building a $1 billion tunnel at this point, and should we not succeed for lack of support there is a real possibility of a collapse of one of the two existing tunnels, and something like a national calamity. You would be surprised if you ever saw that happen, it would close down the city of New York because of a water supply problem.

But, Mr. President, I, along with Senator DOMENICI observed in the course of my introduction to this subject two points: One is the growing abuse of water projects. I was for a brief period chairman of the Subcommittee on Water Resources, and I remember traveling in a helicopter with a Governor of a great Western State as we made our way down a magnificent chain of reservoirs and tunnels and catchment areas sparkling blue water surrounded by a seared, brown magnificent countryside, mountainous countryside.

I said this was a project of the Bureau of Reclamation which could not have done anything more elegant. Water engineering from the time of Nebuchadonis, the Persians of 3,000 years ago, has been an absorbing combination of mathematics and esthetics and the natural fundamental needs of the people. I have said many times you can live without oil, Mr. President, you can even live without love, but you cannot live without water. Indeed, my city of New York in 1910 built the first major aqueduct since the time of the fourth century of Rome, an engineering miracle.

But I said to the Governor, I asked him, "Where does all this water flow from the Bureau of Reclamation? Where does it go?" I said, "My God, it is crystal, it is glorious, it is life-giving."

He said, "Where does that water go? This goes into the swimming pools of my more affluent constituents."

Indeed, before long, our helicopter was flying over an oasis filled with the swimming pools.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I would be happy to yield.

Mr. GOLDWATER. I remember when the Senator took that trip, and I thank him for the eulogies he pays our magnigificent scenery. But the dams over which he flew and the blue water which he saw, with the exception of one dam, were all paid for by those people who have the swimming pools.

Mr. MOYNIHAN. Well, good. That is cheerful.

Mr. GOLDWATER. Very expensive.

Mr. MOYNIHAN. I make the point simply because they were paid for without interest. If we could get the Federal Government, we could be happy to pay for the third water tunnel without interest.

Mr. GOLDWATER. I might also say to the Senator these dams were built by bonds, full interest was paid to all the financial houses in New York City from whom we borrowed the money.

Mr. MOYNIHAN. I accept the Senator's statement. He knows I would do it automatically. But I make the point that this Chamber should attend and the Senators managing this legislation should attend to the fact that the great barbecue is over. There has not been a water project authorization bill enacted since 1972—one very small bit of legislation passed in 1974 and another in 1976 signed by President Ford, neither of any consequence.

Senator DOMENICI and I have tried to say that a combination of misuse of the opportunity, of environmental concerns and budget crises have brought our water programs to a halt. The Corps of Engineers is without work. Nothing is happening. We are likely as not disinvesting certainly in urban water systems. We are not keeping up. The system does not work any more. I know it is hard to hear that, but I came upon it without position one way or the other.

It made sense. It was something that Theodore Roosevelt had done. Only it is not being done now. The last administration came and went without a single water bill passing out of our committee. Our committee will continue to do that as long as it is perceived that on occasion the resources of the country are abused, which on occasion they have been. That would not be confined to this program, but this is a program where it is particularly visible.

As long as it is perceived that some have advantages others are denied and as long as it is perceived that we cannot afford it anyway, it is our view—Senator DOMENICI's and mine—that we cannot afford not to begin investing in water development. But we are not doing it. The kind of opposition to this simple amendment, which simply says, "Pay back what you contract to pay back in the future," that creates an atmosphere, that sustains and enhances a conviction in this Chamber that says, "No more water projects," and that is disastrous, that is ruinous, and those of us who care about the subject must care about reconstructing a majority in support of water programs.

We are facing in the country a set of choices, urban in some cases, rural in others, regional in some cases, most cases, which could dominate the concerns of this Government in the last decade of this century.

I have to speak to my dear friend and revered chairman of the Intelligence Committee: Am I wrong in having recently read that the State of Arizona is cracking up?

Mr. GOLDWATER. The State of Arizona is what?

Mr. MOYNIHAN. Cracking up, big crevices.

Mr. GOLDWATER. No way. There are a few cracks caused by earthquakes. There are a few places where we are so dry the water has disappeared from underneath and the land has settled a bit. But we are not worried about it. That has been happening now for probably the better part of 135 million years. In fact, that is one of the reasons why we have the Grand Canyon, the Earth just sort of gave way.

I will not argue with the Senator.

Mr. MOYNIHAN. I will argue with most people on anything, but not with the Senator on this matter.

Mr. GOLDWATER. I understand that. I just wanted to remind my friend that when New York needs help, Arizona is right there voting with you. You might need it again.

Mr. MOYNIHAN. I will write that down, and with that, I reserve the remainder of my time. I do not think I can have a more happy outcome of this debate than that remark of the Senator from Arizona.

Mr. WALLOP. Mr. President, could the Senator from Wyoming inquire as to the time remaining?

The PRESIDING OFFICER. The Senator from Wyoming has 15 minutes, and the Senator from New York has 1½ minutes remaining.

Mr. WALLOP. Mr. President, I will not belabor this point any further. The Senator from New York says that the consistent cry for westerners is: "Don't make us pay."

We are saying not only that we will pay but that we presently are paying. We are also saying that, like other people in this country, we expect, when a contract has been made, that both parties to that contract live up to the terms of it. However, we do not believe that one who is a little more powerful than the other can later change the terms in midstream.

We are saying that municipal and industrial water supplies from these projects have always been paid back with interest. Those are contracts that are now in place. We are saying that water which is delivered for irrigation purposes is now under contract. We cannot make a contract for water we do not consume.

Then there are the problems that we have with those who seek to provide themselves with environmental benefits, navigational benefits, or flood control benefits. There is no one in this Chamber, or the other Chamber, or anywhere in the country that thinks those have to be paid for. Only farmers are singled out and required to pay these costs. I am just saying farmers are already under contract for the irrigation benefits that they receive, and if the corps has not been able to market project water that has been attainable in planning stages for irrigation purposes, that is not the fault of the people who do not use it. It is just very difficult to try to get people to understand what water is all about.

The amendment of the Senator from New York applies not only prospectively, but retrospectively. That is what I am talking about, changing the terms which people expect they have with their Government, in midstream.

I just do not think the Senate of the United States is prepared to authorize its Government to do that. I would hope that the Senate would vote against it.

If the Senator would care to have an additional minute or two from me to respond, I would be happy to yield to him. Otherwise, I am prepared to yield back the remainder of my time.

Mr. MOYNIHAN. I think I would like to respond at this point for a moment. The Senator from Ohio is not on the floor and may want to make a comment.

Mr. WALLOP. I am not prepared to yield my time to the Senator from Ohio.

Mr. MOYNIHAN. I do ask the Senator if he would agree with me that the amendment I have at the desk which is now before this body would not authorize the breaking of any contracts that now exist.

Mr. WALLOP. It virtually directs it, because by assuming full costs and a new criteria on old projects which are under contract, you are simply breaking that contract and providing de facto a limitation on it. Applying the reclamation law, as we may or may not change it in this Congress, to projects which were authorized by previous Congresses under the Corps of Engineers, with different ideas in mind, is simply changing the whole state of the game in midstream. I just do not think that is what the Senator really has in mind, and yet that is the effect.

Mr. MOYNIHAN. I do have in mind the recovery of additional costs where contracts have been amended and additional benefits provided. But that is a different matter from the original contract.

Mr. WALLOP. That is the prospective side, not the retrospective side of the amendment.

Mr. MOYNIHAN. No; this would affect the original contract only where there has been a change in the contract. I think we can only disagree on this.

I say to my friend, the atmosphere of suspicion and concern about water projects has brought our national water policy to a stalemate. Those of us who deeply are convinced of the rightness of water programs are trying to bring not just equity but the perception of equity to the matters. If we are unsuccessful, the stalemate will go on. The stalemate was there when I arrived here and I can well imagine that it might well be here when I leave.

But I come from an area blessed with enough rainfall, if not enough water tunnels and not enough new water mains.

I do not know what more to say. This is a proposal of the Corps of Engineers which would comply with the standards of the Bureau of Reclamation. If it is not to be done, it is not to be done. But you will not see many Corps of Engineers projects. They will not happen. They have not happened since before the Senator and I came to this body. By the time we came, they had stopped. They simply had to stop.

Mr. WALLOP. Mr. President, I say to the Senator from New York that the payments are made when additional benefits are provided and additional costs are repaid when those additional benefits are provided. That is the way it is now under the law and that would not be changed under the provisions of S. 1867.

I would say to the Senator that somehow or another it is a great deal more difficult to achieve the perception of equity than it is to achieve actual equity when a misunderstanding as to what is going on is clearly stated. I am not seeking an inequitable treatment or an unfair advantage for those who are under these projects. I do not believe that, if the Senator studies this, he will find that that is the case. I say that in all sincerity.

I believe that what the committee has done is to provide the means by which those costs can be recaptured without changing previously contracted arrangements.

Mr. MOYNIHAN. I might say, Mr. President, in concluding, that the Senator from Wyoming has raised important questions, and I admit to the ambiguity of many of the facts with respect to many of them.

We could have pursued the matter further when the authorization for the Buffalo Bill Dam in Cody, Wyo., came to the Senate floor. The Buffalo Bill Dam passed in the night. But the issue will appear in other forms. We will have more Buffalo Bill Dams and no appropriations for them.

Mr. President, I yield back the remainder fo my time.

Mr. WALLOP. I yield back the remainder of my time.

QUORUM CALL

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

The clerk will resume the call of the roll.

The legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 40 Leg.]

Burdick	Garn	Metzenbaum
Byrd, Harry F., Jr.	Goldwater	Moynihan
Denton	Grassley	Thurmond
Exon	Jackson	Wallop
	McClure	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

Mr. McCLURE. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Members, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Idaho. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Virginia (Mr. WARNER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. PRESSLER) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Alabama (Mr. HEFLIN), the Senator from Georgia (Mr. NUNN), the Senator from Michigan (Mr. RIEGLE), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The PRESIDING OFFICER (Mr. BRADY). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 78, nays 5, as follows:

[Rollcall Vote No. 222 Leg.]

YEAS—78

Abdnor	Byrd, Harry F., Jr.	D'Amato
Andrews	Byrd, Robert C.	Danforth
Armstrong	Chafee	DeConcini
Baucus	Chiles	Denton
Bentsen	Cochran	Dixon
Bradley	Cohen	Dole
Brady	Cranston	Domenici
Burdick	Eagleton	Durenberger
East	Johnston	Pell
Exon	Kassebaum	Pryor
Ford	Kasten	Randolph
Glenn	Kennedy	Roth
Goldwater	Laxalt	Rudman
Gorton	Leahy	Sasser
Grassley	Levin	Simpson
Hart	Long	Specter
Hatch	Lugar	Stafford
Hatfield	Mathias	Stennis
Hawkins	Matsunaga	Stevens
Helms	Mattingly	Symms
Hollings	McClure	Thurmond
Huddleston	Melcher	Tower
Humphrey	Metzenbaum	Tsongas
Inouye	Mitchell	Wallop
Jackson	Moynihan	Zorinsky
Jepsen	Nickles	
	Packwood	

NAYS—5

Biden	Garn	Quayle
Boren	Proxmire	

NOT VOTING—17

Baker	Heflin	Riegle
Boschwitz	Heinz	Sarbanes
Bumpers	Murkowski	Schmitt
Cannon	Nunn	Warner
Dodd	Percy	Weicker
Hayakawa	Pressler	

The motion was agreed to.

The PRESIDING OFFICER (Mr. BRADY). With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

UP AMENDMENT 1095

The question is on agreeing to the amendment of the Senator from New York (Mr. MOYNIHAN).

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. EXON (after having voted in the affirmative). On this vote I have a live pair with the Senator from Nevada (Mr. CANNON). If he were present and voting, he would vote "nay." I would prefer to vote and have voted "aye," but I withdraw my vote.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Virginia (Mr. WARNER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mr. HAYAKAWA), and the Senator from South Dakota (Mr. PRESSLER) would each vote "nay."

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from New Mexico (Mr. SCHMITT). If present and voting, the Senator from Illinois would vote "yea" and the Senator from New Mexico would vote "nay."

Mr. CRANSTON. I announce that the Senator fom Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Alabama (Mr. HEFLIN), the Senator from Connecticut (Mr. RIEGLE), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 29, nays 55, as follows:

[Rollcall Vote No. 223 Leg.]

YEAS—29

Biden	Grassley	Moynihan
Bradley	Inouye	Nunn
Burdick	Jepsen	Pell
Chafee	Kennedy	Proxmire
Cohen	Leahy	Quayle
Cranston	Levin	Roth
D'Amato	Lugar	Specter
Dixon	Mathias	Stafford
Durenberger	Metzenbaum	Tsongas
Eagleton	Mitchell	

NAYS—55

Abdnor	Ford	Matsunaga
Andrews	Garn	Mattingly
Armstrong	Glenn	McClure
Baker	Goldwater	Melcher
Baucus	Gorton	Nickles
Bentsen	Hart	Packwood
Boren	Hatch	Pryor
Brady	Hatfield	Randolph
Byrd, Harry F., Jr.	Hawkins	Rudman
Byrd, Robert C.	Helms	Sasser
Chiles	Hollings	Simpson
Cochran	Huddleston	Stennis
Danforth	Humphrey	Stevens
DeConcini	Jackson	Symms
Denton	Johnston	Thurmond
Dole	Kassebaum	Tower
Domenici	Kasten	Wallop
East	Laxalt	Zorinsky
	Long	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Exon, for

NOT VOTING—15

Boschwitz	Heflin	Riegle
Bumpers	Heinz	Sarbanes
Cannon	Murkowski	Schmitt
Dodd	Percy	Warner
Hayakawa	Pressler	Weicker

So Mr. MOYNIHAN's amendment (UP No. 1095) was rejected.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment was rejected.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider the vote by which the amendment was rejected.

Mr. MOYNIHAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. MOYNIHAN. There is a sufficient second.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. All those in favor say "aye."

Mr. METZENBAUM adddressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

QUORUM CALL

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, objection.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the call of the roll.

The legislative clerk continued and completed the call of the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 41 Leg.]

Baker	Gorton	Moynihan
Baucus	Kasten	Nunn
Brady	Laxalt	Symms
Cranston	Mattingly	Wallop
Garn	McClure	
Goldwater	Metzenbaum	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Senators, and I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Iowa (Mr. JEPSEN), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Virginia (Mr. WARNER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. PRESSLER) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Alabama (Mr. HEFLIN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Michigan (Mr. LEVIN), the Senator from Michigan (Mr. RIEGLE), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

The PRESIDING OFFICER (Mr. GRASSLEY). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 74, nays 7, as follows:

[Rollcall Vote No. 224 Leg.]

YEAS—74

Abdnor	East	Melcher
Andrews	Exon	Metzenbaum
Armstrong	Ford	Mitchell
Baker	Glenn	Moynihan
Baucus	Goldwater	Nickles
Bentsen	Gorton	Nunn
Boren	Grassley	Packwood
Bradley	Hart	Pell
Brady	Hatch	Pryor
Burdick	Hatfield	Randolph
Byrd, Robert C.	Hawkins	Roth
Chafee	Helms	Rudman
Chiles	Hollings	Sarbanes
Cochran	Huddleston	Sasser
Cohen	Humphrey	Simpson
Cranston	Inouye	Specter
D'Amato	Jackson	Stafford
Danforth	Kasten	Stevens
DeConcini	Laxalt	Symms
Denton	Leahy	Thurmond
Dixon	Lugar	Tower
Dole	Mathias	Tsongas
Domenici	Matsunaga	Wallop
Durenberger	Mattingly	Zorinsky
Eagleton	McClure	

NAYS—7

Biden	Garn	Proxmire
Byrd, Harry F., Jr.	Johnston	Quayle
	Long	

NOT VOTING—19

Boschwitz	Jepsen	Riegle
Bumpers	Kassebaum	Schmitt
Cannon	Kennedy	Stennis
Dodd	Levin	Warner
Hayakawa	Murkowski	Weicker
Heflin	Percy	
Heinz	Pressler	

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is present.

The majority leader is recognized.

Mr. BAKER. Mr. President, I yield to the Senator from New York.

Mr. MOYNIHAN. I would like to restate my request for the yeas and nays on my motion to reconsider. I was interrupted by the motion for a quorum.

Mr. BAKER. Mr. President, I am glad to yield for that purpose.

Mr. MOYNIHAN. I thank the majority leader. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

MOTION TO TABLE MOTION TO RECONSIDER

Mr. BAKER. Mr. President, I move to lay on the table the motion to reconsider, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Iowa (Mr. JEPSEN), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Virginia (Mr. WARNER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. PRESSLER) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Alabama (Mr. HEFLIN), and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 61, nays 24, as follows:

[Rollcall Vote No. 225 Leg.]

YEAS—61

Abdnor	Ford	Mattingly
Andrews	Garn	McClure
Armstrong	Glenn	Melcher
Baker	Goldwater	Nickles
Baucus	Gorton	Packwood
Bentsen	Grassley	Pryor
Boren	Hart	Quayle
Brady	Hatch	Randolph
Byrd, Harry F., Jr.	Hatfield	Roth
	Hawkins	Rudman
Byrd, Robert C.	Helms	Sasser
Chafee	Hollings	Simpson
Chiles	Huddleston	Stafford
Cochran	Humphrey	Stennis
D'Amato	Jackson	Stevens
Danforth	Johnston	Symms
DeConcini	Kassebaum	Thurmond
Denton	Kasten	Tower
Dole	Laxalt	Wallop
Domenici	Lugar	Zorinsky
East	Matsunaga	

NAYS—24

Biden	Exon	Mitchell
Bradley	Inouye	Moynihan
Burdick	Kennedy	Nunn
Cohen	Leahy	Pell
Cranston	Levin	Proxmire
Dixon	Long	Sarbanes
Durenberger	Mathias	Specter
Eagleton	Metzenbaum	Tsongas

NOT VOTING—15

Boschwitz	Heflin	Pressler
Bumpers	Heinz	Riegle
Cannon	Jepsen	Schmitt
Dodd	Murkowski	Warner
Hayakawa	Percy	Weicker

So the motion to lay on the table the motion to reconsider was agreed to.

Mr. METZENBAUM and Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. STEVENS. Mr. President, will the Senator yield to me 3 or 4 minutes on the bill?

Mr. WALLOP. Mr. President, I yield to the Senator from Alaska 3 or 4 minutes on the bill.

Mr. STEVENS. Mr. President, I would like to inquire of the Senator from Ohio what is going on here. We have a time agreement. I have never seen a filibuster under a time agreement. I thought a time agreement was a gentlemen's understanding, and ladies', too. I think the Senator from Ohio would do much better at home campaigning than here on the floor. I would like to go home sometime this afternoon. Are we going to be forced into a Saturday session in order to satisfy the whim of the Senator from Ohio?

I inquire of the Senator from Ohio, what is he doing?

Mr. METZENBAUM. Mr. President, I do not have any time. If somebody would give me some time, I should be glad to answer.

Mr. STEVENS. I have 2 minutes, Mr. President. The Senator may have some of my time now.

Mr. METZENBAUM. I am particularly pleased that the Senator from Alaska is concerned about my campaign back in Ohio. I sort of thought my first responsibility was here on the floor of the Senate, so I intend to stay on the floor of the Senate to try to defeat this legislation if I possibly can.

Mr. STEVENS. Mr. President, why did the Senator from Ohio——

Mr. METZENBAUM. Will the Senator let me finish?

Mr. STEVENS. I yielded for the purpose of a response.

Mr. METZENBAUM. Will the Senator let me finish?

Mr. STEVENS. Why did the Senator from Ohio agree to the time agreement? He is on the committee, and he is bringing here items he has been chewed apart on in the committee. He lost. He did not have to agree to the time agreement, Mr. President. There is no reason for action like this. I have never seen a filibuster under a time agreement, which I consider to be a breach of the etiquette of this Senate. And I really am getting personally disturbed about being dragged in here on motions to compel my attendance under a time agreement.

Now, I think it is time the Senate got together and decided that this kind of conduct is not going to go on. We have seen all other kinds of conduct build up—postcloture filibusters, all kinds of filibusters, but I have never seen a time agreement filibuster. I think that is a breach of the etiquette and understanding of the Senate.

I hope the rest of the Senate will start expressing their point of view about the actions of the Senator from Ohio. I do not like them. They are wrong. They are burdensome on the Senate. They are costing the taxpayers money by frivolous activity.

If we had known he was going to object, then we would not have scheduled this bill. I think he has violated one of the basic rules of the Senate. The common understanding here is that no one tries to filibuster under a time agreement.

Mr. METZENBAUM. Mr. President, I ask for 5 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I ask unanimous consent for 5 minutes in order to reply to a personal attack.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Ohio is recognized.

Mr. WALLOP. Mr. President, the Senator from Wyoning inquires, this does not come off the bill, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. Mr. President, I have never felt that I had to account to anyone for my actions on the floor of the Senate except to the people of the State of Ohio and the people of this country. I do not yield to the Senator from Alaska or anyone else in conducting myself as a gentleman.

The rules of the Senate provide that every Member may operate under those rules. The time agreement provided that there would be a limit of 3 hours on the bill, a certain period of time for Senator BUMPERS on his amendment, 1 hour on every amendment, and 40 minutes on every second-degree amendment.

As a matter of fact, as of this moment I have not offered an amendment, but I have no reservations in saying that I expect to offer 1 amendment, 2 amendments, 5 amendments, 10 amendments, as many amendments as I see fit, all in accordance with the Rules of the Senate. This is bad legislation. This is legislation that should be defeated. This legislation serves only the purposes of a few wealthy farmers, and I am not worried about my reputation as a gentleman in opposing legislation of this kind. This legislation should never have been brought to the floor of the Senate.

Now, with respect to the matter of the time agreement, I was out of the city on the particular day when the time agreement was brought to the floor of the Senate. It was my understanding at that time that a number of Members of the Senate would object to any time limitation. Had I known that they were not going to as I had been previously advised, I would have advised the Senate minority leader of my position. But I had been incorrectly advised, and I hold no one at fault in that connection.

When I returned and saw what was in the time agreement, I found that it provided that it was possible to offer an unlimited number of amendments. The Senator from Ohio intends to try to make this a better piece of legislation and, if it is possible to get some of my amendments or all of my amendments adopted, then I very well may wind up voting for this legislation.

Inquiries have been made of me as to whether or not it is possible to agree upon some amendments, and I have indicated that it would be possible. But when I have indicated what amendments we would expect to include, I found that they were not acceptable to the people on the other side.

So let me be clear. I will conduct myself as a U.S. Senator in a gentlemanly fashion, and I do not need the Senator from Alaska to tell me how to conduct myself on the floor of the Senate. I intend to offer every one of my amendments that I believe are relevant, and I intend to offer every amendment that I believe I should offer. I hope that I will be successful in defeating this legislation.

Mr. BAKER. Mr. President, will the Senator yield to me for a second?

Mr. METZENBAUM. I certainly do.

Mr. BAKER. I am sure I am violating no confidence when I say I had a conversation with the Senator from Ohio a little while ago and asked what we were doing, and what we could expect. The Senator from Ohio said what I understood him to say on the floor; that is, that I am going to try to prevent this bill from passing. I am, however, not sure in my mind which one of the two objectives I heard the Senator speak of I should accept: that he is going to stop this bill, which I believe the Senator said and which he did say to me privately on the floor of the Senate earlier today, or that he is going to offer amendments to try to improve this bill.

Now, I have handed the Senator an opportunity on a silver platter to pick the right answer, and I would like to hear that from the Senator from Ohio.

If the Senator intends to try to stop this bill and he is using these amendments for that purpose, I have one situation to deal with. If there are, indeed, issues involved that can be worked out in compromise or he has amendments that should be considered by the Senate and they are relevant and germane, not technically germane, but they are reasonable to the debate of the Senate in this matter,

then I have another matter to deal with.

But what I would like to hear from the Senator from Ohio, if he is willing to favor me with a reply——

Mr. METZENBAUM. Of course.

Mr. BAKER (continuing). Is it his objective to try to prevent the Senate from acting on this bill today?

Mr. METZENBAUM. Not if I can get my amendments adopted.

Mr. BAKER. I have a daughter now who is grown, but when she was little she had a cold and we called the doctor. He came to see her, and in his very best bedside manner said, "Can I play that game with you?" And she said, "Yes, but only if you will let me win."

Is that what the Senator from Ohio is telling me?

Mr. METZENBAUM. No; I am not saying that. I have said that there have been some inquiries made of me as to whether or not I could find an area of compromise with respect to this legislation, and I have responded in the affirmative. When we sat down to indicate the area of compromise, I found that there was a negative reaction.

Now, under those circumstances, I am concerned as to whether or not I will be successful in getting my amendments adopted. Today it appears that almost every amendment, whether meritorious or not, is picking up about 29 to 35 votes. Under those circumstances I am not at all certain that I am going to be any more successful than some of the others who have been offering their amemdments. So I would say to the leader that I have not offered any amendments as of this moment except one that I took down, which was a second-degree amendment to the Bumpers amendments, and I am prepared to offer my amendment. I am prepared to debate them, and then and only then will we be able to determine whether or not an unacceptable bill will be acceptable.

Mr. BAKER. I thank the Senator for that statement.

Mr. STEVENS. Will the Senator yield?

Mr. BAKER. One minute.

I appreciate his remarks, but if, indeed, we are talking about issues instead of obstruction, if we are talking about legitimate concerns that the Senator has in terms of the amendments, surely, since every other Member of the Senate has already done so, the Senator from Ohio would be willing to identify the amendments he wishes and consider time limitations on them.

Is the Senator from Ohio willing to do that?

Mr. METZENBAUM. Not at this time.

Mr. STEVENS. Will the Senator yield to me?

Mr. BAKER. Let me finish just for a moment.

I wonder if the Senator from Ohio would consider the possibility then of sitting down with the managers on both sides for a few moments—and I am perfectly willing to provide a 15-minute recess or a prolonged quorum for that purpose—to explore the number of amendments he has, to see if some can be agreed to, to see if there is some opportunity to work out time agreements or to ascertain once and for all whether we have an effort to stop this bill or whether we have an effort to debate amendments? Is the Senator willing to do that at this time?

Mr. METZENBAUM. I would be willing to do so but the Senator from Ohio would perfer to meet in perhaps 15 or 20 minutes so that we can get all of our amendments and ideas together. I would be willing to meet, and I will send word to the majority leader at that point, if that would be all right.

Mr. BAKER. That would be entirely agreeable.

Mr. President, so that the Senator from Ohio understands, and all other Senators—and I hope that it is acceptable and agreeable to the distinguished managers of the bill on both sides—my hope is that sometime before 3 o'clock the managers and the Senator from Ohio and, of course, anyone he wishes to have with him, would meet on or off the floor and try to see where we stand, what amendments might be offered, and what amendments might be negotiated; looking to the possibility of compromise, and finally to advise the minority leader and myself that it is or is not possible to have a time agreement or establish a time certain to conclude action on this measure.

But if the Senator is agreeable to that, I am perfectly happy at this point to reserve any further rights I have or any further motions that I might make to try to hasten the disposition of this matter. I do not say that in any way to be intimidating. I have long since given up ever trying to intimidate the Senator from Ohio. But I do say it as a matter of interest.

May I also say, while I am on the floor, Mr. President, it is my intention to finish this bill, if it is possible to do that. I hope that that conference will be successful. If it is successful, I think we can finish fairly soon. If it is not successful, as I said yesterday and repeat now, we will be in late today and we will be in tomorrow in an effort to do that.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The time of the Senator from Ohio has expired.

Who yields time?

Mr. METZENBAUM. Mr. President, I seek recognition in order to offer an amendment.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

UP AMENDMENT NO. 1096

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 1096. On page 20, line 19, delete all through page 20, line 24.

Mr. METZENBAUM. Mr. President, Congress decided in 1902 to help family farmers settle the semi-arid areas of the West. In doing so, Congress had the wholehearted support of President Teddy Roosevelt. Roosevelt applauded the creation of the Bureau of Reclamation. But he refused to sign the legislation until Congress included important safeguards to insure that the valuable irrigation water would not be monopolized by outside interests. These outside interests included the railroads and the banks that owned vast tracts of land in the West.

President Teddy Roosevelt stood firm, and Congress finally amended the legislation to make the family farmer, not the large corporations, the beneficiary of this subsidy. That is the origin of the 160-acre limitation and the residency requirement found in the 1902 act.

The residency requirement is found in section 5 which states that a recipient must be "an actual bona fide resident of such land or occupant thereof residing in the neighborhood of said land."

The January 20, 1909 Bureau of Reclamation interpretation of the 1902 act defined the term "in the neighborhood" to mean within 50 miles. This is consistent with the 1902 act's original intent to help the family farmer.

What it going to happen under this bill? The authors of this legislation want to eliminate entirely one of the family farmer's protections, the residency requirement.

For what? For whom? For the large corporate farmers of this country.

Section 6 of this bill totally repeals the residency requirement. In doing so it would move the reclamation program away from its original purpose——

Mr. SYMMS. Mr. President, will the Senator yield so I could answer his question?

Mr. METZENBAUM. No.

The PRESIDING OFFICER. The Senator does not yield.

The Senator from Ohio.

Mr. METZENBAUM. In doing so it would remove the reclamation program away from its original purpose in

favor of the absentee landowners such as Tenneco, Standard Oil of California, Superior Oil, and J. G. Boswell Co., all of which have been receiving millions of acres of interest-free water.

Mr. President, I can understand someone coming to the floor of the Senate or Congress and saying the family farmer needs protection. But I do not understand anyone coming to the floor of the Senate and eliminating the family farmer provision in this bill. Why? What logical basis is there for that?

My amendment is not complicated; it is simple; it is elementary. All my amendment would do is restore the language as it presently is in the law. It would restore the 50-mile residency requirement by deleting section 5 of the bill.

I am not the only one who thinks that this amendment should be supported. It is supported by the Environmental Policy Center, the American Rivers Conservation Council, Sierra Club, the National Grange, and the AFL-CIO.

Mr. President, I ask unanimous consent to have printed in the RECORD the letters from those groups.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL POLICY CENTER,
Washington, D.C., July 15, 1982.

Senator HOWARD METZENBAUM,
Russell Office Building,
Washington, D.C.

DEAR SENATOR METZENBAUM: We are writing to you in connection with two provisions of the pending legislation on reclamation law (S. 1867). We are strongly opposed to the elimination of the residency requirement contained in Section 6. This requirement is one of the cornerstones of reclamation law and is designed to insure that federally subsidized water goes to family farm operations, not to paper farmers, absentee-owners, or foreign investors. We urge you to do what you can to preserve this historic safeguard which President Theodore Roosevelt put into place with the 1902 Reclamation Act.

We are also concerned about Section 5 of the bill which relates to the Class I productive potential of agricultural lands. The concept of equivalency, as it is known, comes from the fact that land in the Rocky Mountains with higher elevation and a shortened growing season is not as productive as flat land in California's Central Valley which has a year-round growing season. It takes more that 160 acres of Rocky Mountain land to equal the growing potential of 160 acres in the Central Valley. We urge an amendment to this section making it clear that the concept of equivalency applies only in areas with fewer than 180 frost-free days. If such an amendment is not adopted, we urge that the section be stricken from the bill. The concept of equivalency would otherwise be distorted beyond all meaning to further subvert acreage limitations.

Sincerely,

BRENT BLACKWELDER,
Washington Representative.

AMERICAN RIVERS CONSERVATION COUNCIL,
Washington, D.C., July 16, 1982.

Senator HOWARD METZENBAUM,
U.S. Capitol,
Washington, D.C.

DEAR SENATOR METZENBAUM: The American Rivers Conservation Council is in strong opposition to S. 1867, a bill which would make sweeping changes in federal reclamation law and which would wipe out the two safeguards designed to protect the integrity and purpose of the program. These two safeguards are the residency requirement and the acreage limitation. We urge you to do what you can to prevent these requirements from being emasculated.

Without the residency requirement federally subsidized water could be delivered to foreign entities and paper farm operations. Lax enforcement of this requirement has allowed such abuses as having an outfit incorporated to sell false teeth by mail reaping federal subsidies.

The bill makes a number of direct and indirect attacks on the acreage limitation. In addition to raising the overall limitation and providing exemptions to a number of irrigation districts, Section 5 on Equivalency would allow additional acreage to qualify for subsidized water on the ground that it is equivalent to a much smaller acreage of Class I land. This provision appears designed to provide special benefits to California growers, unless some limitation is placed on its application. One such limitation would be to apply the concept of equivalency only in areas where the growing season is less than six months.

Sincerely,

CHRISTOPHER N. BROWN,
Conservation Director.

SIERRA CLUB,
San Francisco, Calif., July 16, 1982.

Senator HOWARD METZENBAUM,
U.S. Senate,
Washington, D.C.

DEAR SENATOR METZENBAUM: I am very pleased that you are working to amend the Reclamation Reform Act brought to the Senate floor by the Energy and Natural Resources Committee.

The Committee bill is seriously flawed in many areas including cost recovery, residency, equivalency, and acreage limitation. It represents a tremendous subsidy to a very few large growers, especially in California.

Your efforts to add a residency provision are especially important. The original 1902 Reclamation Act was designed to settle the west and to create family farms. If the act is amended to eliminate the residency requirement the original purpose of the act will be thwarted but more important the family farm will be greatly harmed in the west and across our country. There are many pressures on the family farm these days and it is grossly unfair to add to those competition from large agri-business corporations that are heavily subsidized with nearly free water. Water that is paid for by every taxpayer and every farmer to benefit a few.

Another area that concerns us is the overly generous equivalency provision in section 5. It should be eliminated or amended to apply only in areas with short growing seasons.

We are deeply concerned with the Reclamation program because of its substantial negative effect on our natural resources. By providing water at very low prices it has the effect of creating additional demand for cheap water in areas that cannot sustain the development that water brings to those areas.

Again, we deeply appreciate your efforts to amend the Reclamation Reform Act to make it more acceptable to conservationists.

Sincerely yours,

TED E. HOFFMAN,
Chairman, Sierra Club
Water Resources Committee.

CHADRON, NEBR.

NATIONAL GRANGE,
Washington, D.C. July 13, 1982.

DEAR SENATOR:

The National Grange, respresenting nearly 450,000 members in 41 states, has carefully monitored the progress of bills to amend the Reclamation Act of 1920. The issue is a complex one deserving careful attention to a number of specific items that will have long-lasting impacts on family agriculture in America, especially in the 17 western states.

On July 14, the Senate will undertake consideration of S. 1867, sponsored by the Chairman of the Senate Energy and Natural Resources Committee, James McClure. Our membership has taken an active role in the progress of this bill to date, but we are most disappointed in its final form. A number of amendments will be offered on the floor during debate, and I would appreciate your consideration of the following points which will, most likely, be the subjects of recorded votes. In our opinion, three important changes must occur in order to strengthen the bill and to fulfill its intention to serve family agriculture.

First, the acreage limitation in S. 1867 must be significantly reduced to avoid abuse of the Federal subsidies inherent in reclamation projects. The original Act limited landholdings to 160 acres per individual, meaning each member of the family could qualify as a farmer under the Act. Thus, a family of four could own and operate 960 acres of reclamation land in additin to whatever non-reclamation land they might choose to farm. The Senate bill would raise this limit to 2,080 acres, a figure we find unjustified. In addition, S. 1867 would permit a landowner to lease any amount of reclamation land they chose. The effect of this bill is to legitimize speculation in farmland, the value of which is increased by a substantial federal subsidy.

The problem presented above can be remedied by permitting the ownership limit to be placed somewhere between 480 acres and 640 acres while placing an absolute limit on the number of acres that any farming unit can operate. We propose that a cap of 960 acres is a reasonable figure that would retain the 1902 Act's intent. Unlimited leasing of reclamation land would not be permitted, and so the benefits of the public's investments would be dispersed as widely as possible while permitting efficiently-sized family agriculture.

Second, several court decisions have been rendered over the years that apply reclamation law to certain water projects constructed by the Corps of Engineers. The most recent decision was handed down on May 17, 1982 that referred to a Corps project which S. 1867 would exempt. Of course, most of the Corps projects do not deliver irrigation benefits, and many others provide only minimal reclamation benefits, and it is not the Grange's intention to include these in acreage limitations or repayment provisions. But it is only reasonable to extend the Reclamation Act to cover those projects

where irrigation benefits were instrumental in the decision to construct the facilities.

The Grange supports the efforts of Senator Moynihan to include Corps projects with substantial irrigation benefits in the restrictions that apply to Bureau of Reclamation projects. We feel that the Moynihan amendment has been carefully constructed so as to eventually analyze the various Corps projects to determine their individual suitability. A good deal of misinformation has been circulated indicating that all Corps projects would be subject to S. 1867. Such is clearly not the case, but what is clear is this: Unless Sec. 8 of the bill is amended, a loophole will exist which the courts have attempted to eliminate.

Third, the 1902 Reclamation Act specified that beneficiaries of reclamation projects would be family farmers and not speculators or businesses interested in entering agriculture at the expense of the U.S. taxpayers. To assure that the irrigation water delivered from reclamation projects would go to those for whom it was intended, Congress specified that recipients must live on or near the land that is irrigated. For the past several decades, the Bureau of Reclamation has ignored this provision of law. As a result, some reclamation areas have grown into publicly subsidized super-farms where "paper farmers" use the landholdings for sophisticated tax shelters for income derived off the farm in cities nearby and across the country. Foreign interests also benefit from absentee landownership.

The Grange feels that in order for reclamation benefits to accrue to the recipients for whom the 1902 Act was intended, some form of recipient-operator relationship must be established. Two possible approaches should be considered. Congress could reaffirm the residency requirement contained in the Act, or a new provision could require that recipients be actively engaged in farming or farm management. Opponents of a residency clause contend that many farmers wish to live near cities where good schools and other services are located. The Grange believes that because residency was not enforced, local communities have been allowed to deteriorate. Good schools will exists if family farmers live in the vicinity of the farms. We believe that Congress has a duty to ensure that Federally financed water projects do not contribute to neighborhood decline—the intention of the 1902 Act was to build communities and local economies dependent on family agriculture.

One final consideration. The Grange believes that Congress should take steps to ensure that reclamation farmers do their fair share in reducing the supply of crops that are declared to be in surplus when those crops are grown with Federally subsidized irrigation water. A simple amendment, which we understand will be offered, would require all reclamation farmers to participate in any acreage reduction program announced by the Secretary of Agriculture. For instance: If a reclamation farmer grows wheat or cotton, and USDA determines that the supplies of both commodities are in excess of demand, reclamation farmers would be required to temporarily reduce their planted acreage of these crops on their reclamation land. These programs are currently voluntary in all parts of the country. We feel that since the Federal Government makes the growing of surplus crops possible in some areas, reclamation farmers should assume a proportionate share in reducing the supply thereby limiting Federal Budget exposure to support the price of the crops.

Please consider and support our views on this important, yet immensely complex issue. We believe that S. 1867 has serious implications for family farming in West and elsewhere. Unless the above recommended changes are incorporated into the bill, the Grange urges a no vote on final consideration in the interest of sound agricultural and reclamation policy.

Sincerely,

EDWARD ANDERSEN,
Master, National Grange.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., June 30, 1982

DEAR SENATOR:

The American Federation of Labor and Congress of Industrial Organizations urges that you vote against passage of S. 1867, amending the Reclamation Act of 1902 as amended, when it reaches the floor of the Senate.

This bill will destroy the 80-year-old federal reclamation program, with its record of fostering and sustaining the family sized farm in the 17 Western States, and its 97% record of compliance of the farmers with the acreage restriction. The sole beneficiaries would be the 3% of the landowners of federal reclamation projects, mostly in the State of California, owning 30% of the total project land, speculators, corporations and giant agribusinesses—who have continued to flout the law and now look to S. 1867 as the means of legitimizing their lawlessness.

Specifically, this legislation should be defeated because:

(1) The Reclamation Law was designed for farmers to live on family sized farms. Pending legislation would subvert this long-time and socially desirable policy by abolishing the Act's residency requirement. Thus, absentee investors and speculators will be able to acquire large tracts of land, receive the federal irrigation subsidy, and hire others to do their farming.

(2) The principle of the family farm on federal reclamation projects in the West would be destroyed by S. 1867 which would enable an owner to receive federally subsidized irrigation water for up to as much as 2,080 acres of land, and to lease as much as 1,280 additional acres. It has been argued that small farms are out of date and uneconomical. Yet, various studies, including those made by the Bank of America, the U.S. Department of Agriculture and the University of California at Davis, demonstrate that 320 acres of farmland in the Westlands Water District in California's Central Valley yield an annual income ranging from $40,000–$130,000 a year, depending on type of crops raised, soil quality, etc. Such farms rank in the highest 5 percent of annual earnings in the nation.

(3) This bill provides that when the federal government has recovered the irrigation costs to the district, the acreage limitation will no longer apply. It would end-run a 1976 decision of a federal court which declared invalid previous attempts by the Bureau of Reclamation to accomplish this administratively.

At the end of the pay-out period, most irrigation districts will have repaid only a small proportion, in the neighborhood of 20–25 percent, of the construction of the irrigation feature of the project.

Even after pay-out of this small proportion of the costs, and without interest, the federal government will continue to deliver water to the project at taxpayers' expense. Terminating acreage limitation at the end of the payout period perpetuates the federal interest-free subsidy to irrigation districts where the pattern of small farm ownership would be replaced by concentration of holdings in the hands of large corporations and agribusinesses. The fundamental aim of the Act—its benefits following to family-sized farms—would be rapidly wiped out after repayment of the irrigation costs, if S. 1867 is passed.

(4) Two million acres of land in the Kings-Kern project of the San Joaquin Valley, owned mainly by oil companies and agribusinesses, and receiving federal irrigation water, would be totally exempted from federal reclamation law. Every President up to the present one, former Secretaries of Interior, a Secretary of War, several Interior Department Solicitors and a Chief of the U.S. Corps of Army Engineers have found that federal reclamation law applies to the irrigation features of Corps projects authorized by the 1944 Flood Control Act.

A mutually agreed upon test case involving the Kings River-Tulare Lake water districts and the federal government was decided by an appelate court which found that the Reclamation Act did apply—a decision which the Supreme Court refused to review.

The two irrigation districts refused to honor their agreement to abide by the results of the litigation, and have for years conducted an all-out lobbying effort to reverse the decision of the Courts by such a bill as S. 1867.

At the time when hard times are forcing family farmers all over the nation to sell their property and leave the land, it seems inconceivable that this kind of welfare for the great corporations is being presented to the Senate in the guise of "reform."

The losers, should S. 1867 pass, will be the taxpayers and the family-sized farm on the Western reclamation project. The winners are exemplified in the following table:

Westland Water District (California) Owner:	*Acres*
J.G. Boswell	24,000
Southern Pacific	106,000
Boston Ranch	26,500
Harris Farms	18,400
Standard Oil	10,500
Kings Kern project California (Army Corps of Engineers) Owner:	*Acres*
J.G. Boswell	111,000
Tenneco West	67,000
Superior Oil	22,600
Pago-Punta	26,800
Chevron Oil	13,000
Southlake Farms	26,800
Westlake Farms	19,800
Salyer Land	29,100

Once again, we urge that you vote to reject S. 1867.

Sincerely,

RAY DENISON,
Director, Department of Legislation

Mr. METZENBAUM. Mr. President, the purpose of the amendment is clear: Either you believe in the family farmer, and if you do then vote for my amendment; if you do not believe in protecting the family farmer, then vote with the committee to eliminate the residency requirement.

If you vote to adopt this amendment the Senate will be reaffirming its commitment to the 50-mile residency requirement as originally spelled out in the 1902 act.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Is there any other Senator desiring the floor?

The Senator from Wyoming.

Mr. WALLOP. Mr. President, regretfully the Senator from Ohio, though he comes from a State with a good deal of farming, obviously knows nothing of farming. He, obviously, knows nothing of family farming. He, obviously, knows nothing of reclamation projects or law. He knows nothing of the Boswell Corp. and these giant corporations which he speaks. If he did he would know that they were under recordable contracts.

Mr. METZENBAUM. What? I cannot hear.

Mr. WALLOP. They are under recordable contracts which is a requirement to get rid of their excess lands. This would have been virtually completed had it not been for the court case that was brought.

He knows nothing of the life of a farmer. The fact that a farmer can stick his hands in a corn chopper, and that his children may be too young to carry on farming. It may be whatever livelihood he can scrape together thereafter, may be in a city 1,000 miles away. But it is a livelihood, and he saves that farm for the children which he and his wife have spawned.

I do not know what the AFL-CIO knows about farming. I suspect precious little, and I do not know what the Environmental Policy Center knows about farming. I suspect even less. And I do not know what the Sierra Club knows about farming and why they would even consider that to be an environmental issue.

It is not relevant here. What is relevant is whether or not people who have farms in their family may maintain them.

These giant corporations and this continual specter that the Senator from Ohio and others like him continue to raise are shimmerous. They do not exist. Those recordable contracts are there, and they will be out of business, and they would have been out of business by now had it not been for the court case.

So what the Senator just said is that a family, no matter what their circumstance, who owns a piece of ground and for whatever reasons is unable to be on it for a given period of time, a decade or two decades, must sell their farm. This is a preposterous interpretation of what the law of the land should be with regard to family farming. It is an abuse to the family. It is an abuse to family rights. It is an abuse of all those things which people who own land hold dear.

We can go on and debate this thing, but I suspect it is basically irrelevant. What this seeks to do is to make it impossible for people to have land in irrigation districts.

I yield to the Senator from Idaho.

Mr. SYMMS. I thank the Senator for yielding. I appreciate what he has said in answer to the rhetorical question that my good friend from Ohio raised earlier.

The reason why the residency requirement is not in this bill is precisely that when people farm out their lifetime, when they are physically unable to farm and wish to lease it, if the residency requirement is placed on it, in some instances it makes it impossible, forcing them to sell it. It hurts senior citizens who would like to move from Idaho to Arizona, to a warmer climate, for example.

Whom else does it hurt? It hurts the young farmer who is underfinanced, who comes out of the educational phase of his life trying to farm and cannot get the capital together but perhaps can get enough money to start by leasing a farm.

That is the way some of our successful farmers have started, by leasing land, to avoid the risk involved in capital. Otherwise, unless you are born into a farm, you cannot get started in farming today, in most parts of the country.

If the Senator from Ohio had time to visit my State and see what happens with respect to residency, I think he would withdraw his amendment.

His amendment hurts two classes of people: Young people, who are trying to get the upper mobility for an opportunity in agriculture, and working people, who have seen the working days of their lives and want to lease their property and go to a warmer climate.

This amendment would be discriminatory against those two groups of people, and I am sure that is not the intention of the committee.

Mr. President, since I came to Congress in 1973, I have been actively seeking a solution to the outdated and archaic provisions of the 1902 Reclamation Reform Act. This law, coupled with such landmark legislation as the earlier Homestead and Desert Land Entry Acts, played a vital role in the agricultural development of the arid Western United States. There is no issue that Idaho farmers have spoken to me about more.

It has evolved over the 80 years since its enactment into the primary water resource development program in the West, integrated into major river basins and multipurpose projects providing hydroelectric power, municipal and industrial water supply, flood control, and public recreation in addition to reclamation. The gross value of crops produced from reclamation farms approached $5 billion with aggregate economic benefits to the Nation of over $50 billion.

Nonetheless, the act has not changed to meet growing agricultural needs with increasingly less farmers. It has not changed to recognize the fact that a 160-acre farm at the turn of the century kept a family farmer busy from dawn to dusk and provided an opportunity for economic progress. Today, agricultural technology and rapidly escalating costs of production have evolved the family farm into a much larger, but less profitable venture.

The fact that the act had not changed with the times was not a problem until recently simply because the Department of the Interior largely ignored its provisions. The Federal Government instead entered into good faith contracts with reclamation farmers with little heed to the possible consequences of their actions. Unfortunately, that day of reckoning began with a number of law-suits on the act that resulted in a disastrous regulatory reversal of the historic interpretation and administration of the 1902 act by then Interior Secretary Cecil Andrus.

The controversy which I believe will be properly resolved by passage of S. 1867 is essentially a dispute between reclamation family farmers and a group of land reformers, antiagricultural, forces and so-called environmentalists. S. 1867 and its companion, H.R. 5539, which was recently passed by the House, represent remarkable bipartisan efforts to put the controversy to rest. Each reclamation State has its own individual concerns over the 1902 act, and, I suppose, if State delegations from the various States were to draft legislation to address those concerns, we would have a markedly different bill from each of them. It is a tribute to the authors of this legislation that a delicate balance of those differing interests has been reached in S. 1867. This balance has only come about after the tireless efforts of my senior colleague, Senator McCLURE, and the Senate Committee on Energy and Natural Resources. I can assure this body that few stones were left unturned in those deliberations, that S. 1867 has considered every alternative in the crafting of this legislation. Naturally, I am concerned that this delicate balance may be upset by amendments to this bill, and I urge my colleagues to carefully consider the committee's arguments for rejecting these amendments during their consideration of the bill.

We will hear many arguments on the floor today. Most of them will center around subsidies and the excess acreages operated by the giant California agribusinesses. I want to tell this body that the amendments that will be offered on the floor today will hurt family farmers. Despite the cries about agribusinesses, it is my own

State of Idaho that contains the greatest number of excess acres in this Nation, and I can assure Senators that those excess acres are not held by giant agribusinesses, but by the very family farmers that stand to lose the most if S. 1867 is not adopted.

This is not a new Federal program in its infancy—it is instead, a program that is held together by firm commitments between the Federal Government and family reclamation farmers. S. 1867 has been carefully drafted to protect those commitments and address the fiscal responsibility and the concept of full cost responsibly. The proposed amendments to this bill threaten those commitments—they change the rules of the game in the fourth quarter, and the Western agricultural community is left holding the ball.

Mr. President, in conclusion, let me just add that there is a regulatory time bomb ticking away in the Western United States. It was set on August 15, 1977, when Secretary Andrus, in response to a Federal district court order, published proposed rules and regulations governing the 1902 act. The regulations represented a radical departure from the historic application of the act, and threatened the good faith contracts of Western family farms and the very future of the reclamation program itself. S. 1867 would disarm the time bomb, and reform an outmoded statute that cries for change.

Mr. President, at this time I wish to compliment the committee for the job they have done in putting together this bill, with all the varied problems of these reclamation States. The Senator from Wyoming (Mr. WALLOP), the Senator from Idaho (Mr. MCCLURE), the Senator from Washington (Mr. JACKSON), and others have done an excellent job in crafting this bill. It should be passed.

Mr. WALLOP. Mr. President, I appreciate the remarks of the Senator from Idaho.

There is one other segment—the reclamation farmers would be badly hurt by that, and those who are hurt by the economic straits that agriculture presently finds itself in, for example, may have to go off the farm for a year or two in order to support a family and in order to get back to it.

That is as clear as I know. It is an abuse of the concept of family farming which the Senator from Ohio seeks to assert here.

I believe the Senate has already made its expression as to the committee's report. I do not recall whether the Senator from Ohio brought it up in committee, but I point out once again that the Senator was a member of that committee, and he had his shot then.

Mr. MCCLURE. Mr. President, will the Senator yield?

Mr. WALLOP. I yield.

Mr. MCCLURE. I thank the Senator for yielding.

Mr. President, it also should be noted that the Senate voted on this issue in the past. It was in S. 14, reported by the committee in the last Congress, and it was passed by this body once before. So it is not a new issue. It is not one that has not been presented and considered here before.

Mr. WALLOP. Mr. President, I appreciate what the Senator from Idaho has said.

The only new issue before us now is that we have a substantially tighter bill than S. 14, for which I think the Senator from Ohio voted.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I do not agree with the Senator from Wyoming. I am not a farmer, and I do not claim to be an expert about farming matters. I noticed that the Senator from Wyoming probably unintentionally overlooked the National Grange. That organization does speak for family farmers. I read from their letter on this subject:

> The National Grange, representing nearly 450,000 members in 41 states, has carefully monitored the progress of bills to amend the Reclamation Act of 1902. The issue is a complex one deserving careful attention to a number of specific items that will have long-lasting impacts on family agriculture in America, especially in the 17 western states.
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> On July 14, the Senate will undertake consideration of S. 1867, sponsored by the Chairman of the Senate Energy and Natural Resources Committee, James McClure. Our membership has taken an active role in the progress of this bill to date, but we are most disappointed in its final form. A number of amendments will be offered on the floor during debate, and I would appreciate your consideration of the following points which will, most likely, be the subjects of recorded votes. In our opinion, three important changes must occur in order to strengthen the bill and to fulfill its intention to serve family agriculture.

I will not read Nos. 1 and 2 at this time because they are not relevant, but the third one is relevant:

> The 1902 Reclamation Act specified that beneficiaries of reclamation projects would be family farmers and not speculators or businesses interested in entering agriculture at the expense of the U.S. taxpayers. To assure that the irrigation water delivered from reclamation projects would go to those for whom it was intended, Congress specified that recipients must live on or near the land that is irrigated. For the past several decades, the Bureau of Reclamation has ignored this provision of law. As a result, some reclamation areas have grown into publicly subsidized super-farms where "paper farmers" use the landholdings for sophisticated tax shelters for income derived off the farm in cities nearby and across the country. Foreign interests also benefit from absentee landownership.

Mr. President, this is not complicated. You are for the family farmer—and that family farmer includes living within 50 miles—or you are not; and if you are not, you are for the corporate farmer.

If it were in a previous bill, why are we talking about it? Obviously, then, it is still in the law, or we would not be taking it out of the law at the present time. I can only assume that the previous bill, whether passed by the Senate or not, did not become law, and that therefore this is still an operable law.

If you are for the family farmers, support my amendment. If you are opposed to the family farmers and believe that the corporate farmers are entitled to own and farm all the land of this country, then vote against my amendment. But it is simple. It is not a complicated amendment, and that is the reason I offered it in the first instance.

Mr. SYMMS. Mr. President, will the Senator yield for a question?

Mr. METZENBAUM. On the time of the manager of the bill.

Mr. WALLOP. I yield 2 minutes for the purpose of a question.

Mr. SYMMS. I should like to make the point that the Senator is talking about 50 miles. What is so magical about 50 miles? If you live within 49 miles, it is OK. If you live 51 miles away, it is not OK. The Senator is saying something that is arbitrary.

If the Senator really wants his amendment as he describes it—and I disagree—I think his amendment is totally discriminatory against senior citizens and young farmers. Young farmers are under-financed and are trying to get started in farming. Senior citizens want to keep the farm and move and lease the farm to someone else. It is totally discriminatory. I describe it differently from the way my friend from Ohio describes it.

But I would say to the Senator if he really wants to do what he is describing why not make him live on the farm? Why make it 50 miles? What is so magical about 50 miles?

Mr. METZENBAUM. Mr. President, responding to my friend from Idaho, I will say to the Senator it has been the law since 1902.

Mr. WALLOP. It has not been enforced.

Mr. METZENBAUM. It has not been enforced?

Mr. WALLOP. It has not been in the law.

Mr. METZENBAUM. It is not in the law now?

Mr. WALLOP. No, it is not.

Mr. METZENBAUM. The 50-mile provision is not directly in the law but the family farm provision is in the law, and the 50-mile interpretation was established by the Department in 1909.

Mr. SYMMS. I would just say that the 1902 act required a landowner to be a resident on a neighborhood land in order to be eligible. The act of 1926

did not contain those provisions, and it was inherent that they wanted to remove it then because they realized it would discriminate against younger farmers who wanted to get started and did not have the wealth. They did not have a wealthy capitalist in the city to get them started.

It would discriminate against the senior citizens who wanted to stay on their farms, and that is why they left it out in 1926. My good friend is trying to discriminate against the very people whom he is trying to champion, champion their cause.

Mr. METZENBAUM. I do not understand anything about the claim that this hurts the young farmer.

Mr. WALLOP. The Senator is now on his own time.

Mr. METZENBAUM. Mr. President, I have the floor.

Mr. WALLOP. The Senator has it on his own time.

Mr. METZENBAUM. On my own time.

I do not follow that argument at all. To me it seems totally logical. All we are saying is if you want to farm then live on the farm or within 50 miles. I do not have any great position of advocacy for the 50-mile interpretation, but because this it the way it been interpreted in the past, all I am doing is putting the language back into the law as it is at the present time.

Either you agree with it or you do not, but it is not complicated. It has nothing to do with senior citizens; it has nothing to do with young people. It has got nothing to do with anything other then the single question of whether you are going to have the residency in or out. If out you take care of the corporate farmers; if in you take care of the family farmer, and it is as simple as that.

How much time does the Senator from Ohio have left?

The PRESIDING OFFICER. Twenty minutes and nineteen seconds.

Mr. METZENBAUM. I reserve the remainder of my time.

Mr. WALLOP. Mr. President, I cannot speak for the Grange, and the Grange cannot probably speak for itself because the testimony they gave in what they submitted to the committee, is contrary to what the Senator from Ohio just read. They would have seen—a number of exceptions which are not in the Senator's amendment, and I just say that the Senate has talked about this long enough. If the Senator from Ohio wishes to use the remainder of his time he is more than welcome to do so.

I yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, one of the difficulties we have any time an act, a law, has application in one region of the country and not in the other is that there will be widespread misunderstanding in the areas where it is not in application as to how it actually works. We will get a lot of theories about how it works but very little actual practical knowledge of how it works in the field.

The fact of the matter is that the junior Senator from Idaho is exactly correct. There are two groups of people who are disadvantaged, and that is why the amendment should not be adopted. I can cite to the Senator from Ohio the difficulty that a young farmer has in getting started, and the fact that he has to find somebody to capitalize his venture, and the person who takes title to the property may well be the person who is putting up the capital that allows the young farmer to get into farming at all, and without it he simply would not have a chance.

Second, as must be the case in Ohio—I am not as familiar with Ohio obviously as I am with Idaho—the farms have been growing in size even in Ohio, and as they grow in size they buy other land somewhere in the area around their farming operation.

If it happened to be contiguous, that is the land just across the fence, and they could buy that land to go with the land they have then indeed they can satisfy a residency requirement.

But if the land to be acquired happened to be a quarter-of-a-mile down the road or across the road where it was separated by any division of ownership of some intervening land then it would not be contiguous and that does not make any sense to me that just because there might be a 40-acre tract in between or a county road or a State highway that all of a sudden that family that wanted to buy the land that was available and was right next door to them and within the acreage limitations could not own it because they could not comply with the residency requirement.

Why is this in the bill? Because, as my colleague has said, it was in the 1902 act but it was left out of the 1926 act. There has been some confusion since that time as to whether it was an oversight, an inadvertence or repeal by implication or whether or not it was really there or not.

That is why the Senate last time, in considering this bill, had this provision in it. This provision is identical to the one that was in S. 14, which was voted on in the Senate before.

I hope the amendment will be rejected. I thank the Senator for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DANFORTH). Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I am willing to yield back the remainder of my time on the amendment of the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Ohio (Mr. METZENBAUM). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LEVIN (after having voted in the affirmative). Mr. President, on this vote, I have a live pair with the Senator from Nevada (Mr. CANNON). If he were here, he would vote "nay." If I were permitted to vote, I would vote "yea." I therefore withdraw my vote.

Mr. STEVENS. I announce that the Senator from South Dakota (Mr. ABDNOR), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Iowa (Mr. JEPSEN), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Vermont (Mr. STAFFORD), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), and the Senator from New Mexico (Mr. SCHMITT) would each vote "nay."

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Alabama (Mr. HEFLIN), the Senator from Michigan (Mr. RIEGLE), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. RIEGLE), would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 7, nays 75, as follows:

[Rollcall Vote No. 226 Leg.]

YEAS—7

Biden	Metzenbaum	Proxmire
Kennedy	Moynihan	
Leahy	Pell	

NAYS—75

Andrews	East	McClure
Armstrong	Exon	Melcher
Baker	Ford	Mitchell
Baucus	Garn	Nickles
Bentsen	Glenn	Nunn
Boren	Goldwater	Packwood
Bradley	Gorton	Pryor
Brady	Grassley	Quayle
Burdick	Hart	Randolph
Byrd, Harry F., Jr.	Hatch	Roth
	Hatfield	Rudman
Byrd, Robert C.	Hawkins	Sarbanes
Chafee	Helms	Sasser
Chiles	Huddleston	Simpson
Cochran	Humphrey	Specter
Cohen	Inouye	Stennis
Cranston	Jackson	Stevens
D'Amato	Johnston	Symms
Danforth	Kassebaum	Thurmond
DeConcini	Kasten	Tower
Denton	Laxalt	Tsongas
Dixon	Long	Wallop
Dole	Lugar	Warner
Domenici	Mathias	Zorinsky
Durenberger	Matsunaga	
Eagleton	Mattingly	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Levin, for

NOT VOTING—17

Abdnor	Heflin	Pressler
Boschwitz	Heinz	Riegle
Bumpers	Hollings	Schmitt
Cannon	Jepsen	Stafford
Dodd	Murkowski	Weicker
Hayakawa	Percy	

So Mr. METZENBAUM's amendment (UP No. 1096) was rejected.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, it had been my understanding that the majority leader would come down and perhaps put us into a period of recess in which the committee and the leaders on the floor might seek to see if there is any means by which the Senator from Ohio would agree to let this bill proceed. I think the previous vote gives some indication as to the mood of the Senate, and I would hope that that might not be lost on the Senator from Ohio and that we would, indeed, see if there is not some means by which we can come to agreement as to when this bill might be voted on and what amendments may be left. Perhaps we do not need a meeting. Perhaps the Senator could tell us now.

Mr. METZENBAUM. What is the Senator asking me?

Mr. WALLOP. I wonder if the Senator has any idea how many more amendments he intends to propose and if he would be willing to seek a time agreement on them. Is there any structure that the Senator would be amenable to.

Mr. METZENBAUM. The answer is "No," but I did indicate to the leader that I was prepared to sit down in an effort to find a compromise position. However, it would not matter to me, I might say to the Senator from Wyoming—I do not want to get his hopes up high—if there were one vote or two votes for the amendment; my position is that I am going to offer the amendments that I have in mind offering——

Mr. WALLOP. Could we start there? Could we see if there is a number of those——

Mr. METZENBAUM. A number of what?

Mr. WALLOP. A number of amendments that the Senator has in mind.

Mr. METZENBAUM. Let me say I do not feel under any compulsion to advise the Senator from Wyoming how many amendments I have in mind. There is no need for me to do that. On the other hand, as I said to the majority leader, I am prepared to sit down and go down line for line on some of the matters that I would find acceptable.

Now, I do want to advise the Senator from Wyoming—it should be of interest to him—that some of the positions and amendments that I am prepared to accept were those very positions that Secretary Watt—I never thought I would be calling upon him for such support on a debate on the floor of the Senate—has publicly indicated he supports.

Now, I do not know whether this will mean much to the Senator from Wyoming, and it is possible, and I think maybe even probable that the Secretary may have changed his position for one reason or another. But the fact is the reasonableness of the position of the Senator from Ohio is confirmed by the fact that many of the minimums that I would be prepared to accept are the very positions that the Secretary of the Interior has publicly indicated he supports.

Mr. WALLOP. I think the Senator is mistaken on that. We have letters in each instance of those issues, and the Senate has already spoken on them. If the Senator wishes to make the Senate jump through the same hoop more than once, obviously that is his priviledge. But when the Senate has spoken, I would hope that the Senator would find it in his heart to let the will of the Senate be worked, let the political process which the Founding Fathers designed go into play. I see the whip is here now, and I yield to him for purposes of making a request.

Mr. STEVENS. I thank the Senator from Wyoming.

Mr. President, it was my understanding and that of the majority leader that if we stood in recess for a while there might be a possiblity of reaching some accommodation that would help us get to the point of finishing this bill this evening.

Mr. WALLOP. Obviously, that would be the desire of the Senator from Wyoming, and I am certain the desire of virtually every other Senator in the room, but it remains to be seen. The Senator from Ohio said that I should not be optimistic, and I never am when it comes to dealing with the Senator from Ohio, but nonetheless I think it is worth a try on behalf of Senators who are here who have had to make new plans.

Mr. STEVENS. Mr. President, it is my understanding there is leader time that was left remaining this morning. How much time remains to the leadership under the standing order?

The PRESIDING OFFICER. There were a total of 8 minutes remaining to the leaders under the standing order.

Mr. METZENBAUM. If the majority whip will yield——

The PRESIDING OFFICER. The recess would not be counted against anyone's time under the time agreement.

Mr. STEVENS. The recess would not be charged against anyone's time.

Does the Senator from Ohio wish to inquire?

Mr. METZENBAUM. I noted in my discussions with the majority leader that after the public debate was completed we would take this matter to a vote, and that immediately after that the majority leader indicated to me that he intended to ask for a recess.

Now, my own opinion is that you cannot do it in 5 minutes, you cannot do it in 10 minutes. I have no objection to taking a period of time, if we need additional time.

Mr. STEVENS. Until 4 o'clock?

Mr. METZENBAUM. It is worthwhile trying. We can always go back to the floor and extend it if there seems to be any progress.

RECESS UNTIL 4 P.M.

Mr. STEVENS. Mr. President, so we do not use up time that could be used to see if there is the possibility of a meeting of the minds on the matter, I ask unanimous consent that the Senate stand in recess until 4 p.m.

There being no objection, the Senate, at 3:36 p.m., recessed until 4 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CHAFEE).

RECESS FOR 30 MINUTES

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate at 4 p.m. recessed until 4:30 p.m., at which time the Senate reassembled when called to order by the Presiding Officer (Mr. CHAFEE).

ORDER FOR RECESS UNTIL 9 A.M. TOMMOROW

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, there are still negotiations underway among the principals involved in this debate.

I wish I could indicate some optimism, but I cannot. I might express some remaining hope that something can be worked out that would permit us to finish this bill today, but, once again, in all candor, I cannot express such hope for that. Therefore, Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in recess until the hour of 9 a.m. tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BAKER. I yield the floor, Mr. President.

Mr. EAGLETON addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. EAGLETON. Mr. President, I ask unanimous consent that I be permitted to proceed as in routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE WAR POWERS ACT AS APPLICABLE TO LEBANON

Mr. EAGLETON. Mr. President, it is a likely probability that President Reagan will send American troops to Lebanon to be interposed by consent between the PLO guerrillas and the Israeli forces. On this subject, I have sent a letter to the President and would like to read it to my colleagues:

DEAR MR. PRESIDENT: On July 6th, you announced that the United States had "agreed in principle to contribute a small contingent" of United States troops to a multinational force for "temporary peacekeeping" in Beirut should an acceptable settlement of the current hostilities be reached. I am greatly disturbed that, in the wake of your announcement, reports have circulated that the Administration does not consider the introduction of troops into Lebanon under these conditions as triggering the operative language of Sec. 4(a)(1) of the War Powers Act. ("In the absence of a declaration of war, in any case in which United States Armed Forces are introduced into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." The Act then goes on to require timely reporting to Congress).

Mr. President, the situation in Lebanon is such that the likelihood of "imminent involvement" must be acknowledged. Any deliberate attempt to downplay the gravity of the situation and the risks facing those troops to be dispatched to Lebanon would violate both the spirit and letter of the law. Further, the "law" of common sense would be violated because the whole world knows that there are inherent and inescapable risks to the introduction of any troops of any nationality, said troops to be placed between Israeli forces and P.L.O. guerrilla forces. For example, even if Mr. Arafat and Prime Minister Begin give the most thorough and well-intended of guarantees of safety, etc., there is a high probability that one or more P.L.O. die-hards will take a pot shot at American troops simply for the martyred glory of doing so.

As one of the three Senate authors (Javits, Stennis, and Eagleton) of the original Senate War Powers Act, I can speak with authority as to the intent of Congress with respect to the phrase "imminent hostilities." In 1971, I testified before the Senate Foreign Relations Committee on the meaning of those words.

"Obviously hostilities include land, air, or naval action taken by the Armed Forces of the United States against other armed forces or the civilian population of any other nation. But Senate Joint Resolution 59 is more specific. It includes the deployment of U.S. forces outside the United States under circumstances where imminent involvement in combat activities is a reasonable possibility."

There was never any doubt in my mind or that of Senator Javits or Senator Stennis as to what our intent was. We described "imminent hostilities" as hostilities which were "reasonably possible."

Mr. President, the decision to send troops to Lebanon is obviously a delicate, sensitive, and grave matter. If it be your considered judgment that American troops should be sent, I trust you will do so in total conformity with the War Powers Act and especially the operative section, Sec. 4(a)(1).

Yours very truly,

THOMAS F. EAGLETON,
U.S. Senator.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now have a brief period for the transaction of routine morning business to extend not past the hour of 4:50 in which Senators may speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

GERMAN RESPONSE TO NO FIRST USE OF NUCLEAR WEAPONS IN EUROPE

Mr. PROXMIRE. Mr. President, the debate over the no first use of nuclear weapons in Europe deeply involves the opinions of our allies there. When four prominent American specialists urged the United States to adhere to a no first use philosophy, the Germans reacted swiftly.

This is an important consideration, given the fact that any nuclear war in Europe undoubtedly will be fought on German soil to some extent. Thus their opinion is of paramount importance.

While the diplomatic reaction was swift, the more detailed analysis of the problems with a no first use statement has just become available from German authorities. They have found the political implications of no first use to be "profoundly disturbing." They argue that it concedes conventional military superiority to the Warsaw Pact nations and that Soviet forces would not face the prospect of a nuclear attack if they do invade. This grants the Russians a military advantage of some proportion.

Finally, the Germans also argue that if the United States distinguishes between nuclear and nonnuclear war in Europe in response to aggression there, this can only make conventional war more likely.

Mr. President, I ask unanimous consent that a Wall Street Journal article on this issue be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, July 9, 1982]

NO FIRST USE? GERMANS ANSWER BUNDY & CO.

(By Neil Ulman)

In the debate over nuclear weapons, no people have more reason than the Germans to fear the nuclear horror and wish it would somehow pass from them. Both NATO and Warsaw Pact forces stockpile battlefield nuclear weapons in Europe. As the Germans know only too well, any war that erupted there would be fought on their territory. Their foreign and defense policies are aimed at preventing that.

Yet they reacted with anxiety and dismay last April when four prominent Americans proposed in an article in Foreign Affairs Quarterly that the United States work toward a policy renouncing any first use of nuclear weapons in Europe. Foreign Minister Hans-Dietrich Genscher immediately reaffirmed Germany's adherence to the NATO strategy of flexible response. That strategy contemplates the use of nuclear weapons if it appeared that NATO's outnumbered forces in Europe were in danger of being overrun by a conventional Warsaw Pact attack.

A German government spokesman privately deplored the "no first use" article by McGeorge Bundy, former special assistant for national security affairs to Presidents Kennedy and Johnson; George F. Kennan, former U.S. ambassador to the Soviet Union; Robert S. McNamara, former secretary of defense, and Gerard Smith, chief U.S. SALT negotiator from 1969 to 1972. A top German foreign ministry official saw "great problems" caused by the article, and a parliamentary leader promised there would be a German response.

The Germans have now replied, Karl Kaiser, director of Germany's top foreign policy research institute; Georg Leber, Social Democratic member and vice president of the parliament (and a former defense minister); Alois Mertes, a Christian Democrat and member of the parliamentary foreign affairs committee, and Franz-Josef Schulze, a retired general and former commander of NATO's Central European forces, have all joined in another Foreign Affairs article to reject the idea of "no first use." However pacific its intent, they say, such a policy would only "make war more probable."

While they are writing in their private capacities, their article is "very close to the thinking of the German government," says Deputy Foreign Minister Peter Corterier who traveled through the U.S. last week on government business.

The thinking is worth having. More than a discussion of military strategy or arms control, it is also a telling commentary on German-American relations. It is the troubled confidence in those relations that spills over, however indirectly, in disputes over East-West trade and the Soviet gas pipeline as both Germans and Americans compulsively examine each nation's commitment to

the other. For in ways that Messrs. Bundy & Co. may not have imagined and that most Americans might initially find difficult to fathom, the Germans have found the political implications of "no first use" to be "profoundly disturbing."

"No first use" is a military loser for NATO, and that may explain why the Soviets have been suggesting it for years and why it was a highlight of Leonid Brezhnev's recent disarmament message to the United Nations.

As the German authors explain, a "no first use" pledge by NATO would concede a huge military advangage in Europe to the numerically superior Warsaw Pact. "Even in the case of a large-scale conventional attack against the entire European NATO territory, the Soviet Union could be certain that its own land would remain a sanctuary (from nuclear response) so long as it did not itself resort to nuclear weapons," the Germans write. (Elsewhere, in another Foreign Affairs article, Gen. Bernard Rogers, NATO's Supreme European commander, points out another military disadvantage of "no first use." It would give up "the tactical advantage to the defender" wherein a nuclear threat acts as "a restraint on the tactical massing of Warsaw Pact forces preparatory to an assault.")

But more immediate and profound than the military implications of "no first use" would be its political consequences, say the German authors. It would, they charge, ". . . destroy the confidence of Europeans and especially of Germans in the European-American Alliance as a community of risk and would endanger the strategic unity of the Alliance and the security of Western Europe."

Therein, of course, lies the diplomatic value to Soviet policy of "no first use." Even if no shot is ever fired "no first use" could be a wedge to drive between the U.S. and Germany.

The German authors' warning goes to the heart of the current malaise in Germany over the American commitment to the alliance. "German debate over the American nuclear commitment to defend Europe is like the Loch Ness Monster, says Germany's Mr. Corterier. "It has to come up from time to time."

Americans have consistently risked hundreds of thousands of troops and billions of dollars in this century to defend Europe, says the junior minister. What is new in the age of Soviet-American strategic nuclear parity "is that the U.S. risks its very existence for Europe." It is natural for Europeans to wonder from time to time if the U.S. really means that and to look for reassurance that it does.

In the "no first use" proposal, however, the German authors writing in Foreign Affairs saw "a withdrawal of the U.S. from its previous guarantee . . . at stake." The Germans find any such suggestion particularly difficult to deal with at a time when their government is supporting a NATO decision to deploy medium-range nuclear missiles in Germany should current Soviet-American arms control talks on these missiles fail. With NATO asking the Germans to take more risk on their soil, any suggestion that the U.S. would wiggle out of its share of risk is most unhelpful.

Finally, say the Germans, uncoupling the risk of nuclear attack from conventional attack can only make conventional war more thinkable, therefore more likely. The alternative, a buildup of conventional NATO forces to match the Warsaw Pact, would leave Germany "transformed into a large military camp for an indefinite period of time." Neither the German economy nor German society could stand that, they say. "And even if we had a conventional balance, we would still need the link with the American nuclear umbrella," says Mr. Corterier.

The arms control debate isn't simple and it isn't over. But there is instructive paradox for peace marchers in the fact that those who face the nuclear horror most starkly find only more danger in "no first use," one of the season's catchier quick fixes.

DEATH IN CAMBODIA

Mr. PROXMIRE. Mr. President, the White House News Photographers' Association is currently holding its 39th annual exhibition at the Library of Congress. The photographs in this fascinating exhibition offer glimpses of the beauty, humor, poignance, and horror of human life.

Among this collection of striking photographs is one which particularly arrests the viewer's gaze. It is a picture of a field in Cambodia. This field is strewn with human bones. It is hard to see the grass and the rocks because there are so many bones. Hundreds of skulls, thousands of ribs, hundreds of limbs lie bleaching in the sun. The field has become a sea of bones.

These were once living, breathing people, and this photograph is a tacit yet eloquent testimony to their death. For these people did not die through disease, or old age, or accident. They did not gather in this field to be struck down by lighting. They were brought to this field against their will, and in this field, they were deliberately and systematically killed.

It is clear from this photograph, and from many other reports, that the Cambodians have suffered mass slaughter of genocidal proportions. It is clear from this photograph that here is a place where people have been routinely killed, not because of their individual characteristics or actions, but because they belonged to a group that was seen by their killers as a problem or a threat. And this is the kind of atrocity that we must do everything we can to stop.

Our first step in this direction must be to ratify the International Genocide Convention. By doing so, we would signal to the endangered peoples of the world our concern for their plight. We would provide ourselves with a moral weapon with which to attack those who are responsible for horrifying violations of human rights. We might perhaps be able to prevent some instances of bloodshed.

Mr. President, I ask my colleagues to go take a look at that photograph of the Cambodian field. And then I ask them to go home and think hard about the Genocide Convention.

Thank you, Mr. President.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. BAKER. Mr. President, for a change I think I may be the bearer of glad tidings. I have just returned from a meeting which is in progress among the principals to this matter, and they all advise me that they think they are making good progress; that, indeed, they may be able to resolve the issues which remain between them, and they need a little more time. They need a little time then to permit staff to draft an agreement, if they get an agreement.

I have indicated to them that I would ask unanimous consent that the Senate stand in recess until 5:30 in order to accommodate those requirements, and I now do so.

There being no objection, the Senate, at 4:47 p.m., recessed until 5:28 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. STEVENS).

ORDER OF PROCEDURE

Mr. WALLOP. Mr. President, for the interest of Senators who may be listening in their offices, after a good deal of fervent and passionate negotiations, we have reached an agreement which we will offer as a single amendment, subject, of course, to the time limitations upon it, though there is time on the bill should that be necessary. We think and hope that it is not.

As soon as that amendment is drafted, I will introduce it, and the Senator from Ohio and the Senator from Wyoming will discuss what it does. We would hope at that time to propound a unanimous-consent agreement that no further amendment be in order prior to third reading other than technical, and would hope that Senators would be prepared to respond to that request when they come over.

My suggestion is that after the amendment is offered and a general explanation of it has been given, that we then propound that request so that Senators have the opportunity to find their way over here and listen as well to the amendment as it is explained.

At that time, the Senator from Ohio and I will try to respond to any questions Senators may have. We would hope that would then be the final amendment and would hope then that we could go to final passage immediately thereafter.

Mr. METZENBAUM. Mr. President, the Senator from Wyoming has stated

the situation exactly as I understand it to be. We have reached agreement. We are now awaiting the drafting of specific language. I would hope that we could bring this matter to a conclusion in rather short order once the amendment is in final form.

I might say that I appreciate the cooperation extended by the Senator from Wyoming, the Senator from Idaho, and the Senator from Washington, the ranking minority member.

Mr. WALLOP. Mr. President, I thank the Senator from Ohio. It could obviously not have been done without the fine cooperation which was given by the Senator from Ohio to all of us in those negotiations.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

THE ATTORNEY GENERAL, VOLUNTARY SCHOOL PRAYER, AND THE INTEGRITY OF THE CONSTITUTION

Mr. HELMS. Mr. President, as was widely publicized at the time, Attorney General Smith issued an opinion letter concerning my voluntary school prayer bill, S. 1742, on May 6, 1982. Although the letter did not explicitly assert that the bill was unconstitutional, it advanced a legal theory which might well be used to impeach the constitutionality of the bill.

As President Reagan, my colleagues in the Senate, and the Attorney General himself know, I have the highest respect for William French Smith. He is an outstanding lawyer, a fine administrator, and a dedicated public servant who has served the country and President Reagan well. Government needs people like William French Smith who are willing to sacrifice the comfort and quiet of private life for the sake of public service. And Attorney General Smith knows the sacrifice I am talking about because he has been on the receiving end of some rather sharp criticism, both personal and professional. He knows that this is one of the costs of public service.

Mr. President, it is not my purpose today to add to that kind of criticism of the Attorney General—criticism which all of us in public office receive from time to time. Rather, it is my intention to show my colleagues and the public that there is a considerable weight of legal opinion contrary to the opinion expressed in the Attorney General's May 6 letter.

Along with many others, I believe that the voluntary prayer bill is fully constitutional. The materials I place in the RECORD today demonstrate that fact. Moreover, I believe it is the duty of Congress to enact such legislation in order to preserve the integrity of the Constitution. Federal judges, in the area of school prayer and in other areas, have distorted the Constitution beyond recognition, and in so doing they have undermined the very foundation of Government and its role in American society. Congress, holding explicit constitutional power which can be used to ameliorate judicial abuses, cannot stand idly by while Federal judges plow under the traditional liberties of the American people. Too many sacrifices have been made by too many people for Congress to play dead at the hands of social engineers clothed in judges' robes. Congress under the authority of the Constitution will have the last word or else the Constitution, as we and our forebears have known it, will remain radically altered by judicial fiat without the ratification of a single constitutional amendment.

So long as I am in the Senate, Mr. President, I will do everything I can to make sure that Congress has the last word in the task of preserving the Constitution against judicial distortion. We owe this effort to our constituents and to our history as a people.

Mr. President, I ask unanimous consent that my letter of July 14, 1982, to the Attorney General and three of its five enclosures be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, the two enclosures not printed in the RECORD are as follows: First, Statement of Senator JOHN P. EAST appearing in the CONGRESSIONAL RECORD of March 17, 1982, beginning on page S2255; and second, Raoul Berger, "Congressional Contraction of Federal Jurisdiction" (1980 Wisc. L. Rev. 801).

EXHIBIT 1

U.S. SENATE,
Washington, D.C., July 14, 1982.

Hon. WILLIAM FRENCH SMITH,
Attorney General, U.S. Department of Justice, Washington, D.C.

DEAR BILL: A letter over your signature, dated May 6, was sent to Senator Thurmond regarding S. 1742, a bill withdrawing jurisdiction from the federal courts in cases involving voluntary prayers in public schools. The letter in part argues that the power of Congress under Article III, Section 2 of the Constitution to regulate the appellate jurisdiction of the Supreme Court is limited by some "core functions" test.

Although this "core functions" test is superficially intriguing, I am at a loss to find anything in the text of the Constitution, among the predecents or in constitutional history to support it. Thus, the "core functions" test strikes me as the kind of legal fiction so often used by the courts in the recent past to distort the meaning of the Constitution.

Such legal fictions share two characteristic features with this so-called "core functions" test. First, they are result-oriented to the detriment of constitutional text, purpose, and history. Second, they leave judges with a high degree of discretion in future cases because the putative constitutional test is comprised of heavily subjective elements.

For example, the "core functions" test is defined in your letter as follows:

"In determining whether a given exception would intrude upon the core functions of the Supreme Court, it is necessary to consider a number of factors, such as whether the exception covers constitutional or nonconstitutional questions, the extent to which the subject is one which by its nature requires uniformity or permits diversity among the different parts of the country, the extent to which Supreme Court review is necessary to ensure the supremacy of federal law, and whether other forums or remedies have been left in place so that the intrusion can properly be characterized as an exception."

These factors are so subjective in themselves and in their relative weights that they defy regular and predictable application by courts of law. Instead, they guarantee that the personal predilections of judges will prevail over any concrete rule of law. I cannot believe the Framers had any such intention.

On the contrary, does not the text of Article III, Section 2 support my view that it was meant as one check among others that Congress has over the Supreme Court? Congress certainly cannot make rulings in particular cases before the Court, but it can—under Article III, Section 2—deprive the Supreme Court of jurisdiction to hear particular classes of cases. This view is entirely consistent with the whole constitutional structure of checks and balances.

In support of this view I enclose the following for your consideration:

1. Letter dated May 26, 1982, from Professor Charles E. Rice of the Notre Dame Law School.

2. Article appearing in the June 1982 issue of the American Bar Association Journal by Carl A. Anderson, my former legislative assistant and now counselor to the Undersecretary at HHS.

3. Statement by Senator John P. East appearing in the Congressional Record of March 17, 1982 including additional articles by Professor Rice, Mr. Anderson, and Senator East himself and an article by C. Dickerman Williams from the National Review of February 5, 1982.

4. Undated legal memorandum of former Senator Sam J. Ervin, Jr.

5. Article appearing in the 1980 volume of the Wisconsin Law Review by Professor Raoul Berger of the Harvard Law School.

In light of these authorities I hope you will consider revising your May 6 letter to Senator Thurmond. I have great respect for you, but the theory of that letter, in my judgment, is wrong.

Kindest personal regards.

Sincerely,

JESSE HELMS.

NOTRE DAME LAW SCHOOL,
Notre Dame, Ind., May 26, 1982.

Hon. JESSE HELMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HELMS: I take the liberty of offering for your consideration a few comments on the Attorney General's letter of May 6th to Senator Thurmond concerning S. 1742 which would withdraw appellate jurisdiction from the Supreme Court in cases involving voluntary prayers in public schools.

The Attorney General concedes that Article III, Section 2, gives Congress "some power to regulate the appellate jurisdiction of the Supreme Court." (p. 2) However, the essence of his position is that "Congress may not, however, consistent with the Constitution, make 'exceptions' to Supreme Court jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers." (p. 2) This theory is commonly traced to the suggestion by Professor Henry M. Hart, Jr., that the exceptions made by Congress to the Supreme Court's appellate jurisdiction "must not be such as will destroy the essential role of the Supreme Court in the constitutional plan." [Hart, The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harv. L. Rev. 1362, 1365 (1953)] Significantly, this theory was advanced by Professor Hart in response to the suggestion that Congress could satisfy the Exceptions Clause of Article III, Section 2, by removing all but a "residuum of jurisdiction," for example, by withdrawing jurisdiction in "everything but patent cases." [Ibid, p. 1364] Professor Hart acknowledged that the Supreme Court has never "done or said anything to suggest that it is prepared to adopt" that view, because "it has never had occasion to " since "Congress so far has never tried to destroy the Constitution." [Ibid., p. 1365]

Whatever the relevance of the "core functions" test advocated by the Attorney General, or the "essential role" test of Professor Hart might be to a wholesale withdrawal of jurisdiction in "everything but patent cases," such a test cannot properly be applied to a surgical removal of jurisdiction over a particular type of case, as provided by S. 1742 with respect to school prayer. The Attorney General's application of the "core function" theory to a limited measure such as S. 1742 is contrary to the clear language of the Exceptions Clause, the intent of the Framers and the consistent indications given by the Supreme Court itself.

The Attorney General relies upon the "lack of controversy surrounding the adoption of the Exceptions Clause" to support his theory that "nopower to intrude upon the Court's core functions was intended" by the Convention. (p.7) A more reliable indicator of the Convention's intent, however, is the opinion of Chief Justice Ellsworth in Wiscart v. D'Auchy. [3 U.S. (3 Dall.) 32. (1796)] Chief Justice Ellsworth was a member of the Convention's Committee on Detail which drafted the Exceptions Clause. Later, as a Member of Congress, he was the principal author of the Judiciary Act of 1789. In Wiscart, he interpreted very broadly Congress' power over the appellate jurisdiction of the Supreme Court: "If Congress has provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided, we cannot depart from it. The question, therefore, on the constitutional point of an appellate jurisdiction is simply, whether Congress has established any rule for regulating its exercise?" [3 U.S. at 326] Far from supporting any sort of "core functions" theory, Wiscart and succeeding cases established the so-called "negative pregnant" doctrine under which a specific authorization by Congress of appellate jurisdiction was construed by the Supreme Court to imply that jurisdiction was excluded in all other cases. [See the opinion of Chief Justice Marshall in U.S. v. More, 7 U.S. (3 Cranch) 159, 172 (1805)]

Ex parte McCardle [74 U.S. (7 Wall.) 506, 513-14 (1868)], of course, upheld a statute withdrawing appellate jurisdiction only in habeas corpus cases under the 1867 act. It did not involve a withdrawal of jurisdiction in all habeas corpus cases. And it is true that there is no case presenting the issue of a statute wholly withdrawing appellate jurisdiction from the Supreme Court over a class of cases such as those involving school prayer. However, there are numerous statements in Supreme Court opinions on the subject. With the sole exception of a fragmentary comment by Justice Douglas in Glidden v. Zdanok [370 U.S. 530, 605, fn. 11], which he later retracted in Flast v. Cohen [392 U.S. 83, 109 (1968)], every statement by the Supreme Court on the issue clearly supports the conclusion that S. 1742 is surely within the power of Congress; there is not one single word in any Supreme Court opinion which would establish or justify the "core functions" theory advanced by the Attorney General. Indeed, in U.S. v. Klein [80 U.S. 13 Wall.) 128 (1872)], the only case ever to strike down (on special grounds peculiar to the statute involved in that case), a statute enacted under the Exceptions Clause, the Supreme Court expressly reiterated that Congress does have the power to deny appellate jurisdiction "in a particular class of cases":

Undoubtedly the legislature has complete control over the organization and existence of that court and may confer or withhold the right to appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, *there could be no doubt that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient.* [80 U.S. at 145] (emphasis added)

While the Klein case was not cited in the Attorney General's letter, its clear affirmation of the broad power of Congress to remove "a particular class of cases" from the appellate jurisdiction of the Court confirms the consistent lack of support in Supreme Court opinions as well as in the history and language of the clause, for any sort of "core functions" limitation on the power of Congress under the Exceptions Clause. And even if there were such a "core functions" test, it could hardly be sound to apply it so as to invalidate the surgical removal of a precisely defined jurisdiction as proposed in S. 1742.

For various reasons, as outlined in my testimony in the Senate and House hearings on the subject, I believe that the removal of Supreme Court appellate jurisdiction in such matters as school prayer and abortion, would be desirable as a matter of policy. This letter, however, concerns only the constitutional issue raised by the Attorney General's advancement of the "core functions" theory. In my opinion, his employment of that theory as a basis for arguing that S. 1742 is beyond the power of Congress is utterly unwarranted by the language, history and Supreme Court interpretations of the Exceptions Clause.

I hope these remarks will be helpful. If there is any further information I can provide, please let me know.

Sincerely,

CHARLES E. RICE,
Professor of Law.

THE GOVERNMENT OF COURTS: THE POWER OF CONGRESS UNDER ARTICLE III

(By Carl A. Anderson)

The American Bar Association has had a consistent position with regard to proposals that Congress exercise its authority under Article III, Section 2, of the Constitution, to limit the appellate jurisdiction of the Supreme Court. The House of Delegates in 1950 approved a resolution urging an amendment to the Constitution establishing in the Supreme Court appellate jurisdiction in all cases arising under the Constitution, both as to law and fact. Since then the House of Delegates on several occasions has passed resolutions in opposition to legislation removing Supreme Court appellate jurisdiction in certain cases. There may be good reasons for the A.B.A. to continue its traditional stance of opposing legislative initiatives to implement the exceptions clause, but those reasons must be grounded in practical considerations regarding specific legislation, for the authority of the Congress to determine the Supreme Court's appellate jurisdiction is simply beyond dispute.

Article III, Section 2, of the Constitution provides that the "Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." As Prof. William Van Alstyne noted in 15 *Arizona Law Review* 229 (1973), the dependency of the Supreme Court's appellate jurisdiction on the action of Congress was acknowledged early in our constitutional history by the Court in opinions that constituted an "unwavering line" through five chief justices: Oliver Ellsowrth, John Marshall, Roger B. Taney, Salmon P. Chase, and Morrison Waite.

Most instructive on the issue of the intent of the framers of the exceptions clause is the work of Oliver Ellsworth. As a member of the Constitutional Convention's Committee on Detail, he helped draft the exceptions clause. As a member of Congress, he was the principal author of the Judiciary Act of 1789. And as chief justice, he first interpreted the exceptions clause in *Wiscart* v. *D'Auchy,* 3 Dallas 321 [1796], to affirm the broad power of Congress under it. Rejecting arguments that the Supreme Court should itself be the final arbiter of the extent of its appellate power, he wrote: "Here, then, is the ground, and the only ground, on which we can sustain an appeal. If Congress has provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided, we cannot depart from it."

Equally important are John Marshall's remarks in 1788 before the Virginia ratifying convention: "What is the meaning of the term 'exceptions'? Does it not mean an alteration and diminution? Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the Supreme Court. These exceptions certainly go as far the legislature may think proper for the interest and liberty of the people."

Later as chief justice in *United States* v. *More,* 3 Cranch 159 (1805), Marshall af-

firmed Ellsworth's principle and made clear that the exceptions clause would permit Congress to make exceptions to the Court's appellate jurisdiction over an important class of cases based on their subject matter: "[A]n affirmative description of its [this Court's] powers must be understood as a regulation, under the Constitution, prohibiting the exercise of other powers than those described." In *More* the Court held it could not exercise appellate jurisdiction in criminal cases since Congress had failed to grant it that jurisdiction expressly.

During the intervening years the Court repeatedly recognized the authority of Congress to limit the appellate jurisdiction of the Court—*Durousseau* v. *United States*, 6 Cranch 307 (1810); *Barry* v. *Mercein*, 5 How. 103 (1847); and *Daniels* v. *Railroad Company*, 3 Wall. 250 (1865). The following observation from Daniels is illustrative: "It is for Congress to determine how far, within the limits of the capacity of this court to take, appellate jurisdiction shall be given, and when conferred, it can be exercised only to the extent and in the matter prescribed by law. In these respects it is wholly the creature of legislation."

Even Justice Joseph Story, who was repeatedly critical of congressional action under Article III, wrote in his Commentaries on the Constitution that the exceptions clause was intended "to enable Congress to regulate and restrain the appellate power, as the public interest, might from time to time, require."

It was against this backdrop that the Court first considered the constitutionality of an act of Congress specifically creating an exception to its appellate jurisdiction. Ex parte McCardle, 7 Wall. 506 (1868), involved a Mississippi newspaper editor's appeal, under an 1867 amendment to the Judiciary Act of 1789, for a writ of habeas corpus. Three days after arguments on the merit of McCardle's appeal were made before the court, Congress repealed the 1867 law, fearing that the Court's decision would declare unconstitutional the Military Reconstruction Act of 1867. More than a year later the Supreme Court announced its unanimous decision. Observing that it was "hardly possible to imagine a plainer instance of positive exception," Chief Justice Chase concluded: "We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words."

Despite the Court's decision in McCardle—and, more important, despite the fact that it was part of an unbroken judicial interpretation of Article III—some people have cast doubt on the authority of Congress under the exceptions clause. Prof. Henry M. Hart, Jr., for example, proposed in 66 Harvard Law Review 1362 (1953) that the activity of Congress under the exceptions clause "must not be such as will destroy the essential role of the Supreme Court in the constitutional plan." The basic difficulty with this essential role test was recognized by Professor Hart himself when he observed that the Supreme Court has never "done or said anything" to indicate it would adopt his view.

But there is, or ought to be, a more fundamental question: Just what is the constitutional plan to which Professor Hart adverts? His argument neglected to provide an answer, except to say that in the "scheme" of the Constitution the state courts are the "primary guarantors" of constitutional rights.

The "constitutional plan" embodied in Article III is essentially a compromise between two very different views of the role of federal judicial power. Prof. Paul Bator observed in testimony before a Senate subcommittee last year: "The essence of that compromise was an agreement that the question of access to the lower federal courts as a way of assuring the effectiveness of federal law should not be constituted as a matter of constitutional principle, but rather, should be left a matter of political and legislative judgment to be made from time to time in the light of particular circumstances."

The power of Congress to define entirely the jurisdiction of lower federal courts is well settled. Writing for the Court in *Lockerty* v. *Phillips*, 319 U.S. 182 (1943), Chief Justice Stone stated: "Article III left Congress free to establish inferior federal courts or not as it thought appropriate. It could have declined to create any such courts, leaving suitors to the remedies afforded by state courts with such appellate review by this Court as Congress might prescribe." Justice Harlan in *Glidden Company* v. *Zdanok*, 370 U.S. 530 (1962), observed: "The great constitutional compromise that resulted in agreement upon Article III, Section 1, authorized but did not obligate Congress to create inferior federal courts." More recently, in 1973, Justice White, in *Palmore* v. *United States*, 411 U.S. 389, maintained that the "decision with respect to inferior federal courts, as well as the task of defining their jurisdiction, was left to the discretion of Congress."

It is little wonder that the Supreme Court specifically upheld the power of Congress to withdraw, through the Norris-LaGuardia Act of 1932, federal court jurisdiction to issue injunctions in labor disputes. *Lauf* v. *E. G. Shinner & Company*, 303 U.S. 323 (1938). In the context of 149 years of constitutional history, it could hardly have done otherwise.

It cannot be assumed that the framers of the Constitution isolated their careful consideration and drafting of the exceptions clause from the broader issue of the role of Congress in shaping the exercise of the federal judicial power. To the contrary, the broad power of Congress to establish exceptions and regulations to the appellate jurisdiction of the Supreme Court would appear to be a necessary function related to its power respecting the establishment of inferior federal courts.

Prof. Herbert Wechsler concluded in 65 *Columbia Law Review* 1001 (1965):

"There is, to be sure, a school of thought that argues that 'exceptions' has a narrow meaning, not including cases that have constitutional dimension; or that the supremacy clause or the due process clause of the Fifth Amendment would be violated by an alteration of the jurisdiction motivated by hostility to the decisions of the Court. I see no basis for this view and think it antithetical to the plan of the Constitution for the courts—which was quite simply that the Congress would decide from time to time how far the federal judicial institution should be used within the limits of the federal judicial power: or stated differently, how far judicial jurisdiction should be left to the state courts, bound as they are by the Constitution."

Relatively recent statements by members of the Supreme Court reinforce a broad interpretation of congressional power under Article III. In *National Mutual Insurance Company* v. *Tidewater Transfer Company*, 337 U.S. 582 (1949), Justice Frankfurter, dissenting, observed that "Congress need not establish inferior courts; Congress need not grant the full scope of jurisdiction which it is empowered to vest in them; Congress need not give this Court any appellate power; it may withdraw appellate jurisdiction once conferred and it may do so even while a case is subjustice."

Also in 1949 Justice Roberts, writing in 35 *American Bar Association Journal* 1, proposed an amendment to the Constitution to vitiate the exceptions clause power of Congress, declaring, "I do not see any reason why Congress cannot, if it elects to do so, take away entirely the appellate jurisdiction of the Supreme Court of the United States over state supreme court decisions." Justice Roberts was appalled at that prospect, but he did not doubt its possibility.

In *Glidden* Justice Harlan, in an opinion joined by Justices Brennan and Stewart, affirmed *McCardle:* "Congress has consistently with that article [Article III] withdrawn the jurisdiction of this Court to proceed with a case then *subjudice, Ex parte McCardle;* its power can be no less when dealing with an inferior court." In his dissenting opinion Justice Douglas objected to this acceptance of *McCardle.* "There is a serious question," Douglas wrote, "whether the *McCardle* case would command a majority view today." While this statement is cited sometimes to cast doubt on McCardle's continued vitality, it is just as frequently overlooked that by 1968 Justice Douglas had changed his mind. In *Flast* v. *Cohen* he maintained: "As respects our appellate jurisdiction, Congress may largely fashion it as Congress desires by reason of the express provisions of Section 2, Article III. See *Ex parte McCardle. . . .*" 392 U.S. 83, 109 (1968).

The simple incantation of the phrases "supremacy clause" or "equal protection clause" should be insufficient to resolve the constitutional question of legislation enacted under the authority of the exceptions clause unless, of course, it is supposed that uniformity is the supreme constitutional mandate, in which case the matter then is settled by definition. Is the supremacy clause or equal protection of the law violated by a congressional decision to permit state supreme courts to be the courts of final appeal regarding state statutes and executive actions on a particular subject?

In this context it is instructive to consider S. 481, introduced in the 97th Congress by Jesse Helms and John East. Of all the current proposals for congressional exercise of the exceptions clause, this is by far the most formidable. An earlier version was twice passed by the Senate during the previous Congress, and congressional observers consider it likely that by one parliamentary procedure or another the legislation again will be brought to the Senate floor this year. It therefore can be considered the paradigm, for good or ill, of the exceptions process.

It provides, in part, that:

"[T]he Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any state statute, ordinance, rule, regulation, or any part thereof, or arising out of any act interpreting, applying, or enforcing a state statute, ordinance, rule or regulation, which relates to voluntary prayers in public schools and public buildings.

"For purposes of this section, the term 'voluntary prayer' shall not include any prayer composed by an official or employee of a state or local governmental agency."

S. 481 does not attempt either to "overturn" or to "freeze into the Constitution" the Supreme Court's opinion in *Engel* v. *Vitale*, 370 U.S. 421 (1962), striking down the New York State Board of Regents' prayer. Government authorized prayers would remain within the Court's purview. The Court, however, would be prohibited from extending its past holdings to strike down a state practice in which students are permitted to recite prayers they themselves had composed or selected.

Nor would S. 481 affect the power of federal courts to protect individual rights related to the free exercise of religion. Allegations of coercion could still be heard and relief from involuntary activities could still be sought in federal court. S. 481 would effect only a realignment between the federal and state governments respecting the establishment clause and then only in regard to a single issue: voluntary prayer. It can hardly be argued that uniformity of state practice concerning this issue was part of the "constitutional plan" intended by the framers of the First Amendment, especially since five of the states that ratified the Constitution had established, tax-supported churches at the time. Prof. Raoul Berger has written that this legislation "merely seeks to restore self-rule to the states with respect to school prayers—an autonomy reserved to the states from the very beginning." 1980 Wisconsin Law Review 801.

The question is not whether we approve that particular bill or others patterned after it. The issues is whether that sort of legislation would be a valid exercise of the exceptions clause. Everything indicates that it would be. Everything, that is, except the unwillingness of some people to accept any limitations on the authority of the Supreme Court.

The Court's preservators have been more protective than the Court itself. No Supreme Court decision has concluded that the language of the exceptions clause means anything less than it says—that Congress possesses plenary power to make exceptions to and regulations of the appellate jurisdiction of the Supreme Court. Nor has any decision of the Court sought to amend Article III by provisions of Section 2, Congress shall make no exceptions to the appellate jurisdiction of the Supreme Court which affects the Court's ability to enforce the equal protection of the laws, or preserve the supremacy of its own decisions, or protect its essential role in the constitutional plan."

The Court has recognized the authority of Congress in an unbroken line of opinions, of which *McCardle* was one consistent part. *McCardle* may be old, but as recently as 1962 it was found by the Court in *Glidden* still to be good law. The historical fact that this power has been infrequently used does not mean it has ceased to exist. There is no constitutional doctrine of atrophy.

Congressional power under the exceptions clause is itself an important aspect of the constitutional plan for the Supreme Court designed in Article III. When the Court acts, in the words of Prof. Wallace Mendelson, "to impose extraconstitutional policies upon the community under the guise of interpretation," the Court highlights the wisdom of the founding fathers in reserving those issues to the states. Rather than resolving difficult legislative problems, judicial intervention into abortion, busing, school prayer, as well as other subjects, has inflamed public debate and seriously altered American electoral demographics during the decades of the 1970s and 1980s.

Prof. Louis Lusky has observed that the Court's new role rests on the "assertion of the power to revise the Constitution, bypassing the cumbersome amendment procedure prescribed by Article V," and on the "repudiation of the limits on judicial review that are implicit in the orthodox doctrine of Marbury v. Madison." 6 Hastings Constitutional Law Quarterly 403 (1979). As Professor Hart suggested in his article, the question of congressional power under the exceptions clause is related to the role of the Supreme Court in the constitutional plan, and that, as Prof. Henry Abraham observed, "is not a question of judicial institutional capacity; it is rather one of judicial constitutional legitimacy."

In the February, 1982, issue of this Journal (page 159), Robert W. Meserve argues that the limitations on congressional power under the exceptions clause are so encompassing that one is left with the distinct impression that Congress may act to make only the most noncontroversial, technical amendments of the Court's jurisdiction. The article, however, fails to explain why, if this is so, the Court itself has used the broadest language in describing congressional power, or why defenders of the Court's prerogatives of no less stature than John Marshall viewed the provision as empowering Congress to diminish the jurisdiction of the Court as far as necessary to protect the "liberty of the people."

The article maintains that Congress "does not have authority . . . to deny the only remedy ultimately effective to right constitutional wrongs." Why this is so is not entirely clear. Section 5 of the 14th Amendment provides that "Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Professor Berger's book, Government By Judiciary, demonstrates adeptly that the authors of the 14th Amendment were not confident of the Court's ability to enforce the amendment. As Justice Brennan maintained in United States v. Guest, 383 U.S. 745 (1966), "the primary purpose of the amendment was to augment the power of Congress, not the judiciary."

It would seem reasonable that this enforcement power would include at the very least the power to determine what is an adequate or proper federal remedy. The fact that state and federal court judges may disagree over the utility of a certain remedy in particular circumstances would appear to violate the Constitution no more than the fact that federal judges may and often do disagree over the proper remedy when considering the same set of circumstances.

United States v. Klein, 13 Wall. 128 (1871), is cited in the Meserve article to indicate "that the Court will not allow legislation to undermine the fundamental judicial protection of individual rights." This broad interpretation is accurate only in the sense that Klein stands for the proposition that the Court will not allow Congress to use the exceptions clause to alter the proceedings of the Court in favor of a particular class of parties.

In Klein the Court for the first and only time invalidated legislation enacted under the exceptions clause. Klein sought indemnification for property seized during the Civil War, in reliance on prior Supreme, Court and Court of Claims decisions that a presidential pardon would make him eligible for recovery. While the case was pending before the Court, Congress amended the Judicial Expenses Act of 1871 to provide that presidential pardons, like the one Klein had received, were not to be considered sufficient proof of loyalty to enable recovery. The act also provided that the facts recited in the pardon would be conclusive evidence of disloyalty, and at that point the jurisdiction of the court should cease, and the suit must be dimissed.

After recounting this would-be effect of the statute on a judicial proceeding, Chief Justice Chase asked, "What is this but to prescribe a rule for the decision of a cause in a particular way?" The Court struck down the statute as an impermissible invasion of the judicial process to attempt to determine the outcome of litigation in favor of a particular class of litigants. The Court said, "It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power."

It has been suggested that this decision somewhat contradicts or casts doubt on *McCardle*. The Court in *Klein*, however, did not see it that way. It again affirmed a broad power of Congress under the exceptions clause:

"Undoubtedly the legislature has complete control over the organization and existence of that court [the Court of Claims] and may confer or withhold the right of appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress to make 'such exceptions from the appellate jurisdiction' as should seem to it expedient."

Ten years after *Klein*, the Court in The 'Francis Wright', 105 U.S. 381 (1881), upheld a congressional limitation of its jurisdiction in admiralty cases to questions of law. Chief Justice Waite wrote that "while the appellate power of this court under the Constitution extends to all cases within the judicial power of the United States, actual jurisdiction under the power is confined within such limits as Congress sees fit to prescribe. . . . What those powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control."

The Meserve article also argues that "remedy-curtailing legislation puts unfair pressure on state judges." Because they are subject to election, state judges may be put to the "great temptation" of having to choose between their duty to enforce the Constitution and their judicial careers. If this is so, the question arises: Is it not already true today whenever state judges are called on to reach a decision that may be unpopular? This is an astounding argument. One hardly knows whether it shows less faith in the democratic process or in the state judiciaries.

In light of the clear intentions of those who framed Article III and with an eye to the unbroken chain of Supreme Court Decisions over 186 years affirming the literal meaning of that article, it is no wonder that so many members of Congress view the Court's decisions on the controversial subjects of abortion, busing, and school prayer as symptomatic of a self-articulated and overextended role for the federal judiciary. A growing number of members of Congress share Professor Wechsler's view that the plan of the Constitution is for Congress to "decide from time to time how far the federal judicial institution should be used." Hearings before the Senate Judiciary Committee during the 97th Congress on legislative restraints on the judiciary indicate that in the

minds of some senators the time for a re-examination of the proper role of the federal judiciary may be rapidly approaching.

The possibility of congressional exercise of its authority under the exceptions clause may be enhanced by the current political environment. Under the Reagan administration there has been a historic change of direction in the federal government, and not just in terms of the national budget. The relationship between Washington and the states appears to be in the process of redefinition, and the outcome is far from clear at this point.

As the Congress acts to redress the eroded administrative prerogatives of the states, the climate likely will become more favorable for re-examining the relationship between state and national judiciaries. If that happens, one can argue that the use of congressional authority under the exceptions clause would not be the best solution to problems involving the federal judiciary, but one cannot credibly contend that the authority does not exist.

In exercising this power, Congress should heed the advice of Chief Justice Marshall to provide exceptions that "go as far as the legislature may think proper for the interest and liberty of the people." In firmly establishing congressional power under the exceptions clause and in providing a solid foundation for judicial review, Marshall fully appreciated what he wrote in Marbury v. Madison: "The framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature."

(Carl A. Anderson, a former legislative assistant to Senator Helms, is now counselor to the undersecretary of the Department of Health and Human Services. Responsibility for the views expressed is that of the author and not the department.)

The Power of Congress Under the Constitution to Define, Limit, or Curtail the Appellate Jurisdiction of the Supreme Court and the Jurisdiction of Federal Courts Inferior To It

(By Sam J. Ervin, Jr., of Morganton, N.C., a Former Justice of the North Carolina Supreme Court and a former United States Senator from North Carolina)

JUDICIAL POWER

The Judicial Department of the United States is created by Article III of the Constitution. Courts are ordained to exercise judicial power alone. Indeed, they are denied all other power.

The judicial power is the power which courts exercise in hearing and determining cases or controversies before them of which they have jurisdiction.

In commenting on jurisdiction, the text writer in *Corpus Juris Secundum* (Vol. 50, page 1090) says:

The word "jurisdiction" is derived from the Latin "juris" and "dico", and means "I speak by the law. . ." The word "jurisdiction" implies a court or tribunal with judicial power to hear and determine a cause, and such tribunal cannot exist except by authority of law. Jurisdiction always emanates directly and immediately from the law; it is a power which nobody on whom the law has not conferred it can exercise.

Jurisdiction may be either original or appellate. Original jurisdiction is the power of a court to try and decide a case or controversy in the first instance; and appellate jurisdiction is the power of a superior court to review the ruling of an inferior court on the record made in the inferior court, and to affirm, reverse, or modify such ruling. A particular court may have original jurisdiction in some cases or controversies, and appellate jurisdiction in others. *20 American Jurisprudence, 2d, Courts,* section 98, page 459.

The Supreme Court made these sound observations on this subject in *Osborn v. U.S. Bank,* 9 Wheat. 738, 6 L.Ed. 204:

The judicial power, as contradistinguished from the power of the law, has no existence. Courts are mere instruments of the law, and can will nothing. When they are said to exercise discretion, it is a mere legal discretion, a discretion to be exercised in determining the course prescribed by law; and when that is discerned, the duty of the court is to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislatures; or, in other words, the will of the law.

THE CONSTITUTION MEANS WHAT IT SAYS

Although some politicians, judicial activists, and other biased individuals seek to twist awry words displeasing to them, the Constitution means what it says. In expounding this truth, Chief Justice John Marshall, America's wisest jurist of all times, said in his famous opinion in *Gibbons v. Ogden,* 9 Wheat. 1, 188, 6 L.Ed. 23:

As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said.

What Chief Justice Marshall said is beyond rational dispute. If they did not intend for the Constitution to mean what it says, George Washington, John Dickinson, Benjamin Franklin, Nathaniel Gorham, Alexander Hamilton, Rufus King, James Madison, Gouverneur Morris, Robert Morris, William Patterson, Charles Cotesworth Pinckney, Roger Sherman, James Wilson, and their compatriots in the Constitutional Convention of 1787 indulged in unprecedented hyprocrisy or idiocy when they drafted the Constitution and submitted it to the States for ratification or rejection.

THE POWER OF CONGRESS UNDER THE CONSTITUTION

Provisions of Articles I and III of the Constitution clearly reveal that Congress has the legislative power to define, limit, or curtail the appellate jurisdiction of the Supreme Court and the jurisdiction of the federal courts inferior to it. They are as follows:

1. Article I, Section I, declares "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

2. Article I, Section VIII, clauses 1 and 18, prescribe "the Congress shall have the power . . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

3. Article III, Section I, provides, in pertinent part, "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

4. Article III, Section II, clause 1, stipulates "the judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, and the laws of the United States, and treaties made, or which shall be made, under their authority; . . . to all cases affecting Ambassadors, other public Ministers and Consuls; . . . to all cases of admiralty and maritime jurisdiction; . . . to controversies to which the United States shall be a Party; . . . to controversies between two or more States; . . . between a State and citizens of another State; . . . between citizens of different States; . . . between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects."

5. Article III, Section II, Clause 2, states "in all cases affecting Ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make."

As a result of dissatisfaction engendered by the decision of the Supreme Court in *Chisholm* v. *Georgia,* 2 Dall. 419, 1 L.Ed. 440, Article III, Section II, Clause 1, was altered in part by the Eleventh Amendment. This Amendment specifies "the Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of the United States by citizens of another State, or citizens or subjects of any foreign state."

Another Amendment, the Seventh, applies to the appellate jurisdiction of the Supreme Court in respect to facts determined by juries in civil cases.

It must be noted that Article III, Section II, Clause 1, does not actually confer jurisdiction on any court of the United States. On the contrary, it merely enumerates the cases or controversies in which Congress has the legislative power to confer jurisdiction upon them if it sees fit to do so.

INFERIOR FEDERAL COURTS ESTABLISHED BY CONGRESS UNDER ARTICLE III

Acting under Article III, Section I, Congress has established United States District Courts as courts of general jurisdiction to try and decide federal civil and criminal cases in the first instance, and United States Courts of Appeal to review on appeal most rulings of the District Courts.

To aid in the administration of federal criminal justice generally, Congress has created United States magistrates to try and determine petty federal criminal cases, and to conduct preliminary hearings in federal criminal cases of which the District Courts have original jurisdiction. These magistrates do not enjoy life tenure.

Acting under provisions of the Constitution other than Article III, Congress has established certain special courts of limited jurisdiction and courts for territories. These courts are not subject to the requirements of Article III. For the sake of clarity, I employ the term federal courts inferior to the Supreme Court in this statement to signify only those inferior courts created by Congress under Article III, such as the District Courts, the Courts of Appeals, and the Court of Claims.

ORIGINAL JURISDICTION OF THE SUPREME COURT

Article III, Section II, clause 2, defines in specific terms the original jurisdiction of the Supreme Court, and Congress is without

power to increase or decrease it. *Marbury v. Madison*, 1 Cranch 137, 24 L.Ed. 60; *Gordon v. United States*, 117 U.S. 697, Appx. 76 L.Ed. 347.

The Supreme Court has adjudged, however, that Congress may confer on inferior federal courts concurrent jurisdiction with the Supreme Court over cases or controversies within the original jurisdiction of the Supreme Court, subject to the review of their rulings by the Supreme Court. *Ames v. Kansas*, 111 U.S. 449, 28 L.Ed. 482, 4 S.Ct. 437; *Bors v. Preston*, 111 U.S. 252, 28 L. Ed. 419, 4 S.Ct. 407.

THE APPELLATE JURISDICTION OF THE SUPREME COURT AND THE JURISDICTION OF THE FEDERAL COURTS INFERIOR TO IT

It is otherwise with respect to the appellate jurisdiction of the Supreme court and the jurisdiction of the federal courts inferior to it. One of America's most profound constitutional scholars, Edwin S. Corwin, had this to say on this subject in the 1974 edition of his famous book the Constitution And What It Means Today (pages 167-168):

The "cases" and "controversies" here enumerated fall into two categories; first, those over which jurisdiction "depends on the character of the cause", that is to say, the law to be enforced; second, those over which jurisdiction "depends entirely on the character of the parties." (*Cohens v. Virginia*, 6 Wheat 264, 378, 5 L.Ed. 257). In both instances, however, the jurisdiction described is only potential, except as to the original jurisdiction of the Supreme Court. Thus the lower federal courts derive all their jurisdiction immediately from Acts of Congress, and the same is true of the Supreme Court as to its appellate jurisdiction.

As has been noted, Article III, Section II, Clause 2 declares in plain words that the Supreme Court has "appellate jurisdiction, both as to Law and Fact, with such exceptions, and under such regulations, as the Congress shall make."

The Supreme Court has rightly adjudged in multitudes of sound decisions that under this provision it can exercise no appellate jursdiction except in the cases or controversies prescribed by Acts of Congress.

Wiscart v. Dauchy, 3 Dall. 321, 1 L.Ed. 619; *Clarke v. Bazadone*, 1 Cranch 212, 2 L.Ed. 85; *United States v. More*, 3 Cranch 159, 2 L.Ed. 397; *Ex Parte Bollman*, 4 Cranch 75, 2 L.Ed. 554; *Durrousseau v. United States*, 6 Cranch 307, 3 L.Ed. 232; *United States v. Goodwin*, 7 Cranch 108, 3 L.Ed. 284; *United States v. Gordon*, 7 Cranch 287, 3 L.Ed. 347; *United States v. Nourse*. 6 Pet. 470, 8 L.Ed. 467; *Barry v. Mercein*, 5 How. 103, 12 L.Ed. 70; *Forsythe v. United States*, 9 How. 571, 13 L.Ed. 362; *Re Kaine*, 14 How. 103, 14 L.Ed. 345; *Ex Parte Vallandigham*, 1 Wall. 243, 17 L.Ed. 589; *Daniels v. Chicago & R. I. R. Co.*, 3 Wall. 250, 18 L.Ed. 224; *Walker v. United States*, 4 Wall. 163, 18 L.Ed. 319; *Edmonson v. Bloomphire*, 7 Wall. 306, 19 L.Ed. 91; *Ex Parte McCardle*, 7 Wall. 506, 19 L.Ed. 264; *Re Yerger*, 8 Wall. 85, 19 L.Ed. 332; *French v. Shoemaker*, 12 Wall. 86, 20 L.Ed. 270; *United States v. Klein*, 13 Wall. 128, 20 L.Ed. 519; *Merrill v. Petty*, 16 Wall. 338, 21 L.Ed. 499; *Murdock v. Memphis*, 20 Wall. 590, 22 L.Ed. 429; *Butterfield v. Usher*, 91 U.S. 246, 23 L.Ed. 318; *United States v. Young*, 94 U.S. 258, 24 L.Ed. 153; *United States v. Sanges*, 144 U.S. 310, 36 L.Ed. 445, 12 S.Ct. 609; *National Exch. Bank v. Peters*, 144 U.S. 570, 36 L.Ed. 545, 12 S.Ct. 767; *American Const. Co. v. Jacksonville, T. & K. W. R. Co.*, 148 U.S. 373, 37 L.Ed. 486, 13 S.Ct. 158; *Colorado Cent. Consol. Min. Co. v. Turck*, 150 U.S. 138, 37 L.Ed. 1030, 14 S.Ct. 35; *Maynard v. Hecht*, 151 U.S. 324, 38 L.Ed. 179, 14 S.Ct. 353; *Chapman v. United States*, 164 U.S. 436, 41 L.Ed. 504, 17 S.Ct. 76; *Montgomery Bldg. & Const. Trades Council v. Ledbetter Erection Co.*, 344 U.S. 178, 97 L.Ed. 204, 73 S.Ct. 196.

In commenting on what he calls the power of Congress over the appellate jurisdiction of the Supreme Court and the jurisdiction of the federal courts inferior to it, Edwin S. Corwin made these observations in the 1947 edition of The Constitution And What It Means Today (page 127):

Moreover, through its unlimited control over the Supreme Court's appellate jurisdiction, as well as of the total jurisdiction of the lower federal courts, Congress is in position to restrict the actual exercise of judicial review at times, and even to frustrate it altogether.

Thus in 1869 it prevented the Court from passing on the constitutionality of the Reconstruction Acts by repealing the latter's jurisdiction over a case which had already been argued and was ready for decision (*Ex Parte McCardle*, 7 Wall. 506, 19 L.Ed 264); and in the war just closed (i.e., the Second World War) it confined the right to challenge the validity of provisions of the Emergency Price Control Act and orders of the OPA under it to a single Emergency Court of Appeals and to the Supreme Court upon review of that court's judgments and orders. (U.S. Code, tit. 50, app. Sec. 924(a); *Lockerty v. Phillips*, 319 U.S. 182, 87 L.Ed. 1339, 63 S.Ct. 1019; *Yakus v. U.S.*, 321 U.S. 414, 88 L.Ed. 834, 64 S.C.t 660; *Bowles v. Willingham*, 321 U.S. 503, 88 L.Ed. 892, 64 S.Ct. 641)

When it exercises its power to establish an inferior court under Article III, Section I, Congress is empowered to specify what its jurisdiction shall be.

The Supreme Court has rightly ruled in multitudes of sound decisions that inferior federal courts, such as District Courts and Courts of Appeal, can exercise only such jurisdiction, civil or criminal, as may be conferred on them by an Act of Congress.

Rhode Island v. Massachusetts, 12 Pet. 1233, 9 L.Ed. 1233; *Levy v. Fitzpatrick*, 15 Pet. 167, 10 L.Ed. 699; *Cary v. Curtis*, 3 How. 236, 11 L.Ed. 718; *Bath County v. Amy*, 13 Wall. 244, 20 L.Ed. 539; *Grover & B. Sewing Mach. Co. v. Florence Sewing Mach. Co.*, 18 Wall. 553, 21 L.Ed. 914; *Gaines v. Fuentes*, 92 U.S. 10, 23 L.Ed. 524; *Re Pennsylvania*, 109 U.S. 174, 27 L.Ed. 894, 3 S.Ct. 84; *Ellis v. Davis*, 109 U.S. 485, 27 L.Ed. 1006, 3 S.Ct. 327; *Ex Parte Royall*, 117 U.S. 241, 29 L. Ed. 868, 6 S. Ct. 734; *Holmes* v. *Goldsmith & Co.*, 147 U.S. 150, 37 L. Ed. 118, 13 S. Ct. 288; *Gregord* v. *Van Ee*, 160 U.S. 643, 40 L. Ed. 566, 16 S. Ct. 431; *Plaquemines Tropical Fruit Co.* v. *Henderson*, 170 U.S. 511, 42 L. Ed. 1126, 18 S. Ct. 685; *Lockerty* v. *Phillips*, 319 U.S. 182, 87 L. Ed. 1339, 63 S. Ct. 1019; *Bowles* v. *Willingham*, 321 U.S. 503, 88 L. Ed. 892, 64 S. Ct. 641; *Sears, Roebuck & Co.* v. *Mackay*, 351 U.S. 427, 100 L. Ed. 1297, 76 S. Ct. 895; *South Carolina* v. *Katzenbach*, 383 U.S. 301, 15 L. Ed. 2d 769, 86 S. Ct. 803; *Palmore* v. *United States*, 411 U.S. 389, 36 L. Ed. 2d 342, 93 S. Ct. 1670; *Hagans* v. *Lavine*, 415 U.S. 528, 39 L. Ed. 2d 577, 94 S. Ct. 1372.

Even in cases where it has conferred jurisdiction on federal courts in specified cases, Congress has the power to take away such jurisdiction at any time it sees fit. *Kline* v. *Burke Constr. Co.*, 260 U.S. 226, 67 L. Ed. 226, 43 S. Ct. 79, A.L.R. 1077. It may oust federal courts of jurisdiction in pending cases. *Re Yerger*, 8 Wall. 85, 19 L. Ed. 332; *Hallowell* v. *Commons*, 239 U.S. 506, 60 L. Ed. 409, 36 S. Ct. 202.

What has been said makes these things indisputable: first, the Supreme Court's appellate jurisdiction and the jurisdiction of the federal courts inferior to it are conferred upon them by Acts of Congress; and, second, Congress cannot confer upon them jurisdiction of any cause or controversy other than those enumerated in Article III, Section II, Clause 1. *Nashville* v. *Cooper*, 6 Wall. 247, 18 L. Ed. 851; *Palmore* v. *United States*, 411 U.S. 389, 36 L. Ed. 2d 342, 93 S. Ct. 1670.

When it confers appellate jurisdiction on the Supreme Court or jurisdiction on a federal court inferior to it, Congress must give the court freedom to decide the case or controversy judicially one way or another. The power to regulate the jurisdiction of the court does not empower Congress to instruct it as to how it should decide the case or controversy.

Congress undertook to do that by a proviso it adopted on June 30, 1870. By the proviso, Congress instructed the Court of Claims to ignore the constitutional effect of presidential pardons in deciding the claims of persons who had allegedly supported the Confederacy for cotton confiscated by the federal government in Confederate States during the Civil War. The Supreme Court rightly struck down the proviso in *United States v. Klein*, 13 Wall. 128, 20 L.Ed. 519, as an unconstitutional attempt by Congress to usurp the judicial power the Constitution reposes in the courts.

EXERCISE BY CONGRESS OF ITS POWER IN TIMES PAST

Congress has never authorized federal courts to exercise all of the jurisdiction it has the power to give them under Article III, Section 2, Clause 1.

On the contrary, it has denied them jurisdiction in multitudes of instances ever since it enacted the Judiciary Act of 1789. As a rule, Congress has done this to forestall a flood of trivial litigation, or to minimize the clogging of the dockets of the federal courts.

As has been observed, however, the *McCardle Case* demonstrates it curtailed the appellate jurisdiction of the Supreme Court in 1869 to prevent it from making a decision it feared the court might render.

THE WISDOM OF THE FOUNDING FATHERS

The Constitution is the most precious instrument of government ever devised by the experience and wisdom of man. The Founding Fathers drfted and ratified it to secure to Americans the power of self rule and freedom from governmental tyranny, whether legislative, executive, or judicial.

They realized, however, that men are fallible beings, and that none of them can be safely trusted with unlimited power. To this end, they vested in the Supreme Court the power to interpret the Constitution, and thereby gave it the power to confine Congress, the President and the States to their allotted constitutional spheres.

They undertook to make Supreme Court Justices faithful to the Constitution by making it the supreme law of the land, and by requiring them as well as all other federal and state officers to be "bound by oath or affirmation to support it." (Article V, Clause 3)

The also undertook to make Supreme Court Justices independent of all things on earth except the Constitution itself by decreeing in Article III, Section 1, that "the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which

shall not be diminished during their continuance in office."

Notwithstanding these provisions, two members of the Constitutional Convention of 1787, Elbridge Gerry, of Massachusetts, and George Mason, of Virginia, opposed ratification of the Constitution by the States because it contained no provision sufficient to compel activist Supreme Court Justices to obey their oaths or affirmations to support the Constitution or to prevent them from substituting their personal notions for constitutional precepts while pretending to interpret it.

I do not favor Congress limiting the jurisdiction of federal courts to adjudicate cases in which they have manifested their devotion to the Constitution.

I nevertheless rejoice because the Founding Fathers have reposed in Congress the power to define, limit, or curtail the appellate jurisdiction of the Supreme Court and the jurisdiction of the federal courts inferior to it.

The reason for my rejoicing is simple. I abhor judicial usurpation and deem tyranny on the bench as reprehensible as tyranny on the throne. The constitutional power of Congress to define, limit, or curtail the jurisdiction of these courts is in reality the only means embodied in the Constitution whereby activist Supreme Court Justices can be denied the autocratic power to make themselves America's supreme dictators.

Judicial activists are judges who interpret the Constitution to mean what it would have said if they instead of the Founding Fathers had written it.

The moral inhibition of their oaths or affirmations to support the Constitution has not sufficed to restrain judicial activists. Moreover, life tenure and undiminishable compensation do not render them immune to the temptation to make themselves independent of the Constitution.

Alexander Hamilton asserts in the Federalist No. 79 that Supreme Court Justices "are liable to be impeached for mal-conduct" by Congress under the Article of the Constitution "respecting impeachments", and declares in the Federalist No. 81 that "this is alone a complete security" against judicial activism.

I express no opinion respecting the validity of Hamilton's view that judicial activism constitutes an impeachable offense under Article III, Section 4 of the Constitution.

It is to be noted, however, that this possibility, if it exists, has had no deterrent effect on judicial activism. Moreover, impeachment is a cumbersome process, and cannot be made effective without the concurrence of two thirds of the members of the Senate. Article I, Section 3, Clause 6.

The constitutional power of Congress to define, limit, or curtail the appellate jurisdiction of the Supreme Court and the jurisdiction of the federal courts inferior to it is exercisable, however, by a bare majority of the Houses of Congress. Members of Congress who revere the Constitution are likely to demand that this power be exercised with frequency in the future if activist Supreme Court Justices do not stop substituting their personal notions for constitutional precepts while pretending to interpret the Constitution.

In closing, I refuse to heed Mark Twain's reputed admonition: Truth is precious. Use it sparingly.

The tragic truth is that judicial activism has run riot among Supreme Court Justices during recent years.

They have belittled the role of the States in the federal system of government ordained by the Constitution; they have ignored the fact that society and the victims of crime are as much entitled to justice as the accused, and in consequence have impaired the capacity of federal and state courts to protect the people from criminals; they have nullified basic principles of the Constitution and substituted their personal notions for them in cases having racial overtones; and they have arrogated to themselves the autocratic power to prescribe qualifications for voting in elections and to supervise such elections in defiance of provisions of the Constitution which expressly deny them and the federal government such power.

It is high time for activist Supreme Court Justices to realize that the Constitution of the United States belongs to the people of America and not to them, and that their supreme obligation to our country is to obey their oaths or affirmations to support the most precious instrument of government ever devised by human experience and wisdom.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL RECLAMATION LAW

The Senate continued with the consideration of the bill.

Mr. BAKER. Mr. President, I ask the Senator from Wyoming, the manager of the bill, if he will yield me 2 minutes.

Mr. WALLOP. I would be happy to yield to the majority leader for 2 minutes or for such time as he may require.

Mr. BAKER. I thank the Senator.

I indicated earlier I thought the Senate could bring good tidings, and indeed we have been advised that there is an agreement and that matters at issue between the parties have been resolved to their satisfaction, and I trust to that of the Senate in general.

It is my understanding that in a few moments there will be an amendment offered by the distinguished Senator from Wyoming, the manager of the bill, which incorporates a number of items that have been negotiated between the parties and which has been cleared, I believe, by the Senator from Ohio and a number of others who have been actively involved in the negotiations.

Mr. President, it is now 6:20 p.m. We spent a good part of the afternoon in active negotiations, and it would be my hope that no other amendments would be offered.

Indeed, if I could have the attention of the Senator from Ohio and the minority leader for a moment, Mr. President, if I could invite their attention, I was about to say that an awful lot of work has gone into this amendment which, I believe, is generally acceptable to all the parties, is acceptable to all the parties, as I say, and I would like to propound a unanimous-consent request that no other amendments be in order except this amendment or technical amendments which might be necessary in order to complete action by the Senate on this measure.

Knowing there may be clearance requirements the minority leader will wish to examine, I will make that suggestion now rather than that request. But could the minority leader indicate to me how he might feel on that subject?

Mr. ROBERT C. BYRD. Mr. President, if the distinguished majority leader will yield, I would ask him not to make the request right at the moment but wait until we do further checking.

Mr. BAKER. Yes, I thought that might be the case. On our side, Mr. President, Senators should be on notice that assuming the matter can be cleared on the other side as well, I intened to make that request that no other amendments will be in order except for technical amendments and the amendment that is the consensus amendment.

Mr. President, I am also advised that the parties are ready to proceed with debate on this measure, and that the amendment I believe would be subject to the general limitation of 1 hour of debate, would it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, it would appear to me that we ought to be able to finish this matter within an hour. I know many Senators have been inconvenienced, but I think the effort has been worth it.

Mr. President, I would not urge for my part a vote on the amendment itself. I think a voice vote might suffice as far as I am concerned, but I am advised by some Senators that they would like to have a rollcall vote on final passage. With that, I am prepared to yield the floor now so that we may proceed with the introduction of the amendment and debate on the measure.

I will conclude by urging at this late hour Senators to restrain themselves in debate for only that time which is absolutely necessary and their consciences require them to do at this moment.

I yield the floor.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

UP AMENDMENT NO. 1097

Mr. WALLOP. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The Clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP) proposes an unprinted amendment numbered 1097.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 17, line 13, beginning with the phrase "The interest rate used", strike all through line 20 and insert the following:

"The interest rate used pursuant to this Act shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of (1) the computed average interest rate payable by the Treasury upon its marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and (2) the weighted average of market yields on all new, publicly held, interest-bearing, marketable issues sold during the fiscal year preceding the fiscal year in which the expenditures are made or the date of enactment of this Act, whichever is later: *Provided*, That normal operation, maintenance, and replacement charges will be collected in addition to the full cost charge."

On page 19, delete lines 2 through 10 in their entirety and insert in lieu thereof the following:

"SEC. 4. (a)(1) Notwithstanding any other provisions of law to the contrary, irrigation water may be delivered to a qualified or limited recipient for use in the irrigation of a landholding of not more than one thousand two hundred and eighty acres of class I lands, or the equivalent thereof: *Provided*, That not more than six hundred and forty acres of such landholding may be owned by a limited recipient."

On page 19, line 16, delete the words "two thousand and eighty" and insert in lieu thereof the words "one thousand two hundred and eighty".

On page 21, line 24, strike the period and insert in lieu thereof the following: ", except that the aforementioned time in years shall be five years for a recordable contract entered into after the date of enactment of this Act."

On page 29, line 4, strike section 13 and insert in lieu thereof the following new section 13:

"SEC. 13. Any non-Federal party to a repayment contract with the Secretary relating to a reclamation project may apply for validation of any provisions of such contract relating to the acreage limitation available to such party pursuant to such contract or under the Federal reclamation law by making applicaion therefor to the Secretary in writing within three years from the date of enactment of this Act. The Secretary shall review each such application and shall determine whether to validate the contract provision taking into account the circumstances surrounding the execution of the contract. The Secretary shall transmit the application along with his determination to validate or not to validate such contract to the Congress within ninety days from the date he receives such application. Unless the Congress by concurrent resolution disapproves the determination of the Secretary within ninety days from the date on which it receives the Secretary's transmittal, the determination of the Secretary shall be final and binding."

On page 29, beginning at line 19, strike section 14 in its entirety and insert in lieu thereof the following new section:

"WAIVER OF SOVEREIGN IMMUNITY

"SEC. 14. Consent is given to join the United States as a necessary party defendant in any suit to adjudicate, confirm, validate, or decree the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to the Federal reclamation law. The United States, when a party to any suit, shall be deemed to have waived any right to plead that it is not amenable thereto by reason of its sovereignty, and shall be subject to judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. Any suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated. The court, if it determines it appropriate based on the evidence, including written representations concerning the application of the Federal reclamation law, may reform the contract."

On page 33, add at the end the following new section:

"SEC. 18. The Secretary shall, pursuant to his authorities under otherwise existing Federal Reclamation Laws encourage the full consideration and incorporation of prudent and responsible water conservation measures in the operations of non-Federal recipients of irrigation water from Federal Reclamation projects, where such measures are shown to be economically feasible for such non-Federal recipients."

Mr. WALLOP. Mr. President, the amendment which is offered en bloc contains six elements which are identified by the paragraph numbers in the amendment. I would say this is the result of the negotiations which we had.

Paragraph No. 1 amends the interest rate in the bill. The amendment requires the use of an interest rate which would be computed as the average of the sum of the interest rate in the committee bill, which is the 15-year Federal borrowing rate, and the interest rate proposed in the Lugar-Proxmire amendment, which is the short-term 5-year Federal fund rate.

At current rates, Mr. President, this would compute to approximately 12 percent, and seems a reasonable compromise between those interest proposals which were presented earlier and the committee's position.

Paragraph 2, Mr. President, amends the acreage limitation in the bill to substitute a single limitation of 1,280 acres on ownership, and I would say this is the Hatfield amendment which was offered or proposed earlier. This is the provision that the Senator from Oregon sought as a compromise earlier in the afternoon to resolve the impasse here, and this is the basic proposal of Senator HATFIELD.

Paragraph No. 3 amends the recordable contract provision in the bill to require the disposal of excess acreage in 5 years. Mr. President, this is most important for Senators to be aware of—for contracts executed after the date of enactment of this act.

Those recordable contracts which are already in place and already underway would remain as they are recorded. We seek not to change the status quo there except for those provisions which would be made after the passage of this act.

Paragraph 4, Mr. President, amends the validation provision in the bill and, I believe, for the better. I believe the Senator from Ohio has improved and strengthened the bill with his suggestion to require that the Secretary of the Interior make an explicit determination to validate or not to validate a contract according to stated requirements, and it also provides for a modified congressional review utilizing concurrent resolution disapproval rather than joint resolution disapproval.

Paragraph 5 modifies the consent-to-sue provision in the bill to provide a review in court with the discretion to grant the reformation of a contract as a remedy for private plaintiffs in cases with the Secretary of the Interior. I might also say that the bill's language takes into consideration or asks the court to take into consideration representations that have been made regarding the application or the interpretation of Federal reclamation law by former official parties acting in behalf of the United States.

Paragraph 6 adds a new section to the bill which requires the Secretary to utilize existing authorities to insure the implementation of prudent and responsible water conservation programs in irrigation districts. This is a generally stated provision and generally stated on purpose because of the problems that were identified as we talked about changing techniques, technology, and interpretations of what might be a conservation practice within a given district or at a given time.

It recognizes the reality that the world changes, technology changes, and interpretations change. I believe that it is a responsible addressing of the issue of conservation.

Mr. President, those are the six provisions of the amendment. It is offered on behalf of those who were involved in the negotiations.

I suspect that the Senator from Ohio would perhaps like to address the issue at this moment and, at the end of that time, perhaps the majority leader would like to make his request. Perhaps he would like to do it at this moment. Is the majority leader prepared to cover the consent agreement?

Mr. BAKER. Yes, Mr. President, I am prepared on this side. May I say, if I could have the attention of Senators, that there was only one request that I had contemplated making and that was the request that, assuming that

this amendment is adopted, this consensus amendment which has been agreed to, no other amendment would then be in order except for technical amendments, in the strictest and most literal sense of that term, as they may be required to complete the consideration of this measure. I have not put that request yet, but I have discussed it with the minority leader and would like to put it.

Mr. MOYNIHAN. Will the majority leader yield for a question?

Mr. BAKER. Yes, I yield for that purpose.

Mr. MOYNIHAN. Perhaps the distinguished manager of the legislation could best answer it. I assume that the amendment concerning the conformity of the Corps of Engineers to the acreage limitations and cost recovery provisions that I offered this morning, I gather that has not been included.

Mr. WALLOP. It has not been. It, unfortunately, dies as dead as it lay when it was finished being voted upon by the Senate.

Mr. MOYNIHAN. In that case, there is much involved in this. I am not going to keep the Senate, but I must ask, if it would be possible, that there be a rollcall vote on the amendment and a rollcall vote on final passage.

Mr. BAKER. Mr. President, the Senator is entitled to that, assuming that there is a sufficient second, and I assume there would be. I wonder if the Senator would have any objection to a unanimous consent request which would not touch that subject; that is, a unanimous consent request that if this amendment is adopted, that no other amendment be in order, except for technical amendments.

Mr. MOYNIHAN. I take it, the amendment having been offered, it is possible to ask for the yeas and nays.

Mr. BAKER. I will include that in the request, that it be in order at this time to ask for the yeas and and nays.

Mr. MOYNIHAN. In that case, I have no objection.

Mr. BAKER. Mr. President, I put the request.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object and I have no intention to object, as I understand it, the majority leader's request is made on the assumption that this amendment will be enacted.

Mr. BAKER. Yes, that is included in the request.

Mr. METZENBAUM. I thank the majority leader. I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BAKER. Mr. President, the order would include that it be in order at this time to ask for the yeas and nays on the amendment. Does the Senator wish to ask for the yeas and nays?

Mr. MOYNIHAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BAKER. I yield now to the Senator from Kentucky.

Mr. FORD. Mr. President, since the hour is getting late, and I think we all understand that this is a consensus amendment which I would be perfectly willing to accept, could we, once that amendment is passed, just have a unanimous-consent agreement that final passsage be on voice vote?

Mr. MOYNIHAN addressed the Chair.

Mr. FORD. It would just help some of us more than others.

Mr. WALLOP. If the majority leader might try a 10-minute vote on the passage of this amendement.

Mr. BAKER. Mr. President, let me do this. Let me suggest that the votes be back to back and that the first vote be 15 minutes and the second vote, if one is ordered, be 10 minutes. It does not matter on the second vote. I withdraw that request, Mr. President. I would not want a 10-minute vote after we had been in recess for a while and Senators may be scattered in other parts of the city. I withdraw the request, Mr. President.

Mr. METZENBAUM. Mr. President, I want to acknowledge openly that when I went into the session to meet with the distinguished chairman of the Energy Committee and the manager of the bill, I had some concerns of my own as to whether or not we would be able to make any meaningful headway. But I think that objectively everyone would have to agree that we have indeed made very meaningful headway, and that the amendment that is pending at the desk has made substantial changes in the legislation.

Now I am not going to say that this amendment makes this bill a great bill. It does not. But I am prepared to say that it indicates to me that the managers have been willing to attempt to compromise and have made some very significant concessions in order to cause this Senator to feel that any further debate or amendments would not be as productive as the results of these negotiations and the amendment that is presently pending before this body.

We have agreed to a very substantial amendment as a result of the negotiations. We have split the difference between the bill and the Proxmire-Lugar amendment as far as the interest rate is concerned. And as far as I am concerned, I think that is a very major change and a very gratifying one that has come into being. I would have preferred to go as far as the Lugar-Proxmire amendment but having failed in that respect I think half a loaf of bread is better than none at all.

The second one has to do with the change in the limitation of acreage. In that connection, the bill presently provides 2,080 acres. Several runs were made both by Senators PROXMIRE and LUGAR and by Senator EXON with a 960-acre limitation, and those failed. The bill, as it is pending before us at the moment, has 2,080 as the number. So I think that the compromise figure of 1,280, which is the figure that was a part of the Hatfield amendment, is an entirely satisfactory resolution of that problem.

The bill provided originally that, in the event of excess acreage, that holder who had the excess acreage would have 10 years in which to dispose of the additional acreage. We were able to resolve that, again, in a rather simple manner by splitting the difference and making it 5 years. I have the feeling that it ought to be done much earlier than 10 years and certainly maybe a year. But 5 years is a satisfactory resolution of the matter.

The fourth amendment that the Senator from Wyoming has pointed out has to do with the validation provision. I think we have rewritten that provision in a manner which makes it much more logical. It gives the Secretary the responsibility either to validate or not to validate a contract according to stated requirements and then provides that the Congress has the right to review by concurrent resolution, either approving or disapproving that determination by the Secretary.

I think the way it was previously drafted, implicitly or almost explicitly, it provided that there would always be approval by the Secretary.

The next amendment has to do with the question of the consent to sue. Frankly speaking, Mr. President, in this area, the language that was in the original bill went farther than any that I have ever before seen. It pretty much indicated the provisions that the court would have to follow in order to arrive at its conclusion and also pretty much indicated what action the court would be expected to take.

We have changed that language to the House language which is much more satisfactory and simply waives the sovereign power of the Federal Government as far as suits against it, and then goes on to provide that the court has certain jurisdiction but certainly is not instructed as to how to exercise its jurisdiction or resolve any matter before it.

Frankly, I think the language of the compromise amendment does nothing more for the court than give it the power that it already has.

The last amendment has to do with the fact that there is some new requirement now that every effort shall be made to insure the implementation of prudent and responsible water conservation programs in irrigation districts.

All of these amendments in my opinion are helpful. I think they are very meaningful. I think they are very substantive. I find that the compromise amendment is a satisfactory one and urge my colleagues to support it.

Mr. PROXMIRE. Will the Senator from Ohio yield?

Mr. METZENBAUM. I will yield for a question.

Mr. PROXMIRE. No.

Mr. METZENBAUM. Having said that, let me inquire of the chairman of the Energy Committee and the manager of the bill if the Senator from Ohio is correct in his assumption and understanding that every possible effort will be made by those two, as well as all of those who are conferees, to maintain the integrity of the amendments that were agreed to this afternoon.

Mr. McCLURE. Will the Senator yield?

Mr. METZENBAUM. I do.

Mr. McCLURE. The Senator has sat on conferences with the Senator from Idaho and knows that I do try to maintain the positions of the Senate even at times when the Senate has taken positions that I did not agree with. I will do so in this instance.

The Senator, of course, knows the other side of that, too, that the other side is a coequal body and sometimes you have to compromise.

Yes; I will go to the conference and bargain in good faith with the people who will be representing the other body.

Mr. METZENBAUM. I thank the chairman.

Mr. WALLOP. Mr. President, I offer the Senator similar assurances with similar qualifications. The process is the process, but the Senators will go with the Senate's position in mind.

Mr. METZENBAUM. I thank the Senator. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. I commend my friend from Ohio. He has done a wonderful job. There is no way this could have been improved without his working as hard as he did on it.

Having said that, however, I have to say there is no way I can support this bill, 1,280 is just too much; 960 was satisfactory with the administration; 960 would have covered 97 percent of all the farms. When you go to 1,280, it means that all the other provisions, particularly the interest rate provision, do not do much good.

I want to congratulate the Senator for getting that provision up, for the consent to sue, for the validation section, which I understand was substantially improved, and the language on water conservation, which is also a sterling addition.

As I say, none of this could have been accomplished without the remarkable tenaciousness against real pressure. I am sure he did not make himself the most popular man in the Senate in doing so, but there was real pressure on my friend from Ohio.

Once again I salute him as an outstanding legislator.

Mr. METZENBAUM. I thank the Senator.

Mr. JACKSON. Mr. President, I want to start out my brief remarks first by expressing my deep appreciation to the distinguished Senator from Ohio (Mr. METZENBAUM) for his contribution to the resolution of this problem and his willingness to compromise.

Second, I want to express my appreciation to the manager of the bill, the distinguished Senator from Wyoming (Mr. WALLOP) for his patience and willingness to compromise.

The same goes for the chairman of the full committee, Senator McCLURE, who has been in the midst of the resolution of this problem from the very beginning.

May I express, too, the appreciation of all of us who try to follow the details of the legislation to the members of the majority staff: Gary Ellsworth and Russ Brown, who handled all of the details of the legislation, backed up by Chief Counsel Chuck Trabandt, and to Craig Gannett, of the minority staff.

I would like to say that this is his first assignment on a major bill. I want to express my personal appreciation for the fine job that he did in connection with the hearings, the markup, and the debate, backed up, of course, by Mike Harvey, the chief minority counsel.

I am glad now that we can come to a vote, Mr. President, so that this legislation, which is long past due, can be passed, go to conference and get a settlement as soon as possible.

Mr. BENTSEN. Will the Senator yield?

Mr. WALLOP. Mr. President, I yield to the Senator from Texas.

Mr. BENTSEN. Mr. President, I would hope that other laudatory speeches can be made after the vote and by unanimous consent they can appear before the vote.

Mr. RANDOLPH. Will my colleague yield for 30 seconds?

Mr. WALLOP. I yield to the Senator from West Virginia.

Mr. RANDOLPH. A doctor heals, the lawyer pleads, the miner follows precious leads, but this or that what e'er befalls, the farmer feeds them all.

Mr. McCLURE. Will the Senator yield?

Mr. WALLOP. I yield to the Senator from Idaho.

Mr. McCLURE. I am mindful of the admonition of the Senator from Texas. I will reserve the right to present a laudatory speech following the vote. But before the vote, I think it might be important just to review for a moment how we did, indeed, finally compromise with respect to the interest rate. That is not my desire, but it is a legitimate compromise. It was the compromise that was earlier offered by the Senator from Oregon (Mr. HATFIELD) with respect to the acreage limitation. That has been included.

We did, in paragraph 3, amend the recordable contract provision with respect to the contracts that will be entered into in the future for the disposal of excess lands, to shorten the time for disposal on those future contracts. But that does not affect the current contracts.

In the fourth paragraph we subjected the validation provision to a different test, and that is by secretarial determination of the application subject to a review by the Congress by concurrent resolution in lieu of the language that we had, which I think is an improvement in the language and a strengthening of the congressional role.

With respect to section 14 of the bill, which was described, I think, adequately by the Senator from Wyoming in his opening statement of clarification, the explanation appears on page 16294. of the RECORD.

With respect to the availability of the application of this conjunctive relief contemplated, while we did not spell it out, it is certainly inherent in the powers of the Federal courts. That will be available to all litigants to be used by the courts where appropriate.

Even though we substituted language which was taken from the House bill, that sentiment and purpose is still applicable to the House language which has been here adopted and set forth in this amendment. We did not take the House language verbatim. We added on further provision to it. I want to make sure that we understand it has the same meaning and the same purpose as did the original Senate language, but is expressed in a different fashion.

Finally, the conservation provision, I think, is a modest and moderate conservation effort. It will not force uneconomic and imprudent conservation for the sake of conservation upon the user of water on Federal projects.

Mr. WALLOP. May I say to the Senator with respect to the consent provision, that applies to pending cases as well as future cases.

Mr. McCLURE. I thank the Senator.

I thank the Senator from Wyoming for the excellent job he has done in managing this bill. I will reserve further comments until after the rollcall on the amendment and final passage.

Mr. GOLDWATER. Mr. President, may we vote, please?

Mr. WALLOP. Mr. President, I am prepared to yield back the remainder of my time.

Mr. METZENBAUM. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the the Senator from South Dakota (Mr. ABDNOR), the Senator from North Dakota (Mr. ANDREWS), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Mississippi (Mr. COCHRAN), the Senator from Maine (Mr. COHEN), the Senator from New York (Mr. D'AMATO), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Florida (Mrs. HAWKINS), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Iowa (Mr. JEPSEN), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Vermont (Mr. STAFFORD), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. D'AMATO), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Florida (Mrs. HAWKINS), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. PRESSLER), and the Senator from New Mexico (Mr. SCHMITT) would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Connecticut (Mr. DODD), the Senator from Alabama (Mr. HEFLIN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MELCHER), the Senator from Maine (Mr. MITCHELL), the Senator from Michigan (Mr. RIEGLE), the Senator from Mississippi (Mr. STENNIS), the Senator from Tennessee (Mr. SASSER), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Nebraska (Mr. EXON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from North Dakota (Mr. BURDICK) are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. CANNON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Montana (Mr. MELCHER), the Senator from Michigan (Mr. RIEGLE), and the Senator from Tennessee (Mr. SASSER) would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 60, nays 5, as follows:

[Rollcall Vote No. 227 Leg.]

YEAS—60

Armstrong	Gorton	Nunn
Baker	Grassley	Packwood
Baucus	Hart	Pell
Bentsen	Hatfield	Proxmire
Biden	Helms	Pryor
Bradley	Huddleston	Quayle
Brady	Humphrey	Randolph
Byrd, Robert C.	Inouye	Roth
Chafee	Jackson	Rudman
Cranston	Johnston	Sarbanes
Danforth	Kasten	Simpson
DeConcini	Leahy	Specter
Denton	Levin	Stevens
Dixon	Long	Symms
Dole	Lugar	Thurmond
Domenici	Mathias	Tower
Eagleton	Matsunaga	Tsongas
East	Mattingly	Wallop
Ford	McClure	Warner
Glenn	Metzenbaum	Zorinsky

NAYS—5

Garn	Hatch	Moynihan
Goldwater	Laxalt	

NOT VOTING—35

Abdnor	D'Amato	Melcher
Andrews	Dodd	Mitchell
Boren	Durenberger	Murkowski
Boschwitz	Exon	Nickles
Bumpers	Hawkins	Percy
Burdick	Hayakawa	Pressler
Byrd, Harry F., Jr.	Heflin	Riegle
	Heinz	Sasser
Cannon	Hollings	Schmitt
Chiles	Jepsen	Stafford
Cochran	Kassebaum	Stennis
Cohen	Kennedy	Weicker

So the amendment (UP No. 1097) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I rise in opposition to the legislation before us today, the Reclamation Reform Act of 1982, S. 1867.

The original reclamation legislation of 1902 was designed to aid family farmers get started in the western regions of our country.

The reforms we are considering today bear little resemblance to that original act. In fact, it this legislation is passed intact, it will represent a financial bonanza to large corporate farming interests, some of which are major international oil companies.

I am outraged that at a time when grain, dairy, livestock, and other farmers are suffering through one of their worst years since the Great Depression, we are considering legislation which will provide corporate landowners with water subsidized by the Federal Government.

Mr. President, one provision in this so-called reform measure specifically exempts those reclamation projects constructed by the Army Corps of Engineers from the reclamation laws. the Committee on Energy and Natural Resources Report, Senate Report 97-373, on S. 1867 specifically mentions the projects on the Kings and Kern Rivers among others as exempt from the reclamation laws.

The landowners in these two areas include Superior Oil Co., Chevron USA, and Tenneco Oil Co.

While this administration has railed time and again against excessive Federal subsidization of the economy, they have remained silent on a bill that will grant huge water subsidies to oil companies.

While this administration has turned a deaf ear to the plight of farmers in the Midwest and elsewhere and turned the Farmers Home Administration (FmHA) against them in an effort to reduce delinquency rates, they have done nothing to discourage the continued irrigation of thousands of acres of corporate landholdings at taxpayers' expense.

Mr. President, this exemption provision is plain wrong.

Mr. President, S. 1867 effectively removes acreage limitations from the reclamation laws.

Ninety-six percent of all farms served by these projects are 960 acres in size or less. Yet, S. 1867 establishes an ownership limit of 1,280 acres, Combined with the unlimited leasing provisions in this bill, S. 1867 represents a de facto repeal of acreage limitations.

This reform measure does provide that all land owned and leased above 2,080 acres that is served by Federal reclamation projects must pay "full cost" for their water.

But, Mr. President, "full cost" as provided by this legislation amounts to paying an interest rate of just 9⅜ percent.

FmHA farm borrowers are paying more than 13 percent so they can plant next year's crop, FmHA home loan applicants are being told there is no money. Rural community FmHA loans are being made at the Government's cost of money—if the loans are made at all.

And oil company landholdings are benefiting from a subsidized interest rate for water, Mr. President.

The acreage limitation provisions of this reform measure must be changed.

Their well-constructed amendment will mean that those farms which can afford to pay the Government's cost of money, will pay it.

Mr. President, several other problems with this measure exist as well. The efforts of my colleagues to change this measure are laudable. We can and must have reclamation law that is fair, that is enforceable, that provides for the recovery of the Federal Government's cost from those most able to pay.

We simply cannot tolerate efforts to provide some of the largest landowners in this country with Federal subsidies at a time when the rest of Ameri-

can agriculture is reeling from low prices, high interest rates, and an administration agriculture policy that is clearly out of line with the needs of farmers.

Mr. President, S. 1867 must be changed. If not, I urge my colleagues to vote against the expanded subsidization of oil companies and other large landowners which is disguised as reform in S. 1867.

Mr. GOLDWATER. Mr. President, I support the committee reported reclamation bill. The bill will update the antiquated Reclamation Act of 1902 and it is long overdue.

We simply must conform the Reclamation Law to modern farming needs. Very few full-time farmers can make a living from 160 acres, the individual ceiling under present law and court order.

Mr. President, I think it is utter folly to tamper with current reclamation farming practices. We are blessed with the most highly developed and effective agricultural production machine the world has ever known. It not only feeds and clothes our people extremely well, but it gives our Nation enormous trade benefits, serves humanitarian purposes, and provides us with international strategic leverage.

Whatever one might argue from statistics, I am persuaded that anyone who actually visits operating farms and talks with growers in my area of the country will hear that modern farm economics dictate larger sized farms. Let us remember that when the 160-acre limitation was applied, most of the farming was done with horses or very limited mechanical machinery. Today with tractors, cottonpickers, plows, combines and other farm equipment each running into many thousands of dollars, a farmer must work enough acreage to offset his investment costs or it is not economical for him to continue farming.

The increased cost of seed, fertilizer, insecticide, and herbicide also make the margin of profit small per acre. You must have a large acreage to spread those expenses over. For example, the total investment of farms of just 500 acres exceeds half a million dollars. Annual production expenses of farms of this size can easily exceed $100,000.

When a farmer deducts his operating costs, few can make a good living on small farms. For example, a 1977 Bureau of Census study revealed that the net income of irrigated farms of less than 500 acres in Utah was $3,806.

Some of the farm income data used against the committee bill is really a composite figure that represents a total of both farm related and nonfarm income. In real life, many persons work their farms only part time and have to take a second job to get by. But if we are speaking about a farm that is supposed to provide a farmer with net income adequate to sustain a full-time business venture, I can tell you that at least 1,000 acres, and probably more, are needed in my section of the country.

Mr. President, I urge my colleagues to vote for the reclamation bill. If unrealistic limits are put on farm size, it will mean less production, less efficient farming practices and higher prices at the marketplace.

Mr. SIMPSON. Mr. President, as we move toward a conclusion of our debate on the reclamation bill, I want to commend those who have participated in the discussions about the merits of the bill and the various amendments that have been offered to it. In particular, I would note the contributions of the distinguished chairman of the Energy Committee, Senator MCCLURE. My good friend and colleague from Wyoming, Senator WALLOP, and my friend from Washington, Senator JACKSON. Their knowledge and understanding of a complex issue of vital importance to us all has resulted in an effective and meaningful level of debate.

Mr. President, I recall a time nearly 3 years ago—during my first year in this place—when we were debating similar legislation affecting the 1902 Reclamation Act. At that time I listed several factors that I thought should be kept in mind during any consideraton of the reclamation laws. Those considerations are just as relevant to the current legislation, and I would like to reiterate them.

First, the reclamation acreage limitation is an institutional creation originating from a point in history when we were attempting to establish the criteria for the entry of citizens upon vacant public lands for the purposes of populating the Western United States.

Second, if Congress is determined to press the requirement that there be an acreage limitation placed upon the eligibility of an individual farmer to receive water from a Federal reclamation project, there is a need to assess the economic realities of contemporary agricultural production. I noted 3 years ago that the American farmer has always been "market oriented," rather than "peasant minded" in the sense of a desire to be enslaved to his land in a subsistence operation for generation after generation.

Third, Western reclamation projects are most properly categorized as other public works efforts more familiar to many of our colleagues which involve flood control and navigation purposes.

Fourth, private beneficiaries of these projects have always been required to repay the full costs of construction to the Federal Treasury, whereas navigation and flood control have never before been required to make such a public accounting.

Finally, multiple-purpose reclamation projects more recently have incorporated into their future usage, recreational aspects and the enhancement of environmental values, as well as hydroelectric and municipal and industrial uses. Those costs have properly been borne by the public and assessed by a Congress responding to the true needs for such objectives and programs.

Mr. President, I submit that those considerations which I listed 3 years ago are just as valid today in the context of the present legislation. An appreciation of the historical development of the reclamation program confirms that it is constantly evolving. S. 1867 will be an important milestone in that evolution—and I strongly urge that it be passed.

(By request of Mr. WALLOP, the following statement was ordered to be printed in the RECORD:)

● Mr. HAYAKAWA. Mr. President, the Senate considers many pieces of legislation that are critical to the economy of our Nation. The bill which we consider today, S. 1867, is an example of such legislation.

S. 1867, reported out of the Senate Energy and Natural Resources Committee by a vote of 18 to 1, is the product of many hours of testimony from hearings held here and throughout the West. The compromise worked out by Senator MCCLURE's committee will benefit all farmers who farm on reclamation land in the 17 Western States.

I am particularly proud to say that my State of California, its representatives and farm organizations have played a leading role in the formulation of this bill and the legislation that was recently passed in the House. Let me point out a few statistics illustrating my State's agricultural strength. There are over 250 commercial crops grown in California, including 30 percent of all the fruits and vegetables grown in the United States. California accounts for over 90 percent of U.S. production of 12 crops: almonds, apricots, artichokes, broccoli, dates, figs, grapes, nectarines, olives, persimmons, pomegranates, and walnuts. California ranks first in production of grapes, lettuce, tomatoes, eggs, and chickens, and second in all dairy products. California is the Nation's largest producer of sugar beets and the second largest producer of barley; the third largest producer of potatoes and the fourth largest producer of rice. My State is also the second largest producer of dry beans and the second largest producer of cotton in America.

In addition, California is the third ranking State in terms of production of agricultural products for export.

Mr. President, I am proud to represent California agriculture in the U.S. Senate, and let me add that I mean all of agriculture—growers and farm workers alike. Let us not forget then

that California farms are the finest and most productive in the world.

In discussing the importance of California agriculture, let me point out the critical role that section 8 of S. 1867 will play in maintaining my State's leadership role in agricultural production, as well as its significance to corps projects throughout the United States.

Section 8 of S. 1867 exempts from acreage limitations and all other provisions of reclamation law all landholdings within the service area of Federal water projects constructed by the U.S. Army Corps of Engineers throughout the United States unless (1) the project has by statute been designated, made part of, or integrated with a Federal reclamation project or (2) unless the Secretary of Interior, pursuant to his authority under the Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved. Subsection (b) preserves the legal obligation of the landowner's existing contracts with the Federal Government to repay allocated construction costs, as well as their share of operations and maintenance and contract administrative costs for conservation storage. Subsection (b) in no way intends that existing contracts be renegotiated whether or not the landholdings and water districts have repayed allocated construction costs.

This exemption is particularly needed in the Kings River area of California, a unique and remarkable portion of the San Joaquin Valley consisting of 1,000,000 acres of land. Some 500,000 people live and work in that area which annually produces agricultural products having a market value of between $1 and $2 billion. That production alone amounts to substantially more than 10 percent of the agricultural production of the entire State of California.

The Kings River in California, especially, has drawn the criticism of social reformers, and even today is the subject of a lawsuit. But a review of the history of the 1944 Flood Control Act clearly reveals that reclamation law was never intended to be applied to the Kings River, or the Kern, Tule, and Kaweah Rivers.

Mr. President, let me share with you the history of the 1944 Flood Control Act in respect to reclamation and the Tulare Lake case.

The material follows:

Section 8 of the committee bill exempts without exception all projects constructed and operated by the U.S. Army Corps of Engineers under the 1944 Flood Control Act, from reclamation law.

The purpose of the corps exemption is to clarify that merely because a dam and reservoir built and operated by the corps has an irrigation function; it is not for that reason alone subject to Federal reclamation law. Instead, reclamation law can only apply lawfully under any one of two criteria: First, explicit statutory language designates the project as reclamation; or second, in addition to project works constructed by the corps, the Secretary of the Interior has provided works for an agricultural water supply.

The corps exemption was installed to clarify the existing law that was confused by the Ninth Circuit in *United States* v. *Tulare Lake Canal Company*, 535 F. 2d 1093 (9th Cir. 1976). Tulare Lake misconducted congressional intent of the Flood Control Act of 1944 and the plain statutory language of section 8 to conclude that all or any corps projects having an irrigation function are, without more, subject to reclamation law.

The 1944 Flood Control Act in generic language authorized some 90 flood control projects, all across the United States.

In so doing, Congress created a class of equals in each and every project.

Thus Tulare Lake's application of reclamation law to corps projects must obtain not only throughout the ninth circuit (California, Washington, Idaho, Oregon, Nevada, Arizona, Montana, Alaska, Hawaii, and Guam) but also must serve as highest precedent throughout the United States, a subject of a writ of mandamus privately initiated.

At present, however, Tulare Lake is a test case, and the party at bar is the landowners of the Tulare Lake Basin, a 200,000-acre land-locked flood plain into which the Kings River finally empties. Thus in particular, the Court applied reclamation law to all lands supplied with water from the Kings River, on which the corps has constructed and operates the Pine Flat Dam.

Both House and Senate Committees received detailed testimony and written submissions regarding the specially adverse impact of reclamation law's application to both the large and small landowners on the King's River.

In the last Congress, the full House committee rejected two amendments offered during markup to exclude Kings River from the corps exemption first by implicit then by explicit reference. The committee's rejection of the amendments was grounded principally on constitutional grounds, making it unnecessary to restate during markup all of the numerous factual and equitable grounds contained in the hearing record. The amendments would have violated:

First. Due process and equal protection concepts under the fifth amendment; and

Second. Article 1, section 9's prohibition against the enactment of bills of attainder.

The committee's action to keep the Kings River in the general corps exemption is discussed as follows:

I. Factual and Equitable Justification.

II. Constitutional Bar to the Exclusion of Kings River: and

III. Legislative History of Section 8 of the Flood Control Act of 1944.

The principles discussed apply not only to any attempt to exclude the Kings River from the Corps exemption, but as well as the Dern, Tule, and Kaweah Rivers, or any other selected group from the general class of projects created by the 1944 Flood Control Act.

Confronted with a general Corps exemption that does not legislatively apply to one or a few among a class of equals, it is most likely that the courts would either strike down the exceptions or strike down the general exemption itself.

1. FACTUAL AND EQUITABLE JUSTIFICATION OUTLINE

1. The 1944 House Flood Control Committee Report made clear the Kings River landowners' understanding that if the Corps built the dam, reclamation law would not apply:

"Local (Kings River) interests are so strongly in opposition to a projcet built under reclamation law that they have stated that rather than have stated that rather than have the project built by the Bureau of Reclamation they prefer no federal project at all."

2. Under the long-standing reclamation law principle of "payout", the repayment in full of allocated construction cost would cause acreage limitations to be permanently removed:

A. Kings River landowners relied in good faith on the repeated written assurances by the Interior Department (copies of which are appended) that "payout" would occur upon repayment, including the written official representations of:

The Interior Department's Secretary on November 2, 1950; March 2, 1954; and July 12, 1957.

The Commissioner of the Bureau of Reclamation on January 18, 1952 and November 9, 1952.

The Assistant Interior Secretary on May 5, 1954 and May 19, 1954.

The Interior Solicitor on August 9, 1957 and January 3, 1961.

B. The history of the Federal government's assertions of the validity of payout has been traced over half a century in a lengthy and detailed legal memorandum included in the hearing record;

C. Repayment eliminates the so-called "Federal subsidy" justifying acreage limitations under reclamation law; and

D. Twenty-two of the twenty-eight Kings River water districts have fully repaid a sum in excess of $12 million.

3. Because Kings River, like other Corps projects, has none of the fundamental reclamation characteristics, the application of reclamation law produces practical absurdities:

A. The project did not supplement nor did it add new water to the existing water supply;

B. The project did not irrigate arid or semi-arid lands, since the area was fully developed agriculturally long before the project was authorized;

C. The project did not bring additional public or private lands into irrigation;

D. The project did not add or improve any water distribution works, because an efficient and privately owned distribution system, built at a cost to private interests of almost twice the project cost, was operational before the project;

E. The landowners' water rights were perfected before the project was authorized, and are the same as the water rights under California State law which the June 16, 1980, Supreme Court landmark decision in *Bryant* v. *Yellen* (No. 79-421), the so-called Imperial Valley case, held to be so superior as to render acreage limitations inapplicable to the Imperial Valley's pure reclamation project;

F. The project was built as a flood control project but nonetheless, frequent serious flooding still occurs;

G. The project's irrigation functions are incidental; and

H. The Federal government owns no water or water rights of the Kings River.

4. The application of reclamation law in Kings River would be detrimental to all landowners, large and small;

A. Landowners owning excess acreage, the Ninth Circuit conceded in Tulare Lake, can choose not to use the storage and controlled water release services of the project, by-pass the dam, and by their so taking their water "free-flow", reclamation law will not attach;

B. If forced to choose, the large landowners will take their water "free-flow" to avoid reclamation law and the need to sell their land;

C. Without the large landowners' water to carry small landowners' water downstream during the dry months in the growing season, the small landowners will have more serious water loss through water seepage and evaporation, and, therefore, the important water conservation needs of all landowners on the Kings River will be defeated;

D. The surface water lost by small landowners because of "free-flow" will require them to undertake the expensive pumping of water from the underground supply, which is already dangerously low;

E. Because the large landowners, particularly in the Tulare Lake Basin, can store their "free-flow" water on their lands, the small landowners least able to bear the resulting financial burden will be the far more injured parties; and

F. The Water interests of Kings River's 20,000 large and small landowners are, therefore, mutually dependent, and all seek relief through the exemption.

6. The California State Legislature Joint Resolution passed in July, 1979, by a nearly unanimous combined vote of 112-2, petitioned the Congress to grant Kings River a reclamation law exemption (a copy of the full resolution is appended), the conclusion states:

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation to specifically exempt the Kings River service area from the provisions of reclamation law. . . ."

II. CONSTITUTIONAL BAR TO THE EXCLUSION OF KINGS RIVER

Legislation that should exclude from the Corps exemption the Kings River, or other California Corps projects on the Kern, Kaweah or Tule Rivers, or legislation that attaches special conditions on the landowners for according them relief, while providing an unconditional and full exemption to all other similar Corps projects in other states that have an irrigation function, would be unconstitutional on its face. These would be unequal treatment of a selected member of a class of equals. Thus in a bill that should single out Kings River or the other California Corps project for special adverse treatment would violate:

(1) The Fifth Amendment guarantees of Due Process and equal protection, since such discriminatory legislative action is unreasonable, arbitrary, and capricious by its denial of equal treatment to equals; and

(2) Article I, Section 9's prohibition against the enactment of Bills of Attainder, because the exclusion in this context constitutes a legislative punishment by (a) interfering with property rights, (b) failing to further a lawful nonpunitive legislative purpose, and (c) implementing the proponents of the amendment's sole intent to punish identifiable parties.

1. Fifth Amendment Due Process and Equal Protection.—During the full Committee mark-up last Congress amendments to exclude Kings River from the Corps exemption were rejected principally on the grounds that they were unconstitutional and, therefore, unlawful. As the Supreme Court has long recognized, the guarantee of Due Process "secure(s) equality of law in the sense that it makes a required minimum of protection . . . which the legislature may not withhold." *Truax* v. *Corrigan*, 257 U.S. 312, 332, (1921). The Supreme Court has recognized that the Fifth Amendment guarantees equality to equals, in effect, equal protection. *See, Weinberger* v. *Wisenfeld*, 420 U.S. 636, 638 n. 2 (1975). Since the Flood Control Act of 1944 and subsequent flood control enactments authorized numerous Corps projects in other states with irrigation functions, including the Kings River Corps project, the law establishes a class of equals. Denial of reform to only one or a few of the projects in this class is a patent denial of equal treatment.

In *United States* v. *Tulare Lake Canal Company*, 535 F. 2d 10902 (9th Cir. 1976), the Ninth Circuit Court of Appeals held under Section 8 that all Corps projects having an irrigation function and created under the 1944 Flood Control Act are a class of equals, thereby necessitating the application of Reclamation Law to all:

"[The third sentence of Section 8] provides that *all* dams operated under the direction of the Secretary [of the Army] are to be utilized for irrigation only in conformity with the section, *i.e.*, under the reclamation laws; thus bringing under those laws dams for which no additional irrigation facilities are required," *Id.* at 1116.

The third sentence of Section 8 provides:

"Dams and reservoirs operated under the direction of the Secretary of the Army may be utilized after December 22, 1944, for irrigation purposes only in conformity with the provisions of this section, but the foregoing requirement shall not prejudice lawful uses now existing. *Provided*, That this section shall not apply to any dam or reservoir heretofore constructed in whole or in part by the Army engineers, which provide conservation storage of water for irrigation purposes." 43 U.S.C., sec. 390.

The Court's interpretation of Section 8 clearly pronounces a rule of general application, and not one applicable merely to Kings River or other California Corps projects alone.

Moreover, a significant analogy can be drawn between the discriminatory treatment of the four California Corps projects in last Congress' Senate version, S. 14, and the attempted amendment to the bill to deny Kings River equal treatment to all other Corps projects, and the legislation held unconstitutional by the Supreme Court in *Cotting* v. *Goddard*, 183 U.S. 79 (1901). In *Cotting*, the Supreme Court held that a state legislative enactment purporting to regulate a particular class of business, but in operation restricting by regulation only one company in the class, was unconstitutional as a violation of equal protection. The Court found that the legislation in question did not simply affect different companies differently in its indirect results. Nor was the classification based upon inherent differences in the character of the businesses. Rather, the legislation was unlawful as a positive and direct discrimination between persons engaged in the same class of business. *Id.* 114-15.

While congress has the power to distinguish between competing interests in legislation in order to achieve broad public policy goals, the prerogative is limited by the Due Process Clause of the Fifth Amendment. Due Process secures equal treatment for equals under law, and it requires that the means selected to achieve a lawful legislative goal must have a real and substantial relation to the constitutional object sought to be obtained, that standard is not and cannot be met here since neither the legislative goal nor the means selected are lawful. No Congressional finding of fact or statement of purpose for reforming reclamation law has been, or can be, advanced to justify singling out the small and large Kings River landowners for a denial of the relief accorded to all other similar, flood control project landowners. Rather, the evidence developed during extensive congressional hearings suggests simply the reverse. Hence, any attempt to discriminate against the Kings River landowners should constitute the unreasonable, arbitrary and capricious legislation that the courts would be required to overturn.

2. *Bill of Attainder Under Article I, Section 9.*—Legislation that excludes Kings River or other California projects from the Corps exemption by name or description constitutes legislative punishment violative of the constitutional prohibition against Bills of Attainder in Article I, Section 9: "No bill of Attainder or ex post facto law shall be passed". Over one hundred years ago the Supreme Court described a Bill of Attainder as legislative punishment without a judicial trial. *Cummings* v. *Missouri*, 71 U.S. (4 Wall.) 277, 323 (1867). More recently, the Supreme Court in 1965 defined it to mean "legislative punishment, of any form or severity, of specifically designated persons or groups". *United States* v. *Brown*, 381 U.S. 437, 447 (1965). The punishment can be civil or criminal in nature.

If the following two elements are present, the law must be struck as a violation of the Bill of Attainder clause: First, isolation of a defined individual or group; and second, imposition of a type of punishment contemplated by the clause. *Nixon* v. *General Services Administration*, 433 U.S. 425, 469 (1977). Punishment may be recognized under any one of the following three tests: (1) historical experience; (2) function; and (3) legislative motive. *Id* at 473-83.

The amendments to exclude Kings River by implicit or explicit reference satisfy the first essential element of a Bill of Attainder that the victim be clearly identified. The second essential element of punishment within the meaning of the clause, as articulated in *Nixon*, is satisfied under all three tests.

The historical experience test looks to past legislative abuses of power in the United States and England, including punitive confiscation of property by a sovereign. "A statutory enactment that imposes any of these (traditional property right) sanctions on named or indentifiable individuals would be immediately suspect". *Id.* at 173. The water rights to the Kings River were fully vested and perfected under California state law by private parties before the project was authorized. Acreage limitations, residency requirements and the anti-speculation provisions of reclamation law selectively applied constitute an unlawful interference with judicially recognized property rights in water of both large and small landowners. *See, California* v. *United States*, 438, U.S. 645, 670-673 (1978).

Under the functional test, the inquiry is "whether the law under challenge, viewed in terms of the type and severity of burdens

imposed, reasonably can be said to further nonpunitive legislative purposes." 433 U.S. at 475-76. In view of the discriminatory treatment between projects included and excluded from the Corps exemption, without a showing of factual justification on the record, this test is fully met. Moreover, the record is practically uncontradicted as to the factual and equitable justification for an exemption. The amendment's proponents stated no substantive basis in the nature of a non-punitive legislative purpose.

The motivational test "inquir[es] whether the legislative record evinces a congressional intent to punish". 433 U.S. at 478. The record clearly reflects a motivation on the part of the amendments' proponents to prevent certain large landowners in the Tulare Lake Basin from gaining any benefit from the Corps exemption remedy, in full disregard of the factual and equitable circumstances, particularly in regard to small landowners. It is tainted as retaliatory in all respects. The punitive motivation is only heightened by the representations on the hearing record on behalf of small landowners that they will be the most serious victims of the proponents' stated large landowner targets because of the Kings River's natural physical characteristics, including the water supply damage which "free flow" would cause, the resulting further reduction in the precious ground water supply and the economic unfeasibility of farming on a small scale in the Tulare Lake Basin owning to flooding.

LEGISLATIVE HISTORY OF SECTION 8 OF THE FLOOD CONTROL ACT OF 1944

The legislative history of the Flood Control Act of 1944 was repeatedly asserted by critics as grounds that Kings River should be denied reclamation law relief. The factual and equitable grounds for supporting remedial legislation for Kings River go almost wholly uncontradicted.

The critics have relied upon the fallacious reasoning of the legislative history interpretations stated by the Ninth Circuit Court of Appeals in *United States* v. *Tulare Lake Canal Company* and those advanced by the Interior Department in the course congressional hearings.

Listed below are the principal assertions of legislative purpose and intent made by the Ninth Circuit and stated therein is a brief corrective explanation.

1. *The Hill-Overton Colloquy.*—The Ninth Circuit places great reliance upon the Hill-Overton colloquy during the Senate Debate on the reference version of the Flood Control Act:

Mr. HILL. There still seems to be confusion on the part of some Senators with reference to the application of reclamation laws in regard to some of these projects.

"I heard the distinguished senior Senator from Louisiana, when the bill was under consideration, and I think he made it very clear. However, I wish to ask this question: Is it not a fact that section 8 of this bill, as agreed to in conference, makes some reclamation laws applicable to the handling of irrigation water of any of the projects, including California projects, where it is found that irrigation may be carried out? I ask the Senator in charge of the bill whether it is not a fact that the President wanted the California project in this bill constructed under the Bureau of Reclamation so that the water policies would conform to reclamation law?

"Mr. OVERTON. The Senator is correct with respect to the projects in the so-called Central Valley of California. The President wrote me and the chairman of the subcommittee in this regard. However, in view of the fact that the Senate amendment made not only the California projects but all such projects subject to irrigation laws, and in view of the fact that the House concurred in this action by agreeing to Section 8 of the Senate bill, I am sure that the President will feel that we have met the problem that he raised. Section 8 of the bill clearly places reclamation uses of water from these projects under the Secretary of the Interior and under the applicable reclamation laws. No project in this bill which may include irrigation features is exempted from the reclamation laws.

"Mr. HILL. I thank the Senator.

"Mr. OVERTON. The Senate amendment made not only the California projects, but all such projects subject to the irrigation law. In view of the fact the House concurred in that action by agreeing to Section 8 of the bill, I am sure the Senator from Alabama will feel that we have met the question which he has raised. As I stated a while ago, Section 8 of the bill clearly places reclamation uses of waters from all projects authorized in this bill under the Secretary of the Interior, and under the applicable reclamation laws." 90 Cong. Rec. 9264 (1944).

As a preliminary matter, it is necessary to point out that this colloquy was "staged', and for that reason it must be discounted. *See.* Nutting, *The Planned Colloquy—What now?*, 46 A.B.A.J. 93 (1960). The colloquy took place after the Senate had completed its consideration of Section B, and was apparently instigated by the Administration. However, even here Senator Overton remained convinced, as he was at other stages of the debates, that the Interior Department's administration of reclamation law under Section 8 was limited to "surplus water", and in this way, vested water rights would not be interfered with.

If the Hill-Overton colloquy is to be relied upon at all, it must be for the propositions that (a) Section 8 was intended to be applicable to all Corps projects authorized by the 1944 Act; and (b) that "reclamation uses", meaning "surplus water", should be subject to the reclamation law jurisdiction of the Interior Department. He did not intend that vested water rights should be impaired. By the term "surplus water" he meant water made available by the project to which there as no vested right under state law. This is the ony meaning which comports with the Members' understanding, sprinkled throughout the debates, that vested water rights would not be interfered with, a legal concept which Western State Members were plainly aware, but more importantly, of which they were very protective.

"Surplus water" was under the Interior Department's jurisdiction, as Senator Overton understood the operation of Section 8 in the Senate version:

"Of course, the Senate will understand that, insofar as irrigation is concerned, all *surplus water* which can be used for irrigation is turned over to the Department of the Interior, and the method of irrigation and the operation of the irrigation works are under the control of the Department of the Interior." 90 Cong. Rec. 8625 (italic added).

Senator Overton associated "reclamation use" with Bureau of Reclamation jurisdiction, so that projects having predominant "reclamation uses" would be built by the Bureau, and those not having dominant "reclamation uses" would be built by the Corps under the inter-agency pack resolving the Corps-Bureau rift. To the extent of "surplus water", then, a Corps project would have a "reclamation use". Consider, the above with the following statement by Senator Overton in an exchange with Senator Murray:

"In the joint report submitted as a result of a conference and agreement between the Bureau of Reclamation and the Army engineers that policy has been carried out, and the reservoirs in which the predominant interest is conservation, irrigation, and reclamation are to be under the control of the Bureau of Reclamation and the Department of the Interior. Those in which navigation and flood control predominate are to be under the control and operation of the Army engineers. I think what the President has said is fair, and that policy is the one which is being pursued." 90 Cong. Res. 8625.

"Surplus water" was defined in the course of House debates on a section related to the House version of Section 8. Congressman Whittington, Chairman of the House Flood Control Committee which reported out the Flood Control Bill, was questioned by Congressman Chenoweth:

"Mr. CHENOWETH. Will the gentleman define the word "surplus" used in Section 4 in referring to *surplus water*? In the West we have the doctrine of appropriation, for all water in a stream is appropriational. I anticipated a flood-control project where that water would be stored temporarily. *It woud not be surplus water. It is appropriated for irrigation purposes. The gentleman does not mean to interfere with any appropriated water*?

"Mr. WHITTINGTON. No. I would think that this had primary reference to reservoirs for flood control. My general judgment, in answer to the gentleman's question, is that practically all of that water is surplus, and that may be disposed of, if the reservoir is for flood control." 90 Cong. Rec. 4125 (italic added).

Congressman Chenoweth subsequently stated:

"Mr. CHENOWETH. The gentleman from Nebraska is a recognized authority on irrigation law. He comes from an irrigation State. I would like to ask a question or two in order to clear up a couple of paragraphs here. The first is in respect to Section 4 where the Secretary of War is authorized to sell *surplus water.* What is the gentleman's observation as to *surplus water?* In our area all water has been appropriated, including floodwaters. They will be temporarily captured and placed in reserve, but would not be subject to sale. They belong to the appropriators who have already complied with statutes in appropriating it.

"Mr. CURTIS. It would be my opinion that water appropriated for irrigation is not *surplus water.*" 90 Cong. Rec. 4133. (italic added).

The Senate adopted the Committee amendment of Section 8, as proposed by Senator Overton, stated by him to be word for word as recommended by Interior Secretary Ickes, 90 Cong. Rec. 8550, as provided in relevant part:

"Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes only in conformity with the provisions of this section, but the foregoing requirement shall not prejudice lawful uses now existing." 90 Cong. Rec. 8552.

The relevant language of section 8 as enacted provides:

"Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes

only in conformity with the provisions of this section, but the foregoing requirement shall not prejudice lawful uses now existing. Flood Control Act, ch. 665 § 8.58 Stat. 891 (1944) (current version at 43 U.S.C.A. § 390 (1979))."

The only mention of Section 8 during the Senate floor consideration of the Conference version was the staged Hill-Overton colloquy. The understanding in the Senate was clear: Corps dams and reservoirs were subject to reclamation law only as to "surplus water". If the conference version changed that, it was not brought to the Senate's attention. The Conference Report language was cloudy on the essential "surplus water" issue.

"Amendment No. 17: This amendment of the Senate replaces Section 6 of the House approved bill with certain modified language substantially as required by the Secretary of the Interior and constitutes Section 8 of the Senate approved bill. The Senate language will provide for more effective administration in relation to the various technical features of the Federal reclamation law. It establishes a procedure for the utilization of multiple-purpose projects for irrigation purposes when the Secretary of War determines upon recommendations of the Secretary of the Interior that a project operated under the direction of the Secretary of War may be utilized for irrigation purposes." H.R. Rep. No. 2051, 78th Cong. 2d Sess. 7 (1944).

The Administration's tactics were transparent. The Senate version of Section 8 was advanced, argued, and explained by Commerce Committee Chairman Overton. It was Senator Overton himself who asserted the "surplus water" argument. It was also Senator Overton who explained that the Senate version was word for word that of Interior Secretary Ickes. The Conference Committee report states that its version was substantially as requested by Secretary Ickes. This must, of course, cause the drafter's intent to be discounted. The rule stated by Sutherland, and explained more fully in part 2 below, would make reliance on the Secretary's intent impermissable.

2. *Reliance Upon the Administration's Written Correspondence.*—The Ninth Circuit placed great weight on the presumption that the Administration's interpretation and intent in drafting Section 8 was, a fortiore, adopted by the Congress. The *Tulare Lake* opinion's legislative history, 535 F.2d at 1098-1118, repeatedly cites and quotes the written correspondence to the Congress over the signatures of President Roosevelt and Interior Secretary Ickes. The Court states that these writings, in addition to those of Commissioner Bashore of the Bureau of Reclamation, were looked to to determine that acreage limitations were applicable to Kings River. *Id.* at 1099.

The Court's strong reliance on these writings was erroneous. The Administration does not make law; the Congress does. The use of extra-legislative source materials expressing the views of the draftmen has no binding legal force. As an exception to the general rule, weight can be properly attached to the drafter's views only if those views were clearly and prominently conveyed to the Congress during consideration of the bill, provided that there is reason to believe from the record that (1) the legislators' understanding of the bill was influenced by the drafter's communicated views and (2) the communication was so visible to the Members that the drafter's intent was understood in the context of the statutory language. 2A Sutherland, *Statutes and Statutory Construction* § 48.12 (4th ed. 1973). These elements were not met.

The letters regarding acreage limitations and residency requirements, or any other limitations under reclamation law, were not a matter of debate at the time the letters were introduced into the record, or read. There is no basis whatsoever to conclude that the Members were fully informed or plainly understood the reclamation implications of Section 8. The debates make clear that the Members believed that vested water rights would remain intact and unencumbered. There is totally absent any evidence that the Members believed anything other than that if reclamation law were to be applicable to a Corps dam, it would be to "surplus water" or "reclamation water" only. This is the only interpretation that comports with the repeatedly expressed concerns for the possibility which vested water rights would be interfered with and the assurances by spokesmen for the bill that they would not. See, e.g., 90 Cong. Rec. 4125, 4141, 8428, 8616-17.

Interior Secretary Ickes was intent on making a record in order to shape legislative history. If for no other reason, his views, and those of President Roosevelt, were orchestrated to undo the fatal failure of their effort over a period of years to have all projects in the San Joaquin Valley, like the Central Valley of California built and operated by the Bureau. They failed in that attempt. Senator Bailey stated of Secretary Ickes: "He is clearly a partisan in matters of this type, and I believe I am safe in saying that be is something of a crusader. The judgment of partisans and crusaders is always to be respected . . . but *they are not, by any means to be trusted.*" 90 Cong. Rec. 8316 (italic added).

3. *The Kings River Amendment.*—The *Tulare Lake* decision states that on the Senate floor a final attempt was made to bar the application of acreage limitations to the California projects authorized by the 1944 Act but that they were unsuccessful. 535 F.2d at 1108.

The Ninth Circuit is in error. There was no specific amendment offered to exempt Kings River, or the Kern, Kaweah, and Tule River projects, from the acreage limitations. The only possibly relevant amendments were those offered by Senator O'Mahoney and Senator Murray, but they are not on point.

Senator O'Mahoney offered an amendment to authorize the Secretary of the Army, the Corps, to make contracts for the use of "surplus water". 99 Cong. Rec. 8548. He also offered an amendment to Section 8 so that it "shall not apply to any dam or reservoir heretofore *or hereafter* constructed which supplements locally operated irrigation systems or other locally operated water facilities. . . ." 90 Cong. Rec. 8550. The amendments were not voted on. The amendments were referred to the Committee on Irrigation and Reclamation without objection. 90 Cong. Rec. 8850.

The other error is more apparent. It is a fact that Senator Murray offered an amendment to delete from the bill the Corps projects for the Kings, Kern, Kaweah, and Tule Rivers, not to save those projects from Section 8, but rather so that they could be "planned, designed, constructed, operated, and maintained as an integral part of the Central Valley project by the Bureau of Reclamation in accordance with established policies of the Bureau of Reclamation." 90 Cong. Rec. 8622-8623. This was a Roosevelt Administration inspired amendment and it was rejected. The Roosevelt Administration had consistently failed heretofore to have the projects for the four rivers included in the Central Valley project, a pure Bureau of Reclamation undertaking.

It is important to point out that in response to Senator Murray's defeated amendments, a victory and not a loss for Kings River, Senator Overton restated his understanding of "surplus water" in the context of Section 8:

"The able junior Senator from Montana has made considerable comment in reference to the Sacramento and San Joaquin Rivers and the Central Valley, in California. The principle to which I have just referred was carried out in respect to the projects contained in the bill which were authorized for those streams. The testimony shows, I think rather conclusively, that the projects herein authorized to be constructed by the Army engineers are some in which flood control predominates over irrigation. Of course, the Senate will understand that, insofar as irrigation is concerned, *all surplus water* which can be used for irrigation is turned over to the Department of the Interior, and the method of irrigation and the operation of the irrigation works are under the control of the Department of the Interior.

* * * * *

"Mr. President, the Assistant Chief of Engineers, as well as all the engineers who appeared before our committee, stated that they had absolutely no objections whatsoever to the irrigation and power amendments which were suggested by the Secretary of the Interior. They were similar to those suggested by the Senator from Montana, and were subsequently incorporated in the pending bill. The engineers stated that they were perfectly willing to turn over to the Department of the Interior control of the power generated for distribution, and were perfectly willing to turn over to the Bureau of Reclamation the distribution of *all surplus water* held back by the dams constructed by them, for distribution of which would come under the reclamation law, or would follow whatever method Congress might determine upon." 90 Cong. Rec. 8625 (italic added).

It deserves noting that the Supreme Court, in recently reversing the Ninth Circuit in the Imperial Valley decision, *Bryant* v. *Yellen*, No. 79-421 (S. Ct. June 16, 1980) stated that:

"[S]tatements by the opponents of a bill and failure to enact suggested amendments, although they have some weight, are not the most reliable indications of congressional intention. *Ernest & Ernest* v. *Hochfelder*, 425 U.S. 185, 204, N.24 (1976); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 381-382, N.11 (1969). *Bryant*, Slip op. at 23."

4. *Section 8 Was Doomed At the Outset.*—Section 8 was born in several different versions, confusing technical water law terminology with the result that the inequities caused over the years now require this Congress' clarification.

Senator Bankhead, Chairman of the Committee on Irrigation and Reclamation gave a forceful warning to the serious implications of wedding reclamation law to a flood control bill through Section 8:

"If we proceed to enact legislation in this important field by this sort of method, by what might be called a rider to a flood-control program, without any hearing, without any consideration by the committee which

has complete jurisdiction on the subject, *I submit to the friends of the principle of the irrigation and reclamation laws that they are entering upon a most dangerous proceeding and one which may sooner or later lead to the wreckage of the entire reclamation program.*" 90 Cong. Rec. 8549 (emphasis added).

Senator Bankhead's prophecy was apparently correct.

5. *The Kings River Corps Project's Predominant Purpose.*—The Corps study, which laid the basis for the Kings River Project, judged flood control to be the dominant purpose of the dam. H. Doc. No. 630, 76th Cong., 3d Sess. 9 (1940). In considering authorization of Corps projects, including Kings River, the Senate floor manager for the Flood Control Act of 1944 recognized that corps projects principally protected against floods, 90 Cong. Rec. 8625. Even today, the law authorizing the construction of dams under the Flood Control Act requires that flood control purposes predominate, 33 U.S.C. §§ 701, 701a.

Discussion of the Kings River Issue.—The Ninth Circuit states that both the Administration and the Kings River's views were exhaustively considered. The debates and reports do not support that statement. There is almost total lack of discussion of acreage limitations in particular. It is also true that both sides did not exhaustively state their case. Because the Corps was to build the project, Kings River did not anticipate reclamation law problems. In addition, all the Kings River water interests had vested before 1944, so that "surplus water" uses did not pose a problem. Indeed, no Kings River spokesman was necessary nor was one needed for all other California Corps projects. The Kings, Kern, Kaweah and Tule River projects did not require a member's active lobby; the only active lobby which existed was the one confined to Administration written correspondence. In effect, the Administration's attempt to write legislative history was self-serving and without legal significance.

7. *Contrasting language.* Subsection 8 (1) excepts the Corps exemption from projects that have ". . . by Federal statute explicitly been designated, made a part of, or integrated with a Federal reclamation project. . . ."

In stark contrast to the language of Section 8 relied upon by the Ninth Circuit, is Section 203 of the Flood Control Act of 1962 (P.L. 87-874, 76 Stat. 1173), applying reclamation law to the New Melones Project constructed by the Corps under the 1944 Flood Control Act:

"The New Melones project . . . is hereby modified substantially . . . *Provided,* That upon completion of construction of the dam and powerplant by the Corps of Engineers, the *project shall become an integral part of the Central Valley project and be operated and maintained by the Secretary of the Interior pursuant to the Federal reclamation laws. . . . [Emphasis added.]*

No statutory language even coming close to this exists in respect to the Kings River, certainly not Section 8. The contrasting language of the 1944 and the 1962 Flood Control Acts clearly shows Congress's intention to apply Reclamation law in the latter, and not in the former, case.●

Mr. DECONCINI. Mr. President, I wish to pay particular thanks to the Senator from Wyoming, the Senator from Idaho, the Senator from Washington, and the Senator from Ohio for their fine work in putting this compromise together.

Mr. President, the 1920 Reclamation Act has been a tremendous investment in the natural and human resources of this country over the course of several generations. As a direct result of this investment, over 11 million acres are receiving a full or supplementary water supply. That is 11 million acres—about 25 percent of our irrigated farmlands in this country. Reclamation water is distributed to about 153,000 farms, and is the life's blood of many Americans.

In return, the gross value of crops from reclamation farms is about $7.5 billion annually. That is money that stays right here in this country—and as we are a net exporter of Agricultural products, reclamation farmland is a very positive factor in achieving a balance of trade.

And for those of us who do not own farms, we get hydroelectric power, municipal and industrial water, fish and wildlife conservation, flood control, and public recreation. The list goes on and on. Does the farmer benefit from Federal reclamation projects? Certainly—but the new wealth created by expanded agriculture and expanded production has greatly benefited the entire country.

There have been, however, a lot of changes in the world since 1902 and a lot of changes in agriculture technology. The Reclamation Reform Act of 1982, as reported by the Senate Committee on Energy and Natural Resources, and now agreed to on the floor is an important updating of the original act. The most obvious change, of course, is in the formula for determining the size of a farm eligible for project water. Under S. 1867, the size of the farm, rather than the size of the family, determines eligibility. Existing law allows any individual to own up to 160 acres of land and recieve project water. Husband and wife together could own 320 acres. A family of 4 could own 640 acres, a family of 10, 1,600 acres. S. 1867 allows a family, not an individual, ownership of 1,280 acres. The bill also imposes an overall limit on leasing, which does not exist in current law, and for the first time would require the reclamation farmer to repay construction costs with interest if the size of his farm has exceeded whatever overall acreage limitation is finally enacted.

The bill, of course, Mr. President is not perfect. Few attempts to impose limits or guidelines on complex endeavors affecting millions of people ever come close to that lofty goal. And like most major measures which make it to, and pass, the Senate floor, the bill contains many compromises—both large and small—hammered out over the years among the numerous conflicting interests. Consideration and debate here on the floor has given us additional opportunity to make changes, and pass a fair and balanced bill—conference with the House will undoubtedly result in further changes. For my own part, while supporting the bill as reported, I believe the combined total of 2,080 acres of owned and leased land was questionable. I was happy with the 1,280 acre limit we had in the 1979 bill, S. 14, and believe the compromise is a good one. I would agree with my distinguished colleagues, Senators JACKSON and HATFIELD, and many of my colleagues here on the floor that the principle intent of the reclamation program is to benefit a large number of farmers. That although we need a larger acreage limitation to accommodate current and future farm technologies and economies, it is not the intent of the program—nor is it to the benefit of the taxpayer—to subsidize large corporate landholdings.

However, Mr. President, the bill in general is balanced and fair and that is reflected in the overwhelming support given to the reported bill by the committee members and in the compromise we now have. I would like to commend and congratulate the distinguished chairman of the committee, Senator MCCLURE, the distinguished floor manager, Senator WALLOP, and Senator JACKSON the distinguished ranking minority member for their leadership and perseverance in putting this bill together, literally word by word.

I would also like to commend them on their inclusion of section 11(e) which exempts those lands which receive a substitute water supply on the condition that ground water pumping is reduced in equal quantities.

As the Senate Report 97-373 points out, this section applies to the central Arizona project which, I believe, is the only contracting entity which has a contract with the United States requiring an offsetting reduction in ground water pumping for the irrigation water received from the Federal project.

Reclamation law was designed to apply to projects that provide full or supplemental irrigation supplies on a firm or dependable basis. However, although the original use of the CAP water was envisioned to be purely agricultural, the population centers have grown and the master contract now gives M. & I. users a 100-percent priority over agriculture users in event of a shortage. As a result, the cities get a firm water supply. The Indian reservations get a firm water supply. But the farmers do not get a firm water supply. This represents a temporary water supply for Arizona farmers.

Also, as the Senate report points out, the CAP master contract requires a bucket-for-bucket substitution of ground water now being pumped in the project area. CAP neither expands nor stabilizes agriculture's supply. The

purpose of the CAP (Public Law 90-537), was not to create new water supplies—not to create new agriculture—but to reduce the pumping of ground water for agriculture already in existence. Without additional water but with the limitations and restrictions of the Reclamation Act, many, and perhaps most Arizona farmers could not afford to contract with the CAP—could not afford to stop pumping ground water—and that would be disastrous for all Arizonans.

There are a large number of Arizonans who have provided invaluable assistance to me over the last 6 years in helping me to become better acquainted with the various provisions of reclamation law and its application to Arizona projects. Although it is impossible to mention everyone, I would like to give special thanks to those who have testified before the Senate committee on S. 1867: Bob Moore of the Agri-Business Council of Arizona; Clyde Gould of the Wellton-Mohawk Irrigation and Drainage District; and Tom Choles who testified on behalf of five reclamation districts. Their expert testimony was very helpful and instrumental to the development of the bill.

I would also like to thank Rodger Ernst, one of Arizona's outstanding water experts, the same thanks to Bill Gaskin, Howard Weitz, Jim Hennis, Michael Curtis of the Arizona Municipal Power Users Association, Hank Ramon and Rich Johnson of the Central Arizona Project Association, Tom Clarks of the Central Arizona Water Conservation District, Dick and Kieth Walden of Pima Co., and Wes Steiner, the Director of the Arizona Department of Water Resources. Also special thanks to my legislative assistant Jim Magner for his outstanding work in behalf of all of Arizona.

The information and assistance they have provided has been very timely and crucial to representing Arizona's interest in this bill.

Mr. GORTON. Mr. President, because of the importance of the reclamation reform issue to the people of Washington State, I will take this opportunity to express my views on the subject. The 1902 Reclamation Act has been in need of updating and clarification for many years. Farming in the United States is a vastly different business in 1982 than it was in 1902. When laws begin to lose their relevancy to the subject-matter they were designed to deal with, they cease to be enforced. It is precisely this problem that has beset the Reclamation Act. I hope that the product of the conference between the House and the Senate will be one that will make this law once again relevant and that it can and will be enforced.

Mr. President, I am not totally satisfied with the committee bill as a final product, but I do believe that it has made significant improvements on the current law. The most obvious change is in the acreage limitation and the full cost of water provisions. While the committee's version of the acreage limitation may be too generous, it is likely to be compromised with the House. On the other hand, the amendment offered by the distinguished Senator from Indiana, Mr. LUGAR is far too restrictive, even punitive. I hope that the committee will work very closely with the House Members of the conference committee, and that a reasonable acreage limitation combined with a cap on leasing will be adopted.

I thank the members of the Energy Committee and their staffs for their diligent efforts in drafting this bill. We are all aware that the agricultural community does not speak with one voice on this subject and that the balances which must be struck are delicate ones. I particularly thank my friend Senator JACKSON for his tireless work on behalf not only of the citizens of Washington, but of all those served by the reclamation system.

Mr. President, as I have said, this bill is a fine starting point for discussions with the House. I trust that conferees will consider the reservations of their colleagues which have been expressed here today when they proceed to fashion their final product. I hope that they will proceed expeditiously. This reform is long overdue.

Mr. DOMENICI. Mr. President, what we have here today in the U.S. Senate is truly a historic moment. In consideration of S. 1867, the Reclamation Reform Act, we are proposing legislation that would modify one of the most important laws ever passed by the Congress of the United States.

That law, the 1902 Reclamation Act, was one of the keys to settling the Western United States and creating, in the past 80 years of its existence, homes and opportunities for millions of Americans.

In his first measure to Congress, President Theodore Roosevelt said:

> The forests alone cannot, however, fully regulate and conserve waters of the arid region. Great storage works are necessary to equalize the flow of streams and to save the flood waters. Their construction has been conclusively shown to be an undertaking too vast for private effort. Nor can it be best accomplished by the states acting alone.

President Roosevelt recognized that the settlement of federally reclaimed arid land as a central but separate issue which justified a Federal involvement when he said:

> The Policy of the National Government should be to aid irrigation in the several states and territories in such a manner as will enable the people in the local communities to help themselves and it will stimulate needed reforms in state laws and regulations governing irrigation.

Roosevelt said further:

> Our people as a whole will profit, for successful homemaking is but another name for the upbuilding of a nation.

I submit to this body the conclusion that this program has worked well for those local communities, for those States where these projects have been built, and for this Nation.

We have created the opportunities for millions of people and we have added to our Nation's economy and more than repaid the original cost to our Government through increased economic activity and the resultant generation of new tax revenue.

We have, through the reclamation program, truly built a nation from shore to shore.

However, time marches on and several years ago a dark shadow of uncertainty appeared over these projects. A shadow that tried to impose the agriculture methods of the 19th century on today's modern American farms.

This shadow threatened the existence of thousands of family farms in the West. I would repeat this statement. Thousands of family farms had their very existence threatened. That is why today we are considering a new Reclamation Act. That is why I am a cosponsor of this legislation. The 1902 reclamation law was a good law and it served this Nation well. But time marches on and what this legislation does is to recognize the fact that American agriculture today is not what it was 80 years ago. That, simply stated, is the purpose of this legislation. We must modernize the law.

Furthermore, this legislation represents a consensus of the views of many individuals and groups that have argued over this issue the past several years. I believe it will make a good law and I believe it will serve the taxpayers of this Nation as well as serving our consumers well.

It will remove that shadow of uncertainty and will allow our family farmers to get back to doing what they do best. It will allow them to provide America with the high quality food at a reasonable price to our consumers. It will provide this food on a year-round basis so our consumers are not faced with periodic food shortages and resulting high prices.

American today has the greatest food machine the world has ever known. This food machine was built with the blood, sweat, and tears of our American farm families who for the most part accomplished this miracle in spite of Government programs.

It seems to me that this bill is a reasonable piece of legislation that most farmers have agreed is needed. I support it and I hope my colleagues will also give it their utmost consideration and come to the realization that in spite of what they may perceive as shortcomings, it is a bill that will resolve the major issues we have dis-

cussed for several years and once and for all reassert our national commitment to family farms in America.

● Mr. BAUCUS. Mr. President I rise to express my strong support for passage of S. 1867, the Reclamation Reform Act of 1982. Reform of the 1902 Reclamation Act, which sets an acreage limit of 160 acres on Federal project water, is long overdue.

We must increase this acreage limitation to reflect the present-day agricultural climate. Agriculture has come of age in the West and is the mainstay of the economy there. The reclamation program provided for the production of $7.4 billion in crops in 1980 and provides food for over 39 million people. These figures indicate the importance of the reclamation program, not only for the Western States, but for the entire United States.

The reclamation program has played a strong role in the development of the agricultural economy in my home State of Montana. The Huntley Irrigation project has served farmers in the Yellowstone Valley since 1908. The project is one of the first constructed in the United States under the 1902 Reclamation Act.

I think we all agree that some increase in the acreage limitation is essential. In 1902, a 160-acre farm was an economically viable size. Agriculture has undergone tremendous change in the last 80 years and 160 acres is no longer an economic unit, especially in the arid Western States.

During the 96th Congress, I was a cosponsor of Senator CHURCH's legislation to upgrade the acreage limitation. The Senate passed that bill, but because of lack of action in the House, the measure did not become law. We must take action now to prevent the Secretary of Interior from writing rules and regulations based on the antiquated 1902 act.

S. 1867 contains provisions that are supported by reclamation experts in Montana. During the Senate Energy Committee hearings on the bill, a number of Montanans testified on the residency requirement, an equivalency formula, the acreage limitation on owned land and the treatment of leased land.

A workable equivalency formula is an essential feature of reclamation legislation for Montana. An adjustment should be made in the acreage limitation in areas, like Montana, where soils are poor and growing seasons short.

Repeal of the residency requirement makes sense in today's agricultural structure. Distances in Montana are vast. In many cases, irrigated farms produce winter feed for livestock ranches, and these farms are often more than 50 miles from ranch headquarters.

In addition, residency requirements would hamper the ability of families to pass land on to their children. The traditional family farm is still operating in Montana today. A residency requirement, however, would not allow family members the freedom to move away from the "home place" and maintain ownership.

From Montana's point of view, minimal leasing limitations make the most sense. I do recognize, however, that maintaining the intent of the Reclamation Act is important.

Leasing has become an integral part of the farm economy. In excess of 60 percent of all farm land in the United States in leased.

Young people trying to start farming today must be able to lease land. Beginning farmers do not have the capital to buy their own land—especially with the cost of irrigated land in Montana climbing over $1,000 per acre and interest costs exorbitantly high. Rising costs of production and low farm prices necessitate large acreages for farmers to make a go of it today.

Leasing is also necessary to enable farmers to retire and continue to receive the income and security that irrigated farms provide. Without leasing, a farmer who becomes sick or disabled would have to give up his land.

In summary, I believe that S. 1867, without amendments, addresses the concerns of Montana's reclamation farmers. We must walk a fine line between preventing abuses of the Reclamation Act by large corporate organizations and placing unreasonable restrictions on legitimate family farming operations.

I hope the Senate will approve S. 1867 and that we will reach a compromise with the House on the Reclamation Reform Act. There are provisions of the House-passed version that I favor over S. 1867. For instance, the full cost recovery rate of borrowing formula in the House appears more reasonable. I will not, however, argue the point here today. But I hope the Senate will consider this provision when trying to resolve differences in the two measures.

Let us break the stalemate that has plagued reclamation reform efforts in the past. I urge the adoption of S. 1867.●

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MOYNIHAN. May we have order, Mr. President?

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 550, H.R. 5539, which is the House-passed companion legislation for S. 1867, for the purpose of substituting the text of S. 1867 as just passed by the Senate.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5539) to amend and supplement the Federal reclamation laws, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to consideration of the bill.

The Senator from Idaho.

Mr. McCLURE. Mr. President, I ask unanimous consent that the text of H.R. 5539 be stricken after the enacting clause and that the text of S. 1867, as passed by the Senate, be inserted in lieu thereof, as an amendment in the nature of a substitute.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. MOYNIHAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BRADY (after having voted in the affirmative). Mr. President, on this vote, I have a pair with the Senator from Maine (Mr. COHEN). If he were present and voting he would vote "nay"; if I were permitted to vote, I would vote "yea". Therefore, I withhold my vote.

Mr. LEAHY (when his name was called). Mr. President, on this vote I have a pair with the distinguished senior Senator from Nevada (Mr. CANNON). If he were present and voting he would vote "yea." If I were at liberty to vote I would vote "nay." I therefore, withhold my vote.

Mr. MATHIAS (after having voted in the negative). Mr. President, on this vote I have a pair with the distinguished Senator from New Mexico (Mr. SCHMITT). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I, therefore, withdraw my vote.

Mr. STEVENS. I announce that the Senator from South Dakota (Mr. ABDNOR), the Senator from North Dakota (Mr. ANDREWS), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Mississippi (Mr. COCHRAN), the Senator from Maine (Mr. COHEN), the Senator from New York

(Mr. D'AMATO), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Florida (Mrs. HAWKINS), the Senator from California (Mr. HAYAKAWA), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Iowa (Mr. JEPSEN), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY,) the Senator from South Dakota (Mr. PRESSLER), the Senator from New Mexico (Mr. SCHMITT), the Senator from Vermont (Mr. STAFFORD), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. D'AMATO), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Florida (Mrs. HAWKINS), the Senator from California (Mr. HAYAKAWA), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY) and the Senator from South Dakota (Mr. PRESSLER) would each vote "yea."

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Arkansas (Mr. BUMPERS), the Senator from North Dakota (Mr. BURDICK), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Connecticut (Mr. DODD), the Senator from Nebraska (Mr. EXON), the Senator from Alabama (Mr. HEFLIN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Montana (Mr. MELCHER), the Senator from Maine (Mr. MITCHELL), the Senator from Michigan (Mr. RIEGLE), the Senator from Tennessee (Mr. SASSER), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Tennessee (Mr. SASSER) would each vote "yea."

On this vote, the Senator from Montana (Mr. MELCHER) is paired with the Senator from Michigan (Mr. RIEGLE). If present and voting, the Senator from Montana would vote "yea" and the Senator from Michigan would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 49, nays 13, as follows:

[Rollcall Vote No. 228 Leg.]

YEAS—49

Armstrong	Chafee	Dole
Baker	Cranston	Domenici
Baucus	Danforth	Eagleton
Bentsen	DeConcini	East
Byrd, Robert C.	Denton	Ford
Garn	Jackson	Quayle
Glenn	Johnston	Randolph
Goldwater	Laxalt	Rudman
Gorton	Long	Simpson
Grassley	Lugar	Stevens
Hart	Matsunaga	Symms
Hatch	Mattingly	Thurmond
Hatfield	McClure	Tower
Helms	Nunn	Wallop
Huddleston	Packwood	Warner
Humphrey	Pell	
Inouye	Pryor	

NAYS—13

Biden	Metzenbaum	Specter
Bradley	Moynihan	Tsongas
Dixon	Proxmire	Zorinsky
Kasten	Roth	
Levin	Sarbanes	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—3

Brady, for.
Leahy, against.
Mathias, against.

NOT VOTING—35

Abdnor	D'Amato	Melcher
Andrews	Dodd	Mitchell
Boren	Durenberger	Murkowski
Boschwitz	Exon	Nickles
Bumpers	Hawkins	Percy
Burdick	Hayakawa	Pressler
Byrd, Harry F., Jr.	Heflin	Riegle
	Heinz	Sasser
Cannon	Hollings	Schmitt
Chiles	Jepsen	Stafford
Cochran	Kassebaum	Stennis
Cohen	Kennedy	Weicker

So the bill (H.R. 5539), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 5539) entitled "An Act to amend and supplement the Federal reclamation laws, and for other purposes", do pass with the following amendment: Strike out all after the enacting clause and insert:

That this Act shall amend and supplement the Act of June 17, 1902, and acts supplementary thereto and amendatory thereof (43 U.S.C. 371), hereinafter referred to as the "Federal reclamation law."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water.

(b) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the construction costs properly allocable to irrigation facilities in service, plus all operation and maintenance deficits funded, less payments, over such periods as may be required under reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment. There interest rate used pursuant to this Act shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of (1) the computed average interest rate payable by the Treasury upon its marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and (2) the weighted average of market yields on all new, publicly held, interest-bearing, marketable issues sold during the fiscal year preceding the fiscal year in which the expenditures are made or the date of enactment of this Act, whichever is later: *Provided*, That normal operation, maintenance, and replacement charges will be collected in addition to the full cost charge.

(c) The term "individual" means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code (26 U.S.C. 152).

(d) The term "irrigation water" means water made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

(e) The term "landholding" means total irrigable acreage of one or more tracts of land owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary.

(f) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits twenty-five such individuals or less.

(g) The term "limited recipient" means any legal entity established under State or Federal law benefiting more than twenty-five individuals.

(h) The term "Secretary" means the Secretary of the Interior.

SEC. 3. (a) The provisions of the Federal reclamation laws shall remain in full force and effect, except to the extent such laws are amended by, or are inconsistent with, this Act.

(b) Nothing in this Act shall repeal or amend any existing statutory exemptions from the acreage limitation of the Federal reclamation law.

SEC. 4. (a)(1) Notwithstanding any other provisions of law to the contrary, irrigation water may be delivered to a qualified or limited recipient for use in the irrigation of a landholding of not more than one thousand two hundred and eighty acres of class I lands, or the equivalent thereof: *Provided*, That not more than six hundred and forty acres of such landholding may be owned by a limited recipient.

(2) Lands leased for a term of one year or less for the purpose of water management and conservation in years of inadequate project water supply shall not be considered as part of a landholding solely because of having been so leased.

(b) Irrigation water may be delivered to lands leased in excess of a landholding of one thousand two hundred and eighty acres or the equivalent thereof as described in subsection (a), only if full cost as defined in subsection 2(b) of this Act is paid for such water as is assignable to those lands leased in excess of a landholding of one thousand two hundred and eighty acres in the case of a qualified recipient or lands leased in excess of a landholding of six hundred and forty acres in the case of a limited recipient: *Provided*, That "full cost" shall not be applied to excess lands under recordable contract.

(c) In determining the extent of a landholding the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that owner in proportion to that ownership.

EQUIVALENCY

SEC. 5. Wherever an acreage limitation is imposed by the Federal reclamation law, including this Act, the Secretary, upon the request of a contracting entity, shall designate lands under the applicable acreage limitation within a district classified as having

class I productive potential or the equivalent thereof in other lands of lesser productive potential. Standards and criteria for determination of land classes pursuant to this authority shall take into account all factors which significantly affect the economic feasibility of irrigated agriculture, including but not limited to, soil characteristics, crop adaptability, costs of crop production, and length of growing season.

RESIDENCY NOT REQUIRED

SEC. 6. Notwithstanding any other provision of law, irrigation water made available from the operation of reclamation project facilities shall not be withheld from delivery to any project lands for the reason that the owners, lessees, or operators do not live on or near them.

RECORDABLE CONTRACTS

SEC. 7. (a)(1) Irrigation water made available in the operation of reclamation project facilities constructed after the enactment of this Act may not be delivered for use in the irrigation of lands held in excess of the acreage limitations imposed by the Federal reclamation law, including this Act, unless and until the owners thereof shall have executed a recordable contract with the Secretary.

(2) Lands held in excess of the acreage limitations imposed by the Federal reclamation law, including this Act, which on the date of enactment of this Act are or are capable of receiving delivery of irrigation water made available by the operation of existing reclamation project facilities may receive such deliveries only: (i) if the disposal of the owner's interest in such lands is required by an existing recordable contract with the Secretary, or (ii) if the owners of such lands have requested that a recordable contract be executed by the Secretary.

(b) The recordable contracts referred to in subsection (a) shall require the disposal of interest in excess lands within a reasonable time to be established by the Secretary, but shall not exceed ten years after the recordable contract is executed by the Secretary in accordance with terms and conditions required by the Federal reclamation law generally, except that the aforementioned time in years shall be five years for a recordable contract entered into after the date of enactment of this Act.

(c) Recordable contracts existing on the date of enactment shall be amended at the request of the landowner to conform with the acreage limitations contained in this Act: *Provided*, that the time period for disposal of excess lands specified in the existing recordable contract shall not be extended except as provided in subsection (e).

(d) All recordable contracts covering excess lands sales shall provide that a power of attorney shall vest in the Secretary to sell any excess lands not disposed of by the owners thereof within the period of time specified in the contracts. In the exercise of that power, the Secretary shall sell such lands through an impartial selection process only to qualified purchasers according to such reasonable rules and regulations as he may establish: *Provided*, That the Secretary shall recover for the owner the fair market value of the land and improvements thereon unrelated to irrigation water deliveries.

(e) The period of time for which the disposal of excess lands may have been required under recordable contracts executed under the Federal reclamation law, including this Act, are hereby, and in the future shall be, extented for the period of time in which the Secretary shall have withheld the processing or approval of the disposition of such lands, whether he may have been compelled to do so by court order or whether he may have declined to do so for other reasons.

(f) Excess lands which have been or may be disposed of in compliance with the Federal reclamation law, including this Act, shall not be considered eligible to receive irrigation water unless—

(1) they are held by nonexcess owners; and

(2) in the case of disposals made after the date of enactment of this Act, their title is burdened by a covenant prohibiting their sale, for a period of ten years after their original disposal to comply with the Federal reclamation law, including this Act, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon expiration of the terms of such covenant, the title to such lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 432e of title 43, United States Code.

CORPS OF ENGINEERS PROJECTS

SEC. 8. (a) Notwithstanding any other provision of law to the contrary, neither the acreage limitation provisions nor the other provisions of the Federal reclamation laws, including this Act, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers unless—

(1) the project has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal reclamation project; or

(2) the Secretary, pursuant to his authority under the Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved.

(b) Notwithstanding any other provisions of this section to the contrary, obligations that require water users, pursuant to contracts with the Secretary, to repay the share of construction costs and to pay the share of the operation and maintenance and contract administrative costs of a Corps of Engineers project which are allocated to conservation storage or irrigation storage shall remain in effect.

REPAYMENT OF CONSTRUCTION CHARGES

SEC. 9. (a) The acreage limitation provisions of the Federal reclamation law shall cease to apply to any part of a landholding upon completion of the repayment by any contracting entity of the amount of any construction costs required to be repaid by such contracting entity (or by a person within the district pursuant to a contract existing on the date of enactment of this Act) by the terms of any contracts with the Secretary relating to the delivery of water supplies to such part of a landholding for agricultural use: *Provided*, That where any such contract may be entered into pursuant to the authority of the Rehabilitation and Betterment Act (Act of October 7, 1949, 63 Stat. 724, as amended), the contracting entity shall have the additional option of adopting a form of repayment consistent with section 5(c)(2) of the Small Reclamation Projects Act of 1956 (Act of August 6, 1956, 70 Stat. 1044, as amended) and if such form of repayment is adopted, the acreage limitation provisions of the Federal reclamation law shall not apply solely as a result of the indebtedness under such contract.

(b) The Secretary shall provide, upon request of any owner of a landholding for which repayment has occurred, a certificate acknowledging that the landholding is free of the acreage limitation of the Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of the county in which such landholding is located. Any certificate issued prior to the date of enactment of this Act is hereby ratified.

(c) Nothing in this Act shall be construed as authorizing or permitting lump sum or accelerated repayment of construction costs, except in the case of a repayment contract which is in effect upon the date of enactment of this Act and which provides for such lump sum or accelerated repayment by an individual or district or except as provided in subsection (d) of this section.

(d) The Secretary is authorized to negotiate with such contracting entity to conform the terms of any such contract to permit lump sum or accelerated repayment if the Secretary finds that the amount of outstanding indebtedness is less than 5 per centum of the total repayment obligation associated with such contract and that a pattern of family farming has been established in the project service area.

RELIGIOUS OR CHARITABLE ORGANIZATIONS

SEC. 10. An individual religious or charitable entity or organization (including but not limited to a congregation, parish, school, ward, or chapter) which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, as amended, and which owns, operates, or leases any lands within a district shall be treated as a person under the provisions of this Act regardless of such entity or organization's affiliation with a central organization or its subjugation to a hierarchical authority of the same faith and regardless of whether or not the individual entity is the owner of record if—

(a) the agricultural produce and the proceeds of sales of such produce are directly used only for charitable purposes;

(b) said land is operated by said individual religious or charitable entity or organization (or subdivisions thereof); and

(c) no part of the net earnings of such religious or charitable entity or organization (or subdivision thereof) shall inure to the benefit of any private shareholder or individual.

EXEMPTIONS

SEC. 11. Neither the limitations and restrictions imposed by this Act nor any other provision of the Federal reclamation law shall prohibit the delivery of irrigation water—

(a) so long as the lands are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the lands served do not exceed the limits imposed by the Federal reclamation law, including this Act;

(b) when the lands served receive only a temporary, not to exceed one year, supply made possible as a result of—

(1) an unusually large water supply not otherwise storable for project purposes; or

(2) infrequent and otherwise unmanaged flood flows of short duration;

(c) when the lands are acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), by inheritance, by devise: *Provided*, That if after acquisition, such lands are not qualified under the Federal

reclamation law, including this Act, they shall be furnished temporarily with a water supply for a period not exceeding ten years from the effective date of such acquisition;

(d) to isolated tracts found by the Secretary to be economically farmable only if they are included in a larger farming operation but which may, as a result of their inclusion in that operation, cause it to exceed the acreage limitations of the Federal reclamation law, including this Act;

(e) to lands which will receive a substitute water supply and will be required by the Secretary in his contract with the district to reduce ground water pumping in equal quantity from aquifers in the project area as a condition of receiving substitute water from a Federal reclamation project.

CONTRACT REQUIRED

SEC. 12. Irrigation water temporarily made available from reclamation facilities in excess of ordinary quantities not otherwise storable for project purposes or at times when such water would not have been available without the operations of those facilities, may be used for irrigation, municipal, or industrial purposes only to the extent covered by a contract requiring payment for the use of such water, executed in accordance with the Reclamation Project Act of 1939, or other applicable provisions of the Federal reclamation law: *Provided, however,* That the Secretary shall have the authority to waive such payments for water delivered in section 11(b)(2).

SEC. 13. Any non-Federal party to a repayment contract with the Secretary relating to a reclamation project may apply for validation of any provisions of such contract relating to the acreage limitation available to such party pursuant to such contract or under the Federal reclamation law by making application therefor to the Secretary in writing within three years from the date of enactment of this Act. The Secretary shall review each such application and shall determine whether to validate the contract provisions taking into account the circumstances surrounding the execution of the contract. The Secretary shall transmit the application along with his determination to validate or not to validate such contract to the Congress within ninety days from the date he receives such application. Unless the Congress by concurrent resolution disapproves the determination of the Secretary within ninety days from the date on which it receives the Secretary's transmittal, the determination of the Secretary shall be final and binding.

WAIVER OF SOVEREIGN IMMUNITY

SEC. 14. Consent is given to join the United States as a necessary party defendant in any suit to adjudicate, confirm, validate, or decree the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to the Federal reclamation law. The United States, when a party to any suit, shall be deemed to have waived any right to plead that it is not amenable thereto by reason of its sovereignty, and shall be subject to judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. Any suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated. The court, if it determines its appropriate based on the evidence, including written representations concerning the application of the Federal reclamation law, may reform the contract.

ADMINISTRATIVE PROVISIONS

SEC. 15. (a) The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this Act and other provisions of the Federal reclamation law.

(b) Section 3 of the Act of July 7, 1970 (43 U.S.C. 425b) is amended by striking the phrase "for a period not to exceed twenty-five years" following the term "project water".

(c) Any nonexcess land which is acquired into excess status pursuant to involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise, may be sold at its fair market value without regard to any other provision of this Act or to section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. 423e): *Provided,* That if the status of mortgaged land changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law, by bona fide conveyance in satisfaction of the mortgage, such land may be sold at its fair market value.

(d) Beginning October 1, 1982, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(e) The Secretary is hereby authorized and directed to amend any provision of any contract between the Secretary and another party existing upon the date of enactment of this Act which is inconsistent with the provisions of this Act but only at the request of said other party.

(f) The Act of May 26, 1926, Appointment of Commissioner of Reclamation (44 Stat. 657) is amended by adding the words "by and with the advice and consent of the Senate" after the word "President".

LEASING REQUIREMENTS

SEC. 16. (a) Notwithstanding any other provision of the Federal reclamation law, including this Act, lands which receive irrigation water may be leased only if the lease instrument is—

(1) written; and

(2) for a term not to exceed ten years, including any exercisable options: *Provided, however,* That with the prior approval of the Secretary, leases of lands for the production of perennial crops having an average life of more than ten years may be for periods of time equal to the average life of the perennial crop but in any event not to exceed twenty-five years. In addition, the Secretary shall be provided with a certificate signed by the lessee which contains a legal description of the leased land, including a statement of the number of acres leased, the term of the lease, and a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land.

(b) Any lease in effect as of January 1, 1982, shall be required to comply with the provisions of this Act within ten years of enactment of this Act.

(c) Lessees holding lands in excess of the acreage limitation of this Act or of any other provisions of the Federal reclamation law under the provisions of a valid written lease effective as of January 1, 1982, shall be required to comply with the appropriate acreage limitation within ten years of enactment of this Act.

REPORTING

SEC. 17. Any contracting entity subject to the acreage limitation of the Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this Act and the Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require.

REPORT TO CONGRESS ON THE PRODUCTION OF SURPLUS CROPS ON ACREAGE SERVED BY IRRIGATION WATER

SEC. 18. Within one year of the date of enactment of this Act, the Secretary of Agriculture, with the cooperation of the Secretary of the Interior, shall transmit to the Congress a report on the production of surplus crops on acreage served by irrigation waters. The report shall inculde—

(1) data delineating the production of surplus crops on lands served by irrigation waters;

(2) the percentage of participation of farms served by irrigation waters in set-aside programs, by acreage, crop, and State;

(3) the feasibility and appropriateness of requiring the participation on acreage set-aside programs of farms served by irrigation waters and the costs of such a requirement; and

(4) any recommendations concerning how to coordinate national reclamation policy with agriculture policy to help alleviate recurring problems of surplus crops and low commodity prices.

ENCOURAGEMENT OF RESPONSIBLE WATER CONSERVATION MEASURES

SEC. 19. The Secretary shall, pursuant to his authority under otherwise existing Federal reclamation laws encourage the full consideration and incorporation of prudent and responsible water conservation measures in the operations of non-Federal recipients of irrigation water from Federal reclamation projects, where such measures are shown to be economically feasible for such non-Federal recipients.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WALLOP. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I move that the Senate insist on its amendment and request a conference with the House of Representatives on the disagreeing votes thereon and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. HATCH) appointed Mr. McCLURE, Mr. HATFIELD, Mr. DOMENICI, Mr. WALLOP, Mr. WARNER, Mr. JACKSON, Mr. JOHNSTON, Mr. FORD, and Mr. METZENBAUM conferees on the part of the Senate.

ANNOUNCEMENT OF POSITION ON VOTE

Mr. THURMOND. Mr. President, earlier today I missed the first vote and I wish for the record to show that

I was over in the Rayburn Building appearing before a committee over there concerning the Port of Charleston on official business.

I wish for the record to further show that if I had been present I would have voted "aye" to support the Sergeant at Arms to bring in absent Senators.

Mr. WALLOP. Mr. President, I will be very brief, but I do think it fitting and appropriate that I thank the chairman of the committee, Senator McCLURE, the ranking member, Senator JACKSON, for their help and assistance throughout the debate on this measure and for their valued help and assistance during the development of these legislative proposals both this year and in the previous Congress.

Also I want to offer my thanks to Mike Harvey, Craig Gannett of the minority staff; Gary Ellsworth, Chuck Trabandt, Russ Brown all on the Energy Committee staff who provided us with information in a timely and clear fashion; also Paul Kruse of my staff, who has provided me the first help that he has provided on a major bill, and I think he did a wonderful job.

In addition, I want to thank the administration for their support, particularly Secretary Watt and his legislative counsel, Ted Garish, who provided us just innumerable instances of good, efficient, and responsive help when the legislative situation most needed it.

With that, Mr. President, I simply want to express my gratification that at long last we have yet another attempt to resolve this issue which has been an issue in front of the country for at least a half century, and I hope maybe this time we will come to agreement with the House, and reform what has been one of the major pieces of social and agricultural and human legislation this country has ever passed, and which reform is long overdue.

I thank the Chair.

Mr. McCLURE. Mr. President, as I indicated earlier, I would save the laudatory speeches until after passage so that those Members who have found their travel plans inconvenienced all day would not be further inconvenienced.

Mr. President, I cannot pay too high a tribute to the Senator from Wyoming who has done such an excellent job managing not only a difficult bill in terms of complexity of the bill but the difficult negotiations and the difficult parliamentary situation over the last 2 days, and getting us to a point where we have indeed passed a piece of landmark legislation.

As the Senator has noted, this issue has been before the country for at least a half century. It has been before the Congress for more years than I have been here. It passed this body before, but this time I believe we are going to be successful in getting together in a conference with the other body and putting a bill before the President he can sign, and at long last bring resolution to this very difficult problem that has persisted far too long.

I, too, would like to give thanks to the ranking minority member of the committee, Senator JACKSON, who worked on this bill during the last Congress when S. 14 was passed, and to the committee members on both sides of the aisle who worked on it then and worked on it again in this Congress, and to give particular thanks to the members of the staff of the Energy Committee who have worked so long and so hard on it, both before and since.

I might particularly note that Russ Brown worked on it 2 years ago as a member of the staff of the majority, and worked on it this time as a member of the staff of the majority, although in a rather meek role in that regard.

I might also mention certain personal staff members of each of those members who serve on the committee who have been deeply involved, particularly Tom Hill of my own staff who has devoted endless hours to try to bring this to the point of understanding and to translate into legislative language the concerns of the people of Idaho who are so vitally affected by this very important legislation.

In closing, I would like to again say what I have tried to say so often before, not only as to the value of the reclamation program but the fact that the legislation reported from the committee actually is not the kind of giveaway that many people have looked at because they compare 160 acres to 2,000 acres that we had in the committee bill, and say that must be some kind of an expansion of acreage.

As a matter of fact, for the first time we have moved to put some strictures on the unlimited leasing that has been in current law ever since 1902. There has been no limitation, no restriction, and if any abuses indeed have grown up under the reclamation law, it would be in that area.

We have substituted for the building block concept of 160 acres per family member a family unit of 25 people or fewer that would have a single block of land, and I think that is a constructive effort to straighten out the legal complexities that many farm families have today as they deal with the legal realities of estate planning and corporate structure for family operations.

So all in all I think this has been a very constructive effort and one that for the Senator from Idaho is not the end of the road but certainly is a very important milestone in what has been for me a 30-year effort to see that the 160-acre limitation is revised.

Both in the private practice of law and in my service in the State legislature in Idaho and in my years of service in the other body as well as years of service in this body, it has always been a goal of mine, and it is a very great gratification to me that as chairman of this great Committee on Energy and Natural Resources we have now been able to bring it to this point, and I personally thank all of those who have been constructively involved in bringing us to this point.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. McCLURE. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of considering those nominations on page 3, Calendar Order Nos. 842, 843, and 844, in the Air Force, and the nominations placed on the Secretary's desk in the Navy on page 4.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I ask unanimous consent that the nominations be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered en bloc and confirmed en bloc are as follows:

IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Lawrence A. Skantze, 060-20-8707 FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Thomas H. McMullen, 467-36-7147 FR, U.S. Air Force.

Lt. Gen. Kelly H. Burke, U.S. Air Force (age 52), for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE NAVY

Navy nominations beginning Glenn Douglas Lattig, to be commander, and ending

Kenneth E Harder, to be chief warrant officer, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of July 1, 1982.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. McCLURE. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF AVIATION INSURANCE PROGRAM

Mr. McCLURE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5930 an act to extend the aviation program for 5 years.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 5930) entitled "An act to extend the aviation insurance program for five years", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. McCLURE. Mr. President, I move that the Senate insist on its amendments and agree to the conference requested by the House and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. HATCH) appointed Mr. PACKWOOD, Mrs. KASSEBAUM, and Mr. CANNON conferees on the part of the Senate.

AMENDMENT TO THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT OF 1964

Mr. McCLURE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 4688, and I ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 4688) to amend the Military Personnel and Civilian Employees' Claims Act of 1964 to increase from $15,000 to $25,000 the maximum amount the United States may pay in settlement of a claim under section 3 of that Act.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Idaho?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

BUDGET RESCISSIONS AND DEFERRALS—MESSAGE FROM THE PRESIDENT—PM 153

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on the Budget, the Committee on Appropriations, the Committee on Labor and Human Resources, the Committee on Energy and Natural Resources, and the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two new proposals to rescind $63.6 million in budget authority previously provided to the Congress and one revision to an existing deferral increasing the amount deferred by $61.1 million.

The rescissions include $47.4 million previously deferred for the employment and training assistance program administered by the Department of Labor, and $16.2 million for the exploration of national petroleum reserve in Alaska account in the Department of the Interior. The deferral affects the facilities and equipment account (Airport and Airway Trust Fund) in the Department of Transportation.

The details of the rescission proposals and revised deferral are contained in the attached reports.

RONALD REAGAN.

THE WHITE HOUSE, *July 16, 1982.*

PRESIDENTIAL APPROVAL

A message from the President of the United States, reported that on June 30, 1982, he had approved and signed the following bill:

S. 1519. An act to designate certain national wildlife refuge lands.

MESSAGES FROM THE HOUSE

At 12:24 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House agrees to the amendments of the Senate to the bill (H.R. 6590) to provide for the operation of the tobacco price support and production adjustment program in such a manner as to result in no net cost to the taxpayers, to limit increases in the support price for tobacco, and for other purposes.

The message also announced that the House has passed the following bill, without amendment:

S. 2651. An act to extend the expiration date of section 252 of the Energy Policy and Conservation Act.

ENROLLED BILLS SIGNED

The message further announced that the Speaker pro tempore (Mr. WRIGHT) has signed the following enrolled bills:

S. 2651. An act to extend the expiration date of section 252 of the Energy Policy and Conservation Act; and

H.R. 6685. An act making urgent supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. THURMOND).

ENROLLED BILL AND JOINT RESOLUTION PRESENTED

The Secretary reported that on today, July 16, 1982, he had presented to the President of the United States the following enrolled bill and joint resolution:

S. 2651. An act to extend the expiration date of Section 252 of the Energy Policy and Conservation Act.

Senate Joint Resolution 95. Joint resolution to authorize and direct the Secretary of the Interior, subject to the supervision and approval of the Franklin Delano Roosevelt Memorial Commission, to proceed with the construction of the Franklin Delano Roosevelt Memorial, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources:

To be members of the Board of Directors of the Legal Services Corporation:

For the term expiring July 13, 1983: Harold R. Demoss, Jr., of Texas; Clarence V. McKee, of the District of Columbia; and Annie Laurie Slaughter, of Missouri.

For the term expiring July 13, 1984: Robert Sherwood Stubbs II, of Georgia; William J. Olson, of Virginia; William F. Harvey, of Indiana; Howard H. Dana, Jr., of Maine; and William L. Earl, of Florida.

(The above nominations were reported from the Committee on Labor and Human Resources with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LEVIN:

S. 2744. A bill for the relief of Nabil Yaldo; to the Committee on the Judiciary.

By Mr. SYMMS (for himself and Mr. McCLURE):

S. 2745. A bill to amend title 18 to limit the insanity defense; to the Committee on the Judiciary.

By Mr. SASSER:

S. 2746. A bill to reduce revenue losses resulting from the Economic Recovery Tax Act of 1981, and for other purposes; to the Committee on Finance.

By Mr. SIMPSON (for himself and Mr. CRANSTON):

S. 2747. A bill to amend title 38, United States Code, to make adjustments and improvements in the vocational rehabilitation and education programs administered by the Veterans' Administration and the veterans employment programs administered by the Department of Labor, and for other purposes; to the Committee on Veterans Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HELMS (for himself and Mr. SYMMS):

S. Res. 428. A resolution prohibiting the extension of waiver authority under section 402 of the Trade Act of 1974 with respect to Romania; to the Committee on Finance.

By Mr. THURMOND:

S. Con. Res. 112. A concurrent resolution relating to a meeting of the Interallied Confederation of Rescue Officers; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SYMMS (for himself and Mr. McCLURE):

S. 2745. A bill to amend title 18 to limit the insanity defense; to the Committee of the Judiciary.

LIMITING THE INSANITY DEFENSE

Mr. SYMMS. Mr. President, the recent verdict in the Presidential assassination attempt of John W. Hinckley has caused a national expression of outrage and dismay. Americans from all walks of life have registered their feelings of shock and disbelief concerning the decision of the jury in this case.

Because the Hinckley trial was of such national prominence and the result of the trial such a violation of justice and commonsense, it has served as a focal point for an expression of national dissatisfaction. Yet, the result of the Hinckley trial is not the root cause of dissatisfaction. The Hinckley verdict only served to coalesce a basic national feeling that something is dreadfully wrong in our country's criminal justice system of which the insanity defense is but one small part.

Americans view the result in this case as typical and representative of a system gone awry and no longer representative of the interests of a civilized society.

My constituents in Idaho express their concern over not only the need for reform in the insanity defense, but also the need for reform in the apprehension, arrest, bail, sentencing, and parole of violent criminals.

I am hopeful, Mr. President, that the Hinckley trial will serve to provide the momentum necessary to reach such needed, beneficial change in our criminal justice system.

I have been following the Senate's consideration of insanity defense reform with great interest.

There is a fundamental deficiency in the modern insanity plea. The men and women of the Hinckley jury are not to be condemned for their decision in that case. They were bound by the law and instructions given them by the trial judge. It is this system which must be changed.

The change must be more than cosmetic in nature. The change must be fundamental and substantive and I note that many of my colleagues have submitted numerous varying proposals in this regard. Each is positive and moves in the right direction, but I have yet to see one which accomplishes all we might hope for in insanity plea reform.

There are three basic approaches which are being used to correct the deficiencies of the insanity defense. The first approach is toward allowing for a new jury finding of guilty but insane or mentally ill. The second approach is to change the time or manner of consideration of the issue of insanity. The third deals with shifting the burden of proving the issue of insanity.

All of the above—and their several variations—while improvements over our present system, do not address the basic problem of insanity plea reform.

The basic problem of the insanity defense is that there is not nor can there be a knowable, workable definition of insanity. Even technical experts whose lives are devoted to the study of the mind admit that insanity is an illusive, imprecise concept.

Because of this we must adopt a system which, while providing for consideration of the issue of insanity at limited and specific times, does away with the insanity plea.

The legislation which I am introducing avoids the need to consider the entangling, imponderable concept of insanity by a group of people ill equipped for such consideration. It avoids definitions, and shifting of burdens of proof which in in any event are less than fully productive.

If the person charged with a criminal act is so mentally unstable as to be unable to stand trial, he will be handled as the law presently provides.

If the person is able to stand trial, insanity will not be a defense to a criminal charge. This allows the jury in criminal trials to consider the issue of the commission of the crime and the intent of the defendant in committing the act.

If a person is found not to have been capable of forming the required intent, he will be found not guilty. At this point if the prosecution feels that the person was unable to form intent because of a dangerous mental condition, my bill allows for a civil commitment of the individual until he is no longer a danger to himself or the community.

If the individual was found guilty of the charged criminal act he will be appropriately sentenced. If the sentencing judge determines that there is a mental condition which needs evaluation or treatment, such can be part of the sentence. Once treatment for the condition is completed, the defendant will serve the remainder of his sentence in a standard correction facility subject to parole and the normal rules of commutation.

Under my bill, the defendant still maintains all constitutional rights presently accorded him and burdens of proof remain with the prosecution. However, the criminal trial system plugging plea of "not guilty by reason of insanity" will no longer exist. People—even with mental problems—will be responsible for what they intentionally do. The burdensome "battle of the experts" is done away with. The lay jury will only consider those issues which they are best equipped to handle.

I am proud to represent a State which some time ago recognized the need to reform the insanity defense and moved to bring that positive change about. The Idaho model is in the opinion of many experts superior to all other proposals. Idaho has set

the example and I hope the Congress will follow Idaho's lead by quickly adopting similar insanity plea reform.

By Mr. SIMPSON (for himself and Mr. CRANSTON):

S. 2747. A bill to amend title 38, United States Code, to make adjustments and improvements in the vocational rehabilitation and education programs administered by the Veterans' Administration and the veterans employment programs administered by the Department of Labor, and for other purposes; to the Committee on Veterans' Affairs.

VETERANS' EDUCATION AND EMPLOYMENT AMENDMENTS OF 1982

Mr. SIMPSON. Mr. President, today, I am introducing a bill, the proposed Veterans' Education and Employment Amendments of 1982.

The basic intent of this bill is to improve various aspects of the VA's educational benefits programs and of the Department of Labor's veterans' employment programs.

One of the key provisions of the bill will repeal the termination date of the current GI bill, now scheduled to expire on December 31, 1989. The military services feel the need for relief from this termination date since they feel need for relief from this termination date since they feel that some of their most valuable and well-trained careerists are now leaving the services in order to make use of their GI bill benefits by the end of 1989.

While the armed services are currently enjoying a very high rate of recruitment success, no one would desire to see the inadvertent loss of expensive-to-train midcareer personnel. Therefore, in title I of this bill, I propose to make it possible for veterans who joined the military before the "all volunteer force" was established to use their VA educational benefits at any time they may choose to do so, provided they begin school within 2 years of discharge and complete their educational program within 6 years of enrollment.

This seems to me to be as fair and equitable a solution to a thorny problem as might be devised. If this bill is enacted, careerists currently in the services will have the advantage of no longer struggling against a deadline for the use of their benefits which could threaten their career plans; however, they will have only 8 years from the date of military separation to complete their educational program while other veterans have had 10. The Department of Defense seeks this solution and has agreed to pay the expense of providing educational benefits to such veterans beginning January 1, 1990.

Preliminary estimates by the Congressional Budget Office indicate that the enactment of this bill would save the Veterans' Administration some modest sums between now and 1990. The expense the Department of Defense would incur thereafter is informally approximated at different amounts each year, but on the average of about $50 million per year for an overall practical lifetime of about 20 years.

When the cost of training a new careerist is compared to the cost of providing educational benefits to selected military retirees, the Department of Defense has concluded that the latter is preferable, on the basis of cost alone. In addition, if this bill is enacted, Mr. President, all of those who avail themselves of it will have the advantage of furthering their education as an aid to readjustment to civilian life. There is no doubt that such opportunity is beneficial for both the individual and for our society.

The second key provision of this bill contains measures which allow the department of Labor to be more effective in the delivery of employment services for the Nation's veterans. Mr. President, there is no question but that we owe a special debt to our Vietnam, disabled, and recently discharged veterans during this period of high unemployment and economic uncertainty. This strong sentiment for a national program designed to assist these individuals through employment services is evidenced by the bipartisan support received by my amendment No. 1066 to S. 2036, the Senate-passed bill which would provide employment training programs for the Nation at the time of the fast-approaching expiration of the CETA Act. That amendment seeks to establish a $13 million employment training fund, to be administered in the Department of Labor, in order to assure that veterans' employment services receive the proper national attention they deserve.

In title II of this bill which I introduce today, we improve the procedures needed by the Assistant Secretary of Labor for Veterans' Employment Services to properly perform his duties. These adjustments would correct some problems which for several years have caused the existing programs to sputter along haltingly—programs which were designed to help veterans find employment. If this bill is adopted. I am convinced that existing veterans' employment services can be smoothly meshed with the national program which S. 2036 would provide in order to produce an ultimately smooth running, highly efficient set of tools for the Department of Labor to use in the important function of providing excellent services to our veterans.

Therefore the measure I am introducing today includes the following provisions:

First, in title I of the bill, the Veterans' Administration would be given the authority to make payments for the veterans' education assistance program from an existing account. This authority is required since, beginning in December 1982, educational benefits under this program will be financed by the Department of Defense and disbursed by the Veterans' Administration.

Second, the bill would make numberous technical corrections for various education programs which need minor adjustments.

And finally, the bill would delete the December 31, 1989, termination date for the current GI bill. It would allow a military person 2 years from date of discharge to begin an educational program and 6 years from date of enrollment to use the benefits. It would provide for the Department of Defense to make the payments for the program beginning January 1, 1990.

In title II, the employment section, the bill would first provide for the administration of a Federal training program in the Department of Labor which is designed to alleviate veteran unemployment and underemployment. This new program would be established by my amendment (No. 1066) to S. 2036, the proposed "Training for Jobs Act," which passed the Senate on July 1, 1982. The program would be administered by professionals in the Veterans Employment Service who are already charged with providing other coordinated employment outreach and services legislated for veterans.

Second, the bill would call for the Department of Labor to move the responsibility for the enforcement of veterans' reemployment rights from the Office of Labor Management Services Administration to the Assistant Secretary for Veterans' Affairs. It is more logical to assume that persons dealing with veterans' employment matters on a daily basis will be more aware of enforcement needs, while persons with diverse program responsibilities may well lose sight of a veterans' specific problems.

Third, the bill would make clear (a) that State veteran's employment directors should be assigned full-time Federal clerical support; (b) that those directors must meet a 2-year residency requirement within the State for appointment to the job unless the Assistant Secretary for Veterans' Employment waives the requirement in the event that no eligible candidate is available; (c) that a State director must be appointed to each regional office established by the Assistant Secretary of Labor for Veterans' Employment; and (d) that the State director be given office space and support services by the State public employment service system.

Fourth, the bill would require that veteran employment services provided by the Department of Labor be closely coordinated with veteran outreach

programs and rehabilitation centers. Often one organization may believe that another is taking care of a particular veterans' problem; and we wish to be certain that there are no gaps in the effort to find employment for veterans.

Mr. President, this legislation will be the subject of a hearing to be conducted by the Committee on Veterans' Affairs on July 28 at 9:30 a.m. in room 412 of the Russell Senate Office Building. It will be considered at the committee's markup of education and employment legislation on August 12, 1982.

Mr. President, in order that all Senators and the general public may have a more complete understanding of the various provisions of this measure, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

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

SHORT TITLE; REFERENCES

SECTION 1. (a) This Act may be cited as the "Veterans' Education and Employment Amendments of 1982."

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS REHABILITATION AND EDUCATION

USE OF POST-VIETNAM ERA VETERANS' EDUCATION ACCOUNT

SEC. 101. Section 1622 is amended by adding at the end the following new subsection:

"(e) The fund established under subsection (a) of this section may be used by the Administrator for the purpose of receiving and disbursing funds received from the Secretary of Defense for administering the education assistance program authorized by section 2141 of title 10.".

REHABILITATION PROGRAM SUBSISTENCE ALLOWANCE

SEC. 102. Section 1508 (g) is amended to read as follows:

"(g) No subsistence allowance may be paid under this section in the case of any veteran who is pursuing a rehabilitation program while incarcerated in a Federal, State, or local penal institution for conviction of a felony.".

VETERANS OUTREACH SERVICES PROGRAM

SEC. 103. (a) Section 242 is amended by adding at the end the following new subsection:

"(c) The Administrator may assign veterans benefits counselors to such locations as educational institutions to provide assistance regarding benefits under this title to veterans and eligible persons and to provide outreach services under this subchapter.".

(b)(1)(A) Section 243 is repealed.

(B) Section 244 is redesignated section 243.

(C) Section 245 is redesignated section 244.

(2) The table of sections at the beginning of chapter 3 is amended by striking out the items relating to sections 243, 244, and 245 and inserting in lieu thereof the following:

"243. Utilization of other agencies.
"244. Report to Congress.".

MODIFICATION OF 1989 TERMINATION DATE

SEC. 104(a) Section 1662 is amended—

(1) in subsection (a) by—

(A) inserting after "1955" in the first sentence of paragraph (1) a comma and "and before January 1, 1980"; and

(B) adding at the end the following new paragraph:

"(4) An eligible veteran whose last discharge or release from active duty occurs after December 31, 1979, shall not be entitled to educational assistance under this chapter after (A) the expiration of the six-year period following the date on which such veteran first begins to pursue a program of education under this chapter after such discharge or release if such date occurs no later than two years after such discharge or release from active duty, or (B) December 31, 1989, whichever is the later."; and

(2) by striking out subsection (e).

(b)(1) Chapter 34 is amended by adding at the end the following new section:

"§ 1694. Reimbursement by the Secretary of Defense

"The Secretary of Defense shall reimburse the Administrator for all amounts paid by the Administrator as educational assistance under this chapter after December 31, 1989.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1694. Reimbursement by Secretary of Defense.".

REPEAL OF 50-PERCENT RULE

SEC. 105. (a) Section 1673 is amended—

(1) by striking out "(1)" before "The";

(2) by striking our paragraph (2);

(3) by redesignating clauses (A), (B), (C), and (D) as clauses (1), (2), (3), and (4), respectively; and

(4) by striking out clause (2) (as redesignated by clause (3) of this subsection) and inserting in lieu thereof the following:

"(2) any sales or sales management course which does not provide specialized training within a specific vocational field;".

(b) Section 1723 (a) is amended—

(1) by striking out "(1)" before "The";

(2) by striking out paragraph (2);

(3) by redesignating clauses (A), (B), (C), and (D) as clauses (1), (2), (3), and (4), respectively; and

(4) by striking out clause (2) (as redesignated by clause (3) of this section) and inserting in lieu thereof the following:

"(2) any sales or sales management course which does not provide specialized training within a specific vocational field;".

ADMINISTRATIVE AND TECHNICAL AMENDMENTS

SEC. 106. (a) Section 1652(b) is amended by striking out "402(a) of the Economic Opportunity Act of 1964 (42 U.S.C. 2902(a))" and inserting in lieu thereof "section 7(i) of the Small Business Act (15 U.S.C. 636(i))".

(b) Section 1682 is amended in the second sentence of subsection (e).

(1) by striking out "at" and inserting in lieu thereof "in accordance with the rate at which the training is to be pursued, but in no event at more than"; and

(2) by striking out subsection (g) and inserting in lieu thereof the following:

"(g) The amount of the educational assistance allowance paid to an eligible veteran who is pursuing a program of education under this chapter while incarcerated in a Federal, State, or local penal institution for conviction of a felony may not exceed such amount as the Administrator determines, in accordance with regulations which the Administrator shall prescribe, is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program and to cover the cost of necessary supplies, books, and equipment, or the applicable monthly educational assistance allowance prescribed for a veteran with no dependents in subsection (a)(1) or (c)(2) of this section or section 1787(b)(1) of this title, whichever is less. Except for the payment of the educational assistance allowance for necessary supplies, books, and equipment required of similarly circumstanced nonveterans, no amount shall be payable for any course for which there is no tuition or fees.".

(c) Section 1691(c) is amended by striking out "The" and inserting in lieu thereof the following:

"Notwithstanding the exception in the first sentence of section 1673(d) of this title relating to any course offered under this subchapter, the".

(d) Section 1780(a) is amended—

(1) by inserting "or" at the end of clause (5);

(2) by striking out the semicolon and "or" at the end of clause (6); and

(3) by striking out clause (6).

(c) Section 1798 is amended to read as follows:

"(3) The Administrator shall submit to the appropriate committees of the Congress not later than December 31 of each year a report on the current results of the continuing review required by subsection (g)(1) of this section to be made regarding the default experience with respect to loans made under this section and any steps being taken to reduce default rates on such loans. Such reports shall include—

"(A) data regarding the cumulative default experience, and the default experience during the preceding year, with respect to such loans; and

"(B) data regarding the default experience and default rate with respect to (i) loans made under this section in connection with accelerated payments under section 1682A of this title, and (ii) loans made under this section.".

TITLE II—VETERANS EMPLOYMENT

CONGRESSIONAL FINDINGS

SEC. 201. The Congress makes the following findings:

(1) There exists serious unemployment and underemployment among disabled veterans, veterans of the Vietnam era, and veterans recently separated from military service.

(2) Alleviating unemployment and underemployment among such veterans is a national responsibility.

(3) Because of the special nature of such veterans' employment and training problems and the national responsibility to meet those problems, policies and programs to address those problems need to be effectively and vigorously implemented by the Secretary of Labor through the Assistant Secretary of Labor for Veterans' Employment.

PURPOSE OF JOBS TRAINING PROGRAMS

SEC. 202. Section 2002 is amended—

(1) by inserting "and regulations" after "to this end policies"; and

(2) by inserting after "opportunities" a comma and "with priority given to the needs of disabled veterans, veterans of the Vietnam era, and veterans who have been recently separated from active duty,".

STATE AND ASSISTANT DIRECTORS FOR EMPLOYMENT

SEC. 203. (a)(1) Section 2003 is amended by striking out the section heading and all of the matter preceding clause (1) and inserting in lieu thereof the following:

"§ 2003. State and Assistant State Directors for Veterans' Employment

"(a) The Secretary of Labor shall assign to each State a representative of the Veterans' Employment Service who shall serve as the State Director for Veterans' Employment, and shall assign full-time clerical support to each such Director. The Secretary shall also assign to each State an Assistant State Director for Veterans' Employment per each 250,000 veterans and eligible persons of the State veterans population and such additional Assistant State Directors for Veterans' Employment as the Secretary shall determine, based on the date collected pursuant to section 2007 of this title, as are necessary to carry out effectively the purposes of this chapter. Full-time Federal clerical support personnel assigned to State Directors for Veterans' Employment shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title. Preference in such appointments shall be given to veterans and other persons as defined in section 2108 of title 5 and section 2011 of this title.

"(b) Each State Director for Veterans' Employment and each Assistant State Director for Veterans' Employment assigned to serve in any State (1) shall be an eligible veteran who at the time of appointment has been a bona fide resident of the State for at least two years, or, if the Secretary, through the Assistant Secretary of Labor for Veterans' Employment, determines after a good faith search within the State that there is no eligible veteran available for appointment who meets such requirement and who is also qualified for the position, an individual who has been an Assistant State Director for Veterans' Employment in any other State, and (2) shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(c) Each State Director for Veterans' Employment and Assistant State Director for Veterans' Employment shall be attached to the public employment service system of the State to which such Director is assigned. Such Director shall be administratively responsible to the Secretary of Labor for the execution of the veterans' and eligible persons' counseling and placement policies of the Secretary through the public employment service system and in cooperation with other employment and training programs administered by the Secretary, by other Federal jobs training program grantees in the State, or directly by the State.

"(d) In cooperation with the public employment service system staff and the staffs of each such other program in the State, the State Director for Veterans' Employment for the State and the Assistant State Director for Veterans' Employment for the State shall—".

"(2) The item relating to section 2003 in the table of sections at the beginning of chapter 41 is amended to read as follows:

"2003. State and Assistant State Directors for Veterans' Employment.".

(b) Clause (6) of such section is amended to read as follows:

"(6) promote the participation of veterans in Federal employment and training programs and monitor the implementation and operation of such programs to ensure that eligible veterans, disabled veterans, and veterans of the Vietnam era receive such special consideration or priority in the provision of services as is required by law or regulation;".

(c) Such section is further amended by striking out the period at the end of clause (7) and inserting in lieu thereof a semicolon and adding at the end the following:

"(8) supervise the listing of jobs and subsequent referrals of qualified veterans as required by section 2012 of this title;

"(9) be responsible for ensuring that complaints of discrimination filed under section 2012 of this title are resolved in a timely fashion;

"(10) cooperate with employers in identifying disabled veterans who have completed or are enrolled in training under chapter 31 of this title, by working closely with appropriate Veterans' Administration officials;

"(11) cooperate with the directors of the veterans assistance offices established under section 242 of this title in identifying and assisting veterans who have readjustment problems and who may need employment placement assistance or vocational training assistance; and

"(12) in the case of disabled veterans, when requested by Federal and State agencies and private employers, assist those entities in identifying and acquiring prosthetic and sensory aids and devices which tend to enhance disabled veterans' employability.".

DISABLED VETERANS' OUTREACH PROGRAM SPECIALISTS

SEC. 204. (a) Subsection (a) of section 2003A is amended by adding at the end the following new paragraph:

"(5) Funds provided to States under this section shall be subject to the supervision and monitoring of the Assistant Secretary for Veterans' Employment and shall not be governed by the provisions of any other law, or regulation prescribed thereunder, that is inconsistent with the provisions of this section.".

(b) Subsection (b)(2) of such section is amended—

(1) by striking out "section 621A" and inserting in lieu thereof "section 612A"; and

(2) by inserting after the first sentence the following new sentence: "The Secretary, after consultation with the appropriate State Directors assigned under section 2003 of this title, may grant waivers of the limitation prescribed in the preceding sentence.".

(c) Subsection (c) of such section is amended—

(1) by striking out "prime sponsors under the Comprehensive Employment and Training Act" in clause (4) and inserting in lieu thereof "appropriate grantees under other Federal employment and training programs"; and

(2) by adding at the end the following:

"(8) Development of outreach programs with the Veterans' Administration's vocational rehabilitation staff, with institutions of higher learning, and with employers to assure maximum assistance to disabled veterans who have completed or are enrolled in training under chapter 31 of this title.". Section 2003A is further amended—

(1) by striking out subsection (d);

(2) by redesignating subsection (e) as subsection (d); and

(3) by adding at the end of subsection (d), as redesignated by clause (2) of this subsection, the following new sentence: "In administering the program provided for in this section, the Assistant Secretary of Labor for Veterans' Employment shall monitor the appointment of veterans to serve as disabled veteran outreach program specialists to ensure that appointments are made in accordance with the preference requirements prescribed in subsection (a)(2) of this section.".

ESTIMATES OF FUNDS FOR ADMINISTRATION

SEC. 205. (a) Subsection (a) of section 2006 is amended—

(1) by inserting "and chapters 42 and 43 of this title" after "of this chapter" in the first sentence; and

(2) by adding after the third sentence the following new sentence: "Estimates referred to in the preceding sentence shall include amounts necessary to fund the disabled veterans' outreach program under section 2003A of this title and shall be approved by the Secretary of Labor only if the level of funding proposed is in compliance with such section."; and

(3) by adding at the end thereof the following new sentence: "The Secretary shall carry out the provisions of this subsection through the Assistant Secretary for Veterans' Employment.".

(d) Subsection (d) of such section is amended by inserting a comma and "in consultation with the Assistant Secretary of Labor for Veterans' Employment," after "Secretary of Labor".

ANNUAL REPORT TO CONGRESS

SEC. 206. Section 2007(c) is amended by adding at the end the following new sentence: "The report shall also include a report on activities carried out under section 2003A of this title.".

APPLICABILITY OF CHAPTER 42 PROGRAMS

SEC. 207. Section 2011(5) is amended by inserting a comma and "and the United States Postal Service and Postal Rate Commission" after "title 5".

REPORTS OF CONTRACTORS ON VETERANS' EMPLOYMENT EMPHASIS

SEC. 208. (a) Section 2012 is amended by adding at the end thereof the following new subsection:

"(d)(1) Each contractor with respect to which subsection (a) of this section applies shall report at least annually to the Secretary of Labor on the number of veterans of the Vietnam-era and the number of special disabled veterans in the work force of such contractor by job category and hiring location.

"(2) The Secretary of Labor shall insure that the administration of the reporting requirement under paragraph (1) of this subsection is coordinated with respect to requirements for the contractor to make other reports to the Secretary of Labor.".

(b) Within 90 days after the date of enactment of this Act, the Secretary of Labor shall prescribe regulations implementing the amendment made by subsection (a).

JURISDICTION OF ASSISTANT SECRETARY OF LABOR FOR VETERANS' EMPLOYMENT

SEC. 209. (a) Section 2025 is amended to read as follows:

"§ 2025. Jurisdiction; assistance in obtaining reemployment

"(a) The Secretary of Labor shall carry out the provisions of this chapter through the Assistant Secretary of Labor for Veterans' Employment.

"(b) The Secretary shall render aid in the replacement in their former positions or reemployment of persons who have satisfactorily completed any period of active duty in the Armed Forces or the Public Health Service. In rendering such aid, the Secretary shall use existing Federal and State agencies engaged in similar or related activities and shall utilize the assistance of volunteers.".

(b) The item relating to section 2025 in the table of sections at the beginning of chapter 43 is amended to read as follows:

"2025. Jurisdiction; assistance in obtaining reemployment

REPEAL OF EXEMPLARY REHABILITATION CERTIFICATES PROGRAM

SEC. 210. Section 6 of Public Law 90-83 (81 Stat. 221; 29 U.S.C. 601-607) is repealed.

TITLE III—MISCELLANEOUS PROVISIONS AND EFFECTIVE DATES

SEC. 301. Section 3102 (a) is amended—

(1) by striking out "two years" and inserting in lieu thereof "one hundred and eighty days"; and

(2) by inserting a comma and "or within such longer period as the Administrator determines is reasonable in a case in which the Administrator determines that such notification was not actually received by such payee".

SEC. 302. Accept for section 208 (b), the provisions of this Act shall become effective on October 1, 1982.

ADDITIONAL COSPONSORS

S. 1182

At the request of Mr. NICKLES, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1182, a bill to amend the Longshoremen's and Harbor Workers' Compensation Act to revise the manner of computing the benefits provided under such act, to provide for certification of physicians eligible to provide medical care to workers covered by such act, to provide for an attorney to serve as the representative of the special fund established under such act, to establish a Benefits Review Board the members of which are appointed by the President, to establish an advisory committee to evaluate the manner in which the provisions of the act are carried out, and for other purposes.

S. 1939

At the request of Mr. GOLDWATER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1939, a bill to amend the Public Health Service Act to establish a National Institute on Arthritis and Musculoskeletal Diseases.

S. 1958

At the request of Mr. DOLE, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1958, a bill to amend title XVIII of the Social Security Act to provide for coverage of hospice care under the medicare program.

S. 2061

At the request of Mr. MOYNIHAN, the name of the Senator from Vermont (Mr. STAFFORD) was added as a cosponsor of S. 2061, a bill to provide for the conservation, rehabilitation, and improvement of natural and cultural resources located on public and Indian lands, and for other purposes.

S. 2357

At the request of Mr. LUGAR, the names of the Senator from Missouri (Mr. DANFORTH) and the Senator from South Dakota (Mr. PRESSLER) were added as cosponsors of S. 2357, a bill to prohibit export restrictions that interfere with existing contracts for the exportation of such commodities.

S. 2425

At the request of Mr. ROTH, the name of the Senator from Maine (Mr. MITCHELL) was added as a cosponsor of S. 2425, a bill to amend the Internal Revenue Code of 1954 to clarify certain requirements which apply to mortgage subsidy bonds, to make tax-exempt bonds available for certain residential rental property, and for other purposes.

S. 2552

At the request of Mr. BIDEN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2552, a bill to protect the safety of intelligence personnel and certain other persons.

S. 2574

At the request of Mr. SYMMS, the name of the Senator from Massachusetts (Mr. TSONGAS) was added as a cosponsor of S. 2574, an original bill to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes.

S. 2659

At the request of Mr. SASSER, the name of the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 2659, a bill to amend the Social Security Act to provide that disability benefits may not be terminated prior to completion of the reconsideration process including an evidentiary hearing, to provide that medicare entitlement shall continue through the administrative appeal process, and to require the Secretary of Health and Human Services to make quarterly reports with respect to the results to periodic reviews of disability determinations.

S. 2674

At the request of Mr. LEVIN, the names of the Senator from Oklahoma (Mr. BOREN), the Senator from North Dakota (Mr. BURDICK), and the Senator from Michigan (Mr. REIGLE) were added as cosponsors of S. 2674, a bill to amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes.

S. 2725

At the request of Mr. LEVIN, the name of the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 2725, a bill to provide that disability benefits under title II of the Social Security Act shall continue to be paid through the end of the administrative appeals process, and that periodic reviews of disability cases shall be carried out only to the extent that adequate time and personnel are available.

SENATE JOINT RESOLUTION 188

At the request of Mr. INOUYE, the names of the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Texas (Mr. BENTSEN), the Senator from Wisconsin (Mr. KASTEN), the Senator from Idaho (Mr. SYMMS), the Senator from New York (Mr. D'AMATO), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Indiana (Mr. QUAYLE), and the Senator from North Dakota (Mr. BURDICK) were added as cosponsors of Senate Joint Resolution 188, a joint resolution to authorize and request the President to designate March 1, 1983, as "National Recovery Room Nurses Day."

SENATE JOINT RESOLUTION 200

At the request of Mr. GLENN, the names of the Senator from Louisiana (Mr. LONG), and the Senator from Vermont (Mr. STAFFORD) were added as cosponsors of Senate Joint Resolution 200, a joint resolution to designate October 1982 as "National Car Care Month."

SENATE JOINT RESOLUTION 205

At the request of Mr. EAST, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of Senate Joint Resolution 205, a joint resolution to designate September 1982 as "National Sewing Month."

SENATE JOINT RESOLUTION 207

At the request of Mr. DOLE, the names of the Senator from Massachusetts (Mr. TSONGAS), the Senator from Arizona (Mr. DECONCINI), the Senator from Vermont (Mr. STAFFORD), the Senator from Indiana (Mr. QUAYLE), and the Senator from Nevada (Mr. LAXALT) were added as cosponsors of Senate Joint Resolution 207, a joint resolution to authorize and request the President to designate the week of August 1, 1982, through August 7, 1982, as "National Purple Heart Week."

SENATE JOINT RESOLUTION 211

At the request of Mr. DODD, the names of the Senator from South

Carolina (Mr. HOLLINGS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Indiana (Mr. LUGAR), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Connecticut (Mr. WEICKER), the Senator from New York (Mr. D'AMATO), and the Senator from Nebraska (Mr. ZORINSKY), were added as cosponsors of Senate Joint Resolution 211, a joint resolution to authorize and request the President to designate July 27, 1982, as "National Recognition Day for the Registry of Interpreters for the Deaf."

AMENDMENT NO. 1937

At the request of Mr. EXON, the name of the Senator from Nebraska (Mr. ZORINSKY) was added as a cosponsor of amendment No. 1937 proposed to S. 1857, a bill to amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes.

SENATE CONCURRENT RESOLUTION 112—RESOLUTION RELATING TO A MEETING OF THE INTERALLIED CONFEDERATION OF RESERVE OFFICERS

Mr. THURMOND submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 112

That whereas the Interallied Confederation of Reserve Officers (CIOR) an association of reserve officers from twelve of the nations comprising the North Atlantic Treaty Organization, will hold its XXXVth Congress at Washington, D.C. August 8 through August 15, 1982; and

Whereas the United States, through the Department of Defense, will conduct military competitions in conjunction with and as a constituent part of such XXXVth Congress:

Now, therefore, be it resolved that the Congress of the United States extends to the Interallied Confederation of Reserve Officers a cordial welcome to the United States on the occasion of the XXXVth Congress of that organization to be held in Washington, D.C. August 8 through August 15, 1982, and commands the joint effort of the Reserve Officers Association of the United States and the Department of Defense in hosting the XXXVth Congress of that organization, and urges all departments and agencies of the Government to cooperate with and assist the Interallied Confederation of Reserve Officers in carrying out its activities and programs during the period referred to above.

Mr. THURMOND. Mr. President, I rise to call attention of the Senate to the outstanding services rendered by the Reserve Officers Association of the United States through its participation in the Interallied Confederation of Reserve Officers.

The Interallied Confederation of Reserve Officers is headquartered in Europe, and is made up of reserve officers from the various military services of those nations which are members of the North Atlantic Treaty Organization. Some 12 nations have officers who participate in this confederation and meet twice annually, once at NATO Headquarters in Brussels and once in the capital city of one of the NATO European partners.

On August 8-15, 1982, the Interallied Confederation of Reserve Officers will observe its 35th anniversary and in so doing will hold its second meeting in this country. Washington, D.C. will be the site of this session at which the officers of these various nations will visit us in the uniform of their respective countries.

The Reserve Officers Association of the United States is the host organization in 1982 and will be supported by the DOD, Department of State, and other governmental agencies.

Mr. President, this organization was founded in November of 1948 at Brussels by the Reserve Officers Associations of Belgium, France, and the Netherlands. The original membership of approximately 120,000 has grown to 330,000 today with a potential of over 1 million members. The abbreviation of the group, CIOR, derives from the original French, "Confederation Interalliee des Officiers de Reserve." The CIOR is an officially recognized adjunct of NATO and has made an outstanding contribution toward the defense of free world nations and has carried out well its objectives. Its principal objectives include, first, to contribute to the strengthening of the defense of the signatory countries of the North Atlantic Treaty; second, to establish closer relations among reserve officers of the countries of the Atlantic Alliance, in order that these officers may better know and understand each other; and, third, to support the policies of the Atlantic Alliance and to fully cooperate with this organization in carrying out its objectives.

Mr. President, I send to the desk a concurrent resolution which acknowledges the meeting of this group in August and which commends the joint effort of the Reserve Officers Association and the Department of Defense in hosting this meeting.

SENATE RESOLUTION 428—RESOLUTION RELATING TO TRADE WITH THE SOCIALIST REPUBLIC OF ROMANIA

Mr. HELMS (for himself and Mr. SYMMS) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 428

Resolved, That the Senate does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on June 2, 1982, with respect to the Socialist Republic of Romania.

Mr. HELMS. Mr. President, on June 2, the President of the United States asked Congress to renew his authority to waive the freedom of emigration requirements of the Trade Act of 1974, which would extend most-favored-nation trade status to the Socialist Republic of Romania for another year.

Mr. President, for the record I would note that the President took action under title 19, section 2432 of the United States Code. Action under this section may be disallowed by Congress by passage in one House of a resolution of disapproval. Adoption of the resolution therefore would end MFN trade status to Romania.

According to section 402 of the 1974 Trade Act, renewal of most-favored-nation trading status for Romania should depend on current emigration performance; however, the harrassment, job displacement and refusal to allow free emigration continues as before.

One such example is the case of Paul Dragu. Paul Dragu applied for emigration from Romania in 1980 after his family suffered from religious persecution. When he was given the final application for a passport, he gave customary notice at his job only to be arrested along with his wife Georgetta, and sentenced to 6 months in prison for parasitism. His wife suffered a nervous breakdown under interrogation and was placed in a psychiatric hospital. Prisoners released from the prison where Paul Dragu was held reported that Dragu had been severely beaten, and it was doubtful that he would survive.

Mr. President, there are hundreds upon hundreds of Paul Dragus—Romanian citizens—Christians and those of the Jewish faith alike—who are persecuted, denied jobs, and even imprisoned for long periods of time for "crimes" such as Bible smuggling.

I have transmitted over 200 such cases to the Romanian officials but have received no reponse.

If the Romanian Government would agree to reasonable guidelines and regulations regarding emigration procedures, then perhaps the Senate would allow MFN to be approved for another year to test compliance.

In this Senator's opinion, trade must be tied to the improvement of political circumstances, particularly those bearing on human rights. It is difficult to see the benefits of trade when those benefits are obtained from the labor of those who are not free to enjoy the ordinary rights of liberty and property.

It is not anticipated that Romania will revolutionize its entire system, restore the rights of property ownership so essential to the freedom of the individual, and throw off Communist ideology just for the sake of trade. But we can demand that Romania take steps that will lead to an improvement of the system under which the citizens of that country must live. The most

important step is the right of free emigration, without intimidation and harassment. Such a right provides an alternative to the oppressed citizen; if we cannot provide alternatives within the system we should at least provide the alternative of leaving the system.

Year after year we have renewed MFN trade status for Romania, and year after year the Romanian Government has promised to improve their emigration policies. We have kept our end of the bargain, but the Romanian Government has not. Therefore, I invite my colleagues to join in cosponsoring this resolution of disapproval regarding the extension of most-favored-nation trade status to the Socialist Republic of Romania.

Mr. RANDOLPH. Mr. President, will my colleague from North Carolina yield?

Mr. HELMS. I am delighted to yield.

Mr. RANDOLPH. The Senator spoke of those who did not keep their agreements. Of whom was he speaking?

Mr. HELMS. Particularly Romania, the Government of Romania.

Mr. RANDOLPH. Romania?

Mr. HELMS. Yes.

Mr. RANDOLPH. Would the Senator add other countries in the world who are not keeping agreements also?

Mr. HELMS. Of course, I would. But I was addressing myself to a specific request by the President of the United States with respect to Romania.

Mr. RANDOLPH. I simply wish to say that the Senator should include as well a study of those agreements and treaties that the United States has made with other countries and to see what has happened to them, including membership in the United Nations where dues are not paid but countries remain as members of the Security Council.

Mr. HELMS. The Senator is absolutely correct, and I thank him for his comment.

AMENDMENTS SUBMITTED FOR PRINTING

IMMIGRATION REFORM AND CONTROL ACT

AMENDMENT NO. 1938

(Ordered to be printed and to lie on the table.)

Mr. CHILES submitted an amendment intended to be proposed by him to the bill (S. 2222) to revise and reform the Immigration and Nationality Act, and for other purposes.

MASS MIGRATION OF ALIENS

Mr. CHILES. Mr. President, today I am submitting an amendment to S. 2222, the Immigration Reform and Control Act of 1982, which designates the steps the Federal Government may take to stop an uncontrolled mass migration of aliens to the United States. My amendment will give the President the authority to declare an immigration emergency during which the administration will be able to use extraordinary measures to stop aliens from entering the United States illegally and to prevent U.S. residents from bringing aliens into the country.

Mr. President, I am a strong supporter of S. 2222. I believe that Senator SIMPSON has prepared an effective reform package that addresses some of the most serious failings of our immigration laws. It puts the Federal Government in a much stronger enforcement position and holds the promise of restoring order to U.S. immigration policies. However, there is a serious omission in the bill and that is the failure to prescribe what steps will be taken in the event of a mass migration.

The need for such a reform has been proven. Two years ago, my State was the point of entry of an uncontrolled influx of thousands of refugees from Cuba. In just 5 months, 125,000 had arrived requesting political asylum in the United States. Mixed among those were hardened criminals, mentally ill people, and others, who should never have been allowed to enter the United States. American citizens, anxious to rescue Cubans from the repressive Castro regime, provided the transportation for the refugees. They left with lists of relatives provided by Cuban-Americans but returned with those who Castro chose to release. Today, there are still 1,227 Cubans in the Federal penitentary in Atlanta who are being held because of the serious crimes they committed in Cuba.

The city of Miami was quickly overwhelmed by hungry, destitute refugees, while the Federal Government, uncertain of the appropriate Federal role in such a crisis, delayed taking the decisive steps necessary to control the influx. Refugees were released into the community without sponsors, food or housing. Tent cities and temporary shelter arose to accommodate them. Jackson Memorial Hospital, the county hospital in Dade County, was overrun by refugees seeking medical care.

In the early days it was the State and local governments, not the Federal Government, that provided for the refugees. The situation reached crisis proportions because neither the Immigration and Nationality Act, nor the Refugee Act, anticipate a situation in which the United States becomes a country of first asylum for large numbers of refugees. Throughout the crisis, the Federal Government was placed in a position of reacting, rather than actively controlling the situation.

The Cuban refugee crisis was quickly followed by a large influx of refugees from Haiti. At one point, as many as 3,000 Haitians were landing on Florida's beaches. Many were carrying contagious diseases which posed a public health threat to the area. The communities of south Florida, overburdened by the Cuban crisis, were strained beyond their capacity to respond. Again, the U.S. Government was unprepared for the influx. The Haitians were not resettled into the community as the Cubans had been but were placed in detention at the Krome missile site north of Miami until their cases could be reviewed by the Immigration and Naturalization Service. The population at Krome, a facility designed for 525 people quickly exceeded 1,300. The tremendous backlog of cases, the cumbersome hearing procedures, and the court decisions regarding the rights of the Haitians, greatly slowed the process for deciding the legitimacy of their asylum claims. Some of the Haitians have been in detention for 13 months with no resolution of their cases in sight. A Federal judge has just recently ordered their release.

We have seen a complete breakdown of the asylum process during the refugee crisis. Each case must be decided on a case-by-case basis and the process is subject to a lengthy appeals procedure. Although it appears that many of the refugees are economic refugees, not political refugees and do not quality for asylum in the country, so far, only 133 have been excluded. S. 2222 will make significant improvements in the asylum process so that cases can be resolved expeditiously. But I am afraid that the new system will also collapse under the pressure of thousands of cases.

We should not assume that the Cuban/Haitian refugee crisis was a unique situation that will never occur again. That crisis showed us a serious flaw in our immigration laws and I believe that we should take this opportunity to correct it. The amendment I am submitting today aims to prevent another mass migration so that refugees may be screened and processed before they arrive in the United States. Only those who appear to have a legitimate claim of persecution will be released into the community. The controls that are provided for by my amendment will help prevent the chaos that south Florida experienced from reoccuring at some point in the future.

First, the amendment would allow the President to declare an immigration emergency if a substantial number of undocumented aliens are about to embark, or have embarked, for the United States and in his judgment the procedures of the Immigration and Nationality Act, or the resources of INS would be inadequate to respond to the expected influx. Within 48 hours, the President would notify the President pro tempore of the Senate and the Speaker of the House

of his reasons for calling the emergency. As soon as practicable, an announcement of the emergency would be published in the Federal Register. The emergency would automatically end after 120 days or sooner at the request of the President. The emergency could also be extended for 120-day periods.

During the emergency, the President would have the authority to ban travel by any vessel, vehicle, or aircraft, under the control or ownership of a U.S. resident or citizen, to the country or area that is the source of the migration. He would also have the authority to close harbors, airports, or roads that could serve as a departure point to the restricted country. Anyone wishing to depart from an area that has been closed will have to prove to the appropriate authorities that he is not bound for the restricted country. Only those who have obtained written permission will be allowed to leave.

The President would have the authority to utilize any civil Federal agency or branch of the U.S. military in the enforcement of this amendment. The agency that is given authority over a closed road, airport, or harbor would be responsible for developing procedures for granting departure requests. Requests would be granted or denied within 72 hours. An individual who is denied permission to leave may appeal the decision in the U.S. district courts.

In order to enforce the travel restrictions, the President would also be able to order the interdiction of any vessel or vehicle that is owned, leased, or controlled by a U.S. citizen, or resident that is engaged in travel outside of the United States. A vessel which appears to be enroute to the restricted country would be forced to return to the United States or to another reasonable location. This authority could also be used to prevent a U.S. citizen from leasing a boat in another country to transport aliens to the United States. Anyone who violates the prohibitions of the amendment would be subject to civil and criminal penalties and their vehicle would be subject to seizure by the Federal Government.

An alien who arrives in the United States without proper documentation could be summarily excluded from entering the United States if he does not appear to have a ligitimate asylum claim. This provision could also be used to stop undocumented aliens traveling to the United States by sea before they reach U.S. territorial waters, utilizing the President's existing authority to interdict foreign vessels on the high seas. The Attorney General shall develop the procedures for deciding whether an alien shall be excluded or admitted to the United States for a hearing. The decision to exclude or admit would not be subject to judicial review.

Finally, aliens who are admitted to the United States would be held in detention at Federal facilities specified by the President until their immigration status is determined. During the course of detention, the restraints of Federal environmental laws would not apply to the detention facilities. Aliens who are ineligible for asylum in the United States would be returned to the country they came from, or an appropriate third country. Current law requires that aliens be deported to the country they came from. In both the Cuban and Haitian influxes this has proven to be impractical because the Cuban Government has refused to repatriate the refugee and many of the Haitians came from the Bahamas, not Haiti. This provision of the amendment would make our laws more flexible and thus more enforceable.

The purpose of my amendment is not to close our doors to legitimate refugees. The United States, as the epitome of a free, democratic republic, has a great responsibility to provide refuge to those fleeing persecution and repression. But we cannot accept every alien who arrives on our shores claiming persecution, simply because they are here. The legal definition of refugee is very narrow and should be reserved for those who are truly victims of persecution.

If we are going to grant asylum to refugees, we must have an efficient and equitable system for deciding who qualifies. To do less is a disservice to all those who apply, whether they are eligible or not, as well as to the people of this country.

Only case-by-case review can reveal the merits of an asylum case. Granting blanket asylum or blanket exclusion to a group of people is clearly inappropriate. But individual review is, at best, a slow and cumbersome process. It has proved to be unworkable in the face of a mass migration. We must be able to regulate the flow of refugees to avoid overwhelming the system. The amendment I am submitting today will give the administration the tools necessary to prevent a mass migration so that refugees may be screened and processed in an orderly manner, before they arrive in the United States.

Mr. President, I ask unanimous consent that the amendment be printed in the RECORD.

There being no objection, the Amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1938

On page 162, between lines 10 and 11, insert the following:

TITLE IV-IMMIGRATION EMERGENCY

PROVISIONS RELATING TO ENTRY AND EXCLUSION

SEC. 401. Chapter 4 of title II of the Immigration and Nationality Act is amended by inserting at the end thereof the following new sections:

"DECLARATION OF IMMIGRATION EMERGENCY

"SEC. 240A. (a) The President may declare an immigration emergency with respect to any specifically designated foreign country or countries or geographical area or areas, if the President determines that—

"(1) a substantial number of aliens who lack documents authorizing entry into the United States appear to be ready to embark or have already embarked for the United States, and such aliens will travel from, or are likely to travel through, such foreign country or countries or such foreign geographical area or areas; and

"(2) the normal procedures of this Act or the current resources of the Service would be inadequate to respond effectively to the influx of these aliens.

"(b) Within forty-eight hours of the declaration of any immigration emergency, the President shall inform the Speaker of the House of Representatives and the President pro tempore of the Senate of the reasons prompting the declaration. The President shall cause the declaration to be published in the Federal Register as soon as practicable. The declaration shall expire 120 days after its proclamation, unless sooner terminated by the President. The President may extend the duration of the declaration for additional periods of 120 days each by following the same procedures set forth in this subsection as are provided for the making of the declaration, if, in his judgment, the conditions listed in subsection (a) continue to exist.

"EMERGENCY POWERS AND PROCEDURES

"SEC. 240B. (a) Upon the declaration of an immigration emergency under section 240A, the President may invoke the following emergency powers and procedures with respect to a country or countries or a geographical area or areas specifically designated under section 240A:

"(1) Any United States vessel, vehicle, or aircraft, or any other vessel, vehicle, or aircraft which is owned or operated by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any political subdivision thereof and which is bound directly or indirectly for such designated foreign country or foreign geographical area may be precluded from departing from the United States or may be intercepted while en route and required to return to the United States if feasible or to any other reasonable location until such time as it is feasible to return to the United States, or, if appropriate, allowed to proceed to any other reasonable location.

"(2) The arrival in the United States of any alien who lacks documents authorizing entry into the United States or who is otherwise inadmissible and is traveling, directly or indirectly, from or through such designated foreign country or foreign geographical area may be prevented by returning or requiring the return of such alien or any vessel, vehicle, or aircraft carrying any such alien to such designated country or area or to some other reasonable location.

"(3)(A) The exclusion or admission to the United States of any alien, regardless of nationality, who is traveling or has traveled to the United States, directly or indirectly, from or through such designated foreign country or foreign geographical area and who is not in possession of a visa or other entry document required for admission to the United States by statute or regulation may be determined under procedures estab-

lished by the Attorney General (whether by regulation or otherwise), and no such alien shall be presented for inquiry before a special inquiry officer unless such presentation is authorized by the Attorney General pursuant to such procedures.

"(B) Notwithstanding section 208 or any other provision of law, the Attorney General may establish by regulation or otherwise a separate procedure to consider a claim for asylum advanced by an alien whose admissibility is to be determined in accordance with this paragraph.

"(C) Any alien found inadmissible to the United States pursuant to the procedures established by the Attorney General under this paragraph shall be deported to the country from whence he came. If the attorney General determines that the alien should not or cannot practicably be removed to the country from whence the alien came, the Attorney General may deport the alien to any country described in section 243(a), without regard to the designation of the alien or the order of countries set forth in section 243(a).

"(D) Any alien admitted to the United States under this paragraph shall be admitted for such time and under such conditions as may be prescribed by the Attorney General, including the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe to insure compliance with the terms and conditions of the alien's admission.

"(E) No court shall have jurisdiction to review the determination of admissibility or nonadmissibility of, or the determination of any claim for asylum with respect to, any alien who is subject to this paragraph.

"(4)(A) Every alien who is subject to the provisions of this section shall be detained pending a final determination of admissibility or pending release on parole or pending deportation if the alien is found excludable, unless an examining officer finds that the alien is clearly and beyond a doubt entitled to be admitted to the United States. Such detention shall be in any prison or other detention facility or elsewhere, whether maintained by the Federal Government or otherwise, as the Attorney General may direct. The Attorney General may at any time transfer an alien from one place of detention to another. No alien shall be released from detention pending a final determination of admissibility or pending deportation if the alien is found excludable, except in the discretion of the Attorney General and under such conditions as the Attorney General may prescribe, including release on bond.

"(B) Any alien applying for admission from a foreign contiguous territory may, in the discretion of the Attorney General, be required to remain outside of the United States pending a final determination of admissibility.

"(C) No court shall review any decision of the Attorney General made pursuant to this paragraph to detain, to transfer, or to release an alien, except that any person so detained may obtain review, in habeas corpus proceedings, on the question of whether that person falls within the category of aliens subject to detention.

"(D) Nothing in this paragraph shall relieve a carrier or any other person of any liability, duty, or consequence pertaining to the detention of aliens which may arise under any other provision of this Act or other law.

"(5)(A) The President may exempt any source of any department, agency, or instrumentality in the executive branch from applicable environmental requirements pursuant to section 1323(a) of title 33 and sections 300j6(b), 4903, 6961, and 7418(b) of title 42, United States Code.

"(B) If the President finds, and transmits his finding to the Congress, that an exemption is necessary to respond to an immigration emergency, the President may exempt any source or action of any department, agency, or instrumentality in the executive branch which is directly and substantially related to an immigration emergency from applicable related to an immigration emergency from applicable requirements of the National Environmental Policy Act (42 U.S.C. 4331 et seq.), the Coastal Zone Management Act (46 U.S.C. 1451 et seq.), the Endangered Species Act (16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Historic Preservation Act (16 U.S.C. 470 et seq.), and from the applicable requirements of any other Federal, State, or local law which is intended principally to protect or preserve the environment, wildlife, or aspects of the history or heritage of the United States.

"(C) Except with respect to matters concerning the detention of aliens, an exemption under this paragraph shall lapse upon termination of an immigration emergency. In no event shall any exemption under this paragraph be in effect more than one year. An exemption with respect to matters concerning the detention of aliens shall be in effect until terminated by the President or the expiration of one year, whichever occurs first. During the time period in which an exemption applies the President may, in his discretion, require that a source nonetheless meet certain environmental standards without thereby creating a private right of action to enforce that requirement.

"(b)(1) During the existence of the immigration emergency, the President may order the closing or sealing of any harbor, port, airport, road or any other place, structure or location which may be used as a point of departure from the United States to such designated foreign country or foreign geographical area, if the President determines such action is necessary to prevent the arrival in the United States of aliens who are inadmissible and who are traveling from or in transit through such designated country or area.

"(2) No person shall cause any vessel or aircraft to depart from or beyond or enter into a closed or sealed harbor, port, airport, road, place, structure, or location during an immigration emergency, unless written permission has been obtained for such departure before the actual departure of the vessel or aircraft.

"(3) Permission for departure from or beyond or entry into a closed or sealed harbor, port, airport, road, or any other place, structure, or location shall be given only for such vessels, vehicles, aircraft which are clearly shown not to be destined for a designated foreign country, or foreign geographical area. The agency designated by the President under subsection (c) of this section shall prescribe the procedures to be followed in requesting departure permission. In the absence of such procedures, permission may be sought from any agency directly involved in the closing or sealing of the harbor, port, airport, road, or other place, structure or location. A final decision shall be made on any request for departure permission within 72 hours of the request, unless the person seeking such permission consents to a longer period. If no action is taken on the request within the requisite period, the request for departure permission shall be deemed denied.

"(4) The district courts of the United States shall have jurisdiction to review any final decision denying permission to depart under paragraph (3) of this subsection, except that review may be obtained prior to a final administrative decision with respect to any vessel, vehicle, or aircraft if irreparable injury would occur before a final administrative decision could be obtained.

"(c) Although the President may not delegate the authority to initiate those emergency powers of this section which expressly require Presidential invocation, the President may designate one or more agencies of the Federal Government to administer the provisions of this section and of sections 240C and 240D. In carrying out these provisions, such designated agency may promulgate regulations and may request assistance from any State or local agency or from any civilian Federal agency. Notwithstanding any other provision of law or any rule or regulation, the President may direct that any component of the Armed Forces of the United States, including the Army, Navy, and Air Force, provide assistance to such designated agency. Any such agency or component of the Armed Forces of the United States may assist in the actual detention, removal, and transportation of an alien to the country to which he is being deported.

"(d) Notwithstanding any other provision of law, any agency or component of the Armed Forces of the United States which is requested or directed to render assistance or services during an immigration emergency is authorized to stop, board, make arrest of persons, inspect, and seize any vessel, vehicle, or aircraft which is subject to the provisions of this section or of section 240C or 240D.

"(e) In providing assistance under this section and sections 240B and 240D, agencies shall have the same authority as such agencies have for disaster relief under section 5149 of title 42, United States Code.

"(f) The provisions of paragraphs (3) and (4) of subsection (a) of this section shall continue to govern any aliens subject to those provisions, regardless of the termination of the immigration emergency.

"(g) The President may direct the enforcememt of subsection (a) of this section beyond the territorial limits of the United States, including on the high seas.

"(h) Nothing in this section shall relieve any carrier or any other person of any civil or criminal liability, duty, or consequence that may arise from the transportation or the bringing of any alien to the United States.

"TRAVEL RESTRICTIONS AND LICENSING

"SEC. 240C. (a) Upon the declaration of an immigration emergency under section 24A, it shall be unlawful for any person to cause any United States vessel, vehicle or aircraft, or any other vessel, vehicle or aircraft which is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any political subdivision thereof, to travel or be transported to a foreign country or foreign geographical area designated under section 240A or to within such distance therefrom as the President may specify, unless prior approval has been obtained from an agency designated by the President.

"(b) Except as provided in subsection (c), the designated agency may by regulation grant prior approval, under such terms and conditions as it may require, for travel to or within a specified distance of a foreign country or geographical area designated under section 240A for certain classes or categories of vessels, vehicles, and aircraft. The owner or operator of any vessel, vehicle, or aircraft not authorized by regulation to travel to or within a specified distance of a designated country or area may apply to the designated agency for a license granting permission for one or more trips to that country or area. The designated agency shall establish by regulation the procedures governing the application for and the approval and revocation of such licenses. The designated agency may authorize officials of any other agency of the United States to accept and transmit applications for licenses to the designated agency or to grant or deny such licenses under standards established by the designated agency.

"(c) No travel to or within such distance as the President may specify from a designated foreign country or area shall be approved if it appears that such travel may result in or contribute to a violation of any statute or regulation relating to the immigration of aliens to the United States.

"PENALTIES

"SEC. 240D. (a)(1) On or after the day following publication in the Federal Register of the declaration of an immigration emergency, any vessel, vehicle, or aircraft involved in a violation of section 240B(b)(2) or section 240C(a) shall be forfeited and the owner, operator, and any person causing such vessel, vehicle, or aircraft to be involved in such violation shall be subject to a civil fine of $10,000 for each act in violation of such section, except that such vessel, vehicle, or aircraft involved in such violation may be forfeited and the owner, operator, or any other person causing such violation may be subject to a civil fine of $10,000 for each act in violation before such date if such owner, operator, or other person had actual knowledge of the declaration of an immigration emergency.

"(2) All provisions of the customs laws relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property,

"(B) the disposition of such property or the proceeds from the sale thereof,

"(C) the remission or mitigation of such forfeiture, and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures,

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as applicable and not inconsistent with the provisions of this section, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws may be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

"(3) Whenever a conveyance is forfeited under this section the Attorney General may—

"(A) retain the conveyance for official use;

"(B) sell the conveyance and shall use the proceeds from any such sale to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, with the remaining proceeds, if any, turned over to the United States Treasury;

"(C) require that the General Services Administration, or the Federal Maritime Commission if appropriate under section 484(i) of title 40, United States Code, take custody of the conveyance and remove it for disposition in accordance with law; or

"(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

"(4) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant if probable cause shall be first shown for the institution of such suit or action, to be judged of by the court.

"(b) On or after the day following publication in the Federal Register of the declaration of an immigration emergency, any person who knowingly engages or attempts to engage in any conduct prohibited by the terms of section 240B(b)(2) or section 240C(a) shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $50,000 or by imprisonment for a term not exceeding five years, or both, for each prohibited act, except that the owner, operator, or any other person causing a violation of such section shall be punished by a fine not exceeding $50,000 or by imprisonment for a term not exceeding five years, or both, for each prohibited act before such date if such owner, operator, or other person had actual knowledge of the declaration of an immigration emergency.

"(c) Any alien who willfully violates a condition of his admission under section 240B shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

"(d) The requirements and sanctions imposed by this section shall be in addition to those set forth by other provisions of law.

"(e) Violations of any provisions of this Act committed during the immigration emergency may be investigated by the Federal Bureau of Investigation, the Service, the Coast Guard, or any component of the Department of the Treasury. Notwithstanding any other provision of law or any rule or regulation, assistance in investigating or enforcing this section may be provided, with the approval of the Attorney General, by any agency of the United States, including the Army, Navy, and Air Force, or may be provided by any State or local agency.

"DEFINITIONS

"SEC. 240E. As used in sections 240A through 240D—

"(1) the term 'agency' includes any executive department and components thereof, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"(2) the term 'aircraft' means any airplane, helicopter, glider, balloon, blimp, or other craft or structure capable of being used as a means of transportation in the air;

"(3) the term 'vehicle' means any automobile, motorcycle, bus, truck, cart, train, or other device or structure capable of being used as a means of transportation on land;

"(4) the term 'vessel' means any ship, boat, barge, submarine, raft, or other craft or structure capable of being used as a means of transportation on, under, or immediately above the water; and

"(5) the phrase 'United States vessel, vehicle, or aircraft' include any vessel, vehicle, or aircraft documented, registered, licensed, or numbered under the laws of the United States or any political subdivision thereof.".

UNLAWFUL BRINGING OF ALIENS INTO UNITED STATES

SEC. 402. Subsection (b) of section 273 of the Immigration and Nationality Act (8 U.S.C. 1323(b)) is amended—

(1) by striking out in the first sentence "$1,000" and inserting in lieu thereof "$3,000";

(2) by striking out the last sentence; and

(3) by adding at the end thereof the following: "Such sums shall be a lien upon the vessel or aircraft involved in a violation of the provisions of subsection (a) of this section, and such vessel or aircraft may be libeled therefore in the appropriate United States court. Pending the determination of liability to the payment of such sums or while such sums remain unpaid, such vessel or aircraft may be denied clearance, or summarily seized, or both, unless a deposit is made of an amount sufficient to cover such sums or of a bond with sufficient surety to secure the payment thereof satisfactory to the Attorney General.".

INSPECTION BY IMMIGRATION OFFICERS

SEC. 403. Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended to read as follows:

"(b)(1) Unless an immigration emergency has been declared, an immigration officer shall inspect each alien who is required to have documentation seeking entry to the United States and shall make a determination on each alien's admissibility.

"(2) The decision of the immigration officer on admissibility of an alien shall be final and not subject to further agency review or to judicial review, if the immigration officer determines an alien to be an alien crewman, a stowaway under section 273(d) of this Act, or an alien who does not present documentary evidence of United States citizenship, or lawful admission for permanent residence, or a visa or other entry document, or a certificate of identity issued under section 360(b) to support a claim of admissibility.

"(3) Any alien not excluded under paragraph (2) of this subsection who does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to admission shall be detained for further inquiry by a special inquiry officer under section 236.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. There are authorized to be appropriated to the President to carry out the purposes of sections 240A through 240E of the Immigration and Nationality Act an amount not to exceed $35,000,000. Amounts appropriated under this section are authorized to remain available until expended.

On page 162, line 11, strike out "TITLE IV" and insert in lieu thereof "TITLE V".

On page 162, line 13, strike out "Sec. 401." and insert in lieu thereof "Sec. 501.".

On page 79, in the table of contents, redesignate the item relating to title IV as title V.

On page 79, in the table of contents, redesignate the item relating to section 401 as section 501.

On page 79, in the table of contents, insert between the items relating to titles III and V, as redesignated, the following:

CONSTITUTIONAL AMENDMENT ON A BALANCED BUDGET

AMENDMENT NOS. 1939 AND 1940

(Ordered to be printed and to lie on the table.)

Mr. HART submitted two amendments intended to be proposed by him to the joint resolution (S.J. Res. 58) proposing an amendment to the Constitution altering Federal fiscal decisionmaking procedures.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will have a meeting on Wednesday, July 21, 1982, at 9 a.m., in room 301, Russell Senate Office Building. The committee will be marking up proposed regulations to implement Senate Resolution 20, providing for television and/or radio coverage of Senate proceedings.

On April 21, 1982, the Senate agreed to Senate Resolution 20, and directed the Committee on Rules and Administration to report to the Senate a resolution containing such regulations and such rules changes as are needed to implement television and/or radio coverage of proceedings of the Senate. The original deadline for the 60-day reporting period was June 20. However, on June 15, by unanimous consent, the deadline was extended to July 15. On Wednesday, July 14, the reporting deadline was further extended by unanimous consent until Friday, July 23, 1982.

In preparation for this markup, the Rules Committee held hearings on May 19 and May 25 and received testimony from Senators and interested public parties.

For further information regarding this meeting, please contact Rules Committee staff on 224-9078.

SUBCOMMITTEE ON LABOR

Mr. NICKLES. Mr. President, the Labor Subcommittee of the Labor and Human Resources Committee will hold a hearing on S. 2634, a bill to amend section 14(c)(3) of the Fair Labor Standards Act of 1938, to permit the employment of handicapped and severely handicapped individuals in common areas, to permit the employment of handicapped individuals in demonstration projects, and other purposes, on Wednesday, August 11, 1982, in room 4232 of the Dirksen Senate Office Building. The hearing will begin at 9:30 a.m. Members of the public wishing to testify should submit a written request to Senator NICKLES, Labor Subcommittee, 4230 Dirksen Senate Office Building, Washington, D.C. 20510. Staff contacts are Chuck Carroll and Charlene Abshire at 224-5546.

COMMITTEE ON THE BUDGET

Mr. DOMENICI. Mr. President, the Senate Committee on the Budget will hold a meeting on the omnibus reconciliation bill for fiscal year 1983, Thursday, July 22, at 2 p.m. in 6202 Dirksen Senate Office Building.

For further information, contact Nancy Moore of the Budget Committee staff at 224-4129.

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. PACKWOOD. Mr. President, the Subcommittee on Taxation and Debt Management of the Senate Finance Committee will hold a hearing at 9:30 a.m. on July 19, 1982. The following proposals will be considered:

S. 2197, introduced by Senator MATSUNAGA. S. 2197 would make permanent the provision for refund of taxes paid on the sale of fuel for use in a taxicab, and would make certain sales of fuel for use in a taxicab exempt from tax.

S. 2498, introduced by Senator MATSUNAGA. S. 2498 would provide that certain indebtedness incurred by educational organizations in acquiring or improving real property shall not be treated as acquisition indebtedness for purposes of the tax on unrelated business taxable income.

S. 1298, introduced by Senator WALLOP with Senator PACKWOOD, Senator BRADLEY, Senator BACUS, and others. S. 1298 would extend certain tax provisions to Indian tribes on the same basis as such provisions apply to States.

The purpose of this statement is to briefly explain the issues raised by these bills. This may help you chart the progress of tax legislation before the Taxation Subcommittee. It also helps assure greater public awareness of tax amendments coming before hearings.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

Mr. McCLURE. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Pollution, of the Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Friday, July 16, at 10 a.m., to hold a hearing on the Clean Water Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. McCLURE. Mr. President, I ask unanimous consent that the Agriculture Committee be authorized to meet during the session of the Senate at 10:45 a.m. on Friday, July 16, to continue their reconciliation markup on food stamps and the dairy program.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

BILINGUAL EDUCATION—A DIFFERENT KIND OF SEGREGATION?

● Mr. HUDDLESTON. Mr. President, advocates of bilingual education in this country contend that the program is needed to give limited-English-speaking children the opportunity to fully participate in our society. They say that the program is only being used to teach these children English so that they can be mainstreamed as quickly as possible. However, the evidence indicates that bilingual education is not achieving this goal. Nowhere has this been pointed out more clearly than in a letter which I recently received from teachers at Woodrow Wilson High School in San Francisco, Calif. As the teachers state—

> If the success of a bilingual education program can be measured by the number of students moved out of it and into regular classes each year, ours is a dismal failure. Out of over 500 students of limited English proficiency (LEP students) at our school, only three have been "demitted" from the bilingual program so far this year. Furthermore, the LEP students at our school who are not in bilingual classes appear to be making much more rapid progress in English.

It is difficult to believe that only 3 students out of over 500 were able to be mainstreamed after 1 year's time in the program. As the teachers note, students in bilingual education programs are getting less time to use English than students in regular classes. More importantly, bilingual education is promoting a type of segregation which is clearly contrary to the principles on which our country is based. Many teachers in bilingual programs in the school district are not qualified and parents are discouraged from exempting their children from bilingual programs.

Interestingly, this information comes from teachers in a school in the San Francisco Unified School District. This is the same district where parents of non-English-speaking Chinese students sued because their children were being denied an equal educational opportunity. The result of this suit was the well-known Lau remedies which were supposed to correct this problem. However, almost 10 years after the Lau against Nichols decision by the Supreme Court, it appears that the progress of limited-English-speaking children has not changed.

It is obvious that changes are needed in our bilingual education programs if

we are going to have them achieve the stated goal of teaching children English. The teachers' letter has made this very clear.

Mr. President, I submit for the RECORD the letter from the Woodrow Wilson High School teachers and the enclosed appendixes.

The material follows:

WOODROW WILSON HIGH SCHOOL,
San Francisco, Calif.

Senator THOMAS HUDDLESTON,
U.S. Senate,
Washington, D.C.

DEAR SIR: If the success of a bilingual education program can be measured by the number of students moved out of it and into regular classes each year, ours is a dismal failure. Out of over 500 students of limited English proficiency (LEP students) at our school, only three have been "demitted" from the bilingual program so far this year. Furthermore, the LEP students at our school who are not in bilingual classes appear to be making much more rapid progress in English.

Because our school's classes for "newcomers" have been developed by the academic departments, rather than by a separate bilingual department, we have both ESL and bilingual classes, and most LEP students are enrolled in both kinds.[1] All LEP students take two ESL classes each semester that are offered by the English department; Language Development and Reading. These classes are available on four levels of advancement. Zero, Beginning, Intermediate, and Advanced Students are placed in appropriate level classes when they enter the school based on the results of both a written and an oral examination administered by the school district's Intake Center. Their placement is re-evaluated every six months by the classroom teachers. Students may move up as quickly as their progress in English allows. Students whose primary language constitutes a small minority, such as Cambodian, Lao Burmese, Korean, Arabic, Hindi, and Samoan, are enrolled in "Bilingual Support" classes in social studies, math, and science, as well as the ESL classes listed above. "Bilingual Support" classes are taught using ESL methods. "Bilingual Support" Typing and Foods are also available as electives for any LEP student.

LEP students whose primary language is Spanish, Cantonese, Vietnamese, or Tagalog/Ilocano must take bilingual social studies. Additionally, every effort has been made by the district Bilingual Office and our school administration to place these students in bilingual science and math by forcing the academic departments to offer as many bilingual classes as possible. This attempt has not been entirely successful as the complexity of students' needs and a lack of bilingual teachers qualified to teach advanced courses has forced compromises. A plan to schedule a Chinese bilingual Geometry-2 class was thwarted because there were not enough students to fill it. Ironically, the class would have been made up entirely of students who had passed the regular Geometry-1 class was taught in English. We do offer a large number of bilingual classes in General Math, General Science, Algebra, Geography, U.S. History, and Civics.[2] These classes are taught largely in the primary language, and students are grouped only by ethnicity, not by English proficiency, resulting in a mixture from zero through the Advanced level English speakers in one class.

While the principle of bilingual education appears sound, in practice, in our district at least, there are several serious questions to be raised about its efficacy:

(1) The students in bilingual classes get less opportunity to practice English than students in ESL classes.

(2) Bilingual classes promote blatant segregation. Students stay, for most of the day with their own ethnic group, missing the opportunity to become part of the mainstream of the life of the school. On the other hand, in ESL classes where students are grouped by English profiency, not by ethnic group, students make friends with members of other groups and learn English much faster.[3]

(3) There is little choice involved for the student or the parents. Even though parents may exempt their child from bilingual classes, this is actively discouraged by the school administration. Teacher or counselor initiated exemption from bilingual classes can only be done after an elaborate and unrealistic exit procedure.[4] This appears to result in most students remaining in bilingual classes for their entire time in school.

(4) There are serious doubts about the qualifications of some bilingual teachers. The San Francisco Unified School District Bilingual Office does its own hiring, evaluation, certification, and firing. Our school has been required to accept a certain number of teachers from that office and fit them into the schedule. Many have neither teaching experience nor regular California teaching credentials. Some speak English so poorly that it is difficult for students and adults to understand them. Unfortunately, nearly all of these teachers are currently teaching ESL or regular departmental classes as well as bilingual classes.

(5) There are so many special bilingual course offering at our school that courses for the English-fluent two thirds of the school have had to be curtailed.

RECOMMENDATIONS

If changes are made in Federal law regulating bilingual education, we recommend the following:

(a) Specific guidelines for secondary schools be included. These should consider the complexity of high school curriculum, departmental autonomy, and subject matter expertise necessary for effective teaching at that level. Current guidelines are vague and subject to widely varying interpretations usually benefiting bureaucrats rather than students.

(b) Some limit be placed on the number of years that a student can remain in bilingual classes. This will reduce taxpayer burden for special interest groups and also eliminate the possibility that a student could spend 12 years in the public schools, segregated from the other students, and never learn to speak English.

(c) The purposes of bilingual education be clarified. If the major purpose is to teach the students more effectively, actual results should be scrutinized. If its major purpose is to foster the students' heritage, it should be limited in scope, and more educationally sound methods, such as ESL, should be used to teach necessary material.

Sincerely,

BEN ADAM,
Site Coordinator, Federal Compensatory Education Program.
RUDI FALTUS,
Reading Resource Teacher, Social Studies, Title I.
ROBERT FADER,
Reading Resource Teacher, Title I.
JUDITH WIESE,
Reading Resource Teacher, Title I.
ADRIENNCE SEMTH,
Reading Resource Teacher, Social Studies, Title I.
GAIL G. DENT,
Social Studies Department Head.

COMPARISON OF LEP STUDENTS SERVED IN DIFFERENT WAYS

Limited English speaking students are placed in ESL Language Development classes varying from Zero to Advanced level. Their progress in English production, speaking and writing, is evaluated every six months by their classroom teacher, and they are either moved up to the next level or retained in the same level. Language Development classes were selected for this study because the level reflects ability to speak and understand spoken English.

GROUP I

Speakers of Hindi, Lao, Cambodian, Hmong, Korean, Arabia, Smoan, Burmese, were enrolled in only classes taught with ESL methods (Those listed in the schedules as Bilingual Support use ESL methods) and regular classes.

21 percent were retained in the same level for a second year.

GROUP II

All speakers of Spanish were in Spanish Bilingual Social Studies. Most were in Spanish Bilingual General Math and Spanish Bilingual Life Science.

29 percent were retained in the same level for a second year.

GROUP III

Some speak only Cantonese. Some speak only Vietnamese. Some speak both. Most are ethnic Chinese from Vietnam or Hong Kong. All took Chinese or Vietnamese Social Studies. Some took bilingual math and science, but not consistently in one language.

38 percent were retained in the same level for a second year.

Excerpt from schedule of classes—Spring 1982—Note number of bilingual sections in academic departments:

SOCIAL STUDIES DEPARTMENT

Sequence and teacher:	Room
Geography 1	
090 6—Heafey	306
Geography 1.8D (bilingual support)	
091 4—Tran	122
Geography 2	
092 1—Cabral	129
093 1—Morey	232
094 1—Smiell	221
095 2—Fesunoff	304
096 2—Smiell	221
097 2—Tooley	300
098 3—Cabral	129
099 3—Tooley	300
100 4—Fesunoff	304
101 4—Navarrete	330
102 6—Morey	232

[1] See Appendix—Comparison of LEP Students in Bilingual and Non-Bilingual Classes.
[2] See Appendix—Class Schedule and Explanation.
[3] See Appendix—Anecdotal evidence for ethnic integration in ESL classes.
[4] See Appendix—Bilingual Reclassification Form.

103 6—Tooley 300
104 7—Morey 232

Geography 2.8A (Chinese bilingual)

105 3—Soo 221
106 7—Soo 221

Geography 2.8B (Filipino bilingual)

107 4—Anorico 328

Geogaphy 2.8C (Spanish bilingual)

108 2—Ledon 111
109 6—Ledon 304
110 7—Ledon 304

Geography 2.8D (Bilingual support)

111 7—Tsang 330

Geography 2.8F (Vietnamese bilingual)

112 1—Tran 122
113 7—Tran 122

U.S. History 1

114 3—Warren 356

U.S. History 2

115 1—Heafey 306
116 1—Warren 356
117 2—Dent 310
118 3—Heafey 306
119 4—Heafey 306
120 6—Warren 356
121 7—Heafey 306
122 7—Warren 356

U.S. History 2.8A (Chinese bilingual)

123 4—Soo 221

U.S. History 2.8C (Spanish bilingual)

124 1—Navarrete 330
125 6—Levy 324

U.S. History 2.8D Bilingual support)

126 1—Sciutto 312

U.S. History 2.8F (Vietnamese bilingual)

127 6—Tran 122

Civics 1

128 2—Warren 356

Civics 2 (law)

129 2—Sciutto 312
130 4—Sciutto 312

Civics 2.8F (Vietnameses bilingual)

131 2—Tran 122

Civics 2 (economics)

132 1—Tooley 300
133 4—Tooley 300

Civics 2 (psychology)

134 1—Fesunoff 304
135 3—Fesunoff 304

Civics 2 (sociology)

136 3—Dent 310
137 6—Dent 310

Civics 2.8A (Chinese bilingual)

138 6—Soo 221

Civics 2.8C (Spanish bilingual)

139 3—Navarrete 330

Civics 2.8D (bilingual support)

140 1—Sciutto 312

World History 2

141 6—Curnow 316

Mathmatic Department

Fund math 1

142 6—Palpallatoc 100
143 7—Palpallatoc 100

Fund math 2

144 1—Palmer 128
145 2—Chow 110
146 3—Chow 110
147 3—Palmer 128
148 4—Muschi 108
149 6—Muschi 108
150 7—Palmer 128

Fund math 2.2

151 1—Cabaccang 130
152 2—Muschi 108
153 3—Muschi 108
154 6—Cabaccang 130
155 7—Cabaccang 130
156 7—Muschi 108

General math 1

157 1—Stiles 104
158 6—Stiles 104
159 7—Stiles 104

General math 2

160 1—Perdue 106
161 2—Cabaccang 130
162 3—Cabaccang 130
163 4—Darrington 100
164 6—Chu 134
165 7—Le 131
166 7—Chu 134

General math 2.8C (Spanish bilingual)

167 1—Ledon 110
168 3—Fettah 100
169 4—Ledon 104

General math 2.8D (bilingual support)

170 4—Chu 134
171 6—Le 131

Algebra 1-CP1

172 2—Stiles 104
173 4—Chow 110
174 6—Chow 110
175 7—Chow 110

Algebra 1.8C (Spanish billingual)

176 4—Fourie 131

Algebra 2-CP2

177 3—Perdue 106
178 4—Perdue 106
179 7—Perdue 106

Algebra 2.A (Chinese bilingual)

180 2—Chu 134

Algebra 2.8F (Vietnamese bilingual)

181 3—Le 134

Geometry 1-CP3

182 2—Perdue 106

Geometry 2-CP4

183 1—Chu 134
184 3—Stiles 104

Trigonometry CP6

185 1—Fourie 131
186 3—Fourie 131

Math analysis-CP6

187 2—Fourie 131

Computer programing 1

188 1—Darrington 100
189 7—Darrington 222

Computer programing 2

190 1—Darrington 100
191 7—Darrington 222

SCIENCE DEPARTMENT

Biology 2

238 1—Peterson 116
239 4—Turner 109
240 6—Turner 109
241 7—Peterson 116

Chemistry 2

242 4—Weinstein 127

Life science 2

243 1—Weinstein 120
244 2—Peterson 116
245 2—Turner 109
246 3—Turner 109
247 4—Morey 112
248 4—Peterson 116
249 6—Peterson 116
250 6—Tontho 114
251 6—Weinstein 120
252 7—Weinstein 120

Life Science 2.8C

Spanish bilingual

253 6—Santos 112
254 7—Santos 112

(Life science 2.8D (bilingual support)

255 1—Tontho 114
256 2—Tontho 114
257 3—Tontho 114

Phycology 2

258 3—Morey 112

Physics 2

259 3—Weinstein 120

OBSERVATIONS OF BILINGUAL AND ESL STUDENTS

The most notable and distressing feature of a bilingual program in a high school is its isolation from the rest of the school. The students are together most of the day, speaking only their native language to each other and to their bilingual teachers. There is little or no communication with other students or staff members, and little or no English is spoken. Additionally, when required to communicate in English outside the bilingual classroom, the students exhibit difficulty or even hostility. The other students in the school are suspicious of them, make fun of them, and sometimes even attack them physically.

On the other hand, students placed in ESL classes and grouped by English proficiency, not by primary language, and taught by speakers of standard English, make rapid progress, socially, as well as linguistically. Speakers of Hindi, Korean, Arabic, Lao, etc. are seen around the campus in integrated groups, speaking English. They appear to have little trouble understanding or making themselves understood. Because they are less visibly alien, they are accepted more readily by the other students.

While the proponents of bilingual education argue that non-bilingual teachers lack a proper understanding of the culture of and sympathy for foreign-born students, we have found that patently untrue. In a school where teacher morale and professional competence is high, teachers can rapidly adapt their methods for non-English speaking students. Our school had a sudden flood of newcomer students in a short period of time, necessitating basic curricular changes without changes in staff. This was met very successfully by In-service training and use of Federal monies for classroom aides. Most teachers new to ESL methods were quick to adapt and pleased at the courtesy and eagerness to learn of the foreign-born students. Bilingual education, at our school was imposed, not because of need, but because of administrative fiat.

To All Administrators, March 31, 1982, WAD No. A-264.

Subject: Bilingual Reclassification Form.

From Albert Cheng, Coordinator, Bilingual Education, 239-0161.

Action required: Notify All Staff.

In compliance with the State Law AB507 (Bilingual Education Improvement and Reform Act), the Bilingual Education Department has developed a procedure and form for reclassifying and exiting a student from a Bilingual/ESL program to an English-only program. The procedures and the Bilingual Reclassification Form (BRF) replace all previous notices and forms emitting students from the Bilingual/ESL program.

The reclassification procedure involves the following major steps;

I. INITIAL RECOMMENDATION

The request for reclassification may be initiated by the student, parent or guardian, teacher, administrator, or other responsible

certificated personnel (e.g. Resource Teacher).

II. ASSESSMENT CRITERIA

A. *Teacher Observation.*—1. Student must be tested by the teacher on the Student Oral Language Observation Matrix and must be no less than Level 4.

2. Latest report card grades for English, Math and Social Studies must be noted.

B. *Academic Achievement.*—CTBS test results must be at or above 36th percentile, in Reading, Math, and Language Arts. Please note date and level.

C. *English Oral Language Proficiency.*—The Language Assessment Scale must be used and administered at the appropriate grade level. This is to be administered at the school site. Test results must be no less than Level 4 (75–84 points).

D. *Writing Skills Assessment.*—Administer the appropriate Writing Mastery Test per grade level. Student must achieve a passing grade.

III. SIGNATURES

Signatures of the school administrator and initiator, plus either the ESL teacher or Bilingual teacher must be on the fori.

After the above, the fori is to be forwarded to the Bilingual Office as indicated for appraisal. The form will be returned to the school with the placement recommendation.

IV. PLACEMENT RECOMMENDATION

If all of the above critieria are met, the student may be recommended for placement in an English-only program. After the recommendation is made by the Bilingual Office, the form will be returned to the school to secure parental consent.

Parent Consent/Signature.—Parental consent is mandatory in accordance with State Law for exiting a LEP student. The parent also has the option to have the student remain in the Bilingual/ESL Program. A separate sheet requesting parental consent is attached and translated into various languages.

After the form has parent's signature, it is returned to the Bilingual Office for processing and computer code adjustments.

I. FOLLOWUP

Follow-up on the student's progress at the 1st and 6th months after reclassification is required. Indicate whether progress at the first month and again at six months is satisfactory. Administrator or designee must sign to indicate satisfactory progress. (If progress is unsatisfactory, student must be re-admitted into ESL and/or Bilingual Program).

II. COPIES

Retain a copy of the BRF in the student's cum folder and send a copy to: Bilingual Education Department, 300 Seneca Avenue, San Francisco, California 94112.

FRED C. LEONARD, JR.,
Associate Superintendent,
Instructional Support Services.
YVETTE DEL PRADO,
Associate Superintendent,
School Operations.

SAMPLE CONSENT LETTER

Dear Parents/Guardian: Your son/daughter———is currently enrolled in the Bilingual Education Program wherein he has received intensive English language training and classes where the native language is used to help him/her progress in the academic areas.

In reviewing your son's/daughter's grades and other test results, we believe that he/she is ready to enter an English only instructional program.

If you agree with our assessment, please check item A and sign your name. If you wish to retain him/her in the Bilingual/ESL program, please check item B and sign your name.

A. We do consent to an English only program.

Parent's/Guardian's Signature, Date.

B. We wish him/her retained in the Bilingual/ESL program.

S.F.U.S.D. BILINGUAL RECLASSIFICATION FORM (BRF)

Student's name, sex, school.

B.O. number, grade, room.

Primary language, program: Bilingual, BILP/ESL.

Initial recommendation (check one):

A. Request initiated by: Administrator, teacher, student, parent, bilingual resource teacher or other—specify.

B. Date initiated: Mo., day, year.

I. ASSESSMENT CRITERIA

a. Teacher observation:

1. Student oral language observation matrix (SOLOM must be at level 4)—Indicate level achieved, date of assessment.

2. Last report card grades: English, math, social studies.

B. Academic achievement: CTBS per grade level, date, (must be no less than 36th percentile).

C. English Oral Language Proficiency K-12 (Language Assessment Scale—LAS):

LAS Score, level, (LAS must be at level 4, i.e., 76 to 84 points) Date of Post Assessment.

D. Writing skills assessment:

Grades 1–5: Macmillan Series E Writing Mastery Test (per grade)—Pass, fail, date assessed.

Grades 6–8: McDougal, Litell Series Writing Mastery Test (per grade)—Pass, fail, date assessed.

Grades 9–12: Writing Sample—Pass, fail, date assessed.

II. SIGNATURES

Initiator, date; school administrator, date; ESL teacher, date; bilingual teacher, date.

Please send this form for approval to: Mr. Albert Cheng, Coordinator, Bilingual Department—San Miguel School, 300 Seneca Avenue, San Francisco, California 94112.

Placement Recommendation (This will be made by the Bilingual/ESL Department).

Recommended Program: retain, exit, date.

Administrator, Bilingual Program, Date.

This form will now be forwarded to the school.

Parental Consent and Signature:

Parent's Signature, Date.

Please return to Bilingual Office for processing after parental consent.

Followup: Evaluation of Student's Progress.

SATISFACTORY

1st month: Month, day, year. Yes, no, signature—Administrator or designee.

6th month: Month, day, year. Yes, no, signature—Administrator or designee.

Note.—A copy of this form must be retained in student's cum folder, and another copy sent to the Bilingual Department.●

U.S. GRAIN TRADE WITH THE SOVIET UNION

● Mr. LUGAR. Mr. President, my colleagues in the Senate have read a host of news accounts recently outlining the pros and cons of agricultural trade with the Soviet Union. The discussion of this issue has been plagued by cloudy thinking, and is in need of some clarification.

I have suggested that any proposed economic sanction be measured against two basic tests: First, would the sale in question serve to strengthen the Soviet economy or military machine, or will it simply compel the Soviet Union to use up scarce foreign exchange reserves to purchase goods which do not add to its productivity?

Second, to what extent will a sanction against the transaction hurt the U.S. economy, and will that degree of damage be justified by benefits to our foreign policy?

Mr. R. A. Lenon of the International Minerals & Chemicals Corp. has written a rebuttal to a recent editorial on this subject in Business Week magazine. This letter offers a viewpoint with regard to U.S. grain trade with the Soviet Union that I share strongly, and I ask that the text of this letter be printed in the RECORD.

The letter follows:

INTERNATIONAL MINERALS & CHEMICAL CORP.,
Northbrook, Ill., July 8, 1982.

MR. JOHN L. COBBS,
Editor, Business Week,
New York, N.Y.

DEAR MR. COBBS: Your editorial "A rough, right decision" (July 5) calls for an embargo on future grain sales to the Soviet Union. Such a step would be a major add-on to the burden already draped around the shoulders of the U.S. farmer and the domestic agricultural community generally. It is unlikely that any intended message would be heard; our allies, with their more pragmatic export policies, could be expected to smile, shrug, and go about their business, while the Soviets would turn, as before, to other readily available sources.

Much of the nearly $1 trillion investment in U.S. agriculture has been made on the premise that upwards of 40 percent of crop output would be sold into export markets. Unfortunately, this country's growth in share of international agricultural markets has come to a halt, and our use of embargoes as a political tool has contributed greatly to the problem.

Looking at the most recent one, the 1980/81 Russian grain embargo, a study by Schnittker Associates estimates that this action cost our country $11.4 billion in national output, almost 310,000 jobs, and $3.1 billion in personal income—plus several billions more in direct government costs. The ill effects still linger in product oversupply and international uncertainty as to the reliablity of the U.S. as a supplier.

We will applaud and support firm U.S. economic actions for constructive purposes, but an embargo on grain to the Soviets would be counterproductive—ineffective abroad, and severely damaging to the American farmer, struggling to survive in an already difficult economic situation.

Sincerely,

R. A. LENON.●

MORTGAGE REVENUE BOND PROGRAM MAY MOVE AGAIN

● Mr. SASSER. Mr. President, Congress enacted the Mortgage Subsidy Bond Tax Act of 1980 in order to bring about certain selected revisions in the operation of mortgage revenue bond programs throughout the country. However, because this legislation was hastily drawn and because of initial Treasury Department regulations governing implementation of the law, mortgage revenue bond programs around the country virtually ground to a halt. This was not the congressional intent of the 1980 act.

In the intervening year and a half, several pieces of legislation have been offered to current the problems brought about by the 1980 act. Also, the Treasury Department has issued new regulations which have resolved some of the problems involved in implementing the statute. These regulatory changes reflect, in some measure, the mortgage bond amendments contained in S. 1348 which I introduced in June 1981. These new Treasury regulations have made it possible for at least some States and localities to issue a comparatively small volume of mortgage bonds.

However, more needs to be done. Many States still cannot participate in the program. Other States have issued bonds but have had to provide substantial State subsidies in issuing them.

Now, the opportunity to make the remaining changes necessary for a functioning, efficient mortgage bond program is available to the Congress. This final reform package was offered by Senator ROTH in the Finance Committee and accepted as an amendment to the tax bill. It provides for a flexible arbitrage limitation of from 1⅛ percent to 1⅛ percent, depending on the size of the issue; reduces the first-time home buyer requirement from 100 percent to 80 percent of buyers, making the program more adaptable to varying local housing conditions; and sets a maximum allowable purchase price at 10 percent over median, again allowing for different regional and local patterns in market and housing stock conditions.

Because these reforms are so important to the future of the mortgage bond program, and because 40 Members of the Senate are cosponsors of S. 1348, the bill I introduced last year toward this goal, Senator ROTH and I have sent a "Dear Colleague" letter to those 40 cosponsors urging their continued support for the reform package when it comes to the floor as part of the tax bill. As we state in the letter, this may be the only opportunity Congress will have this year to make homeownership more available to even a small portion of the homebuying public.

I hope that all of our colleagues, beyond the original cosponsors, will take this opportunity and support the Roth mortgage bond language. I ask that our "Dear Colleague" letter be included in the RECORD at this point.

The letter follows:

U.S. SENATE,
Washington, D.C., July 12, 1982.

DEAR COLLEAGUE:

In view of your interest in the mortgage revenue bond program as a cosponsor of S. 1348 introduced by Senator Sasser in June of last year, your continuing support is urged for the provisions Senator Roth has included as an amendment to this year's omnibus tax bill.

As you probably know, the tax bill now carries provisions which will: permit an arbitrage limitation on a sliding scale from 1⅛ percent to 1⅛ percent; reduce the first-time homebuyer requirement from 100 percent to 80 percent of buyers; and bring the average area purchase price limitations more into line with current market and housing stock conditions. Additionally, the Roth package includes still-needed changes from S. 1348 in prohibiting the forced sale of reserves by issuers.

A key aspect of the Roth language in the tax bill—as in the Sasser bill—is that it does not create an additional cost to the Treasury. The Congressional Budget Office estimate still holds: no net revenue impact.

With no end in sight to high interest rates and the housing depression that has dragged on for 46 months, this legislation will probably be the only means available to Congress this year to enable even a small portion of the homebuying public to purchase a home. Your support for the Roth proposal during floor consideration of the tax bill will help get the mortgage bond program functioning as envisioned in S. 1348, and as it was intended to function under the Mortgage Subsidy Bond Tax Act of 1980.

Sincerely,

WILLIAM V. ROTH, JR.
JIM SASSER.

WEAPONS PROCUREMENT

● Mr. GOLDWATER. Mr. President, recently I wrote to the Secretary of Defense, Caspar Weinberger, concerning our weapons systems procurement and the problems we face in providing for an adequate national defense. I intend to provide a copy of this letter to each member of the House and Senate Armed Services Committees in an effort to generate some improvement in this process.

By also entering a copy of this letter in the RECORD, I hope to encourage management firms, the academic community, and even the defense industry at large to suggest solutions to the multitude of problems we face in defense procurement.

In my view, we have arrived at a very dangerous crossroad in our Nation's history. Unless we quickly revise some of our procurement practices, both in Congress and at the Pentagon, we run the certain risk of a dramatic decrease in our ability to defend this Nation.

Mr. President, I urge my colleagues to consider the thoughts which I provided to the Secretary of Defense and then to work together to achieve some positive solutions. I submit for the RECORD my letter to Secretary of Defense Weinberger, dated July 14, 1982.

The letter follows:

U.S. SENATE,
Washington, D.C., July 12, 1982.

Hon. CASPAR WEINBERGER,
Secretary of Defense,
Department of Defense, Washington, D.C.

DEAR CAP: First, I must tell you that I am going to insert a copy of this letter into the CONGRESSIONAL RECORD. I am going to send a copy of it to each member of the Armed Services Committees of the Senate and the House, and I am hopeful that out of this will come some kind of action that can help the armed services and our country.

For probably the last fifteen years, I have been extremely worried and concerned about the rapidly increasing cost of our armaments. It is one thing to have items that we purchase increase in cost consistent with inflation. But, when we look at the total increase of inflation, let's say from 1970 to 1982 of 102 percent, we find increases in weapons systems costs ranging from figures comparable to this to figures many times larger. I think now only the members of Congress and you, but the American people, have every right to know why these costs have been increased.

Hopefully, Cap, by putting this in the RECORD, we will find some companies or academic groups which might make some offers as to the solutions we seek. I am sending this to members of the Armed Services Committees in the hope that they can also come up with some potential solutions.

There is no easy sclution, but I think there has to be a better way. Let me give you my own personal thinking. The handling of our weapons procurement in Congress has undergone a drastic change and I now question the wisdom of this change, even though at the time I thought it might be wise. I am referring to the budget process. Formerly we sat as committees to authorize purchases for the armed services, and these authorizations would go to Appropriations for their approval. Now these authorizations go to the Budget Committee, which duplicates the Armed Services Committee's actions and they tell us yes or no and where to cut, but not why to cut. Then it has to go through the appropriations process and, in effect, the Armed Sevices Committee doesn't have a whole lot to say about what we buy and what we pay for it. It is left up to committees whose know-how in this field is not exactly adequate nor in-depth.

I would propose that the Congress decide whether or not the budget process is paying off or whether it is causing undue hardship, not just to the military, but to every branch of our government that requires appropriated funds.

The Congressional budget process is not our only problem. After the weapons systems have been chosen and the manufacturer has been granted contracts, then the factory doing the manufacturing, working with a project manager appointed by the responsible branch of our military, is supposed to watch what happens to cost, to progress and to quality.

Now, I'm not faulting our men in uniform who are assigned these jobs, but let me give you a little suggestion here. We assign men from different areas of command to the Pentagon for maybe three or four years,

during which time some of them become project managers. Just about the time they become sufficiently knowledgeable in their particular field, they are transferred to another job.

Now seriously, although I know the officers involved might not appreciate it, you should consider keeping these men in the Pentagon for the remainder of their time on active duty, allowing them to be promoted consistent with their fellow officers.

There is no doubt, Cap, that we can greatly improve the quality of management coming from the Pentagon and I imply no criticism or disrespect for the officers involved. On the other side, I think we can insist that the contractors involved work more closely with the program managers, so that we know the instant that a price may go up. We cannot afford to wait until the price has jumped 50, and in some cases 100 or more, percent with the excuse that inflation has caused the increase. We have watched too many projects go through that process, and we wind up buying equipment at extremely inflated prices. Unfortunately, I suspect these increased prices are due more to increased profit than inflation.

These charges are unpleasant to make, but I think the time has come when we have to look hard at the facts and figures, because we are not going to be able to afford the kind of military we should have. Time after time I have raised the question of whether we can afford it and whether we can make it, and too many times I get the answer, "I don't think we can afford it and there is a question about whether our industrial capacity can produce in quantity or quality."

It appears to me to be high time that we appoint a group, either through the President or through you, made up of academicians, businessmen, and military men, to look into this whole problem because, and I don't want to be repetitious, we are not gaining on the enemy, nor are we even holding our own. I believe that you must give this your immediate attention. I would like to finally feel that some group, someplace, is giving this problem of increased prices, increased costs, and decreased quality serious consideration. It has to be done or I'm afraid we are going to fall behind in the strategic balance with our potential enemy.

With respect and best wishes,

BARRY GOLDWATER.●

THE REAL ISSUES IN ABSCAM

● Mr. MOYNIHAN. Mr. President, yesterday's Washington Post includes an article by Mr. James Q. Wilson, a distinguished professor at Harvard University. In his article, which concerns the congressional inquiry into the FBI's actions in connection with Abscam, Mr. Wilson raises a number of important proposals that I believe warrant our attention. I urge my colleagues to review this article and ask that it appear in the RECORD following my remarks.

The article follows:

[From the Washington Post, July 15, 1982]

THE REAL ISSUES IN ABSCAM

(By James Q. Wilson)

If they are carried on in the spirit which created them, the congressional hearings into the conduct of the FBI during the Abscam investigation will only lower, again, the public regard for Congress and will fail to address the real issues to which Abscam should direct our attention.

During the debates on the expulsion of former Sen. Harrison Williams, Sen. John Stennis (D-Miss.) described the conduct of the FBI as a "national disgrace," and Sen. David H. Pryor (D-Ark.) said that the behavior of the bureau revealed a "total, callous disregard for the rights of citizens." Various senators and representatives demanded an investigation, not of Congress—seven of whose members had been convicted of corruption—but of the agency that detected the corruption and gathered the evidence that stood up in court.

The hope that Congress would make a more dispassionate inquiry into the affair seems forlorn in the light of recent comments, such as those of Rep. Don Edwards (D-Calif.), who thought the FBI investigation had a "totalitarian smack to it."

To judge by such remarks, too many congressmen are addressing the wrong issue. They seem to suggest that offering senators and representatives, who have willingly come to a meeting arranged for them by a bagman, money in exchange for political favors and then arresting them is an improper, outrageous, undemocratic police tactic. It is nothing of the kind. Such undercover operations are essential if law enforcement agencies are to make any serious inroads into narcotics trafficking, political corruption, white-collar crime, and other consensual offenses.

For decades the FBI was unwilling to tackle these problems; now that it has decided to do so—in no small part after being denounced by Congress, during the Watergate episode, for having failed to do this—it finds itself hauled before hostile committees demanding, in effect, an end to such methods. It took a great deal of courage for the director of the FBI and the officials of the Justice Department to proceed with these investigations after so many years during which a past director of the FBI contented himself with merely filing away reports of congressional indiscretions, or possibly using them privately in ways designed to exert influence over Congress.

The record ought to be clear as to what did not happen during Abscam. There is not a shred of evidence that there was an FBI "hit list" of congressmen who would be "targeted" for investigation. There is not a shred of evidence that political partisanship or political ideology played a part in the decision to proceed with these investigations. There is not a shred of evidence that innocent politicians were wrongfully convicted; even the one judge, William B. Bryant, who has reversed the Abscam conviction of former Rep. Richard Kelly, did not deny Kelly took the money or say that Kelly's claim that he took it only for purposes of his own "investigation" was anything but "bizarre" and "nearly farcical." No jury believed the claim that the defendants had been entrapped—that is, induced to commit a crime they would not otherwise have committed. As Judge Jon Newman of the 2nd Circuit Court of Appeals said in turning down an Abscam appeal based on the claim of entrapment, "Any member of Congress approached by agents conducting a bribery sting operation can simply say 'No.'" None did.

But there is an important issue raised by the Abscam case. It has little to do with the law on entrapment or the investigative methods employed; indeed, the investigations of the congressmen were more meticulous in those respects than are the typical undercover investigations of racketeers, fraudulent businesses and narcotics dealers. The issue has to do with the Constitution.

The framers of the Constitution created a system of separate branches exercising shared powers in order to prevent tyranny. That tyrant might be an all-powerful president or an all-powerful Congress (most of the Framers feared the latter more than the former). Whatever the source, the "great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others."

In 1787, scarcely anyone disputed the view that the separation of powers was desirable; what James Madison and his colleagues added to the notion that powers should be separate was the equipping of each branch with both the means and the motives for checking every other branch. "Ambition must be made to counteract ambition."

By relying on the "private interest of every individual" to stand "sentinel over the public rights," the Framers were embracing what the late Martin Diamond termed a "sober view of human nature." Or as Reinhold Niebuhr was to put it: man is good enough to make democracy possible and bad enough to make it necessary. But if we are to rely for freedom on private ambition generating conflict over the management of shared powers, then we are, in effect, saying that we value freedom more morality. The object of the Framers was not to create a pure government, or a pure Congress, but one that would, by reason of its internal divisions, as well as by its dependence on the public will, be unable to tyrannize over us.

By allowing a reasonable scope for the operation of private ambition, we pay a price. From 1941 to 1981, nearly 50 congressmen faced criminal charges; most were convicted. During the 95th Congress alone, 13 present or former members of Congress were indicted of convicted. Most of these convictions occurred when a law enforcement agency had the case dropped into its lap by a person with knowledge of the matter. What is distinctive about the Abscam investigation during the 96th Congress was that the FBI did not wait for a case to appear on its doorstep; rather it actively pursued leads given to it by various informants who had originally turned up during investigations having nothing to do with Congress.

One could devise methods that might well inhibit the avaricious inclinations of certain congressmen. But, I doubt one can easily do that without at the same time inhibiting the legitimate exercise of ambition and self-interest. And as ambition is inhibited, the motive power of the system of checks and balances is weakened. Government would be impossible without a modicum of honor and virtue, but our form of government might not be possible if virtue governed to the exclusion of all other considerations.

The problem for Congress is not to cripple the investigative methods of the FBI or rebuke it for having employed them against Congress, but to devise some reasonable safeguards to ensure that they cannot be employed—out of a desire for either perfect virtue or total power—to weaken the constitutional independence of Congress. Our system of government must fear both a Savonarola as well as a Machiavelli, and though neither is in power today we cannot be certain about tomorrow.

I suggest that investigations of members of Congress, especially those involving intrusive techniques that could, in either incompetent or scheming hands, lead either to entrapment or manipulation, be made subject to review in advance by the third branch of government. Before employing those techniques, the FBI would have to show a small panel of judges, in a private hearing, that it has reasonable grounds for its suspicions and that it has selected it targets on the basis of those reasonable suspicions and not on on the basis of mere rumor or political disposition. I suggest further that the Department of Justice improve those internal arrangements designed to ensure central control over such investigations so that the highest levels of the department, and not a local U.S. attorney, are supervising the employment of these techniques.

There is precedent for such a review in the requirement that a special judicial panel review FBI petitions for warrantless searches in cases involving foreign counterintelligence where the normal procedure of obtaining a warrant would be inappropriate. It is possible some investigations might be forestalled by this review; that would be the price we would pay for maintaining the separation of powers and a Congress not easily intimidated by executive power.

From the record I have seen, I believe the Abscam investigations would have passed such a judicial test. I would also venture that the likelihood of the FBI ever using Abscam-type investigations to intimidate Congress is quite remote; apart from the integrity of its present leadership, there are readily available far more effective methods of intimidation, such as planted evidence and surrilous leaks. Remote as the risk may be, it ought to be reduced while the matter is fresh in our minds.

Two final points. There may be no simple cure for another cost of Abscam—the public naming of innocent parties during trial of the cases. Informants brag and misrepresent; one apparently said he could reach, among others, former senator Jacob Javits. There was no evidence for this at all, but it came out. The problem is that such name-dropping can only be prevented by editing the tapes on which the investigations are recorded, but, if edited, such tapes would become unless as a means of verifying the compliance of the FBI with investigative guidelines. Perhaps the discovery motions of defense counsel can be restricted in their application, or some parts of the tapes could be viewed in camera by the judge, to prevent harm to the innocent.

The other point is that the separation of powers cuts both ways. Congress has an equivalent obligation to respect the independence of the executive branch and to avoid aggrandizing it. I hope that the members of Congress will see fit to criticize fellow members, as they have now criticized the FBI, wherever a congressional investigation becomes a public circus in which innocent persons are abused, unsupported allegations are made and fishing expeditions are conducted. They have not always done so.●

THE ENERGY SECURITY ACT OF 1980

● Mr. DOMENICI. Mr. President, 2 years ago Congress took a major step toward energy independence for the United States. At a time of unrest in the Middle East, skyrocketing oil prices, and domestic energy shortage, the Energy Security Act of 1980 was signed into law.

The passage of the Energy Security Act was the result of a bipartisan effort to construct a coherent, national, energy policy. It represented a major effort by the United States to free itself from dependence on foreign oil and produce at home the energy to fuel our economy and safeguard our national security.

The centerpiece of the Energy Security Act is the U.S. Synthetic Fuels Corporation, a limited life, quasi-governmental agency created to assist in the development of a commercial synthetic fuels industry. The Corporation's sole purpose is to provide the incentives needed to transform our natural abundance of coal, oil shale, and tar sands into a safe, reliable supply of energy.

Today, the Corporation is moving toward achieving the mandate set down for it by Congress. It is a tremendously difficult task requiring a delicate balancing of the technical, financial, and environmental uncertainties of synthetic fuels development against their strategic importance as an energy source.

In May of this year, the Synthetic Fuels Corporation attempted to seek out advice from businessmen, energy experts, and academicians on how best to achieve the goals set down in the Energy Security Act. It called together a 12-member synthetic fuels study panel for a one-time meeting to discuss the major issues facing the Corporation as it brings this industry to commercialization.

Mr. President, a majority of the panel's members produced a report which reaffirms the continued importance of synthetic fuels development. The majority found that the commercialization of synthetic fuels technology is a key national objective and that the Synthetic Fuels Corporation, with its full range of financial incentives, can bring us closer to realizing that objective.

Our efforts to achieve energy independence are as important today as they were 2 years ago. The Middle East remains volatile, our reserves of petroleum are being exhausted while few new ones have been discovered, and oil prices continue to be tied to the actions of the OPEC cartel. The majority of outside experts of the synthetic fuels study panel support the actions taken by Congress in 1980. They believe now, as we did then, that synthetic fuels development will bring the United States a large measure of energy security.

Mr. President, I ask that the paper of the majority group of the synthetic fuels study panel be printed in the RECORD.

The document follows:

THE GOVERNMENT'S SYNTHETIC FUELS PROGRAM: THE CURRENT CONTEXT

(This paper summarizes the discussion and consensus points of the Working Group consisting of: Charles Berg, William Hogan, Kurt Irgolic, Eric Leber, Robert McClements, Amos Meyer, Richard Wainerdi, and Malcolm Weiss. Although this summary is generally accepted by the Working Group, not all members of the Group necessarily subscribe to every statement.)

1. Because of the manifold uncertainties associated with future energy prices and future government policies relating to technical, economic, and environmental questions, the private sector cannot presently justify the significant investments necessary for synthetic fuels projects of commercial magnitude.

2. The volatility of the world energy market is vividly apparent in the recent development with the price and supply of oil.

3. National security concerns (relating to the reduction of fuels imports, economic stabilization, and other societal benefits—as well as strengthening our military defense posture) represent the pre-eminent rationale for continued development of synthetic fuels.

4. Further, the goal of developing experience in synthetic fuels technology commercialization continues to be a key national objective. Thus, there is an appropriate role for the government in synfuels promotion.

5. A primary objective of the Synthetic Fuels Corporation's (SFC) energy program should be to assist in establishing operational confidence in technologies as yet untested at commercial size (thereby helping to reduce associated technical, economic, and environmental uncertainties). It is expected that succeeding generations of plants will exhibit significant reductions in unit costs.

6. Pursuant to this objective, the SFC should—to the extent feasible—encourage a modular approach to systems engineering, design, and construction. This approach can provide a suitable base of technological information with minimum expenditures, minimum risk exposure, and minimum environmental impact. (After satisfactory demonstration of technical and economic readiness, non-federal entities could be encouraged to proceed to full-scale commercialization.)

7. In concurrence with the Board's decision supporting diversity, we recommend that the SFC conduct a project solicitation program directed at the maximum permissible (within the confines of the Energy Security Act) number of resource bases and technologies, thus providing information on and the expansion capacity for the widest range of technical options with commercial potential. This program, moreover, should be fully consistent with national energy policy goals.

8. Among the mechanisms for financial assistance to be used in pursuing these objective are: price guarantees, loan guarantees, and equity partnerships (joint ventures). A full range of financial incentives and instruments helps ensure sufficient flexibility to tailor the economic support package to the needs and constraints of the specific project. Use of a single tool for financial support may not provide an adequate stimulus for private investment. For example, price guarantees—however attractive—at times may be of limited effectiveness because the upper limit on politically acceptable prices may be inadequate to cover risks perceived by investors.

9. The management of the engineering, construction and operation of facilities should continue to be under private sector control. SFC participation should be as cooperative and mutually supportive as possible with the project concern (particularly with regard to facilitating government regulatory review and oversight processes). Further, continuity and predictability of SFC behavior would help establish industry confidence in the government's energy efforts and—specifically—credibility in the SFC's commitment to the advancement of synthetic fuels.

There are appropriate roles for the SFC that go beyond the (financial assistance) provisions set forth in Title I of the Energy Security Act; enumerated below are suggestions for such additional roles.

1. To the extent that government involvement (including that of the SFC) is indicated in the energy field, balanced consideration should be extended to the broadest array of domestic fuel resources, alternate energy technologies, conservation methodologies, and other techniques to improve productivity on a non-discriminatory basis.

2. To provide for a sustained stream of promising technological candidates for future SFC support, the Corporation should encourage through appropriate internal and interagency channels, as well as through liaison with entities in the non-federal sector, a consistent and coordinated program for research and development on synfuels (whether they are narrowly defined as in Title I of the Act or broadly defined as in the item immediately above). We find that research and development is a necessary pre-requisite for the continuing productive expenditure of the federal funds allocated to the Corporation.

3. In the past the production of synthetic fuels from biomass, coal and other fossil fuels was comparatively commonplace. However, many of the technical, operational, economic, and environmental details of these initial experiences have been lost because of inadequate record keeping. We find, therefore, that one of the purposes of the Corporation should be to facilitate the establishment and maintenance of a current, comprehensive body of information on domestic and foreign synfuels efforts. Moreover, it is incumbent upon the Corporation to identify and pursue effective means for transferring this information to the interested public. (Such means could include—but not be limited to—periodic conferences addressing the state-of-the-art, topical publications, development of a computerized data base (with remote access capabilities), and a "hot line" for pressing questions relating to synfuels characteristics (chemical, material, biological, and environmental).

A sound and accessible base of technical, environmental, and health-effects information is essential to establishing a viable synthetic fuels industry. The SFC should take the lead in providing that base—avoiding to the greatest extent possible mistakes made during the development of the commercial nuclear energy industry. A vehicle for accomplishing that objective consists of establishing one or more centers of expertise outside of the government.●

DAVID STOCKMAN AND HIGH INTEREST RATES

● Mr. SASSER. Mr. President, I know that many of my colleagues have wondered from time to time whether the Reagan administration supports the tight money and high interest rate policies of the Federal Reserve Board. For from time to time we have heard various Treasury Department officials, including Treasury Secretary Regan, express discomfort and consternation about the adverse impacts that high interest rates are having on the administration's economic program.

But I would direct my colleagues' attention to David Stockman's recent interview as reported by the July 19 issue of U.S. News & World Report. In that interview, the following question and answer appeared:

Question. Do you give Reaganomics credit for the Federal Reserve Board's tight-money policy?

Answer. We endorsed it; we urged it; we have supported it.

Mr. President, I would suggest that this exchange demonstrates beyond a shadow of a doubt the administration's backing of the Federal Reserve Board's high interest rate policies.●

EYEWITNESS IN LEBANON

● Mr. MOYNIHAN. Mr. President, it is too often the case, as Senator Hiram Johnson of California put it so well in 1917, that—

When war comes, the first casualty is truth.

This is nowhere more true today than it is in southern Lebanon. Throughout the decade-long war in Lebanon, it has frequently been difficult to ascertain from day to day just what has happened. It has been no less difficult during these last few, turbulent weeks.

One searches for reliable, firsthand accounts.

In the forthcoming number of the New Republic, dated August 2, 1982, Martin Peretz will publish his own eyewitness account. Marty Peretz, currently editor in chief and president of the New Republic was a colleague of mine on the faculty at Harvard University and remains a valued friend.

An early copy of that issue has been made available to me today. As the subject addressed by Mr. Peretz—Israel's recent action in southern Lebanon—is of the greatest importance to the Senate, I believe it to be my duty to share this article with my colleagues, and such others as may enjoy timely access to the RECORD.

Mr. President, I submit for the RECORD an article by Martin Peretz, entitled "Lebanon Eyewitness."

The material follows:

[From the New Republic, Aug. 2, 1982]

LEBANON EYEWITNESS

(By Martin Peretz)

Much of what you have read in the newspapers and newsmagazines about the war in Lebanon—and even more of what you have seen and heard on television—is simply not true. At best, the routine reportorial fare, to say nothing of editorial or columnists' commentary, has been wrenched out of context, detached from history, exaggerated, distorted. Then there are the deliberate and systematic falsifications: remarkably little of what has been alleged in various published protest statements against the Israeli action in Lebanon is fact. I know; I was there.

So too, of course, were hundreds of other journalists, most of them honest men and women, hardworking and skeptical. Indeed, if one could contrive to get one's news, only from, say, David Shipler of The New York Times, covering the Israeli side of the war lines, and from Thomas Friedman, also of the Times, working out of the PLO-held zone; perhaps with some occasional glances at David Ignatius's complex impressions in The Wall Street Journal, Eric Silver's reports in The Guardian of London, David Ottaway's dispatches in The Washington Post, and Arnold Hottinger's analyses in the Neue Zuercher Zeitung—and, in deference to the age of visual simultaneity, take in the National Public Radio broadcasts of Jim Ledderman and the telecasts of the Cable News Network and of Independent Network News, which in depth of understanding and respect for viewers' intelligence outclass the big three—then one might have a reasonably balanced view of recent events and their background.

But few of us are immune to the impact of the thirty-second TV news update, the headline that tells all but what's important, the human-interest particular that misrepresents by universalizing, the analogy that warps rather than illumines. (The most obscene of this last is the comparison of Beirut, where six thousand PLO gunmen hold a civilian population hostage to their last-ditch battle with Israel, with the Warsaw ghetto, all of whose inhabitants were marked by ascription for death by the Nazis. This likening of the Jews to the Nazis and of the PLO to the Jews is sometimes made less directly by characterizing the Israeli invasion as "genocidal" and Israeli war aims as "the final solution to the Palestinian problem." It is possible that some use these words sloppily, the way people once talked about American genocide in Vietnam—or Harlem. Others use them knowingly, which is to say, knowing well how inappropriate they are.) Mass culture makes much of our politics derivative of such superficialities: the media, fast-paced for multiple deadlines—early edition, late edition, morning news, 7 o'clock news, 11 o'clock news—are always after new, vivid images of conflict, violent if possible, even if they beg, unrequited, for explanation. Why would anyone be interested in buildings that have remained standing or in bodies that have remained whole? The standing order for the armies of the fourth estate is "good copy." Journalists have a professional interest—and it is a vocational hazard for their thinking—in broken necks and amputated limbs, the equivalent of fires and armed robberies on the local news. So we now have people who are thought and who think themselves informed, we now have editorial writers and columnists, officially certified as informed and also wise, who seem to form their political opinions from news photographs.

And why, after all, shouldn't they? Aren't pictures of human suffering in war evidence enough of the wrongness of war? But those who take their opinions from photographs or verbal evocations of war victims are not pacifists; few of the condemnations of Israel are based on pacifist principles or even on vaguely pacifistic sentiment. And few of those who condemn Israel today condemn others when their actions make for similar

photographs, or worse ones. In any case, pacifism is not politics. All wars hurt, but some wars are conducted differently from others—yes, more humanely, and to more humane purpose. This I argue—this I saw with my own eyes—is Israel's war in Lebanon. It's a war too complicated to tell about quickly, too taxing by way of historical understanding for correspondents armed with a peculiarly American mixture of ignorance, cynicism, and brashness, who jet from crisis to crisis—looking for Vietnam, and, if possible, for Watergate, too. There is one other factor: a cohort of journalists specializing in the Middle East—Jonathan Randal, William Claiborne, Edward Cody, and Jim Hoagland, all of The Washington Post, lead the pack—with a record to defend. The events in Lebanon prove them wrong, some of them deceitfully so, and they shape the facts—as they want to shape the future—to disguise the disservice they've done their readers, which is to say the disservice they've done the truth and, therefore, the foreign policy of our country as well.

About ten days into the war, The New Republic noted editorially that there had been "terrible civilian casualties . . . terrible Israeli callousness." With the specificity that the computer age requires, two numbers had by then been bruited about in the media. One widely cited report numbered the dead at 10,122; another, at 9,583. The figure that took hold in the public's imagination was a neat 10,000 fatalities, to which were added anywhere from 16,000 to 40,000 wounded, and no less than 600,000 refugees. (Another recent figure claims 700,000.) TNR had been skeptical of the statistics from the first, but, deep down, I feared that perhaps the Israelis had actually been "unforgettably bloody," as the Post would later put it, causing "widespread slaughter of civilians." I too had been on television the bombed-out buildings of Sidon.

There is no way to be pleasantly surprised as one travels north from sleepy Nahariya, on Israel's Mediterranean coast, into Lebanese territory. Waterside roads have been strafed, trees uprooted, cars damaged, roofs of the occasional shoreline houses blown out; PLO artillery pieces, carcasses of a self-defeating illusion, litter the landscape. The UNIFIL outposts—those preposterous redoubts of French, Nepalese, Fijian, and Dutch witnesses to the inability of international authority to keep the promise made to Israel after 1978 that Palestinian terrorists would not again assault its settlements—are untouched. The fighting here was fast, and, as army types aseptically put it, "light." No one says that south of Tyre many civilians, or any, were caught in harm's way.

Tyre is where the controversy about civilian casualities starts and Sidon is where it ends. The casualities of West Beirut, whose destiny the PLO holds in its hands, were never counted in the early estimates that first provoked indignation. Tyre and Sidon fell to the Israelis after forty-eight hours of heavy fighting. The cities were bombed from the air, shelled from the sea, set upon over the land. These were not, said a saddened Israeli colonel, "manicured attacks." But neither were they indiscriminate or wholesale; this was no war against a civilian population, Lebanese or Palestinian. Whomever I talked to on the streets—and there are many eager to talk, Christian and Moslem, in French or English or Arabic—pointed out that what the Israelis had targeted were invariably military targets. A friend in the States later remonstrated that this observation implicitly faults the PLO for resisting the invasion. It's not that, not that at all—but rather that the PLO resisted, as it had previously aggressed, from the midst of civilian life, and of Lebanese as well as of Palestinian civilian life. With excruciating consistency, the PLO's commanders seemed to favor for their antiaircraft batteries the courtyards of schools, for their tanks and artillery the environs of hospitals, apartment buildings, and—easiest for them and most devasting for their families—the labyrinthine alleys of the refugee camps, Rashidiye at Tyre and in Ain el-Hilwe at Sidon. The PLO was not alone in turning noncombatant areas into war zones: Jonathan Randal in the Post (June 14) gingerly admits from Aazzouniye that "there were also confused reports of Syrian soldiers being in the area of the sanitarium during the fighting." In Jezzin, more beautiful than Aspen, the reports were not confused. Dr. Naji Kannan told me that he had evacuated patients to his own home from his hospital because the Syrians had installed themselves in its confines and wouldn't leave.

On whom, according to the Geneva Convention's laws of war aiming to set inhibitions on the killing of innocents, falls the onus for civilian casualties incurred in populated areas? Had the Israelis, I asked, shelled areas from which there was no fire? No one, not even the surly young bank clerk in Tyre, suggested they had. The entrance to Sidon and the city center were devastated—and, I was told by locals, that's exactly where PLO arms and fighters were most densely concentrated. The bombed-out, skeletal evidence of a military infrastructure proved it. In this primarily Moslem locale, PLO headquarters stood directly between the Shabb hospital and Al Fatah's own infirmary. All the same, it was apparent that Israeli forces took pains not to damage such buildings, likely to hold civilians. Even in heavily hit areas, many mosques and other public institutions seemed miraculously to survive unscathed. I wondered freely, I should add, with an officer from Dover Zahal, the army's information unit. He had no itinerary beyond my curiosity.

You've seen the destroyed areas on television; you've probably not seen the vast areas adjacent to them or those five of ten minutes away. In the hills beyond Sidon and Tyre, toward the interior, the countryside has been wholly undisturbed. Here and there are shell marks; natives date them vaguely to five or six years ago. The press has systematically ignored the fact that much of the destruction, in the cities and in other locales like Damour, that it describes and portrays on television is a result of seven years of bitter fighting.

In both major coastal cities, hours before the Israeli attack, leaflets had been dropped, calling on the inhabitants to flee to the beaches, which would be guaranteed by the Israelis as open or war-free zones. That's what the cities could have been had the PLO entrenched themselves in the hills and not in the cities. In Sidon, I was told by a local merchant, the PLO firebombed a street a shops to emphasize its intent that people not leave. (Elsewhere, it was rumored, the PLO killed people who wanted to leave, but I did not hear this from a reliable source myself.) Dr. Pinhas Harris, Israel's Scottish-born deputy surgeon-general, who returned from leave at Walter Reed Hospital in Washington, D.C., to direct the medical relief effort in the south, estimated that more than 100,000 people, perhaps 150,000, took refuge on the beaches north and south of Sidon. Two weeks after the fighting, I could see that there had been a vast encampment. Israelis told me that food had run out quickly. "It is not a happy circumstance to escape to the beaches," Dr. Harris conceded, "but had more civilians heeded our warnings, listened to our importunings, the number of dead would have been infinitesimal."

What were the numbers? "Please don't tell us," Mary McGrory wrote Menachem Begin in an open letter in The Washington Post (June 20) "that the figures given by the Lebanese of 9,000 civilian dead are exaggerated." But was it not the numbers which flared tempers? Was it not the numbers which in Richard Cohen's meticulous calculus (Post, June 10) of just how little Israel had suffered from recent terrorist attacks—and not what it had prevented in the past and prevented for the future—that made its response "totally out of proportion"? People who talk about proportionality need to be scrupulous about numbers.

Numbers have always been a problem in Lebanon: there has been no census for more than a generation, lest fresh figures disrupt the political formula for denominational representation which alone allows Lebanon to be imagined as one country. The PLO will not allow UNRWA to do a count of the refugees in the camps lest allocations be reduced. As on Chicago's voting rolls, old people don't really die in the camps; their food rations go on forever. The population of Lebanon is said to be about three million; this makes the figure of 600,000 new refugees in the south transparent nonsense, since that is roughly the total number of inhabitants of the war zone, from the Mediterranean in the west to the Syrian front in the east. Even the scaled-down number of 300,000 refugees defies logic and one's eyes. A number that never seemed to change is of those in West Beirut. Although for weeks correspondents have described—and I saw—long lines of cars laden with people and belongings leaving the PLO-held sector, there always were 500,000 people left; the Israelis' guess is between 200,000 and 250,000. Finally, making the elementary point that when people leave a city its population decreases, Bernard Gwertzman (Times, July 13) estimated there were from 200,000 to 400,000 civilians left. In a sidebar to its March 1981 series on Lebanon, the Post told us that there are 400,000 resident Palestinians in the country. But on July 8, Jonathan Randal, the coauthor of last year's articles, wrote that there are 500,000. Surely it's not the birthrate. Elsewhere the number 600,000 crops up. So what's one or two hundred thousand among journalists? If no one quibbles about these big numbers, no one should quibble about a mere few thousand in the death count. Friedman in the Times tells us that the current population of Sidon is 200,000; Ottaway in the Post says it is 300,000; in the same paper, Cody says it's 200,000. Take your pick.

Given the impossibility of accurately judging the number of the living, it is not surprising that sloppiness and propaganda determine the number of the dead. In the beginning the high toll seemed to carry the cachet of international relief agencies. Maybe that's why Senator Charles Percy, not ordinarily inclined to see the best in the Israelis anyway, accepted the 10,000 figure as close to the truth. But the source was never actually the International Red Cross or any U.N. agency, though they have been widely cited. The numbers came originally

from the Palestinian Red Crescent, of which Yasir Arafat's brother is president. Some early Lebanese estimates were close to his. But the numbers from Beirut about the deaths in the south also defy logic and experience. This past winter there were airplane crashes in Washington and Boston; it took more than a week to know exactly how many were dead. But last month in Lebanon, we received and accepted precise daily figures—and not even from authorities on the spot but from Israel's enemies in besieged Beirut—and elsewhere. (The New York Times even called Professor Edward Said on Morningside Heights in New York to check casualty figures.) Chancellor Bruno Kreisky of Austria, joining the litany for the 10,000 dead, said his source was UNICEF. But in Geneva a spokeswoman for UNICEF declared, "We have not reported any casualty figures at all." A phone call to UNICEF headquarters in New York provoked a stronger denial.

This leaves the International Red Cross, which seems absolutely beside itself to deny responsibility for the casualty numbers. David Ottaway reported in the Post on June 25 that Franceso Noseda, head of the Red Cross mission in Lebanon, claimed that "we did not mention here any figure approaching 10,000." He did say that the only numbers the Red Cross had provided were the counts of 47 dead and 247 wounded in Tyre—and these figures, interestingly, are lower than those put out by Israeli authorities. In Tyre, Dr. El Khalil estimated that between 57 and 63 persons had been killed, including civilians from the refugee camps. Dr. Harris told me that Israel "doesn't estimate the dead. We count them. This is why we couldn't give numbers as readily as the people in Beirut. We had no real numbers until the fallen-in buldings were dug out. Maybe there are a few more we won't find." The Israelis didn't hazard an official number until June 22. They admit to some 250 dead in Sidon. In Nabatiye, the PLO's main base n the center, where the resistance was spotty because Palestinian regulars had run, no one really challenges the Israeli number of ten civilian dead. In a Nabatiye hospital with 60 patients, Dr. Kanon told me there was only one war-wounded, from Sidon. All of this is a far cry from the "many thousands" assumed by Stephen S. Rosenfeld in the Post on June 18.

The refugee estimates have also been brought into perspective. Many of the refugees, in fact, are those returning to their homes in the south, abandoned after the PLO usurpations since 1976. The fact is that the invasion has solved or redressed a refugee problem even as it has created or perpetuated one. (Many of the returning refugees travel by Mercedes, the national automobile. Almost all of these cars are old, almost all of them scarred from the country's long years of fratricide. They are certainly not emblems of the rich; there may be more Mercedeses than cedars in Lebanon. The resilience of the Mercedes in these demanding surroundings suggests that German-manufactured goods outlast nature's most hardy creations.)

Representatives of Oxfam and other agencies are now all over Lebanon, trying to find a way to spend the money they've raised and are still raising. Some of them have gotten into squabbles with the Israelis over bureaucratic obstacles put in the way of distributing supplies. But the truth is that there is no emergency in basic human needs: food is plentiful and cheap. An uproar in Israel and abroad quickly rectified the tendency of both Israelis and Lebanese to ignore the Palestinians' suffering; in the few areas where electricity was still out there was a shortage of flashlights; many people said there was not enough gasoline or kerosene; one farmer told me that insecticide was scarce. The hospitals are, as one medical director put it, "not especially worse off than before"; Medicins Sans Frontiéres is operating freely but without as much to do as it had expected. Jacques Windfeld of the Save the Children Federation-England observed, "I've seen many developing countries where cities look worse normally. Lebanon is a developing country, isn't it?" "The one real need is for construction supplies to help people rebuild," the supervisor of the Joint Distribution Committee's operation in Lebanon told me. "But the need is not insurmountable and it is being addressed." There is already functioning a joint task force from the Israeli Army and the frail Lebanese government to do what's needed in the warm months ahead. Most people said to have been displaced were displaced for only a few days. One indication: David Ottaway reported on June 16 that Jezzin "is said to have become a major refugee center with 200,000 now camping in and around it." When I spent a day in Jezzin a week later they were not there. I don't think Ottaway would vouch for his numbers.

What is clear is that Israel's attack was measured and careful. I was also in Lebanon after "Operation Litani" in 1978, another Israeli action that was, in my view, neither measured nor careful. A slap-dash improvisation, it did not go as far north as this recent campaign and did not embroil big cities. But many villages and towns I saw then were hit, bombed mostly, as nothing—not even the armed Palestinian center, Damour, once and for centuries a Christian town—was hit this time. The inhabitants I saw then were enraged at the indiscriminate harshness of Israel's attack. The townspeople showed no deference to the victors then, no disposition to flatter. TNR noted in 1978 that "air power and artillery were used in ways that turned civilians into targets, killing innocent people and driving thousands from their homes. . . . In some areas, the Israelis fought well indeed. . . . But mostly they used their fire power, the reflex of a modern army, in what can only be called an indiscriminate fashion. Fighting that way is neither necessary nor wise, and Israel was especially well prepared to fight differently. . . . The tactics Israel's army adopted were familiar and disheartening. And those tactics radically devalued what the army achieved."

Nothing comparable could be said about the events of recent weeks. This time, Lebanese of all persuasions and origins have expressed—I heard it myself dozens of times—gratification at their liberation from the PLO.

It is by now certain that the casualties reported out of southern Lebanon were false. "Arabs exaggerate," said an Arab friend to me coyly in Jerusalem. But we need no instruction in national character to know about Palestinian hyperbole. The front page of the The Washington Post on June 12 should have been an adequate object lesson. "Minutes before a ceasefire went into effect," Richard Homan reported, "Israeli bombers destroyed a Beirut apartment building housing the PLO's military command center. A PLO communiqué said more than 100 persons had been killed." Homan then went on to report what is probably closer to the truth: "Beirut radio put the toll at five dead." It's not hard to understand why the PLO, which attacks civilians as a strategy and as a chosen alternative to engaging armed units, is profligate with estimates of the dead caused by Israel: it's one way to try to establish a parity of immorality. On June 25, 1981, the Palestine Information Office published an advertisement in The Christian Science Monitor charging that "over 500 people in Palestinian refugee camps and Lebanese villages had been killed in the previous month by the Israeli military air raids and attacks." On July 7 the Monitor published a most unusual correction of a paid advertisement. It stated that 100, not 500, had been killed from May 25 to June 25, and "of these about 90 resulted from Syrian shelling, about 10 from Israeli attacks." The correction went on to note that, according to Lebanese sources, the total number killed since April 1 had been about 700. "The great majority of the losses resulted from shelling by Syrian forces. About 40 to 50 were the result of Israeli attacks." It is just possible, it may even be likely, that more civilians were killed in Lebanon by the Syrians alone—leaving aside the routine homicidal rampages of the various Palestinian factions and the Lebanese militias—in that virtually unnoticed fighting last spring than in this entire Israeli war, which has riveted so many influential Americans to their seats of judgment. There is a certain promiscuity with zeroes in the Arab world.

III

The relentless trolling of the PLO and its partisans about civilian casualties is directed at two audiences. With elite opinion in the West, it seems for the moment to have won a round. The other target is Israeli opinion, and, more particularly, the fighting spirit of Israel's citizen army.

Many Israeli soldiers with whom I spoke were desolated by the consequences of what they saw as their acts of necessity. They did not need the inflated casualty figures of "many thousands" to feel grief for what they had wrought. "We must be able to weep also for victims of just wars," said Yuval, a nineteen-year-old paratrooper in the elect Golani Brigade. (The Israelis ask that reporters not give last names in identifying ordinary soldiers. So here I willingly abide by the canons of their military censorship.) But Yuval went on to insist that army training establishes fastidious rules about avoiding harm to civilians in warfare. "I do not believe that we Israelis are wholly alone in the world in being so fixed on this issue. But I have no evidence that our neighbors care about it at all, and certainly not the PLO."

In English, the phrase is clumsily rendered as either the "purity of arms" or the "morality of arms." In Hebrew, the doctrine is called tohar haneshek; its origins go back to the 1930s, when, as a companion piece to havlagah or restraint, it established clear and self-denying rules of what was militarily permissible. Zionism then was an intensely ideological movement, measuring its successes againts scrupulous moral standards. The semi-official Jewish self-defense force, the Haganah, insisted on so many prohibitions on exposing unarmed Arabs to risk that, as one old veteran told me, "we took on the most terrible risks ourselves." The Haganah also got itself into an ongoing dispute with the far less meticulous and more indurated Revisionist wing of Zionism, Menachem Begin's precursors in British

Mandate Palestine. In the post-independence Israel Defense Forces, the partisans of tohar haneshek went unchallenged. "Has the sway of the doctrine atrophied," I asked Shlomo Avineri, "with the ascendancy of the Revisionist?" Avineri is one of the world's leading political theorists, a specialist on Marx who teaches at the Hebrew University, and director-general of the Foreign Ministry in the last Labor government. He is not a friend of the incumbents or their theories. (See, for example, the devastating treatment in his new book, The Making of Modern Zionism [Basic Books].) His answer was clear. "If anything, the restraints of the doctrine of tohar haneshek are more compelling now than before," he said, "The army's professionalism, which protects it, is sure. The lapses of Operation Litani have been corrected, strenuously. Moreover, precisely because the Likud is in power and the Labor opposition waiting to pounce on deviations from the army canons, there was much greater sensitivity, much more than ever before, to the fate of civilians during wartime. You know I believe in dialectics: under Begin and Sharon military instructions, the orders of war, from the bottom to the top, were much more explicit with regard to tohar haneshek. The army did the maximum." What Avineri said to me was confirmed by virtually every soldier with whom I raised the matter.

Most of the soldiers I know, like most of the Israelis I know, are people of the left, all of them critics of this government, some of them critics of this war. Udi is one of them. I've known him for three years. Last fall I flew all the way from Boston to Jerusalem for his wedding. Udi is a reservist in field intelligence in the armored corps—made up of those infernal tanks which, once hit by heat-seeking weapons, don't give anyone half a chance to survive. In civilian life, he is a young therapist in training. He takes tohar haneshek seriously; he would do so even if there were no explicit doctrine. "The most awful moment of the war was when, searching through my binoculars for the source of RPG's [rocket-propelled grenades] being hurled at our tanks, I found the faces of twelve- or thirteen-year-olds. What was I to do?" After the fighting was over, he suggested that just possibly they were somewhat older. Probably they weren't older; captured PLO recruitment documents say clearly, "those under 12 years of age will not be accepted" (The New York Times, July 11). So were these children civilian casualties? One of Udi's friends—I don't have his name in my notes—fought hand-to-hand in a refugee camp. Fire seemed to come from everywhere and could come from anywhere. Even in pursuit of terrorists, however, he wouldn't throw grenades into rooms where they might be hiding. He wouldn't understand a phrase like "generate no prisoners." Why, after all, does Israel now hold between 5,000 to 6,000 PLO prisoners from this Lebanon operation? There were six days of close combat in one of the camps. How many Israelis died there? Wouldn't fewer have died if the Israelis relied more on bombing?

Soldiers, like other Israelis, have political opinions and political differences. In contrast to most other armies, these are aired in routinely arranged seminars or bull sessions, even on the front. Such exchanges are part of army life. Professor Avineri, for example, was in Lebanon last week on a reserve assignment with the army education unit, and conducted "fully free and open" discussions with officers and ordinary soldiers on various vexing topics, including whether it would be right or wrong for Israel to move against West Beirut. "The Army doesn't fear these discussions," he told me, "even though it knows that the officers who conduct them, being mostly intelligentsia, are mostly critics of the government or actually on the left."

The only big demonstration anywhere in the Middle East against the war in Lebanon was in Tel Aviv, organized by an army officer-initiated movement called Peace Now. But, as the very dovish Israeli novelist Amos Oz reminds us in the July 11 New York Times Magazine, "Not a single member of Peace Now disobeyed the mobilization orders. . . . Some of them died in the fighting." The first night I was in Israel I met a young Peace Now reservist who had volunteered to fight even though he hadn't been called up. "My unit goes, I go."

The dissent was mostly political or strategic, not moral. It was registered in advance of the war, and also during it. No one really disagreed with the goal of removing the PLO threat in the north; but some thought the costs too high or the goal impossible to achieve. It is a strange army, needing no home-front jingoism to support it; as a lieutenant I know said, "Except for some blatherings from the Prime Minister, we heard no jingoistic slogans. It's better that way." A study done at Bar-Ilan University, released while I was in Israel, shows that, proportionally, more ex-members of the most left-wing of Israel's youth movements, the Hashomer Hatza'ir, join combat units in the army than from any other Zionist flank. Among soldiers such as these, whose political differences with the government are clearest, the greatest offense seems to have been taken at the charges of Israeli callousness or indifference to civilian casualties. "The false and hypocritical accusations coming from people who been unfeeling about our civilian deaths and who speak in behalf of the people who aim only at civilians has caused a backlash," one Labor-affiliated journalist suggested. "Wars can be fought for purposes other than survival, for political purposes. Did the British fight the Falklands war for survival?"

IV

Israel did not go to war against the PLO in Lebanon on behalf of the Lebanese people. Had it done so, its purpose might have been thought illegitimate. So if some alien rump had set up a state-within-a-state, as the PLO had done in southern Lebanon and Beirut since 1976, yet had not at all threatened Israel, there might have been laments in Jerusalem but little or no action from there.

And, of course, there are Israelis who didn't want action from Jerusalem, even if taken solely in Israel's interests. "I was one of them," said Clinton Bailey. "I was dead-set against this war." Bailey, 46, is a native of Buffalo, New York; he is now an Israeli. He is senior lecturer in Middle Eastern history at Tel Aviv University and now finds himself in Sidon, after a stint in Nabatiye, as adviser on Arab affairs to the Israeli military in southern Lebanan. He comes by this post because he is a prominent Arabist; he teaches courses on Palestinian nationalism and Bedouin culture. He's been a burr under the saddle of successive Israeli govenments, having become a tribune for the nomadic Bedouins displaced by modernization in general and, specifically, by the air bases now being completed in the Negev to replace those evacuated in the Sinai. He knows the Arabs and likes them, and not in a patronizing way. A Lebanese municipal official in Nabatiye told me that Bailey was particularly sensitive to questions of Arab dignity, "which is why he made sure that the administration of the city was quickly given over to the Lebanese. We had not really had it for six years."

That's the story I was told by Lebanese all over southern Lebanon, in the big cities and the smaller towns, by Christians and Moslems, by people of all classes and educational levels. "I had thought that the PLO had fought for a foothold in Lebanon," Bailey told me. "Not till I came here and spoke to the Lebanese themselves did I realize what the PLO had done here, that they had established a stranglehold."

That is the great untold story of the last six years. It unfolds in every encounter with a Lebanese, even from those few still sympathetic to the plight of the Palestinians. Everyone has his own grievance, his own memories. The simplest, perhaps the most existential, is that the PLO endangered everyone's lives by making southern Lebanon a target of the Israeli military. But it rarely stops with that. The PLO, it turns out, was not a guerrilla army in a friendly sea.

Khalil, a 25-year-old Moslem who had just left West Beirut, told me that his brother had been killed by a sniper shooting from a Palestinian stronghold. Jabber, slightly younger, said that his family's car had been confiscated by a PLO faction. Hussein said that his sister was constantly being accused of being an Israeli spy: "Not true; she resisted some Palestinian's advances." Ahmet said, "They got their way always by showing the pistolet; if not the pistolet, the Kalashnikov." Toufek—his brother called him Tommy—said, "This was our land and they ran it as if it were theirs." I heard similar complaints dozens of times.

Moustafa Mouein was the representative of the Lebanese Ministry of the Interior in the Nabatiye district, including 42 surrounding villages. Nabatiye, I was told, was deserted over the years by much of its populace. "I walked on mines," Mouein said. "I could not hang the Lebanese flag in my office or the picture of the president." This civil servant described the disintegration of the courts. "An injured Lebanese could get no justice from a Palestinian. The courts were courts of force." He groped for words. A more articulate, more cagey official, Ednan Ibrahim, the town's deputy mayor, arrived. "There was no normal society in the south," he said, in elegant French. "Civil society was paralyzed. There were no functioning judges, no lawyers really. If a judge pronounced a fair decree, who would execute it? The police were the Palestinian militias." It was a tale of kangaroo courts, and of vengeance. This had a wider meaning he wanted to share. "There had not been a civil war between Moslem and Christian in Lebanon. There was a war on the land of Lebanon by two exterior forces to destroy the government and make the country their own. I mean the PLO and Syrians. The PLO wanted to solve its problems on our territory."

I asked both of them whether Western journalists had asked them about life with the PLO during the previous six years. Both said no. One went further: "You couldn't talk to journalists without permission." Later, in the hallway, a minor functionary volunteered, "We were glad the journalists didn't come with their questions. We would have been afraid to tell the truth."

That the journalists didn't come with their questions is clear. (And it's not only in

southern Lebanon where they demonstrated a startling absence of curiosity. How many stories do you remember out of Lebanon about life in the Maronite and Druze areas of the north?) On four successive days in March 1981, The Washington Post ran articles, running to almost six pages, on "South Lebanon: The Forgotten War." The series, by William Claiborne and Jonathan Randal, is very tough on Major Haddad, the leader of an uneasy coalition between Shiites and Christians just north of the Israeli border, and tougher still on Israel. There is, for example, the suggestion that people left Nabatiye because of the Israelis rather than because of the PLO. "'The Palestinians and their leftist allies exercise a kind of wild and woolly control," Claiborne and Randal wrote, "but they are hemmed in by the Syrian Army, which came to Lebanon as a peacekeeping force in 1975." How fortunate for the Lebanese that the PLO was hemmed in: but was the PLO really just wild and woolly, No, not exactly. In Shiite villages, "the Palistinians misbehaved, ruined orchards and crops, and the Israelis simply raised the pain threshold." Even today Post correspondents describe the PLO occupation in benign terms. Tyre "had been run by a local PLO commander in cooperation with local residents until the Israeli invasion." Some Lebanese, of course, did cooperate with the PLO, like the Jumblatt clan. (In Lebanon, extended families are political movements.) But is "cooperation" the word the residents of Tyre used? "Sidon had been a PLO protectorate. . . ." Perhaps a broad meaning of protection is intended here. Alas, it was not the war in southern Lebanon that was forgotten, but the people. That's what Deputy Mayor Ibrahim thinks: "Lebanon wasn't considered during the last six years." And then, with his dignity suddenly turning plaintive, "There is a Lebanese people."

But it was from Beirut that the narrative of the Palestinian grievance was being written. From Beirut last week, Randal cavalierly reduced a complex historical dispute to a phrase: ". . . the Palestinians were expelled from Israel." Simple. It's also in Beirut where the PLO's dreams for redress are formulated and its heroes annointed. In the Post on July 7 Ed Cody eulogized PLO Colonel Azmeh Seghaiyer, apparently killed by the Israelis in Sidon. Azmeh "had participated in training and preparations for a number of operations against Israel including the coastal road assault of 1978 in which more than 30 Israelis were killed. . . . I always thought of him as an honorable military officer . . . you can admire a man even when he is part of deeds you cannot admire—the coastal raid, for example."

The PLO's behavior in the south does not quite fit the neat image its propagandists convey to the press. Confiscations, harassments. Young people forced into the militias, schools closed, rapes, molestations, commandeering of licenses, passports, services, offices: this was the stuff of everyday life in the web of the PLO's "state-within-a-state." A doctor in the former PLO "protectorate" of Sidon reported that the PLO regularly sacked hospitals and doctors' offices for medical supplies. "We couldn't keep our ambulances. The local population suffered." So much so that whole villages and towns were evacuated, sometimes leaving only the aged and the infirm. The Shiite village of Arnon, for example, in the far south, near Beaufort, or Rihane farther north.

I spent some time in others. Aichiye is one. It was a Maronite village of maybe 3,000 people, emptied save for 30, maybe 40, since shortly after a PLO massacre that took 75 lives. I have before me the names of comparable towns with comparable recent histories: Brih, Kaa, Jdaidet, Baalbeck, Kaddam. You've probably never heard of them. I hadn't till last month. There is a similar list of Lebanese towns shot up by the Syrians. No one pretends that the massacres were one-sided—Maronites shed the blood of Moslems, too, rivers of blood. Even Père Boulos Oneid, Aichiye's mayor-priest, admits that. But he still seemed stunned by the world's indifference, and even the Pope's, to the PLO's "rape of my native village. I am happy to be back. Ten or fifteen families return every day. Maybe with the grim lessons of the past behind us we will be able to live better with our neighbors."

It won't be easy. When—and if—the foreigners leave, the local militias, manned by lithe young toughs, smiling and polite and probably trigger happy, will still be around, armed with the hate-filled memories of old men. The Lebanese hatred of the Palestinian is something awful. The Hebrew paper Ma'ariv reported on July 9 that the motto of one xenophobic Maronite militia commands, "It is the duty of every Lebanese to kill one Palestinian." A blood-curdling Times interview on July 10 with two Christian poets left the Israeli colonel who'd accompanied correspondent Henry Kamm "so sick" that he "wanted to leave." Bailey told me, "You can't casually ask a Lebanese doctor to treat a Palestinian patient." It is a human tragedy.

But you can't begin to be able to deal with that tragedy until you look at the sources of the hatred—and the sources of the relief at the coming of the Israelis. Randal has found at least one Lebanese made happy by the war: "Dr. Labib Abu-Zahr . . . could scarcely conceal his joy. 'I'm a son of a millionaire orange grove owner. . . . Now we want to build Lebanon again with marble floors,' he said flourishing a cigar." But is it only Lebanon's vulgar rich who are relieved by the developments in their country? I met no one rich in Lebanon, and everyone I did meet was relieved that the Israelis had lifted from them the burden of the PLO. And not all that far from Damour, where wretchedness has been the fate sequentially of Christians and Palestinians, stands the glaringly plush little community of Doha. It must have been to the nicer parts of Beirut what Bel Air is to Beverly Hills, Hobe Sound to Palm Beach. Doha showed no scars of war; its elegant homes and gardens are islands of corrupt indifference. Huge crates of granite and marble wait to be put into an unfinished house. War had intruded in Doha only when an Israeli general was killed by a PLO gunman in hiding. How had Doha, so close to ravaged Damou and other scenes of heavy fighting these last six years, remained unscathed? "The residents paid high taxes to the PLO and they provided a patrol," I was told by a less protected neighbor who lived nearby. So the PLO, a revolutionary movement of the downtrodden, not only confiscated from those with little but also cosseted those with much. Rowland Evans and Robert Novak, longtime critics of Israel, wrote from Sidon in their syndicated column that for the Lebanese "surviving the PLO was another kind of hell." The PLO was "itself an occupying power," asserted the columnists. The character of PLO rule may just have been an augury of what was planned for the "secular domocratic state in Palestine." Maybe that's why those who look forward to that state weren't eager to examine the model already taking form in Lebanon.

Doubtless if the Israelis don't extricate themselves from Lebanon, they will be seen as an occupying power, as they have become in the West Bank. For now, though, the contrast between the Israelis and the PLO in southern Lebanon is vivid and welcome, a manifestation also of *lohar haneshek*. "Civilized soldiers,' a schoolteacher called them. Do the Israelis loot, I asked? Toufek's sister—we were not introduced—answered from outside the circle of men, "Not a cigarette." But even well-behaved foreign soldiers, around too long, will be seen as intruders. The West Bank is historically disputed territory. Southern Lebanon is not; there is no Palestinian claim to it whatever. So try to figure out why you've heard and seen and read so much about the Israeli occupation of the West Bank and so little about the Palestinian (and Syrian) occupations of southern Lebanon, two chunks of land roughly comparable in size and population, one on everyone's tongue, the other till last month the home of the forgotten Lebanese. Not eyeless in Gaza, but eyeless in Lebanon.

V

Who, then, is doing the censoring? Not the Jews, but the journalists think themselves the chosen people. At the Israeli Army spokesmen's headquarters in East Beirut, I heard one American reporter complain that the daily Israeli press briefing was inconveniently timed. Wars are to be fought for the benefit of the network news. A French journalist and a Japanese photographer, who'd not seen each other "since El Salvador," fell into each other's arms near Beaufort castle. "The Israelis are making it very hard," one of them said. What does "hard" mean? The networks have accused the Israeli authorities of "political censorship" because they've refused to transmit certain film over satellite. I don't recall anything like those petulant outbursts when neither the British nor the Argentines allowed camera crews on to the Falklands. Everybody meekly accepted the official handouts.

Is Israel, at war with the PLO, really morally obliged as a democracy to transmit from its satellite in Tel Aviv ABC's interview with Arafat conducted in Beirut? The Israelis have also clamped down on other newsclips offensive to the censor or merely embarassing. But this is probably the first war in history in which one side provided information services for the other. Must democracies, however, forswear engaging in psychological warfare and must they actually assist their enemies in this regard?

The uproar over Israeli censorship seems to me to be in part a projection. The press censored itself for years on Lebanon. It was not brave, but fearful—as it has been not brave but fearful at Hama in Syria or on the frontiers betwen Iraq and Iran, places where so many more were killed than in southern Lebanon.

VI

I write from the safety of the seashore. The radio reports heavy casualties in Beirut, today in both parts of the city. Again, the death of innocents. Enough have been killed; no one needs the pornography of inflated numbers. West Beirut is the biggest hijacked plane in history, its population hostage of a vanquished army that has not even been asked to surrender but only to leave foreign territory with flag and song and small arms, for elsewhere, perhaps to

those countries which have paid them all these years to operate out of poor Lebanon.

The radio also reports harsh repressive measures by Israel in the West Bank. These make a mockery of the victory in Lebanon which, with the PLO militarily defeated, makes it possible for Israel to take steps, however tentative and groping, toward a more generous peace. Israel is now itself hostage to Begin's ideological hubris, and to his will to be brutal. Tohar haneshek has run its course in the West Bank, and because of Israel's ruling politicians, not its army. The struggle in Israel, I console myself, is not over Lebanon, but over the West Bank, which is what the struggle should be about, the struggle to disgorge, the struggle to find Arab partners in a territorial compromise.

The Palestinians have always been hostage to the recalcitrance of their leaders. For sixty years a compromise was possible between the two peoples whose pasts and futures are inextricably tied to the one land of historic Palestine. But no compromise satisfied the Arab leadership—not even the tiny little statelets proposed for the Jews by the British in the 1930s, not even the partition plan of 1947. The PLO was formed, it is urgent to remember, in 1964, when the West Bank and Gaza and East Jerusalem were all still in Arab hands. Always the Palestinians were hostage to the dream of a map without Israel. That's why the leadership never really permitted the mass resettlement of refugees anywhere. Their homelessness was to fester and explode; the camps were to be the launching pad for the "the return." UNRWA, initially a humanely motivated operation, became hostage to the refusal of the Arabs to find a compromise. It is shocking, but not illogical, that an UNRWA school in Siblin should have served as a training base for PLO terrorists. When Camp David was ratified, committing the parties to negotiations for full autonomy and free elections that might eventually have developed, despite Begin's designs, into an Arab sovereignty, no West Bankers or Gazans came forward to press their case at the conference table. Some of their well-wishers never quite grasped why the Palestinian Arabs did not seize the opportunity provided by Camp David. But the Israelis understood, and rightly, that to the PLO and to those who feared it, any compromise was too compromising. And those who hinted they might want to come forward met with death at the hands of the PLO.

The Arabs of Palestine suborned their rights to the exiles in Lebanon, and the exiles chose armed struggle. The truly enormous caches of arms I saw, heavy arms, from the Soviet Union and North Korea and France and the U.S., were not being stockpiled for the social service organization which Jonathan Randal now says (Washington Post, July 8) is the real function of the PLO. All those weapons, far too many for those who would fight, held the Palestinians in thrall to the idea of some decisive defeat of the Israelis. It was the PLO which, having chosen armed struggle, inevitably provoked it, and was decisively defeated in it. Surrounded and isolated in Beirut, its fighters are hostage now to the idea of dying for Palestine. As in Sidon and Tyre, cities held hostage for six years, they don't care who dies with them, and their partisans don't really seem to care either.

Lebanon's freedom to struggle through to its own complicated destiny depends on the removal of the PLO from Lebanese soil. So, too, only the removal of the PLO from Lebanon will free the Palestinians, there and in the West Bank, from their captivity to the intoxicating and death-dealing notion of no compromise. Those are the stakes in Beirut. (Understanding this, let us put an end to this silly fetish about 25 miles and 40 kilometers. Beirut, in any case, is only 33 miles from Israel's northern border.) What happens in the next days in Beirut, then, will determine whether the Palestinians will be allowed at long last to face reality. The Israelis have won their military victory; this surely is a precondition for peace. But it is not the only precondition; there are others, political ones. Whether the present Israeli government can move to create these remains to be seen. It, too, must face reality.●

THE 1983 WHEAT PROGRAM AND SOVIET GRAIN SALES

● Mr. BAUCUS. Mr. President, on Wednesday Agriculture Secretary John Block outlined the 1983 wheat program. Many of us who represent farm States saw this as an opportunity for the Secretary to provide relief to the depressed farm economy.

But I, like many of my colleagues, was disappointed by the Secretary's program. It is not news to any of us that American farmers are facing the worst economic conditions since the Great Depression. The bumper crops of the past few years have sent prices down. Yesterday in Montana, for example, the price of wheat dropped to less than $3 a bushel.

Low prices, grain surpluses, continued high interest rates and escalating production costs have pushed many farmers in Montana and elsewhere to the brink of bankruptcy.

The administration's wheat program for next year does not, however, address these fundamental concerns. Mr. Block says farmers must take 20 percent of their acreage out of production if they want to participate in Federal farm programs.

He says that reducing production next year will help reduce the surpluses, and therefore stabilize market prices.

This program may provide a way to use up some of the grain glut. But for farmers the question is whether market prices will increase enough to compensate them for reducing their production—and therefore their income—by a fifth.

I do not know if very many farmers are ready to take such a risk.

I had hoped the Secretary would propose a paid diversion program. Several recent studies, including one done by the Congressional Budget Office and a private consulting firm, conclude that such an approach is more cost effective.

The administration's approach to farm exports seems to be equally shortsighted. Export sales are a critical part of the grain market, especially when surpluses are high. But the Reagan administration seems determined to punish farmers by putting export sales on the back burner.

After promising to lift the embargo on grain sales to the Soviet Union, the administration has given little help to struggling American farmers looking for new overseas sales.

The administration is not willing to negotiate a new long-term sales agreement with the Russians. Trade Ambassador William Brock and Secretary of State-designate George P. Shultz confirmed that, in what appears to be a continuation of the ruinous embargo policy of the Carter administration.

Making matters worse, Secretary Block's 1983 wheat program provides only a $300 million increase in the Government's loan program to promote exports. That is pitifully inadequate at a time like this.

Yesterday I joined 21 other Senators in urging President Reagan to reconsider his decision not to renegotiate a long-term agreement with the Soviets.

Farm exports are now forecast to reach $42 billion in the fiscal year that began October 1, 1981. That is 4 percent below last year's level. In the first half of 1982, U.S. farm exports fell 10 percent in value and 3 percent in volume.

The reason for the decline in farm exports is clear: The low level of export sales to the Soviet Union.

All of us—including the administration—are alarmed about the depression in the farm economy. But farmers do not need our expressions of concern. They need action. They need higher prices. They need increased export sales. They need lower interest rates.

Tragically, neither the 1983 wheat program nor the administration's position on exports to the Soviet Union hold relief for American farmers. I urge the administration to reconsider its positions.●

ANTHROPOLOGIST ALFONSO ORTIZ RECEIVES MacARTHUR FOUNDATION GRANT

● Mr. DOMENICI. Mr. President, the MacArthur Foundation recently announced their "no strings" grants which were given out to 19 persons in an attempt to create an atmosphere conducive to first-rate research and creativity. The $14 million committed by the foundation which was funded by the late John D. MacArthur, himself an innovative insurance tycoon, is the latest of a series of awards given to persons outstanding in their respective field, a sort of American Nobel Peace Prize.

One New Mexican who richly deserves this award is Alfonso Ortiz, an anthropologist from Santa Fe. Since no direct applications are accepted by the foundation and recipients of these awards are recommended and thor-

oughly screened, it is obvious that his work in anthropology is nationally known and this further funding of his research work will be valuable as it adds to our collective national knowledge.

I ask that an article listing the grant recipients be printed in the RECORD.

The article follows:

NINETEEN GIVEN "NO-STRINGS" GRANTS OF UP TO $300,000

CHICAGO.—The MacArthur Foundation yesterday announced "no-strings" attached five-year grants of up to $300,000 each to 19 people in various occupations.

The recipients are free to do whatever they want with the money, foundation president John E. Corbally said. However, the foundation hopes the money results in creative research and artistic production.

"The talent is abundant, the diversity so far is impressive and the dedication of each is clear," Corbally said.

"Through the $14 million committed to the program so far, we are providing, at least in part, an atmosphere that should be conducive to first-rate research and creativity."

The new recipients bring to 60 the number funded through the foundation established by the late insurance tycoon, John D. MacArthur.

Among the recipients announced yesterday are writers, physicists, a filmmaker, historians, an ophthalmologist and a musician.

Each will receive an annual award ranging from $31,200 to $60,000.

The foundation accepts no direct applications. Potential recipients are identified through a network of "scouts" and then screened.

New recipients, with the field of endeavor and current residence are:

Fouad Ajami, Middle East affairs, New York; Charles Bigelow, graphic design, typography, anthropology, Boston; Peter Brown, history, classics, Berkeley, Calif.; Robert Darnton, history, Princeton, N.J.; Persi Diaconis, math, statistics, Stanford, Calif.'; William Gaddis, writing, New York.

Also, Ved Mehta, writing, New York; Robert Moses, education, Cambridge, Mass.; Richard Muller, experimental physics, Berkeley, Calif.; Conlon Nancarrow, musical composition, Mexico City; Alfonso Ortiz, anthropology, Santa Fe, N.M.; Francesca Rochberg-Halton, history of science, Assyriology, South Bend, Ind.

Also, Charles Sabel, social sciences, Cambridge, Mass.; Ralph Shapey, musical composition, Chicago; Michael Silverstein, anthropology, linguistics, Chicago; Randolph Whitfield, Jr., health services, ophthalmology, Kiganjo, Kenya; Frank Wilczek, theoretical physics, Santa Barbara, Calif.; Frederick Wiseman, film, Boston, and Edward Witten, theoretical physics, Princeton, N.J.●

MONETARY POLICY

● Mr. MOYNIHAN. Mr. President, Dr. Robert Ortner, the administration's chief economist at the Commerce Department, made remarks yesterday worthy of our notice. Despite predictions from varous administration spokesmen in recent months that the economy would roar back by now, Dr. Ortner noted the most recent decline in industrial production, the 10th drop in 11 months, and identified tight monetary policy as one of the crucial factors.

"Given the present situation, with production down the way it is," Dr. Ortner said, "It would not be damaging or inappropriate if the Fed sped up money growth and brought down interest rates consciously." The current monetary growth targets—endorsed by the President and the Treasury Secretary—are keeping the economy, in Dr. Ortner's words "from getting off dead center."

At long last, reality is beginning to seep into administration thinking. I welcome Dr. Ortner's observations, which coincide closely to proposals I have been advancing for many months.

On March 31, 1982, Senators JIM SASSER and DONALD RIEGLE joined me in proposing a budget alternative based upon a basic shift in the mix of monetary and fiscal policies. I pointed out that the deficits projected under the administration's budget submission—the largest deficits in the Nation's history—were a direct consequence of basic errors in economic policy. Much of these current deficits arise from the impact of the current recession on Government revenues and from the impact of the current unprecedented interest rates on the Government's cost to service the national debt.

The current deficit crisis, in short, could not be resolved until we restore economic prosperity and get interest rates down.

There is little doubt about the central role recent monetary policy has played in bringing on this recession and sustaining the highest real interest rates in American history.

Last year, M_1—the central measure of the Nation's money supply—grew at a mere 2.3 percent annual rate. That was the tightest money policy since 1959, and the sharpest 1-year plunge in monetary growth on postwar history. When supplies of money are sharply contracted, the price to borrow these supplies—the interest rate—inevitably rises. This is simply classical supply and demand. And as these rates rise, consumer spending and business borrowing and investment inevitably decline.

The results are now obvious, even to the administration. We are experiencing the worst recession since the 1930's, with nearly 10 percent of our work force and 30 percent of our manufacturing capacity idle, and the highest number and rate of business failures since 1933.

These hardships could have been averted. In my budget alternative last March, I proposed that the Federal Reserve abandon its unprecedented tight-money policy and return to the monetary growth path originally proposed by the administration in "A New Beginning: A Program for Economic Recovery" (February 18, 1981). There, the administration proposed that "the growth rates of money and credit are steadily reduced from the 1980 levels (7.3 percent for M_1) to one-half those levels by 1986." This original policy would have meant an average 0.6 percentage-point annual decline in M_1 growth rates for the years 1981 through 1986. Under this policy, then, M_1 would have grown by about 6.6 percent in 1981—not 2.3 percent—and millions of Americans now jobless and thousands of businesses now closed be prospering today.

We proposed that the Federal Reserve make up for the precipitous shortfall in monetary growth last year by expanding money supplies for 1 year before returning to the gradual and moderate annual reductions in money growth rates proposed by the President in February 1981.

The administration's chief economist at the Commerce Department now agrees. "How do you break the logjam of the current decline, "Dr. Ortner asked. And he answered, "One day would be if (the Federal Reserve) loosened up for the next 12 months. If they did that, the economy could begin to grow without igniting inflation."

This policy shift would also conform to the directions of the Congress. Last May, I offered a resolution in the Budget Committee directing the Federal Reserve to ease its current policies and return to the President's monetary growth path. The committee chairman, Senator PETE V. DOMENICI, proposed revised language which the committee accepted without objection:

It is the sense of the Congress that if Congress acts to restore fiscal responsibility and reduces projected budget deficits in a substantial and permanent way, then the Federal Reserve Open Market Committee shall reevaluate its monetary targets in order to assure that they are fully complementary to a new and more restrained fiscal policy.

The full Senate adopted this resolution without demur, and the House of Representatives incorporated the identical language in its budget resolution.

This represents the first time in American history that the Congress has directly expressed its view to the Federal Reserve that it reevaluate its monetary policies.

And despite protestations from some in the administration and the financial press, the Federal Reserve has been listening and, in its way, responding. During the first 5 months of this year, M_1 grew at a 7.6 percent annual rate—well above the Federal Reserve's official target range for M_1 of 2.5 percent to 5.5 percent. One note of caution: Over the last 2 of those 5 months, this rate fell to 4.5 percent. And in late June, the Federal Reserve reaffirmed its intention to keep M_1 growth at a mere 3-percent annual

rate for the second-quarter months of April through June.

This is not enough. The Federal Reserve currently is reviewing its annual money growth target ranges, and will report to Congress at the end of July. I urge the Federal Reserve to revise its 1982 M_1 growth range upward, in accordance with the deep concerns which I share with the chief economist at the Commerce Department.

The Federal Reserve and the administration must abandon the dogmatic strictures of tight-money monetarism. They must permit the money supply to expand to the moderate levels required to bring down interest rates and restore this Nation's economic prosperity.●

WOMEN'S RIGHTS NATIONAL HISTORICAL PARK GRAND OPENING

● Mr. D'AMATO. Mr. Speaker, today marks the opening of America's newest national park. Throughout this weekend, the Women's Rights National Historical Park in Seneca Falls, N.Y., will celebrate its grand opening with numerous activities celebrating the birth of the women's rights movement in the United States.

The Women's Rights National Historical Park was established by Congress in 1980 to interpret the story of six sites associated with the 1848 Women's Rights Convention in Seneca Falls, which inaugurated the women's suffrage movement. The park will provide programs for the public about the 1848 convention and its significance in American history.

The story of the 1848 convention is one of courageous and principled women and the community in which they met. Seneca Falls emerged as a bustling mill and manufacturing community along the five natural falls of the Seneca River during the 1830's and 1840's. A rural farming area was transformed in just a few years to a center of milling and manufacturing. The change was revolutionary to women; for the first time women in the area could choose to work in a mill for paid wages, rather than work in the home.

Major change was occurring around Seneca Falls as well. The abolition and temperance movements attracted and created many radicals and reformers. Elizabeth Cady Stanton moved to Seneca Falls in 1847. Since her early youth, Stanton had been concerned about women's lack of equality. They are not allowed to own property. They were not allowed to vote. They were not allowed to retain guardianship or other powers over their children. Stanton was also frustrated and angered by some of the experiences of women in the abolition movement. They were at times not allowed to be delegates or to speak in public. These frustrations combined to create a resolve in Stanton that women should address their grievances.

On July 14, 1848, five reformers met at the house of Jane Hunt in Waterloo, N.Y., adjacent to Seneca Falls. Stanton, Jane Hunt, Lucretia Mott, Mary Ann McClintock, and Mary Wright decided to hold a convention to publicize their dissatisfactions. The women met the next day at the McClintock home in Waterloo and drafted the Declaration of Sentiments, which was a manifesto on women's rights.

On July 19 and 20, 1848, over 300 men and women came to the convention in the Wesleyan Chapel in Seneca Falls. It was the first convention to discuss women's rights and was the beginning of the women's rights movement in America.

Mr. President, I wish to congratulate those who have made the opening of this park possible. It is very satisfying to me to see these efforts brought to fruition. I look forward to the continued growth and development of the Women's Rights National Historical Park.●

THE 150TH ANNIVERSARY OF THE VILLAGE OF PULASKI

● Mr. D'AMATO. Mr. President, I rise to recognize the village of Pulaski located in the center of Oswego County, N.Y., that is celebrating its 150th anniversary this month.

In 1805, the six founders of Pulaski fueled with the same inspiration that had possessed their ancestors to sail on the *Mayflower's* maiden voyage to the new world, set out from their Vermont hamlet for the unbroken forests of upstate New York. These men were eventually joined by their families, and once settled, Pulaski continued to grow. It was finally on April 26, 1832, that the village received its charter.

Now 150 years later Pulaski has developed largely into an agricultural area with some manufacturing. It is a trading center for a large population located along three major highways, and in addition superbly situated for recreational enthusiasts. As a gateway to the Adirondacks and a bordering village of Lake Ontario, a variety of activities can be pursued. Pulaski takes pride in its clean air, pure water, fishing, and hunting facilities, sand beaches and winter skiing and snowmobiling.

I would like to commend this village for 150 years of development and exemplary service to its citizens. Certainly, it is an ideal community in which to work and reside. I congratulate Pulaski on this special occasion.●

U.S. POPULATION

● Mr. PACKWOOD. Mr. President, I wish to report that according to the latest U.S. Census Bureau approximations, the total population of the United States on July 1, 1982, was 231,468,943. This represents an increase of 161,013 since June 1, 1982. Since this time last year, our population has grown by an additional 2,178,852.

In 1 short month we have added enough people to our population to more than fill the city of Providence, R.I. Over the past year, our population has increased enough to fill the cities of Jacksonville, Fla.; Columbus, Ohio; St. Louis, Mo.; and Seattle, Wash.●

RAY LARKIN'S RETIREMENT—A TRIBUTE TO A LEGISLATIVE FOOT SOLDIER

Mr. ROBERT C. BYRD. Mr. President, the spotlight in the Senate is understandably focused on the Senators—those men and women elected from the 50 States and officially charged with making the legislative decisions that govern our Nation.

However, the Senate is assisted in its duties by a battalion of able men and women without whom we could not do our work efficiently and effectively. From time to time, an opportunity arises for us to pay tribute to one or another of those helpful assistants, and today presents such an opportunity.

In 1955, Mr. Ray Larkin began working for the Senate in the employment of the late Senator Harley Kilgore of Beckley, W. Va. Today, after serving in many congressional functions, Ray Larkin is retiring from his doorkeeping position, a position in which he has worked faithfully since 1970. Over the years, Mr. Larkin served in the Documents Room, the Post Office, and on the Capitol Police Force. In every role he played, Ray Larkin performed his duties well and loyally, and he made numerous friends. We shall miss Ray, but we shall not forget him.

Ray Larkin is a native of West Virginia. In World War II, he served in the U.S. Navy. Later, he attended Potomac State College in Keyser, W. Va., where he studied farming and agriculture. He plans now, I understand, to retire to his farm in Paw Paw, where he will be able to put his college studies to work more intensively.

I am sure that I speak for all of our colleagues when I wish Ray Larkin our best in the years ahead, and when I thank him for his many years of helpful assistance in making our work here easier, safer, more enjoyable, and more useful.

Mr. RANDOLPH. Mr. President, I join with my able colleague, Senator ROBERT C. BYRD, in a genuine tribute to Ray Larkin of Paw Paw, Morgan County, W. Va.

Our good friend from the Mountain State has given cheerful and helpful service in the Senate for 28 years. He was always cooperative and effective as he served thousands and thousands of people on Capitol Hill.

VITIATION OF ORDER FOR SESSION TOMORROW

Mr. McCLURE. Mr. President, a parliamentary inquiry. Do I understand that there is an order for the convening of the Senate on tomorrow?

The PRESIDING OFFICER. There is, 9 a.m.

Mr. McCLURE. Mr. President, I ask unanimous consent that that order be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY

ORDER FOR RECESS UNTIL 11 A.M. MONDAY, JULY 19, 1982

Mr. McCLURE. Mr. President, I ask unanimous consent that when the Senate recesses today it recess until the hour of 11 a.m. on Monday, July 19.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. McCLURE. Mr. President, I ask unanimous consent that, following the recognition of the two leaders under the standing order on Monday, there be a period for the transaction of routine morning business for not to exceed 15 minutes with statements therein limited to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER THAT NO ROLLCALL VOTES OCCUR BEFORE 4 P.M. ON MONDAY

Mr. McCLURE. Mr. President, following morning business, the pending business would be Senate Joint Resolution 58, the constitutional amendment calling for a balanced budget; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Mr. President, I ask unanimous consent that any rollcall votes ordered on Monday prior to the hour of 4 p.m. be postponed to begin at 4 p.m. and that the votes occur in the order in which the yeas and nays were ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. I might note that that excludes the final passage of the resolution.

ORDER FOR RECESS BETWEEN THE HOURS OF 12 NOON AND 2 P.M. ON MONDAY

Mr. McCLURE. Mr. President, I ask unanimous consent that the Senate stand in recess between the hours of 12 noon and 2 p.m., on Monday, July 19, 1982.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL MONDAY, JULY 19, 1982, AT 11 A.M.

Mr. McCLURE. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until Monday at 11 a.m.

The motion was agreed to, and the Senate, at 7:44 p.m., recessed until Monday, July 19, 1982, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 16, 1982:

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

George R. Hoguet, of New York, to be U.S. Alternate Executive Director of the International Bank for Reconstruction and Development for the term of 2 years, vice David S. King, resigned.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Charles W. Greenleaf, Jr., of Virginia, to be an Assistant Administrator of the Agency for International Development, vice Jon D. Holstine, resigned.

DEPARTMENT OF ENERGY

Oliver G. Richard III, of Louisiana, to be a member of the Federal Energy Regulatory Commission for a term expiring October 20, 1985, vice Matthew Holden, Jr., resigned.

EXECUTIVE OFFICE OF THE PRESIDENT

Nancy A. Maloley, of the District of Columbia, to be a member of the Council on Environmental Quality, vice Jane Hurt Yarn.

Ronald B. Frankum, of California, to be an Associate Director of the Office of Science and Technology Policy (new position).

CONFIRMATIONS

Executive nominations confirmed by the Senate July 16, 1982:

IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, secton 601:

To be lieutenant general

Lt. Gen. Lawrence A. Skantze, xxx-xx-xx... FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Thomas H. McMullen, xxx-xx-xx... FR, U.S. Air Force.

Lt. Gen. Kelly H. Burke, U.S. Air Force, age 52, for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370.

IN THE NAVY

Navy nominations beginning Glenn Douglas Lattig, to be commander, and ending Kenneth E. Harder, to be Chief Warrant Officer, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on July 1, 1982.

EXTENSIONS OF REMARKS

THE ENTERPRISE ZONE PROPOSAL

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. GRADISON. Mr. Speaker, as one of the original cosponsors of H.R. 6009, I have followed the progress of the enterprise zone proposal with particular interest. There is widespread support in this House for innovative methods to revitalize our decaying inner cities.

Because my district includes a large inner city area, I have seen firsthand the need for new approaches to aid urban areas. The direct spending policies of the past have been limited successes at best. While enterprise zones cannot perform miracles, nor can they stand alone as an urban policy, they offer a much-needed new dimension to our efforts to aid cities. The crux of that new dimension is the emphasis on private sector job creation, a focus which has been lacking from past programs and which is vital to the successful revival of any urban area.

In a recent article in the Cincinnati Herald, Samuel Pierce, Secretary of Housing and Urban Development, clearly and succinctly explains how enterprise zones will work, and how, in conjunction with certain existing Federal programs, enterprise zones can be an important catalyst for urban development. I wholeheartedly recommend this article, which is printed below, to all of my colleagues, but especially to those who have expressed reservations about enterprise zones. Secretary Pierce's description of the proposal should provide answers to many of the questions raised about this legisation.

The article follows:

[From the Cincinnati Herald, June 5, 1982]

AN AMERICAN REVOLUTION IN TROUBLED CITIES

(By Samual Pierce, Jr.)

For more than a generation, America has struggled with the problems of restoring vigor to its depressed cities and rural towns. Billions of dollars have been spent for one well-intentioned scheme after another. The results have been mixed at best, but the costs have grown intolerable.

President Reagan has recommended an experiment-based upon the idea that a "hand-up" is more helpful than a "handout"—to stimulate private sector activity in our cities. Compared to the past decades of ineffective Government grant-in-aid programs, the President's idea is revolutionary. It also offers hope that our most distressed areas can reverse their present fate, and create opportunities for thousands of disadvantaged people.

The enterprise zone program will help new businesses, primarily. It will give them a chance to get started and the opportunity to grow, providing two important ingredients to turning around a distressed area:

Create jobs within the most economically depressed areas, particularly for lower income and minority workers, and

Redevelop and revitalize these places of decay and despair.

The President's proposal for enterprise zones is a good one, and its chances for success are excellent. Many earlier attempts to solve the problems of physical decay and economic stagnation depended almost entirely on Federal grant programs. This program, to the contrary, seeks to get Government out of the way in order to stimulate both private investment and local public initiatives.

Cities will be able to coordinate this program with existing efforts now underway in distressed sections. Enterprise zones will not replace the Community Development Block Grant or Urban Development Action Grant programs, and in fact, both of these proven programs can be used as a major stimulus in a zone.

This will not be a HUD-run program. State and local governments will design and make their own contributions to enterprise zones and develop creative initiatives to help new businesses take root and grow. The role of the Department of Housing and Urban Development will be to select the best applicants to participate in the program—up to 25 per year for 3 years.

The incentives in our proposed legislation are substantial, whether the new business calls for a staff of one, or a factory force of 1,000. It allows state and local governments to balance incentives for employers, employees, entrepreneurs, and neighborhood groups, depending on local needs.

Regulatory relief can also be substantial in an enterprise zone, depending once again on local needs. State and local governments will be authorized to request relief from Federal regulatory agencies. However, no rule will be lifted which would affect civil rights protections, the public health, safety or welfare, or the minimum wage for zone workers.

A significant amount of regulatory relief will come at the State and local levels. In a number of our recent cooperative efforts with local governments, we've seen that local zoning laws, local building codes, and other local regulations can strangle economic development. In many cases, Federal deregulation will be helpful, but in most cases, state and local efforts will make the big difference in the success or failure of the enterprise zone.

I hope that each and every one of them succeed, because the areas that are eligible to become enterprise zones have had chronic problems with poverty, unemployment, population loss, and decay.

Once an area meets the basic requirements for eligibility and has been nominated for Federal approval by both the local and State governments, we at HUD will compare all the applications submitted. The process is designed to be competitive because we want to give the best proposals a chance to prove the worth of the experiment.

Applications which depend on the Federal incentives along will not compare favorably with applications that cut redtape and taxes at the state and local level, involving neighborhood groups in the program, and experiment with improving public service through a greater involvement of the private sector.

I have been asked what factors I will weigh when making my decisions, and what enterprise zone applications should contain, but I want to wait until the legislation is passed and signed by the President before I speculate. In any case, I firmly believe the creativity and innovation shown by so many state and local governments will guarantee far better proposals than any I might speculate about now.

I have said that I think there is a good chance for success with the program. Let me be clear that this is not the "be-all-and-end-all" for urban areas. There are no instant solutions for these longstanding problems. Only a recovered nation's economy and the full success of the President's overall program hold out long term, permanent solutions.

But until that time, the idea of helping the people and places in greatest need is something all of us in the Reagan Administration feel deeply that we want to do. But instead of Government spending, inner-city residents need opportunities. A job is the best social program.

This is the focus of the enterprise zone concept. The program will identify and remove Government barriers to entrepreneurs who are capable of creating jobs and economic growth. It will draw out and build upon existing talents and abilities already present in depressed areas. It will call for the kind of imagination and innovative local leadership and private initiatives needed to bring renewed hope for our ailing communities throughout the Nation.

With the cooperation of the Congress, this idea will have a chance to prove its worth.●

FOREIGN POLICY AND ARMS CONTROL IMPLICATIONS OF CHEMICAL WEAPONS

HON. CLEMENT J. ZABLOCKI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. ZABLOCKI. Mr. Speaker, this morning the Subcommittee on International Security and Scientific Affairs meets to examine the foreign policy and arms control implications of chemical weapons.

Within the next few weeks the House of Representatives will be faced with making a historic decision as to whether the United States should resume production of chemical weapons—after a 13-year moratorium on such production.

Our colleagues in the other body have already expressed their concern over the binary chemical weapons program by adopting an amendment to the fiscal year 1983 Defense authorization bill which prohibits U.S. production of chemical weapons for our allies in Europe unless those allies request U.S. chemical weapons and agree to pre-position them on their territory.

This amendment, which passed by a vote of 92-0, resulted from testimony in the other body earlier this year that the preponderance of binary artillery production would not be for U.S. forces, but for allied use.

Clearly, the views of our friends and allies in Europe—on both binary modernization and chemical weapons arms control—are of critical importance when making a decision on resumed chemical weapons production.

It is for this reason that I wrote to the President on January 7, 1982, expressing concern that a binary production decision at this time could undermine far more important and fundamental foreign policy interests—such as TNF deployment and cooperation on Poland—of the U.S. Government and the NATO alliance.

The Soviet submission last month at the United Nations of a chemical warfare arms control proposal offers a real opportunity to pursue a negotiated ban as opposed to production on new lethal chemical weapons.

The Soviet proposal contains a number of significant changes from the past, the most important of which relate to verification of a chemical weapons arms control agreement.

It is the Chair's view that the very fact that the Soviets took the initiative and tabled this proposal, and addressed the substantive issue of verification, offers the Reagan administration a unique opportunity to resume bilateral negotiations with the Soviet Union.

Let us meet the Soviets head on—resume the bilaterals—and negotiate a verifiable ban on chemical weapons, to stop this new, costly, and dangerous arms race.●

TRIBUTE TO DR. BOOKER T. ANDERSON

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. MILLER of California. Mr. Speaker, on July 21, 1982, Rev. Dr. Booker T. Anderson, Jr., will be honored by the residents of the city of Richmond for his many years of dedicated service to the civil rights struggle of all mankind.

Upon graduation from San Francisco State University, Dr. Anderson studied systematic theology in Atlanta, Ga., and later transferred to Boston University where he graduated cum laude in systematic theology.

Dr. Anderson has always been a courageous civil rights fighter. He carried the struggle to Atlanta, Selma and Montgomery, Ala. He participated with others in the march to integrate the Georgia State Legislature.

He served as director of public relations for the Western Christian Leadership Conference under the late Dr. Martin Luther King. Later, he was appointed a Ford Fellow to study urban planning, designing, strategy, and management.

Dr. Anderson served as president of the Northern California NAACP for 4 years. He served as a councilman and mayor of the city of Richmond, he was a member of the Contra Costa Civil Service Commission for 10 years, 4 of which he served as president. He was also a member of the San Francisco Housing Authority and was later appointed to the San Francisco Community College Board. Presently, he is an elected member of that board. He has been a lecturer at the University of California and the San Francisco Theological Seminary.

Dr. Anderson is married and has two sons, one enrolled at the University of California and the other at Dartmouth University.

Rev. Dr. Anderson is pastor of Jones Memorial Methodist Church in San Francisco.

I join with Dr. Anderson's many friends and admirers in recognition of his dedication and contributions to his country, his community and his fellow man.●

THE OTHER SIDE OF THE VETERANS ADMINISTRATION CONTROVERSY

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. HYDE. Mr. Speaker, I am sure we have all read recent news reports regarding the controversy swirling around the head of the Administrator of the Veterans' Administration, Robert P. Nimmo. As with all things, there are always two sides to a story, but it is rare that both sides are presented.

Therefore, in an attempt to present the other side, I want to share with my colleagues an article which appeared in the June 24 issue of The Stars and Stripes—The National Tribune. The author, Gabriel P. Brinsky, is the national service and legislative director of AMVETS, and his comments are well worth everyone's attention.

THE MUCKRAKERS

(By Gabriel Brinsky)

What brings a man, financially independent, out of retirement to serve his government? A search for power . . . perhaps. A sense of dedication . . . possibly. Or maybe the sense of duty to respond to a call from his President.

Robert P. Nimmo, Administrator of Veterans Affairs, did not seek the position he holds. It sought him. Just as he did several times before as a soldier, he answered his country's call.

Whether Robert Nimmo would answer the call if it came today is questionable. In spite of being a capable and effective Administrator, he has come under severe barrages. Some criticism is warranted, much is not. His biggest problem has been his inexperience in knowing how the game is played in the nation's capital. A person in public life in Washington, D.C. does not honestly and frankly express himself. He speaks generally to express nothing, for to voice a truism could result in the vultures descending in droves.

And there is no denying that the Administrator has committed several faux pas which have antagonized the various service organizations. For this, his wrists have been slapped and they probably will be again in the future. Undoubtedly by now, the Administrator understands and accepts this.

But muckraking is something else. It has no place in our society. None should be exposed to it. And certainly a public servant of Mr. Nimmo's caliber should not be subjected to its abuse. Criticism of his public utterances is one thing. Reflecting on his integrity by slanting or concealing the facts is another.

Which brings us to the allegations concerning his remodeling of the executive offices and his use of a government vehicle.

During a past month or so, the Administrator was attacked on consecutive days on television for his extravagances in refurbishing his executive offices and his use of a chauffeured car. This was followed by press attention at appropriate, calculated intervals, with articles expounding the theme of his extravagant abuses at the expense of the veterans.

What the original fuss was all about was that Nimmo's offices were remodeled at a cost of $54 thousand. The figure is correct but the description is lacking. The inference is that it applied only to the Administrator's immediate office. In fact, the cost covered the entire executive area of the southwest wing of the tenth floor involving all of the staff offices. The expenditures for the Administrator's office alone was approximately $18 thousand.

Even to the most naive, this cost to renovate the Administrator's office, the head of the second largest agency in personnel and the third largest in appropriations, was not only reasonable but extremely modest.

But there is more. The $18 thousand would not have been spent if certain changes were not required because of the former occupant who was confined to a wheelchair. There were no carpets in certain offices and surrounding areas to facilitate the locomotion of the former Administrator. And because of his handicap, he had a special chair which he took with him.

There is no reason why the Administrator of Veterans Affairs should go without a desk or carpets on his floor. Nor is there any reason why he should be required to live with a VA motif wall covering which was damaged, faded, and dirty. Or to accept wallpaper incompatible with the furniture.

Come on! We're talking about a prominent official in our government charged with running an agency with a budget of more

than 24 billions of dollars. Even a middle level functionary is entitled to some perks such as a carpeted floor and a desk. Oh yes, and even a desk chair.

As for the shower that was installed, some funds were expended in providing different accesses to the two half baths in the executive suite. The shower and stall was standard prefabricated, a nonluxurious, unit. Surely, it is not unreasonable for the Administrator, when he needs to leave directly from his office to attend an official function to refresh himself and to avoid smelling like yesterday's clothes. If he is expected to work and to directly repair from his place of work, the least we can do is place a shower at his disposal.

Of course, a big deal was made over the former Administrator's furniture which Nimmo sent to his daughter in the Department of Commerce. Nothing was mentioned of the fact that the former Administrator's furniture was transferred to the Department of Commerce in exchange for executive furniture which they in turn would provide to the Veterans Administration. Since the GSA furnishes all furniture, who got what is really immaterial. It all belongs to the government and no costs were involved.

As for the allegations relating to the Administrator's use of a government vehicle for transportation from home to office, the Veterans Administration's Appropriation Acts do prohibit, since 1978, such use of transportation. Why the Administrator of Veterans Affairs should be singled out and denied such transportation is not clear.

We may wonder how an Administrator with an erratic schedule imposed by uncertain demands can be denied the flexibility of repairing to his residence and reacting to the demands of his responsibilities. Admittedly, remedial legislation is needed.

But apart from all this, it is questionable whether the stories released criticizing the Administrator would have achieved the same adverse impact had certain relevant information been disclosed.

Consider, for example, the fact that it was the Administrator who requested the Inspector General to look into any improprieties. It was the Administrator who requested that his office be furnished, not with new furniture available within the Agency.

It was the Administrator who voluntary gave up an airy, cheerful reception room in order that the space could be utilized for needed office space. The Deputy Administrator and his secretary are now occupying that space.

Consider, too, that the only items of furniture bought for the Administrator were the high back chair and a coffee table. Or consider that the renovation which occurred by the construction of walls was for the purpose of creating two offices where one existed before. This resulted in the addition of five valuable space-saver offices. Maximum utilization of space has never been a valid subject for criticism.

And, of course, the stories made no mention of the cost involved by prior Administrators which would make the $54 thousand expenditure a new low in the poverty level. Nothing was said that the Inspector General concluded his report with the finding that "the renovated space is compatible with the office appointment which has historically and customarily been provided to Agency officials and other top Federal executives."

I believe that Robert P. Nimmo is an effective Administrator and many are grateful for the services which he is rendering to veterans. Sure, he has made mistakes and he is a natural object for criticism. But if it is necessary to condemn him by reason of his acts, let us be fair. There should be some superficial, shallow standards of ethics even among the muckrakers.●

ADMINISTRATION NEEDS TO GET SERIOUS ON ARMS LIMITATION

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. SIMON. Mr. Speaker, one of the things that concerns many of us is the question of arms reduction. After the massive movements in the streets in Europe and the United States, this administration is at least paying lipservice to it. I hope it is more. Motivation is a very difficult thing to judge, but I hope we are serious in our arms control negotiations

And like many, I yearn for strong evidence of our seriousness of purpose.

A publication called the Disarmament Times, published by the nongovernmental organizations who covered the special session on disarmament in New York, ran an article titled: "What President Reagan Could Have Told the Special Session."

What they suggest here makes eminent good sense to me.

I urge my colleagues in the House and Senate to read their suggestion.

More than that, I urge those in the White House who are involved in the decisionmaking to read this.

As one of those who was named a congressional adviser to the special session on disarmament by the President, I confess considerable concern about the general tone and attitude of the U.S. delegation. In addition to the article from the Disarmament Times, I am placing into the RECORD a letter I sent to the President. I also called my senior Senator, CHARLES PERCY, and expressed concerns.

Like many others, I want to be proud of my country and what it stands for. I am proud of my country but not always what it stands for.

Nothing President Reagan could do could secure his place in history more than if he could move us to a meaningful, verifiable arms control package.

But for that to happen this administration is going to have to exert much stronger leadership than I have seen on the issue of arms reduction up to this point.

The supplied material follows:

WHAT PRESIDENT REAGAN COULD HAVE TOLD SPECIAL SESSION

(By Disarmament Times Staff)

With the exception of a proposal for an international conference to develop a common system for accounting and reporting military expenditures, U.S. President Ronald Reagan's speech to the SSD II plenary on 17 June was a recapitulation of previously made statements on U.S. Government arms control policies.

Obviously, as Eleanor Roosevelt once pointed out in a statement Reagan quoted, "empty promises are not enough." Nevertheless, the U.S. President could have presented some new proposals that would have demonstrated that the U.S. Government is sincere in its desire to seek nuclear arms reductions.

What could Reagan have proposed? First, he could have stated that the United States was willing to join the Soviet Union in pledging to a "no first use" of nuclear weapons, *on the conditions* that the Soviet Government take immediate steps to reduce the conventional arms arsenal of the Warsaw Pact countries in Europe to bring them in balance with NATO forces. Such a proposal surely would have been greeted with loud applause in the Assembly Hall. It would have also addressed the fears the NATO allies have regarding the superiority of Warsaw Pact conventional weapons in the European theatre.

Secondly, Reagan could have challenged the Soviet Union to agree to bilateral reductions in the number of nuclear weapon tests. In recent years, the Soviet Government has conducted more such tests than the United States; offering to agree on reductions in this area would have cost the U.S. virtually nothing.

Thirdly, the U.S. could have offered unilaterally to suspend production of chemical weapons as long as negotiations on a ban on chemical weapons production are proceeding. This proposal would have been particularly timely in view of the Soviet's statement on 16 June that it is willing, for the first time, to move in the direction of allowing onsite inspection to verify the destruction of chemical weapon stockpiles and to verify that the ban on production of such weapons is being respected.

Fourthly, President Reagan's statement that the U.S. Government is "deeply committed" to a "strengthening" of the nonproliferation framework would have been viewed more seriously if the U.S. would have pledged itself to exert pressure on the countries that have refused to sign the NPT and submit all their nuclear installations to international safeguards.

Finally, in connection with the proposal that an international conference be convened to establish a common system for the reporting and accounting of military expenditures, Reagan could have gone one step further and added that, once such a system is in place, the United States would be willing to negotiate substantial reductions in military spending.

Even allowing for the fact that the U.S. is not interested in "propaganda," as David Adamson, a specialist in disarmament issues at the U.S. Mission stated at a press conference following Reagan's speech, some effort could have been made to convince the worldwide community that the U.S. is ready "to serve mankind through genuine disarmament," as President Reagan claimed.

HOUSE OF REPRESENTATIVES,
Washington, D.C., June 9, 1982.

HON. RONALD REAGAN,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am grateful to be appointed as a congressional adviser to the United States delegation to the United Nations Special Session on Disarmament.

But I am deeply concerned.

In all recorded history there have never been as many nations and national leaders gathered to concentrate their efforts on the subject of arms limitation. And never has it been more important that our ability to destroy ourselves be limited.

In that atmosphere you have rightly decided to address the United Nations. I applaud that decision. As one of the delegates to the 1978 UN Special Session on Disarmament, I regret the inattention to the first conference by your predecessor.

But the U.S. delegation to the Special Session appears to have no plans greater than avoiding embarrassment and denouncing the Soviets. The Heritage Foundation "backgrounder" on the session appears to be accurate in calling the U.S. posture "largely an exercise in damage limitation for the American delegation." If there is anything positive coming out, anything in the way of hope, anything more than anti-Soviet rhetoric, I have not detected it. I do not suggest that others in your Administration, at Geneva and elsewhere, have not been working hard on the arms control question, but the public stance at the UN is largely negative.

That concerns me for several reasons:

First, it ignores the urgency of the issue itself. This precedent-breaking meeting is gathered on our soil and we appear to have no dream or vision, no plan to use it to nudge the world toward arms control. That ill becomes us.

Second, it shows indifference to those who have serious questions about our motivation. As an official of a country close to us told me recently, "You are our good friends. But we have serious questions as to whether you really want arms control." That concern is widespread among other nations, and among many of our citizens. I am among them.

Third, there are serious reservations among some of our friends who sense that we seem more interested in reviving the Cold War than in establishing a solid peace. At the U.S. Mission to the United Nations there is now an exhibit which pits the United States against the Soviet Union; we are vividly portrayed as the heroes and the Soviets as the villains. I do not believe we need to convince others of Soviet excesses; the UN vote on Afghanistan is clear evidence of that. What is more important is to show other countries that we are serious about the issue of arms control, and the exhibit suggests to some the opposite.

There are three films shown to visitors. One, for example, is "Czechoslovakia, 1918-1968". It portrays what has happened in Czechoslovakia, and the Soviets do not look good. But does showing it contribute anything toward arms control? Or does it convince visitors that the United States is interested in reviving the Cold War? The answers seem to me fairly obvious. It is a boomerang we are tossing at the Soviets which comes back to hit us.

Fourth, agreement with the Soviets on arms control will come only after long and difficult negotiations, but that will happen only if there is at least some modest effort toward creating an atmosphere of mutual trust and respect between our two countries. If we continue with this type of propagandistic effort (accurate as it may be), and if the Soviets then show films about Vietnam, for example, and our involvement there (accurate as that might be) nothing is contributed toward creating the atmosphere that is essential for real negotiations.

It is irresponsible to have a "pie in the sky" attitude about Soviet intentions, or about what can be accomplished in arms limitation. But it is equally irresponsible to be unnecessarily confrontational.

In the 1978 United Nations session the United States missed a great opportunity. In 1982 we could be headed toward an even worse result, unless you do two things:

(1) Instruct our Mission to the United Nations and our delegation to this Special Session to follow a more constructive and positive path, and to emphasize our genuine interest in arms control.

(2) When you speak in New York next week, you may be making the most important talk of your presidency. As important as economic problems are, and other matters which you face day to day and hour to hour, next week you will be addressing the question of whether humanity can survive. You have been blessed with great skills as a communicator. This can be your finest hour and the nation's finest hour, if you seize the opportunity to present a positive program, to create a better atmosphere, and pledge your efforts to achieve significant arms control.

Unless and until these two actions take place the United States will be in the awkward situation of betraying the ideals and hopes of the American people and the hope of millions around the world who now look to our nation for leadership.

Sincerely,

PAUL SIMON,
Member of Congress.●

JUDGING ISRAEL

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. SCHUMER. Mr. Speaker, many voices have been raised in moral condemnation of Israel for her recent actions in Lebanon. I urge all who have expressed such feelings to consider carefully the points presented in the following New York Times editorial of July 1, 1982:

JUDGING ISRAEL

Israel is, or should be, morally "different" from other nations. So say the critics of its pre-emptive war against the P.L.O. in Lebanon, in which uncounted civilians have died. Because Israel was born of the world's revulsion over Hitler's genocide, the critics note, they hold it to a higher code, even in war. Some of these critics are Israelis, struggling to show how morally different they are from their Arab enemies. Are the critics right?

Their case is initially compelling because of the way the war unfolded. The Begin Government, having reneged on its promises of "full autonomy" for Palestinians in the West Bank and Gaza, lied at the start when it said it wanted only a 25-mile cordon sanitaire. Subsequently, it has probably lied about, or at least suppressed, the civilian casualties it has caused.

Throughout, it has been less than honest—certainly unwise—in confusing the P.L.O. with all Palestinian aspirations. And it has seemed obvious almost from the start that the slaughter in Lebanon was clearly disproportionate to any immediate P.L.O. threat.

But even after granting all that, there is another side. Critics of the civilian bloodshed in Lebanon now fail to remember the much-greater slaughter of civilians by which the P.L.O. and Syria took over the country. By remaining indifferent until the Israeli intervention, the world has erected a cynical double standard.

That does not excuse Israel from the obligation to relate ends to means, but it surely explains why most Israelis now scorn the opinion of mankind. If the world wishes to counsel the Israelis, let alone give them moral lectures on why they must adhere to a higher standard, then let the judging be fair:

Why is it wrong for Israel to threaten tens of thousands in west Beirut to get at a few thousand remaining P.L.O. fighters—but not wrong for those fighters to hide in civilian neighborhoods, using innocent people as hostages? As The Economist reported while criticizing Israel's assault on Sidon: "Civilians trying to escape from the camp were shot, apparently by the guerrillas. . . . Palestinian prisoners the Israelis sent in to plead for the civilians to be freed are also said to have been shot."

Why is it wrong for Israel to fight to restore a once-friendly Christian power in Lebanon—but not wrong for the P.L.O. and Syria, with Arab League sanction, brutally to have destroyed that power?

Why was it wrong for Israel to let the P.L.O. grow strong enough to make all of Lebanon its base—but not wrong for Syria, Jordan and Saudi Arabia to support that buildup on someone else's territory and at Israel's expense?

Why is it wrong, woefully wrong, for Israel to ignore the aspirations of Palestinians who lost their roots to Zionism—but not wrong for other Arab nations to exploit the dispersed refugees while refusing for decades to partition the old Palestine?

Why, in short, should Israel be held to higher standards of moral conduct when most Arab states still deny it even the lowest attributes of nationhood: safe borders and legitimacy? Why should Israelis believe that what the P.L.O. was allowed to do to Lebanon was not also its program for Israel?

Such brutal warfare required more justification than Israel has so far provided. It needs to answer some hard questions. Even a less-embattled nation would feel obliged to follow so costly a triumph with a plausible, generous program for coexistence. Nonetheless, by fair standards, if it will finally accept the responsibility of its might, Israel deserves understanding for its plight.●

HALTING POLLUTION OF OUR COASTAL WATERS

HON. JAMES J. HOWARD

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. HOWARD. Mr. Speaker, the Marine Protection, Research, and Sanctuaries Act, commonly known as the Ocean Dumping Act, was enacted in 1972 as a result of concern over the effects of unregulated ocean dumping. The act established a policy to prohibit or strictly limit the ocean dumping of materials harmful to people or the marine environment. The 95th Congress strengthened this legislation

with my active support and established a deadline to terminate ocean dumping of harmful sewage sludge by December 31, 1981. The 96th Congress amended this law to include a ban on the dumping of harmful industrial wastes by the same date.

As my colleagues know, I have been working to help end ocean dumping along the New Jersey coastline. H.R. 6113, the Ocean Dumping Act amendments was reviewed by the Public Works Committee in June of this year. It is my hope that the entire Congress will join with me in supporting a strong Ocean Dumping Act.

The following article appeared in the June/July 1982 issue of National Wildlife. The necessity of pursuing an expeditious cleanup of our ocean is clearly evident from this article:

HOW FRAGILE IS THE OCEAN?

(By Jerry Adler)

WHILE SCIENTISTS SEARCH FOR THE ANSWER TO THAT COMPLEX QUESTION, THE NATION CONTINUES TO POLLUTE ITS COASTAL WATERS

For decades, the barges have crossed the green waters of the New York Bight, headed for the same little patch of ocean beyond the mouth of the Hudson River. They bear sewage sludge—millions of tons of it—the concentrated byproducts of the commercial, industrial and metabolic activities of ten million people, rich in heavy metals, synthetic organic compounds and intestinal pathogens. There is nothing on or below the surface to mark this spot as special; its only distinction is to be found on the map, which shows that it lies exactly 12 miles from land—just beyond the "contiguous zone" of legal jurisdiction—and equidistant from the shores of the two states that use it, New York and New Jersey. Hatches open and the barges dump their loads—quickly, for they are near major shipping lanes. Then, they head back to shore, where only recently has anyone thought to ask what happens to the sludge when it hits the water.

Only in the last few years have oceanographers observed that the patch of sea chosen as a mutual dumping site by the two states in the 1920s lies right on the Hudson River fishway, connecting deep water and estuary. At times, it is also in the path of currents that sweep the discarded poisons toward the beaches of Long Island. Unfortunately, today, scientists still do not understand the physical laws by which man's toxins disperse, dilute and settle in the ocean. "Our survival is linked directly to the sea," notes California marine scientist Sylvia Earle, "yet we know as little about much of the ocean as we do about the moon."

For that matter, it is not even certain that we humans can predict the workings of our own laws. Many Americans—apparently including many members of Congress who voted for it—believed that a 1977 amendment to the federal Ocean Dumping Act would prohibit virtually all marine disposal of sludge and other wastes after December 31, 1981. It turns out that they were mistaken; last year, a federal judge in New York indefinitely extended New York's right to use the 12-mile dump site while the alternatives are studied once again. By the time a final decision is rendered, predicts Ken Kamlet, director of the National Wildlife Federation's pollution program, "1981 will be virtually an ancient memory."

The Environmental Protection Agency (EPA), which vigorously opposed ocean dumping under the Carter Administration, has switched signals and is now refusing to appeal the judge's order. That, fears Kamlet, "is a clear signal that the ocean is once again fair game." At least two other East Coast cities have expressed interest in resuming ocean sludge dumping, instead of trucking it to expensive landfill sites. Currently, the EPA is in the process of relaxing the nation's ocean dumping regulations.

Like the air, the seas suffer from the tragedy of the commons: there is no economic incentive for we humans to protect them, because for any individual, the benefits of having a "free" dump outweigh the costs of adding to the worldwide burden of pollution—at least until that burden is so great that it poisons us all.

Given enough information about the underlying strata, a geologist can predict with fair accuracy what will happen to sewage sludge deposited on land: which layers it will penetrate and which it won't, where it will disperse and where it will collect. Beneath the deceptive surface of the ocean, there is an invisible structure as complex as any that exists underground. But with the sea, there is the added complication of constant motion.

Powerful forces layer the ocean horizontally and keep currents flowing in their channels, as if by invisible banks. Salty Mediterranean water spills out through the Strait of Gibraltar and forms giant lakes out in the middle of the Atlantic, inexplicably refusing to mix with the surrounding ocean. Particles of lead or iron at the ocean's surface are kept in suspension by gradients of temperature, density or salinity. But they don't accumulate there indefinitely, because they are eventually ingested by zooplankton and sent to the bottom mud in the form of fecal pellets. Midocean rifts, explored for the first time within the past five years, turn out to be alive with gushing hot springs that recycle the ocean's water continuously, taking some chemicals out of solution and adding others—and supporting thriving communities of sea life in self-contained food chains.

Is it any wonder—given the depths of our ignorance about the ecology of the sea—that on the crucial subject of sewage sludge, two researchers at the prestigious Woods Hole Oceanographic Institution in Cape Cod, Massachusetts, can come up with completely opposite and contradictory recommendations? John Ryther, a specialist in aquaculture, believes that the main danger from sludge is eutrophication of the bottom from its rich load of nutrients. He favors dispersing the sludge far out into the open ocean.

Ryther's colleague, Holger Jannasch, a microbiologist, recommends precisely the opposite course: diluted in the ocean, he says, the components of sludge will never reach a sufficient concentration for microbes to begin the work of decomposition. We have enough problems, Jannasch believes, without disseminating all of the intestinal viruses of New York throughout the Atlantic.

If danger threatens, we might hope that it would be signaled by the fish, which are, after all, continually sampled by the world's fishermen. But such signals are notoriously difficult to interpret. We can take pictures of anchovy schools by satellite, but overall, our baseline data on fish populations is so scanty as to be almost useless. Did the wreck of the tanker *Arrow* in the early 1979s off the Scotian shelf wipe out the herring spawning ground there? Marine biologists suspect so, but there is no way to prove it.

In the laboratory, oil deranges a wide variety of processes in almost every organism studied, but in the ocean, it has to rain dead fish before oceanographers can say for certain that an oil spill has killed anything. That is a disturbing notion to the fishermen whose livelihoods depend on the resources of Georges Bank—the 12,000-square-mile area off New England that is one of the world's most fertile commercial fisheries, and which is currently the site of increasing offshore oil exploration. A major spill at Georges Bank could be a catastrophe. What's more, Jelle Atema, a researcher at Woods Hole, has discovered an added danger from oil drilling: the sticky muds that are pumped into wells to flush out the drilling canal appear to be highly toxic to lobsters. The problem needs further study.

The plight of marine biologists has been likened to that of a naturalist who visits Minnesota in September and again in February, and then concludes that there has been a massive duck kill because he no longer sees any birds. Hundreds of square miles of the North Atlantic are regularly denuded of much of their zooplankton by quirks in the Gulf Stream. As the current meanders erratically, east of Cape Hatteras, it may make a deep loop to the south (or, more rarely, the north). If the base of a southerly loop pinches together, it forms a ring of warm Gulf Stream water circling a core of cooler water from the continental slope—a ring that may be a hundred miles wide, and that may drift off by itself for months before disintegrating in the Sargasso Sea. It carries with it all the cold-water organisms in the core, which are trapped by the warm water around them. As the ring breaks up and the core water slowly warms, the creatures die by the billions—victims of an ecological catastrophe.

In the past, we may have enormously underestimated the productive capacity of the oceans. An obscure class of photosynthetic bacteria—sometimes called picoplankton, because they contain one picogram (one trillionth of a gram) of carbon per cell—turns out to be almost omnipresent in the oceans, accounting for as much as a quarter of the sea's total biomass. Although they had been described by researchers as far back as 1965—and, in fact, had been cultured in a laboratory at Woods Hole—it was not until 1979 when a team from that institution discovered the creatures virtually filled the oceans.

Knowing so little, it was easy for us to imagine the worst. Like medieval mapmakers, we have filled the unknown void with monsters—except that ours were molecules, ugly, bristling carbon chains and rings, hydra-headed with chlorine and phosphate radicals. We could imagine them accumulating invisibly beneath the waves, parts per trillion becoming parts per billion, becoming parts per million, until the deadly threshold is crossed and the plankton, the single-celled foundation of the food chain, rebel and stop photosynthesizing. Or the culprit might be mercury, the pollutant responsible for "Minimata Disease," a hideous outbreak of posioning that struck a community of Japanese fishermen beginning in the 1950s. Mercury also was the focus of a major health scare in the United States a decade ago, during which many Americans were afraid to eat tuna.

Lead also had its prophets of doom; since man began putting it into the atmosphere (chiefly in the form of auto exhaust), the amount of lead in the oceans has increased by a factor of ten in some places, reports Clare Patterson of the California Institute of Technology. In a "cloud" of lead whose bottom boundary now extends several hundred yards below the surface, the North Atlantic registers concentrations as high as 30 to 40 parts per trillion, compared with 2 to 4 parts per trillion in the South Pacific. Patterson acknowledges that no widespread ill effects on marine life are yet apparent, but he has stopped eating oysters as a direct result of his research. He also believes that we are nearing "the borderline at which perturbations occur. We have to act now."

The monsters may well be real; it is surely too soon to tell. Almost everyone agrees that the continued accumulation of low-level synthetic organic waste in the oceans will ultimately end in disaster. But some scientists are growing less concerned about the worldwide effects of metals and naturally occurring petroleum; what impresses them is not the occurrence of Minimata Disease, but the fact that it has not manifested seriously anywhere else except in that one confined and exceptionally polluted bay. Says Derek Spencer, associate director for research at Woods Hole: "We have moved away from the view of ten years ago that the ocean is a very fragile thing."

It may be that there is room in the ocean for some of man's wastes, even within the strict requirements of the Ocean Dumping Act, which prohibits activities that "unreasonably degrade" the marine environment. Peter Anderson, head of marine and wetlands protection for the EPA's Region Two, which includes New York, gives an illustration of reasonable degradation: the dumpng of inorganic acid waste, such as ferric chloride, a byproduct of pigment production that is currently discarded off the coast of New Jersey. Seawater is a weak base, he says, so the acid is quickly neutralized. Plankton or other creatures hit directly by the acid as it comes off a barge would, of course, die, but the population quickly rebounds to fill the gap. In terms of degrading the environment, it has no more lasting impact than digging a hole in the ocean.

Nevertheless, environmentalists are alarmed, and with good reason. The long-standing EPA policy against issuing permits for ocean dumping where any feasible land-based alternatives exist may soon be altered. In drawing up new criteria for issuing dump permits, the EPA may place more emphasis on observable effects directly at the dump site, and less on hypothetical dangers to a whole ecosystem—a potentially fatal mistake when dealing with the deceptive ocean. "Some metals may be more toxic when they reach the ocean bottom than they were on the surface," says George Knauer of the Moss Landing Marine Laboratories in California. There is also concern over the possible disruptive effects of synthetic organic chemicals, such as PCBs, which may not show up for years. "Even if the oceans are very robust," notes Wayne Stobo, a fisheries expert at the Bedford Institute of Oceanography in Nova Scotia, "as you keep pumping in poisons, you'll reach a level where the oceans can't absorb them. Once you reach that crisis state, the game is obviously lost."

In deciding whether land or ocean dumping is best in a particular case, the EPA may decide to give more weight to the onshore pollution problems associated with soil and drinking water. That seems only reasonable—but it breaches an important principle: that the oceans deserve unique and totally disinterested protection. It is precisely because the sea has no one to speak for it that the federal Ocean Dumping Act was necessary in the first place.

And the law was never more necessary than today. We have done everything to the ocean except dry it up, and the lesson of history is that we would have done that, too, if there was money to be made at it. Yet in recent years, some progress has been made in protecting the seas. If we are careful and lucky, then the oceans, where all life began, may not be the place where it all ends.●

HONORING MR. LOREN M. BARNETT

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. LEWIS. Mr. Speaker, on July 27 the Associated General Contractors, San Bernardino-Riverside chapter, will honor Mr. Loren M. Barnett on the occasion of his retirement from the California Department of Transportation. It is with great pleasure that I join in honoring Loren Barnett.

A native Californian and lifelong resident of Redlands, Calif., Mr. Barnett served the people of California for 41 years in the Department of Transportation and its preceding agency, the California Division of Highways.

Loren graduated as a civil engineer from the University of California in 1941. Following graduation, he began working for the division of highways in San Bernardino where he has worked until his retirement except for a 6-year term in the military.

In World War II, Loren served in the U.S. Navy from July, 1942 to May, 1946. He achieved the rank of Lieutenant Commander in the Naval Reserves. Again Loren served his country during the Korean conflict from November 1951 to November 1953.

Loren Barnett was instrumental in the construction of all major State highways in San Bernardino and Riverside Counties from 1946. He has disguised himself since 1964 as a deputy district director and assistant district engineer in district 08 of the department where he has directed the maintenance and construction activities of the district.

A leader in community activities, he has been actively involved in the civic and youth programs of his native Redlands, Calif.

Mr. Speaker, I take great pride in recognizing an outstanding public servant and community leader, Mr. Loren M. Barnett, and commend him to the House of Representatives.●

HISTORY LESSONS

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. BEREUTER. Mr. Speaker, we all want peace; no one will dispute that. But there are different ways to achieve and maintain peace. History can provide us with examples of methods that did and did not work, and recently the Sioux City, Iowa, Journal urged us to examine that history as we consider the future of the nuclear arms race.

Noting that arms control treaties have never deterred those who are determined to break them, the Journal said in an editorial entitled "History Lessons" that demands for unilateral disarmament and freezes in the West leave the Soviet Union with little incentive to bargain. The Journal then concludes that President Reagan's course of rearming while negotiating is a wise one. I have included the entire editorial in the RECORD.

[From the Sioux City Journal, June 26, 1982]

HISTORY LESSONS

History offers scant evidence for the notion that signing arms control treaties helps to keep the peace or deter aggressors. As historian Barbara Tuchman noted in a recent essay, nations bent on conquest have always found ways to evade arms limitations that constrained their ambitions.

Germany and Japan were classic examples during th 1930s. The Soviet Union behaves in a similar fashion today, cynically violating long-standing prohibitions against the use of chemical and biological weapons.

Accordingly, the arms reduction proposals put forth by the Reagan administration and reaffirmed by the president last week in his speech to the United Nations' special session on disarmament, may be doomed to failure. The Soviets may continue to reject them or, having "accepted" them, may cheat even as they are now cheating massively on the terms of the 1925 Geneva Protocol and the 1972 Biological Weapons Convention.

Even so, Reagan has good reason for pressing the Soviets hard on arms control issues. To do otherwise would be to surrender the high ground in what has become a full-blown propaganda war launched by the Soviets. Losing this war could have disastrous consequences. Among them: a further unraveling of NATO; an erosion of domestic support for rebuilding the American nuclear deterrent, and casting the Kremlin in the undeserved role of spurned peacemaker.

Then, too, there is always the possibility that resolute diplomacy backed by unquestioned military strength just might persuade the Soviets to accept and abide by a genuine arms reduction agreement. However remote that possibility, Reagan must pursue it.

He must also show he understands the growing disarmament movement in the West. If the nuclear debate in the United States becomes politically divisive, it will soon doom any chance for successful negotiations with Moscow. The Soviets will have

little incentive to bargain in good faith, much less agree to actual reductions in their nuclear arsenal, so long as Western governments are under mounting pressure to make unilateral concessions.

The tone and contents of the president's UN speech were welcome indications that he understands the need to negotiate from a position of strength with the Soviets while simultaneously reassuring at least the more thoughtful among the peace marchers in the West.

Thus, he underscored the administration's commitment to avoiding war, nuclear or conventional. But he also noted that merely signing arms control agreements that cannot be verified and are not adhered to is an exercise in building "paper castles." Exactly so.

Reagan called upon the Soviets to demonstrate their oft-proclaimed commitment to arms control and disarmament with "deeds, not words." He repeated the administration's standing offers to rid Europe of all intermediate range nuclear arsenals of both superpowers by one-third, and reduce the size of the conventional forces fielded by NATO and the Warsaw Pact.

Taken together, these proposals go far beyond those offered by any previous administration. Indeed, they far exceed the nuclear "freeze" offered by Soviet President Leonid Brezhnev and endorsed by many disarmament activists in the West.

The Soviets can prove that they too desire an end to the arms race by meeting Reagan halfway, and by permitting adequate means of verification. If they refuse, as history suggests they will, the Reagan policy of arming while negotiating will have proved an indispensable insurance policy for keeping the peace.●

WHAT OUR DEFENSE REALLY NEEDS

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. SIMON. Mr. Speaker, Melvin R. Laird, the Secretary of Defense in the Nixon administration, recently had an article in the Washington Post in which he calls for serious negotiations with the Soviet Union for reductions in nuclear weapons and for greater attention to more conventional weapons.

I am placing his article in the RECORD.

[From the Washington Post, Apr. 12, 1982]

WHAT OUR DEFENSE REALLY NEEDS

(By Melvin R. Laird)

The United States must send strong, clear—and sustained—signals to the Soviet Union about our national security resolve, and that is why we need to redirect the focus on the defense budget.

If we do this, if we ensure that our nation has a realistic deterrent, we can increase strategic and conventional readiness, and avoid overwhelming "out year" expenditures that will tax congressional and public staying power.

As we face major changes in the makeup of the leadership of the Soviet Union, I am concerned about the dual problems of security in the world in which we will live and the extraordinary threat posed by nuclear weapons.

The zero nuclear policy advocated by President Reagan last fall on intermediate nuclear forces in Europe was a major start toward responsible arms control negotiations. A worldwide zero nuclear option with adequate verification should now be our goal in all arms control negotiations—the freeze-now option is dangerous.

The principal strategic needs of the United States and the West have little to do with a multiplicity of nuclear weapons systems. This is particularly true inasmuch as I am confident that our missile-firing submarines will remain invulnerable through this century. New fiber optic detective systems and other breakthroughs may make attack submarines vulnerable during this period because of the speeds they are required to travel. This is not the case with ballistic-missile-firing submarines because of their different operational requirements.

Our principal defense needs in this decade have instead to do with such requirements as the ability to keep open the sea and air links of the alliance, the ability to hold ground without resort to nuclear weapons, and the ability to project and sustain power at great distance.

The general perception of the current Defense Department and of many Americans seems different. Multiple nuclear weapons systems are accorded highest priority and are seen to be central to military strength. Nothing could be further from reality. This is a bad misconception.

The security of the United States, the Western alliance and the Free World deeply concerns me. The United States and its allies must take the lead to provide and maintain a realistic deterrent and usable military strength in the service of freedom.

In the long run, the danger of nuclear war can be averted only by serious negotiation with the Soviet Union for reductions in nuclear weapons of all kinds to zero. These weapons of mass destruction may be important for political purposes, but they are useless for military purposes. They do increase enormously the dangers of military confrontation.

Our true strategic military needs have little to do with nuclear weapons except to deter their use against us. These needs have much to do with the fact that America and its allies are a far-flung array of nations, separated by distance and by oceans. The Warsaw Pact, in contrast, dominates the heartland of Eurasia. It follows that we must be able to keep open the sea and air links that bind together the alliance, to hold ground on the borders of Europe and elsewhere, and to project and sustain power at great distance. None of these objectives requires nuclear weapons.

It is essential that we recognize and support the increased emphasis given defense in allocation of resources. But this emphasis is seriously misdirected in giving priority to nuclear weapons systems. We need instead to focus on quality people, on usable military technology, on operations and maintenance and on coherent military organization. If we are not prudent in our defense buildup, we will lay the basis for a defense let-down.●

FIRE ISLAND NATIONAL SEASHORE

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. DOWNEY. Mr. Speaker, today I introduced legislation to amend the Fire Island National Seashore Act. The Fire Island National Seashore was established in 1964 to preserve and protect one of the last relatively unspoiled natural barrier islands in the Northeast for the use and enjoyment of future generations.

Fire Island is a unique resource. It is located only 50 miles from New York City and has one of the finest ocean beaches in the world. It also has magnificent dunes and spectacular maritime forests including the famous sunken Forest Preserve. Although there are bridges at either end of Fire Island, there are no roads to mar the beauties of the island. Access to most of the seashore is by ferry or footpath. Within the boundaries of the seashore are 18 scattered small heavily developed communities, primarily consisting of single-family homes and cottages and the businesses serving them and day visitors. There are about 4,500 such structures today compared with fewer them 3,000 when the seashore was established. Future growth is estimated at about 1,000 additional structures.

The act exempts private property within these communities from condemnation, with some exceptions, provided that the local authorities have in effect zoning ordinances which conform to standards promulgated by the Secretary and which are approved by him. No current local zoning ordinances have been approved by the Secretary, although three of the four zoning authorities have made the necessary amendments and the fourth one is expected to follow shortly. No new commercial use or expansion of existing ones is permitted without the approval of the Secretary of Interior. Property subject to a variance or nonconforming use loses this exemption. Since the subdivision in many communities originally was intended for modest cottages, under present zoning laws many plots are buildable only under a variance. More than one-third of the structures built since 1964 received a legal variance under New York law.

Public Law 95-625 created an ocean-front dune district to prevent any further development on the protective dune system. Owners of undeveloped property within the dune district are permitted to retain title provided the dune is kept in its natural state.

The first zoning standards were promulgated by the Secretary in 1967; the

latest revision was in September 1980. The standards contemplated low density of use to protect the environment, mostly single-family homes, and limitation of commercial uses to those serving the needs of the communities. The idea was to keep private development within bounds appropriate for a national park. Unfortunately this scheme has not been entirely successful. The high demands for vacation rentals on this most desirable island has led to the sometimes illegal conversion of single-family homes into multiple dwellings or rooming houses. Bars, discos, and hotels have been established in violation of zoning standards.

Enforcement of standards by and large has been a failure because Congress authorized condemnation as the only enforcement tool. The Secretary has no authority to obtain an injunction in Federal court. We twice have raised the authorized ceiling for land acquisitions, but annual appropriations have not been adequate. Furthermore, in these times of fiscal constraints, the National Park Service puts a low priority on using scarce land acquisition funds for enforcement. A Federal court has criticized this scheme as follows:

> In their justifiable frustration plaintiffs have sought relief from the courts but it is clear that only Congress can provide the remedy . . . nevertheless, precatory though our words must necessarily be, we cannot help but urge those with the power and authority to preserve this gem of an island to halt their procrastination and get on with the urgent business of saving this charming and fragile outpost of nature before the encroachment of haphazard development irrevocably despoil it. (*Biderman* v. *Morton*, 497 F.2d at page 1148-49).

This bill offers a way out of the dilemma. It is one which will cost the taxpayer little or nothing. It is one which avoids retiring from private use expensive property with little or no public value. It also is more flexible and respectful of private property owners.

It is important to emphasize that the broad powers the Secretary now has and the additional powers this bill would grant are intended to be used only in instances when the municipalities are unable or unwilling to enforce the zoning standards. The principle of home rule in this area is primary. The Secretary's powers are a "court of last resort."

It is intended that the Secretary shall use the powers given to him only in cases of gross violations which degrade the character of the communities or which threaten the natural resources which the Seashore was established to protect. The Seashore now has a land acquisition plan that takes into account these fine distinctions. Congress cannot take on the burden of enforcing the Secretary's zoning regulations or making judgments on individual instances. But we can provide a better and more cost-efficient mechanism than now exists.

This bill does two things: It allows the Secretary to sell acquired property with a covenant for a conforming use and to retain the proceeds for future enforcement action. It also gives the Secretary the option of applying to the U.S. district court for an injunction against the nonconforming use pending the condemnation. These are not "new" powers. What is new is the way in which they are being applied.

The "turn-around" provision, acquiring a nonconforming property and selling it for a conforming use, has been in the Lands and Waters Conservation Act. It has not been used in the Seashore because the proceeds from such sales do not go back in the Seashore but into the general fund. This bill would establish a "revolving fund" to put proceeds of the sales right back into the Seashore only for the purposes of implementing the act.

One reason the deterrent has not been effective is that the safeguards Congress has built into land acquisition procedures to protect the interests of private property owners have a built-in time delay. Where development pressures are as great as they are at Fire Island, these put the property owner who is determined to violate the standards in a "no risk" situation and the Government in a "no win" situation, which guarantees a loss to the taxpayers.

Testimony before the House Appropriations Subcommittee on Interior and Related Agencies, March 17, 1980, documented a number of recent instances in which building in violation of standards was carried on even after the Secretary had initiated use of his condemnation powers. Before the required proceedings had been completed, the Government was faced with paying fair market value for a developed or partially developed tract instead of for vacant land. The National Park Service then either backed away from the whole situation or expended hundreds of thousands of dollars needlessly.

The provision to permit the Secretary to apply for an injunction will give him the ability to act swiftly to prevent such exploitation. It does not confiscate property rights because at the end of this procedure one of two things happens: either the property owner is paid fair market value for his property, or he decides to use it in conformity with the zoning standards. If the property is acquired, this bill provides for the "turn-around" and the ability to use appropriated funds similarly for future potential violations.

This is not exactly a "free lunch" proposal. There will be some costs. But it does protect both the public interest in preserving the island and the Public Treasury. It also is more equitable for private property owners than what we now have and will allay the concerns some Fire Islanders have expressed in the past about the Seashore's acquisition and condemnation policies.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fire Island National Seashore Amendments Act of 1982".

SEC. 2. Section 2 of the Act entitled "An Act to establish the Fire Island National Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e-1), is amended by adding at the end the following new subsections:

"(h)(1)(A) The Secretary shall sell any property described in subparagraph (B) of this paragraph acquired by condemnation under this Act—

"(i) to the highest bidder;

"(ii) at not less than the fair market value; and

"(iii) subject to covenants or other restrictions that will ensure that the use of such property conforms to the standards specified in regulations issued under section 3(a) of this Act which are in effect at the time of such sale and to any approved zoning ordinance or amendment thereof to which such property is subject.

"(B) The property referred to in subparagraph (A) of this paragraph is any property within the boundaries of the national seashore as delineated on the map mentioned in section 1 except—

"(i) property within the Dune District referred to in subsection (g) of this section;

"(ii) beach or waters and adjoining land within the exempt communities referred to in the first sentence of subsection (e) of this section; and

"(iii) property within the eight-mile area described in the second sentence of subsection (e) of this section.

"(2) Notwithstanding any other provision of law, all moneys received from sales under paragraph (1) of this subsection may be retained and shall be available to the Secretary, without further appropriation, only for purposes of acquiring property under this Act.

"(i)(1) Upon or after the commencement of any action for condemnation with respect to any property under this Act, the Secretary, through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prevent any use of, or construction upon, such property that—

"(A) fails, or would result in a failure of such property, to conform to the standards specified in regulations issued under section 3(a) of this Act in effect at the time such use or construction began; or

"(B) in the case of undeveloped tracts in the Dune District referred to in subsection (g) of this section, would result in such undeveloped property not being maintained in its natural state.

"(2) Any temporary restraining order or injunction issued pursuant to such an application shall terminate on the date the United States acquires title to such property or, if such proceedings are terminated without the United States acquiring title to such property, on the date of such termination.".

SEC. 3. Section 3(e) of the Act entitled "An Act to establish the Fire Island National

Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e-2(e)), is amended to read as follows:

"(e) If any property, including improved property but excluding undeveloped property in the Dune District referred to in section 2(g) of this Act, with respect to which the Secretary's authority to acquire by condemnation has been suspended under this Act—

"(1) is, after the date of the enactment of the Fire Island National Seashore Amendments Act of 1982, made the subject of a variance under, or becomes for any reason an exception to, any applicable zoning ordinance approved under this section; and

"(2) such variance or exception results, or will result, in such property being used in a manner that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time such variance or exception took effect;

then the suspension of the Secretary's authority to acquire such property by condemnation shall automatically cease.".●

EDWINA PADGETT HONORED FOR HEROIC ACT

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. GIBBONS. Mr. Speaker, on July 28, the American Automobile Association will present seven young people the highest award given to members of school safety patrols throughout the United States, the AAA School Safety Patrol Lifesaving Medal.

The seven recipients, credited with having saved a life while on duty at their school patrol posts, will be honored at special ceremonies during AAA Day at the World's Fair in Knoxville, Tenn.

This year's medal recipients will join a list of 249 youths from 28 States and the District of Columbia who have been honored since the program began in 1949.

AAA has sponsored school safety patrols nationwide since 1922. Today the program includes more than 1 million children at 50,000 schools throughout the country.

One of the recipients of the 1982 award is from my district. She is Edwina Padgett, 10, of Tampa, Fla.

Edwina will be honored for her quick action and heroic act. In September 1981, after only 10 days on duty with the school safety patrol, she entered the street and pulled a 6-year-old from the path of an automobile that proceeded through a red light.

Edwina should be recognized for her exceptional judgment and courage in a dangerous traffic situation.●

MOUNT ST. HELENS BILL WIDELY SUPPORTED

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. BONKER. Mr. Speaker, the House of Representatives soon will consider H.R. 6530, legislation to create the Mount St. Helens National Volcanic Area.

The most important thing Congress can do for communities around Mount St. Helens is act quickly to turn the mountain into a new research, recreational, and economic base.

H.R. 6530 will establish a 115,000-acre protective area, to be managed by the Forest Service. Scientific research and traditional recreational opportunities, such as hiking, fishing, and hunting, will be given priority in management of the area.

The legislation is a carefully considered compromise, based on extensive hearings and input from the scientific community, timber interests, and conservationists.

The entire Washington State House delegation has cosponsored H.R. 6530, an impressive display of bipartisan support.

Our starting point was not an easy one. Small mills in southwest Washington and Oregon had advocated a 40,000-acre volcanic area; Gov. John Spellman, Republican, had endorsed a 113,000-acre plan; scientists offered a 155,000-acre protective area and environmentalists rallied around a 216,000-acre national monument proposal.

The compromise encompasses the top priorities of scientists and environmentalists, while preserving the timber base so important to southwest Washington and Oregon.

The work of all parties involved—forest products interests, scientists, environmentalists, and area residents—has been nothing less than admirable.

I submit letters of support for House passage of H.R. 6530 by Burlington Northern, Inc., Weyerhaeuser Co., the American Institute of Biological Sciences, the former Ecology Program Director of the National Science Foundation, Sierra Club, Wilderness Society, and Audubon Society be place in the RECORD at this point.

BURLINGTON NORTHERN INC.,
Seattle, Wash., July 9, 1982.

Hon. DON BONKER,
Cannon House Office Building,
Washington, D.C.

DEAR CONGRESSMAN BONKER: I would like to take this opportunity to thank you for your efforts regarding H.R. 6530 which would establish the Mount St. Helens Volcanic Area.

Burlington Northern supports the designation of these lands as a volcanic area to preserve its unique scientific and educational value. As you know, we have already indicated our support by announcing our intent to donate certain lands around the crater and at Spirit Lake for inclusion in the proposed Volcanic Area.

Because we hold other lands within the proposed Volcanic Area, Burlington Northern also supports those provisions of the bill which provide for U.S. Forest Service acquisition of lands and interests within the Volcanic Area through a legislated exchange. We believe this provision will expedite the development of the Volcanic Area, and by consolidating ownership of these lands under the Forest Service it will provide for more effective management of the Volcanic Area.

While Burlington Northern has not taken a position with regard to specific boundaries contained in H.R. 6530, we would like to commend both you and sponsors of the Senate bill for making every effort to fairly balance the interests of those who have called for both smaller and larger boundaries. As you know, we have made a one time offer to open those lands that we will exchange into for open bidding to help offset concerns surfaced by some national forest timber purchasers.

Given the diverse and often competing interests, involved in this bill's process, it is phenomenal that you and your colleagues have developed a consensus bill in such a short period of time. In many respects this legislation goes a long way toward meeting the needs of all who have expressed interest in the proposed Volcanic Area.

Sincerely,

RICHARD M. BRESSLER,
Chairman and Chief Executive Officer.

WEYERHAEUSER CO.,
Tacoma, Wash., July 15, 1982.

Hon. DON BONKER,
Cannon HOB,
Washington, D.C.

DEAR CONGRESSMAN BONKER: Weyerhaeuser is supportive of Mount St. Helens legislation that will establish a volcanic area set aside for recreation and scientific study that also provides for flood control and protection of the downstream communities. We support Forest Service management of that area and thought the original proposal of 84,700 acres was adequate for these purposes.

As the largest private landowner in the area, one of our principal concerns has always been adequate provisions for the fair and timely exchange of our land and timber inside the proposed boundaries for U.S. Forest Service land and timber outside that boundary. We are pleased with the exchange provisions contained in House Bill 6530 and believe they reflect a fair and equitable arrangement that should be reflected in the final bill.

We believe the Washington State Congressional delegation has done an admirable job of pulling the divergent interests involved in this issue together and producing legislative proposals acceptable to all parties involved, as well as the general public.

We hope this bi-partisan spirit of compromise will enable speedy passage of House legislation on Mount St. Helens.

Regards,

J. WILKINSON,
Vice President.

AMERICAN INSTITUTE
OF BIOLOGICAL SCIENCES,
Arlington, Va., June 22, 1982.

Hon. DON BONKER,
Cannon House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE BONKER: The major eruption of Mount St. Helens in the Gifford Pinchot National Forest in southwestern Washington provides an excellent opportunity for the scientific investigation of the effects of volcanic activity. The AIBS, a consortium of 38 scientific societies in the biological sciences is extremely pleased to learn that legislation has been introduced to establish a volcanic area for scientific studies. We would like to express our support for the bill which you have introduced in the House, particularly since your proposed legislation provides for the untouched areas necessary for biological investigation.

Because of this eruption, biologists have an unusual opportunity to study a wide variety of important phenomena, including recolonization strategies, tests of island biogeography, ecological succession and physiological stress. Many studies are already in progress and we wish to emphasize the importance of biological as well as geological research in this area. Biological research projects require adequate control areas, and therefore we are pleased to see that your proposal would include land not directly and obviously affected by the volcanic eruption.

Please let me know if we can be of any assistance to you in securing support for your bill.

Sincerely yours,
ARTHUR C. GENTILE,
Executive Director.

GEORGE MASON UNIVERSITY,
Fairfax, Va., July 1, 1982.

Hon. DON BONKER,
434 Cannon House Office Building,
Washington, D.C.

DEAR SIR: This letter is written to support the establishment of a National Monument at Mount St. Helens, Washington.

For two years I served as Ecology Program Director at the National Science Foundation and during that time I had the responsibility of funding and overseeing ecological research on the mountain. It was my privilege to interact with dozens of environmental scientists throughout the Pacific Northwest and to tour the volcanic site on two occasions, both on the ground and by helicopter. Because this major eruption and its devastation to nearly 200 square miles of pristine forests provided a once-in-a-lifetime opportunity for unique research, NSF and other agencies, federal and state, have quite properly supported millions of dollars of research projects. It cannot be stated too many times that the Mount St. Helens eruption in May 1980 continues to provide an exceptional opportunity for biological and ecological research—natural recovery of major forest ecosystems, effects of volcanic ash and debris on wildlife, potential devastations of insects and the like.

The ecological research projects on Mount St. Helens have necessarily embraced large experimental areas. For these projects to be meaningful to the scientific community, they require equally large control areas, namely unaffected contiguous forests at different levels, slopes, climates, and the like.

I, therefore, wholeheartedly support the concept of a National Volcanic Monument for research and your compromise bill to include at least 115,000 acres in the Monument.

Sincerely yours,
DAVID W. JOHNSTON,
Professor of Biology.

SIERRA CLUB,
Washington, D.C., July 9, 1982.

Hon. DON BONKER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BONKER: We have reviewed the legislation which you have introduced to designate Mount St. Helens as a National Volcanic Area, H.R. 6530.

We believe it takes the proper approach by protecting the geologic and ecological features of the area in a comprehensive manner. Its requirements that the U.S. Forest Service manage the volcanic area primarily for natural succession is a key provision to insuring that the volcano remains a living laboratory for future generations of citizens and scientists. The bill includes important provisions insuring recreational and visitor access. For these reasons we support the passage of H.R. 6530.

Your bill represents a method of protection of many of the key areas surrounding the volcanic cone itself. While we are disappointed other areas of scientific and technological importance were not included, we urge you to seek passage of this bill through the House of Representatives.

We wish to thank you for your leadership role you have taken on this issue and hope to work with you in the future in protecting this national treasure.

Sincerely,
TIM MAHONEY,
Washington Representative.

THE WILDERNESS SOCIETY,
Washington, D.C., June 25, 1982.

Hon. DON BONKER,
U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE BONKER: I would like to express The Wilderness Society's strong support for H.R. 6530, a bill to establish a 115,000-acre protective area around Mount St. Helens.

Although we originally testified in favor of, and would like to have seen a 216,000-acre area around this unique resource protected (H.R. 5787), we feel that H.R. 6530 has struck an acceptable balance. Some important areas will not receive the level of protection we would prefer. The 115,000-acre proposal does go quite far, however, in protecting areas of foremost importance for scientific research, watershed protection, fish, wildlife and recreation which were excluded from the original protective area proposed by the U.S. Forest Service.

We appreciate and commend your continued diligence and hard work on this measure and look forward to the passage of H.R. 6530.

Sincerely yours,
CHARLES M. CLUSEN,
Conservation Director.

NATIONAL AUDUBON SOCIETY,
Washington, D.C., July 9, 1982.

Hon. DON BONKER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BONKER: The National Audubon Society strongly supports H.R. 6530, to create a 115,000 acre Mount St. Helens National Volcanic Area. We commend you and your colleagues in the Washington delegation for cosponsoring this legislation and assisting it through the legislative process.

While the area enclosed by the boundaries of H.R. 6530 do omit some specific areas of scientific importance that we had sought to incorporate within it, nevertheless, the legislation does give full and adequate protection to the most important and valuable places from a scientific and recreational standpoint. If the legislation passes in this form, the whole American people will be able for years to come to study and enjoy an area unique in our country, an area which includes superlative stands of remaining untouched virgin forests of giant trees as well as the awesome displays of the power of volcanism, an area which protects habitat for rare and endangered species of wildlife as well as spectacular examples of mud flow and blow down so important to students of geology.

We will certainly do everything in our power to work with you to assure the passage of H.R. 6530 in its present form, without amendments, and hope to persuade the Senate to recede to the House's version of this important legislation. If the legislation passes, it will be a great credit not only to our state, but a benefit to the entire nation. Many thanks again to you and your colleagues for your outstanding efforts to give to the American people a beautiful and spectacular piece of our American earth, safe forever.

Sincerely,
BROCK EVANS,
Vice President for National Issues.●

THE ROLE OF THE PRIVATE SECTOR

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. GREEN. Mr. Speaker, I would like to bring to the attention of my colleagues an article which was written by my constituent, Gerald Schwartz, and which appeared in the June issue of the newsletter of the Public Relations Society of America. Like many of us in the Congress who are concerned about the continuation of vital social service, health, research, and arts programs, Mr. Schwartz poses the question of how far corporations can go in "picking up the slack" left by the reduction in funds available from the Federal Government, and with the role which corporations might play in the future. This article points to some new partnerships which I thought might be of interest to my colleagues.

The article follows:

CORPORATE PROFITS AND THE PUBLIC INTEREST

(By Gerald S. Schwartz)

Few will argue that corporate America is under increasing pressure to pick up the slack made evident by Federal cutbacks in social, cultural and educational programs.

How far corporate America is expected to go is the underlying question. And what is the fine line between the fictional society depicted in "Atlas Shrugged," by Ayn Rand, in which each produced according to ability

and each was provided for according to need—and the emerging industrial society of the 1920s in which the public could be damned?

In 1980, American corporations gave away about $2.7 billion out of $550 billion profits. That amounts to a little more than one half percent for the arts, charities, education, religion, and various social programs. The tax laws have allowed corporations to donate up to five percent of pre-tax profits and deduct the amount. But according to the Council of Financial Education, only one-third of nearly 1.5 million companies make any philanthropic contributions.

The Conference Board recently released a survey showing that many corporations are reluctant to increase their contributions to social, cultural and educational programs. The survey raised a good question: What is corporate America's role in the '80s—a decade brought to reality by overspending of previous years?

One executive, who asked for anonymity, was far from enthusiastic. "We didn't start these programs and we shouldn't be responsible for their continuation if Federal money is not available."

Other corporations have made news with their contributions to philanthropic projects. Some months ago, Merrill Lynch, Pierce, Fenner & Smith announced it was contributing $300,000 to the Metropolitan Opera—the first time in 99 years that the Met had obtained corporate support for its annual spring tour.

Yale University recently signed a $1.1 million contract with Celanese Corporation to conduct research on enzymes. Yale gets the patents and salaries for four doctoral students. It joins Harvard, MIT, Stanford, and other institutions that are doing industry-subsidized research where, in many cases, both the corporation and the institution benefit.

This year, the government is increasing tax deductions to ten percent. The doubling is supposed to be an incentive from the government to corporations in the hope that business will help close the gap created by the Administration's cutbacks.

Other tax laws have been changed that will affect the relationship between business and society. These include corporate deductions for child care which could have the same dramatic impact on the work culture that similar post-World War II changes in tax laws governing employee health benefits and retirement benefits had.

It seems that society is indeed straddling the fine line between defining corporate profits and the public interest. The 1980s remain wide open for answering these difficult questions.●

EDITORIAL OPINION: FLAT RATE TAX

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. BEREUTER. Mr. Speaker, I would like to share with my colleagues an opinion expressed by the Lincoln Journal concerning the flat-rate tax proposals. As expressed in the article, the idea of a simpler tax system is certainly attractive; yet, we should be certain to explore the many facts of each proposal before making any decision.

I am a cosponsor of H.R. 5868, a bill which directs the Secretary of the Treasury to conduct a study regarding the replacement of the current individual and corporate income taxes with such a flat-rate structure.

I request permission that the editorial be reprinted in the RECORD.

A FLAT-RATE TAX? MAYBE

[From the Lincoln Journal]

At their recent midterm conference in Philadelphia, organizational Democrats supported the snowballing idea of junking the present individual Federal Income Tax Code and replacing it with a flat-rate national income tax. This is an approach that's been pushed by certain tax theorists for years.

In this enterprise, liberal Democrats have curious companions, indeed. Several of the more celebrated banner wavers of the political Far Right are keen on the flat-rate income tax, too. Bill Bradley and Jesse Helms, arm in arm? Wow!

Even President Reagan Tuesday conceded a flat-rate income tax looks "very tempting" to him.

Already, Nebraska's congressional delegation is starting to receive letters from constituents casting opinion ballots for the radical change.

The first sampling suggests many see the reform as a simple, effective answer to what has been a very complicated problem—the horrendously formidable Federal Income Tax Code.

Yet that very rationale encourages caution. There always are simple answers to perplexing, mosaic-streak issues. They also almost always turn out to be either wrong or aggravating.

The flat-rate tax proposals floated by different groups are not quite such simple devices as applying a single percentage tax rate to all income. Almost instantly come calls for qualifications, conditions, exceptions, et cetera.

By way of illustration, the flat-rate plan which the Democrats in Philadelphia liked would continue to exempt the lowest income from any tax liability and, according to "Congressional Quarterly", would not do away with the "more popular" tax deductions, such as the tax write-off for home mortgage interest (Jimmy Carter broke one of his lances on that rock.)

Democrats also tilt toward adding a surtax which would be progressive for the higher incomed. But a flat-rate tax designed by hard-shell fiscal conservatives certainly would be without any surtax feature. Better the existing loopholes.

This Nation's great institutions and activities which depend upon tax-exempt gifts—churches, schools, hospitals, foundations, etc.—could be expected to oppose ending of exemptions which pump their vital fluids.

That, however, could be creatively accommodated, by the way a flat-rate tax is structured. One approach could be an extra tax for any person who fails to give 5 percent of his or her income annually to charity, or the other way around, a tax credit for one who can prove his or her charity.

Enthusiasm for the flat-rate tax springs from the frightful difficulty inherent in the current tax code. It's just too complicated. A system so forbiddingly difficult erodes taxpayer confidence.

More, it fosters tax evasion and tax avoidance. It stimulates business mergers which make little economic sense and almost none at all socially. It fertilizes the tax shelter, draining away millions from the productive sector to the unproductive.

Those are some of the larger considerations which sprinkle appeal on the flat-rate tax idea just now, as well as a few of the considerations which make congressional adoption problematical.

The Journal concludes with an opinion that basic models of different flat-rate tax proposals should be developed for public inspection. There ought to be projections made on how the shift would affect the national economy as well as individuals at current different income brackets.

The idea of an easier-to-comprehend tax system, with comparable equity, is automatically attractive. How it might work warrants exploration. Surely there's nothing to be lost by browsing.●

EPA AND NOAA MINORITY VIEWS

HON. LARRY WINN, JR.

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. WINN. Mr. Speaker, the legislative reports for the EPA and NOAA annual authorizations, H.R. 6323 and H.R. 6324, were filed with minority views. However, because of time constraints they were signed only by myself and my colleague, Mr. CARNEY. Following is a list of those members of the committee who support these views. For the benefit of my colleagues I am also including the minority views themselves.

EPA views—Messrs. GOLDWATER, WALKER, FORSYTHE, SENSENBRENNER, SKEEN, DUNN, and LOWERY.

NOAA views—Messrs. GOLDWATER, FISH, WALKER, FORSYTHE, SENSENBRENNER, SKEEN, and LOWERY.

MINORITY VIEWS—ENVIRONMENTAL PROTECTION AGENCY AUTHORIZATION BILL

The Minority members of the Science and Technology Committee find it necessary to oppose the Committee's authorization bill for the Environmental Protection Agency due to the 5 percent increased level of funding, the request for a two year authorization, and particularly the highly restrictive language included in sections 2(d)(3) and the entire section 6 of the bill amending the Science Advisory Board (SAB).

The Environmental Protection Agency has enjoyed bipartisan support in the Congress since its inception under a Republican administration. That same bipartisan concern and support for environmental protection exists in this Congress today. However, the Democrats' approach to the current fiscal reality varies quite drastically from ours. In an era of fiscal restraints, it is much easier for opponents of the Administration to arbitrarily establish budget levels at unrealistically higher figures than the Administration requests rather than try to develop budgets within current economic constraints. Under such a scenario, the Majority, by setting higher levels, implies that bigger is better. The Minority, on the other hand, contends that more dollars in the EPA R&D budget does not equate directly to more useful products, to more effective

environmental regulations, or even to a safer environment for Americans.

This Committee has continually scrutinized the EPA R&D program and has witnessed in the past that increased funding has often not produced higher quality research. To respond, once more, by substantially increasing funding brings forth a question as to the merits of such a business-as-usual attitude.

Despite our desire to remain within the Administration's budget request of $215.9 million, the need to protect programs which this Committee has repeatedly expressed concern over led us to offer an alternative EPA budget of $222.9 million.

We take great issue with the increase of $24 million proposed by the Majority in Energy Research. The President's proposal for energy control technology reflects the philosophy that the private sector can be expected to undertake final development and commercialization of control equipment. This major market has been created by the issuance of air quality standards. EPA will continue to evaluate the reliability and effectiveness of control technologies. The proposed addition of $9.0 million by the Majority perpetuates a belief that the government is more qualified than private industry to conduct these developments. The Minority does not support this thesis.

We also disagree with the increases this bill calls for in the energy monitoring research program. The Agency's budget consolidates such research into the non-energy programs at an estimated budget of $31 million. Finally, EPA's proposed reduction in energy ecological effects research is based on the successful completion of significant research in mining and reclamation and offshore oil and gas drilling. Therefore, we find the increases proposed by the Majority to be unnecessary and inappropriate.

The Minority wishes to express strenuous objection to the language contained in this legislation which represents a totally unwarranted attempt by the Majority to improperly limit the authority of the Administrator to transfer and to efficiently manage the agency. This attempt at micromanagement by the Committee Majority could remove essential management authority and flexibility from the Administrator and will inevitably result in less effective management, reduce efficiency, and substantially increase paperwork. Such heavy handed attempts to impose ridiculous and unnecessary constraints merely because members of the Majority do not approve of the current Administrator's management style must be rejected.

Finally, Section 6 of the bill which amends the enabling statute under which the Science Advisory Board was created, is both unnecessary and redundant to provisions contained in this Committee's authorization bill of 1978 in which specific guidelines were provided for establishment of the SAB.

In conclusion, the Minority continues to support the bipartisan efforts to maintain a sound environmental program and supports the Administration's efforts to restore economic stability to our nation.

The preceding views are signed only by the Ranking Republican of the Full Committee and Subcommittee because of the time constraints imposed by the Committee on filing the legislative report. Rule XI, cl. 2 of the House rules specifies that three legislative days will be provided for this purpose. The Committee-imposed deadline was 12 hours after bill passage. In an attempt to meet that deadline, we have decided not to route these views for the signatures of other members who are certain to support this position.

MINORITY VIEWS—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AUTHORIZATION BILL

The Minority Members of the Science and Technology Committee reluctantly find it necessary to oppose the Committee bill, as amended, due to the request for a two year authorization imposing a 6 percent increase in spending for fiscal year 1984, the reinstatement of a second polar orbiter the additional paperwork and reporting requirements in sections 203 and 204, and for the establishment of a new Great Lakes Office clearly ignoring existing programs and offices within NOAA which could achieve the same goal.

Despite our differences, however, there is much agreement on both sides of the aisle on the vast majority of the research and development programs of NOAA. Specific areas of agreement include marine ecosystem research and analysis, the importance and necessity for a strong ocean pollution and ocean dumping research program, basic atmospheric and climatic research, and the weather service functions of NOAA. The alternative budget, offered by the Minority, supported these programs which the Majority and Minority agree on and did so at a level of increased yet reasonable funding.

The Majority's amendment to the bill displays an attempt to reduce a previous unacceptable funding level, yet the Minority still regards the level proposed as too high. We regard our alternative budget, at a level of $16.5M above the NOAA request, to be a much more realistic approach to current fiscal realities. It is clear to us, and the American public, that this nation is struggling in its emergence from severe and deep economic troubles that have plagued us since the 1930's. Increased federal spending, at a level suggested by the Majority, would be counterproductive to the efforts to restore vitality and sustained growth to the economy.

The changes made in the Administration's budget by the Minority affect four line items. First, an addition of $8,833,000 was made for three directorates: (1) $5.5 million for ocean dumping research; (2) $2.8 million for the reinstatement of the Great Lakes Environmental Research Laboratory; and (3) $.5 million for a NOAA/EPA joint cross-media sewage sludge study. Secondly, an addition of $6,000,000 was made for Weather Services/Supporting Research to provide for the continued procurement of NEXRAD, to restore $1 million to the Space Environmental Laboratory, to reinstate the Agricultural Weather Service Program Fruit Frost Forecast Program, and Fire Weather Program, and finally, $2.0 million for the reinstatement of 45 weather stations. Thirdly, the increases in Atmospheric Research totalled $1,750,000 to be applied to the First Global Atmospheric Research Program ($.5 million), the World Climate Research Program ($.5 million), and $.75 million for basic research in other severe storms program under the Weather Modification category. The final and fourth line item change was a request for an increase of $120,000 in user fees for the Environmental Data and Information Services.

It is not an easy task to make cuts in the National Atmospheric and Oceanic Administration; the Minority is unanimous in its support for NOAA's mandate. What the Minority Members wish to emphasize is the overriding importance of supporting the Administration's funding levels as a means to national recovery through fiscal responsibility.

The preceding views are signed only by the Ranking Republican of the Full Committee and Subcommittee because of the time constraints imposed by the Committee on filing the legislative report. Rule XI, cl. 2 of the House rules specifies that three legislative days will be provided for this purpose. The Committee-imposed deadline was 12 hours after bill passage. In an attempt to meet that deadline, we have decided not to route these views for the signatures of other members who are certain to support this position.

LARRY WINN, JR.
WILLIAM CARNEY.●

DO SANCTIONS DETER AGGRESSION?

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. MICHEL. Mr. Speaker, it has been said that true power is shown not in striking hard or in striking often but in striking accurately. Nowhere is this more true than in the case of trying to deter aggressive behavior on the part of the Soviet Union through the use of selective unilateral sanctions.

There is a considerable body of evidence that such a move, no matter how deeply it is rooted in the motivations and rhetoric of principled anti-Soviet policy, just may not work. And if it does not work, it not only misses the target—it actually hurts the United States.

Recently, on July 14, 1982, the Wall Street Journal published three articles, all of which offer evidence that sanctions do not work. At this point I wish to place in the record these articles: "U.S. Effort to Block Soviet Gas Pipeline Recalls Failed Embargo of 20 Years Ago"; "Can Economic Sanctions Deter Aggression?"; and "Norway's Gas Reserves and the Soviet Pipeline."

CAN ECONOMIC SANCTIONS DETER AGGRESSION?

(By Adam Meyerson)

Are economic sanctions against the Soviet Union a useful instrument of foreign policy? That question is the subject of growing debate within the Western alliance, particularly now that President Reagan has decided to try to block European licensees of U.S. companies from exporting technology for the Siberian gas pipeline.

A historical study on "Economic Sanctions," just published by Harvard University's Center for International Affairs, may help sort out some of the issues. The author, Robin Renwick, was head of the Rhodesia Department in the British Foreign Office from 1978 to 1980, and is therefore familiar with the most sustained and systematic international effort to apply economic sanctions for a political purpose—the British and United Nations sanctions

against Rhodesia from 1965 to 1979. His book focuses on the Rhodesian sanctions and on the League of Nations sanctions against Italy in 1935-36, and looks briefly at the U.S. embargo against Cuba under Fidel Castro, economic warfare against the Germans in World Wars I and II and the cutoff of U.S. strategic exports to Japan half a year before Pearl Harbor.

Mr. Renwick concludes that economic penalties alone haven't been effective in deterring aggression or fundamentally changing the political conduct of states. The decisions by 50 members of the League of Nations to cut off all imports from Italy, and to ban arms shipments to Italy as well as all credits and loans to the Italian government, did not stop Mussolini's army from conquering Ethiopia. The U.S. embargo against Castro cut off the traditional market for three-quarters of Cuba's exports, and denied spare parts for most of the island's plant and equipment, but it did not reverse Castro's expropriation policy or his efforts to export revolution in Latin America. It was a debilitating civil war in the late 1970s, not sanctions, that brought negotiations for majority rule to Rhodesia.

But Mr. Renwick argues that economic sanctions can inflict economic damage on the target country. Over the eight-month course of the League of Nations sanctions, the value of Italy's exports fell by 35% and the resulting foreign-exchange constraints forced Italy to do without nonessential imports; in addition, the lira was devalued by 40%. From 1965 to 1968 Rhodesia's tobacco farmers—the core of political support for Ian Smith's white-rule regime—lost two-thirds of their income; sugar growers were similarly hit. In 1966, Rhodesia's exports and imports each dropped by about a third; and throughout the 14-year sanctions period, the country was unable to attract much foreign investment or gain access to the world's major capital markets.

In neither the Italian nor the Rhodesian case, however, was the economic damage severe. Mr. Renwick asserts that the average Italian hardly noticed the effects of sanctions, particularly not by comparison with the Depression, from which Italy was then emerging. He estimates that in 1966, Rhodesia's national income declined at most by 5 percent. From 1966 to 1974, moreover, Rhodesia's gross domestic product rose in real terms by 6 percent per year, one of the world's highest growth rates. The end of this growth in the mid-1970s was due more to war and high oil prices than to sanctions.

In both examples, sanctions were partially undemined by offical and unofficial noncomplicance. The U.S., Germany, Austria, Switzerland and Hungary refused to join the sanctions against Italy, South Africa, Portugal and its African colonies and the United States which from 1971 to 1977 allowed the import of Rhodesian chrome—on the grounds that the only other source was the Soviet Union—didn't go along with the Rhodesia sanctions. Through unofficial circumvention, moreover, Mr. Renwick asserts that Rhodesian products found their way to the Soviet Union, Eastern Europe and virtually all OECD countries.

Sanctions are often conceived as a "bloodless substitue for war." but Mr. Renwick suggests it is impossible to make sanctions effective without being prepared to use military power. Mussolini reportedly told Hitler that he would have been unable to conquer Ethiopia if the League of Nations had embargoed oil shipments to Italy. The French, however, were afraid an oil embargo might drive Italy into an alliance with Germany, and the British feared it might lead to a war.

Mr. Renwick also suggests that sanctions are a double-edged sword. He argues that the sharp reduction in Rhodesian trade hurt Zambia and Mozambique more than it hurt Rhodesia. The Britain, froze all Rhodesian sterling assets in Britain, but the Rhodesians retaliated by defaulting on payment of their considerably larger sterling debts, and also by blocking remittances on investment income.

Mr. Renwick does not directly address such issues as credit subsidies or technology transfers, except to say that bans on the supply of arms or high technology "are easier to operate than attempts at wider economic embargoes." He argues that sanctions may serve useful propaganda purposes in mobilizing world opinion and that they can modestly "weaken the country to which they are applied." But, he cautions, "more claims should not be made for a sanctions policy."

Norway's Gas Reserves and the Soviet Pipeline

(By Per Egil Hegge)

An innocuous sentence in President Reagan's press conference June 30 didn't make it into most American papers, but it did create a stir in Norway. Answering a question about possible additional steps to force America's European allies to go along with the embargo to block export of pipeline equipment to the Soviet Union, the president said:

"We offered to help them (the allies) with a source of energy closer to home, Norway and the Netherlands, and gas fields that apparently have a potential that could meet their needs. We weren't able to get that agreement."

It so happened that a fair number of prominent Norwegian parliamentarians were in the U.S. at the time, attending the U.N. session on disarmament, and watched Mr. Reagan on television. While not exactly screaming bloody murder, they were terse and rather sharp in their comments. The former prime minister, Mrs. Gro Harlem Brundtland, now leader of the opposition, criticized Mr. Reagan for implying something in the nature of jurisdiction by the United States over the energy reserves of two sovereign nations—Norway and the Netherlands.

Public criticism in Norway was even stronger in some quarters, with the left wing complaining that the president had openly attacked or reprimanded the Norwegians for lack of solidarity and will to cooperate. The American Embassy in Oslo pointed out that nothing of the kind could or should be read into the statement, and said that the President was referring to exchanges of views that had been going on among the allies since the industrialized countries summit meeting in Ottawa last July.

But even the political leaders in the Norwegian department of oil and energy said they were somewhat surprised at the president's words. They pointed out that during the exchanges, which they describe as swaps of information rather than of views, they have emphasized that the gas reserves under the North Sea and the Norwegian Sea off Arctic Norway cannot be developed before the start of the 1990s at the earliest.

This, according to the Norwegians, is due to several factors: First, exploration has hardly begun; second, building transportation facilities, whether in the form of LNG terminals or pipelines, possibly from Northern Norway through Sweden and on to the continent, is time-consuming, and third, there are the very important political considerations with regard to Norway's national economy.

When Norway found itself obliged to develop an oil policy just over a decade ago, the overriding aim was to go slow so that only a measured amount of money would be pumped into the economy of a nation of four million people. Also, it was decided that Norway's geographic population pattern should be preserved.

To Americans, used to economic expansion on the fast track and to geographic mobility, this may seem to be going against nature. But Norway's three northernmost counties cover an area the size of Belgium, the Netherlands and Denmark combined, and they have less than 400,000 people. (The three European countries have more than 20 million.) And the northernmost county, Finnmark, with 80,000 people, has a 122-mile common border with the Soviet Union.

Keeping the population in these areas is extremely important in terms of national security, as Norway's defenses are based on calling up local reserves in an emergency. And as for going against nature: A winter in Arctic Norway is an unforgettable experience—and a very long one, too.

Americans tend to blame the Norwegians for an unduly virginal attitude to the oil bonanza. At the time of the energy crisis in 1974, one American in Oslo remarked: "You are the funniest people I know. The world is screaming for oil, and you have it. And you walk around wringing your hands, complaining about the problems it will bring you, and wishing that it would somehow go away."

The basis for President Reagan's words at his press conference seems to be a study by a consulting firm in Geneva, commissioned by the U.S. Department of Defense and presented on March 24. The study, titled "Alternative Strategies to Gas in Western Europe," deals in great detail with known and probable gas reserves under the North Sea and the Norwegian Sea. Its policy recommendations, from which the U.S. government has publicly dissociated itself, include attempts at exerting pressure on Norway and the Netherlands to get them to accelerate the development of their gas fields, to make this gas a viable and attractive alternative to imported gas from the Soviet Union via the Siberian-Western European pipeline currently in the works.

In the study, Norway's energy policy is described as "intensely nationalistic," even compared to other Scandinavian countries. For the reasons mentioned above, it is hard to fault that description, and for the same reasons, Mr. Reagan's use of the words "we offered to help" was perceived by many Norwegians as especially grating.

The latest exchange of views on this subject between the U.S. and Norway took place in Oslo June 21 and 22, when Richard Perle, assistant secretary of defense for international security policy, met with the minister for oil and energy, Vidkun Hveding, and the minister's deputy, Hans-Henrik Ramm.

In several interviews in Norway, Mr. Perle pointed out that for the Norwegians to proceed at their leisurely pace might expose them to two risks:

There may be no market for their gas when it does come on line in the 1990s be-

cause of the downward projections for gas demand, and the Soviets might manipulate their price so as to squeeze the Norwegians out of the market even if there is one. His answer to the objection that the Soviets will be able to market their gas in Western Europe long before the Norwegians anyway, even if the Norwegians were to give up their policy of deliberately slow development, runs as follows: The Soviet pipeline, originally planned to start deliveries in late 1984, will be considerably delayed because of the American embargo and because of endemic Soviet administrative problems. And then we are talking about the late 1980s, maybe even the early 1990s.

While both Norwegian and American officials deny that any kind of pressure has been brought to bear, the difference of opinion goes to the core of the present dispute between the U.S. and Western Europe: What strategy should the countries of the Western Alliance follow in their dealings with the Soviet Union?

Here, the Norwegian conservative government, while less critical of the U.S. than its Labor predecessor, is sticking to a policy very close to that of the West German Social Democratic leader, Helmut Schmidt. It's a more realistic version of the original Nixon-Kissinger detente concept: Economic cooperation with the Soviets is mutually beneficial and contributes to stability—and may even bring some political spinoffs. But it is not a case of Great Expectations so much as the thin hope that something might turn up, and, despite the differences, of sticking with Our Mutual Friend. Who happens to be Mr. Reagan—even when he chooses his words with less than immaculate care.

U.S. Effort To Block Soviet Gas Pipeline Recalls Failed Embargo of 20 Years Ago

(By Steve Murson)

"Trade denial has come to be an important symbol of our cold war resolve and purpose, and of our moral disapproval of the U.S.S.R.," wrote a presidential aide.

These words weren't written about the Reagan administration embargo of natural-gas pipeline equipment to the Soviet Union in the aftermath of the military crackdown in Poland. They were written 19 years ago by John F. Kennedy aide Walt Whitman Rostow about an almost identical U.S. embargo of equipment for a Soviet oil pipeline in the aftermath of the Cuban missile crisis.

All but forgotten in the U.S., the pipe embargo of 1962-1963 remains a sore point for West Germans eager for trade with the Soviet Union. Western experts on Soviet trade argue the Reagan administration could learn much from the pipeline battle 20 years ago. They also say the outcome of the current fight (if the Reagan administration persists) will probably be the same: some construction delay, but ultimately completion of the project, a political victory for the Soviets and a setback for the unity of the Western alliance.

The American embargo two decades ago remains freshest for the West Germans, who were the only ones to go along with U.S. efforts then. "The Germans keep coming back to this (earlier incident)," says Angela Stent, Georgetown University professor and author of "From Embargo to Ostpolitik," and book about West German-Soviet relations. "They were the only country to go along with the (1980) Olympic boycott as well. They aren't going to be in the position again of forfeiting business while their competitors and allies go ahead."

The U.S. decision to embargo large-diameter steel pipes to the U.S.S.R. in 1962 was a response to growing European trade with Russia and to concern about increasing Russian oil exports, according to Miss Stent.

Soviet plans at the time called for an increase in oil exports to the West to more than a million barrels a day, from a 1960 level of 486,000 barrles a day. Even the increased level was just 4 percent of world oil sales. About 40 percent of the Soviet oil exports went to Italy, Japan and West Germany.

AN EARLIER CONTRACT

West Germany was attracted to the pipeline project as much for prospective steel exports to stop the slide in steel prices as for oil availability. On Oct. 5, 1962, three major Ruhr steel companies signed contracts to supply the U.S.S.R. with $28 million of 40-inch diameter steel pipe.

American officials cried out against the plans. "Economic warfare is especially well adapted to their (Soviet) aims of world-wide conquest," concluded Sen. Kenneth Keating's subcommittee after hearings on Soviet oil. "They are using oil to buy valuable machinery and know-how from the West. They have even succeeded in exchanging oil for the pipelines, valves and tankers. . . . If these tactics continue to succeed, there is danger that Western countries will become increasingly dependent on Soviet oil supplies for vital defense as well as industrial activities."

Oil companies also denounced the project. They charged that the Soviet Union was dumping oil, selling it to Germany at a price of $1.71 a barrel, well below world market prices of $2.56 a barrel, according to Miss Stent.

Unable to muster complete allied support for a formal Western embargo, the U.S. obtained an informal North Atlantic Treaty Organization resolution opposing the pipeline. Highly sensitive to U.S. pressure, the West German government agreed to comply with the resolution and barred the three steel companies from fulfilling their contracts. In the domestic political uproar that followed, the ruling West German coalition was brought to the brink of collapse after it used the heavy-handed tactic of walking out of a meeting of the Bundestag, thus depriving the parliamentary body of a quorum and of the chance to vote down the proposed sanctions.

The three German companies slashed their operations in the wake of the sanctions. The Soviet Union sued the firms. And West German-Soviet trade dropped sharply.

OTHER ALLIES WENT AHEAD

Other allies weren't so easily deterred. The British deemed the NATO resolution non-binding and continued to supply large-diameter pipe to the Russians. The Italians interpreted the resolution as not applying retroactively and fulfilled existing contracts. Japan and Sweden also continued to supply the Soviet Union.

The embargo stimulated increased Soviet production of large-diameter pipes, albeit at the expense of other Soviet industrial goods. The Soviet pipe was also somewhat inferior in quality to Western pipe. In 1961 the U.S.S.R. produced no 40-inch diameter pipe; by 1965 it was producing 600,000 tons a year.

Soviet leader Nikita S. Khrushchev ridiculed the American embargo. "Anything one pleases can be regarded as strategic material, even a button, because it can be sewn onto a soldier's pants. A soldier won't wear pants without buttons, since otherwise he would have to hold them up with his hands. And then what can he do with his weapon? But if buttons really had such great importance and we couldn't find any substitute for them, then I am sure that our soldiers would even learn to keep their pants up with their teeth, so that their hands would be free to hold weapons."

In the end the pipeline was finished, though slightly late. Soviet oil exports increased as planned. Miss Stent concludes in her book that "the chief result was a general irritation both in East-West relations and in relations between the United States and its allies."

"It's obviously comparable," she says. Like the Soviet oil pipeline, the current Soviet natural-gas pipeline will contribute relatively small amounts of Europe's total energy needs. The U.S. is again hinging its embargo effort on one crucial item—compressors—instead of large pipe, and trying to enforce the embargo on European firms retroactively.

EUROPE MORE OUTSPOKEN TODAY

One important difference today is that Europe is more galvanized in its opposition to the U.S. efforts. "The Germans don't play the same role, but America is showing its allies that it doesn't like East-West trade policy," says Miss Stent. "The Russians are reacting in the exact same way: Their national virility is being salted. It is inducing them to develop their own capacity."

Another difference today is that some U.S. officials and conservative commentators are focusing their criticism on the credit arrangements through which the Soviet Union is financing the pipeline. They say that some Western governments are subsidizing credit that Moscow wouldn't be able to raise on a free market. Such credit, they say, will indirectly help the Soviets build other segments of their economy or military. Proponents of the pipeline project reply, however, that the Soviet Union will, in effect, pay for those credit subsidies through lower gas prices.

Miss Stent plays down U.S. arguments of potential security threats posed by energy dependence on the Soviet Union. "Some of that dependence already exists. Besides there are other areas, such as Berlin, where the Soviet Union can put pressure on without sacrificing earnings." Furthermore, she adds, "it is in the security interests of Europeans to diversify sources of supply. The Soviet Union is as attractive as Libya or Algeria."

"Yes, the embargo will hurt them," argues John Hardt, Library of Congress analyst, about the Soviet Union. "The pipeline, like the one in 1962, will be more costly, take more time, be of less quality. But the Soviet Union will offset the efficiencies it would have gained by making different priorities."

"We've created new opportunities for the Soviets," says Ed Hewitt, Soviet Union expert at the Brookings Institution. "They'd like to come out with some diplomatic coup, an agreement with Europe directly contrary to the wishes of the U.S. government. If they can come off with a visible, highly publicized agreement (to replace embargoed U.S. equipment), that would be worth something to them."●

TO HELP A BOY

HON. THOMAS A. DASCHLE

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. DASCHLE. Mr. Speaker, the July 11, 1982, issue of Parade, a Sunday supplement news magazine, contained an article entitled "To Help a Boy," describing the work done by the Sky Ranch in Buffalo, S. Dak. The Sky Ranch, in the 20 years it has been in operation, has served as a model of what caring, innovative people can do to protect and preserve our most important natural resource, our young people. I request permission that the article be reprinted in its entirety, and I urge my colleagues to read it, and take its message to heart. It is nice to know that there are still people who care, and, more importantly, have the ability and determination to do something about the troubled youth of this country.

TO HELP A BOY

Sioux warriors once taught their children to grow strong on the high plains of the Dakotas. The landscape has changed little since the days of Sitting Bull, and children still learn to survive in the bleak terrain. But today the children come from far away, and for a special purpose. They are delinquents who have been sent to Sky Ranch in Buffalo, S.D.

To probation officers and social workers, the Spartan regimen of the Harding County ranch offers the possibility of motivating boys labeled "incorrigible." To the boys, aged 10 to 18, the ranch offers an opportunity not only to straighten out their lives but also to prove themselves—to test their courage and ability by flying an airplane.

"It takes a great deal of responsibility to solo out a plane, to take it up and bring it down safely," says Father Dale Kutil, the Catholic priest who runs Sky Ranch. "That's a happy young man when he does that."

Chances are that when a boy arrives at the ranch, he is far from a happy young man. Sky Ranch takes in boys who have been in trouble with their school or with the law. A panel of four at the ranch, including a clinical psychologist, chooses the boys. And during the 20 years since it was founded, Sky Ranch has taken boys from every state except Hawaii.

When Thomas Economus arrived at the ranch in 1970, he was 13 years old and already a street-tough kid from Chicago with a record of truancy at school and run-ins with the police.

"I was a regular rotten hell-raiser," recalls Economus, now 25. "They took me off the street and gave me a second chance. I left a very, very bad environment and got a new start."

The program at Sky ranch has always been keyed to earning privileges, by doing well at school and by good conduct. The ultimate privilege is flying a plane, and for a boy to get the opportunity, he must prove himself through a series of merit classifications, from Thunderbird to Skyhawk to Falcon to Eagle. "Not all the boys want to fly—and they don't have to—but we encourage it," Father Kutil says.

Thomas Economus did not choose to fly, but his brother, David, did. David, who spent four years at Sky Ranch, recalls the first time he was handed the flight controls: "I was up with the flight instructor, and he says, 'Take over.' And I say, 'What?' And he repeats his order, 'Take over.' I was really scared, but I did it."

David Economus, now 23, says flying was crucial to his therapy, "Flying did something for you. If I was back home, I might he sitting in jail, and here I was flying," he says. "I had a bad temper when I was a kid. Now I can control it. Learning the controls of an airplane shows you. If I can fly a plane, I can do just about anything."

David and Thomas Economus are Sky Ranch success stories. David graduated from high school in South Dakota and returned to Chicago, where he now works as a boiler engineer in a hospital. Thomas graduated from college and worked at an advertising agency in Chicago after he left Sky Ranch. He recently moved to Washington, D.C., as a salesman for a book publishing company.

Thomas recalls that when he left the ranch, he was a completely different person. "Sky Ranch taught me how to respect people, how to love people and how to adjust to living in society," he observes.

Father Kutil says the ranch keeps track of graduates and has achieved a high rate of success. "The boys who come here have low self-esteem," he says. "We give them an image of self-worth here. We teach them to give respect and to get respect."

The ranch offers almost one-to-one contact between the staff and the boys. Up to 40 boys stay at the ranch at any one time, and the staff usually numbers 36. The school at the ranch is accredited for special education, but it cannot give a diploma. However, the ranch operates a halfway house in Sturgis, 100 miles away, which has a high school nearby.

On the grounds of the 300-acre ranch are a hangar, an airfield and two small planes. Its 12 buildings include the school and a rodeo arena. And among the staff of teachers and counselors is a flight instructor to shepherd the student pilots.

Flying was a necessity for the priest who founded Sky Ranch. Father Don Murray's parish included six churches scattered over 300 miles around Buffalo. Murray would say mass seven times each Sunday, flying from one church to the next. This feat earned him the nickname "The Flying Parde."

The growth of Sky Ranch from one small dormitory to its current size would not have been possible without an unusual partnership between Father Murray and the liquor industry. During the last 20 years, the industry—through the nonprofit Sky Ranch Foundation—has contributed more than $4 million to buy land, maintain the ranch and keep it growing. Last year, the Miller Brewing Co., placed canisters in more than 35,000 taverns around the country, with all proceeds going to the ranch.

Father Murray was killed in a plane crash in October 1975. One boy from Sky Ranch, a passenger, also was killed; two other boys survived the accident. One survivor was David Economus, who says he walked out of the plane seconds after it crashed.

Father Kutil, who took over for Father Murray, is unable to fly because of medical problems, but the ranch still offers boys the chance to take control of a plane—and their lives.●

YELLOW RAIN

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. GINGRICH. Mr. Speaker, I would like to draw the following article to my colleagues' attention:

[From the Wall Street Journal, June 17, 1982]

A PATHOLOGIST'S ANALYSIS OF YELLOW RAIN

(By Bernard M. Wagner, M.D.)

As a result of reports received since 1975, the State Department has concluded that "lethal chemical agents" have been used by Communist forces in Afghanistan and Laos. Further, the State Department notes that the Russians possess such agents and were responsible for their use in Vietnam as well as using them themselves in Afghanistan. The central question concerns the nature of the evidence.

In clinical medicine, decision making frequently depends on "soft" evidence. Population studies, anecdotal reports, deviations from normal, morbidity and mortality statistics and careful evaluation of clinical data all play a role in defining the presence of disease in a community. We teach medical students and resident physicians that the correct diagnosis of a viral infection is either isolation of the virus or demonstrating the host response to the virus. Yet, in practical terms, the diagnosis and treatment of most viral infections proceed without this kind of information.

USED AGAINST PRO-U.S. TRIBES

Population field studies began with the reports by the Hmong tribes of Laos. The tribesmen participated in support of the U.S. against Communist forces in the mountains of central and northern Laos. Hmong refugees streaming into Thailand told of "poison rains" usually yellow but also red, green and blue. The clinical symptoms usually included skin irritation, dizziness, nausea, hematemesis (bloody vomiting) and melena (bloody stools). Individual cases reported a variety of other symptoms, some quite bizarre. However, the Hmong people have multiple dietary and nutritional deficiencies which may modify their response to external poisons. Also, the toxic materials could have been variable in their composition.

The U.S. Government in mid-1981 began to test samples from Southeast Asia for the presence of toxins. In August 1981, high levels and combinations of tricothecene toxins were detected in samples of foliage from a village in Cambodia. The sample was from a village that had been attacked by aircraft exploding containers of the brightly colored toxins in the air. Exposed natives developed toxic symptoms and many reportedly died. Samples obtained in the following months from other villages under attack both in Cambodia and in Laos yielded similar results. Finally, blood samples from victims of a chemical attack revealed tricothecene toxins.

On March 22, 1982, Special Report No. 82, titled "Chemical Warfare in Southeast Asia and Afghanistan." was delivered to Congress by Secretary of State Alexander Haig Jr. This detailed document provided the evidence to establish the fact that chemical toxins, derived from fungi, were used as a form of biological warfare. Tricothecenes

are potent, lethal toxins produced by molds growing on a variety of grains. Known as mycotoxins, they have been a health problem for humans and animals in many parts of the world.

The accumulated data, after careful review and scientific scrutiny, lead to one conclusion: Chemical and biological warfare is being conducted by the Soviet Union in Southeast Asia and Afghanistan. What does the civilized world do next?

We need an intensive research effort on the mechanisms of toxicity produced by tricothecenes. This effort must be guided by the assumption: "What if American troops and civilians were exposed to these toxins?" One could take the position that this is a problem for the United Nations or NATO or some other multinational organization. After all, it's not happening to us. This may not be true.

Since February 1981, the U.S. Department of Health and Human Services' Center for Disease Control has been notified of 38 cases of sudden death among Southeast Asian refugees in various parts of the U.S. The highest number of cases was in California. All these sudden deaths were investigated by medical examiners or coroners. Certain common features emerged from the clinical and postmortem studies.

All except one of these refugees were men and all apparently died during sleep. The majority of the deaths, 87%, occurred in Hmong natives from Laos. Available information indicated that they had been in the U.S. from five days to 52 months (average six months) before death. The families of 34 refugees who died were interviewed and this information added to the medical reports.

In this group, 29 deaths were witnessed and occurred between 9:30 p.m. and 7:00 a.m.; 28 persons appeared to be asleep and one was just falling asleep. All were apparently in good health and none had complained of symptoms before going to bed. Witnesses were alerted by unusual respiratory sounds or by a brief groan. All victims were unresponsive when discovered. Paramedical personnel documented ventricular fibrillation in two cases but were unable to resuscitate them.

To date, the results of autopsies and routine toxicology studies have not identified a cause of death in 30 of the 36 cases reviewed by pathologists. A review of nocturnal deaths in young males (20-39 years of age) in an age-matched American population and a statistical analysis of death rates in Laos was done. The estimated rate of sudden, unexpected, nocturnal death among Laotian men ages 25-44 is equal to the sum of the rates of the four major causes of death among U.S. males of the same ages.

Detailed study of all data available suggests that the refugee deaths in the U.S. constitute a distinct syndrome. The syndrome may be defined as follows: Sudden, unexpected deaths without antecedent symptoms occurring during sleep at night in Laotian males who were either from areas where toxin attacks had taken place or who could reasonably be assumed to have passed through such areas in their flight from Southeast Asia.

Given our limited knowledge concerning the effects of tricothecenes in humans, we cannot exclude the possibility that the deaths were indeed related to toxin exposure. Those natives caught in the yellow-rain attacks inhaled the toxins, absorbed them through the skin and probably ingested them as contaminants.

There is serious scientific speculation concerning the potential cardiac toxicity of tricothecene when ingested in small amounts over long periods. The direct effect of those toxins and certain of their metabolities directly on heart muscle is already established. It may be necessary to revise some of our current thinking in cardiology as it concerns primary heart muscle disease. Known as cardiomyopathy, there is one type referred to as "beer-drinkers' cardiomyopathy" and thought to be associated with cobalt toxicity. As the toxic actions of mycotoxins become better understood, it now seems possible that "beer-drinkers' cardiomyopathy" may have resulted from contamination with tricothecene toxins.

Mycotoxins are soluble in fats and may be released slowly in the body from "fat depots." There are highly sensitive analytical methods available for the detection of these toxins in body fluids and extracts of tissues. We need to apply sophisticated techniques to microscopic tissue sections in attempting to elucidate the puzzling syndrome of sudden death experienced by the Hmong refugees in the U.S.

ACHIEVING GOAL WITHOUT NUKES

It is clear that the world-wide scientific community must intensify its research efforts concerning the enormous hazard to mankind posed by these lethal toxins.

The threat of limited, controlled, biological warfare is, at least for me, on a scale with nuclear war. With toxins having both acute and delayed effects, an aggressor can achieve his ends without the problems posed by nuclear blasts. Besides, toxins can be delivered in an insidious, almost undetectable manner defying even late recognition of the act. I am convinced that, until proven otherwise, the syndrome described is related to biological warfare.

The current outcry by civilized peoples against nuclear weapons with a demand that they be outlawed must also extend to chemical/biological warfare. Our government, along with all other nations, must find a way to pressure the Soviet Union and its clients into halting this activity. Until then, prudence dictates that we formulate policies to safeguard populations at risk.

(Dr. Wagner is director of laboratories at Overlook Hospital, Summit, N.J., clinical professor of pathology at Columbia University College of physicians and Surgeons and president of the U.S.-Canadian division of the International Academy of Pathology.)●

H.R. 6738: CWIP IN UTILITY RATE BASE

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. COLLINS of Texas. Mr. Speaker, I introduced legislation yesterday that would amend section 111(d) of the Public Utility Regulatory Policies Act (PURPA) to require State public utility commissions to consider the advisability of including construction work in progress (CWIP) in the rate base of electric utilities. The financial crisis facing the electric utility industry is of such severity that public attention needs to be focused on regulatory and legislative actions that could benefit ratepayers by stabilizing utilities' financial health. I am convinced through inclusion of CWIP in the rate base, the vicious circle can be broken where high risk creates low earnings quality that leads to power companies paying the highest interest rates which hurts ratepayers.

AFUDC AND CWIP

To understand the CWIP issue, a brief review of relevant utility regulatory policy is necessary. Traditionally, it has been assumed that ratepayers should not pay for a utility plant until it becomes used and useful—that is, until the plant actually provides service. Accordingly, utility commissions have allowed construction costs into the utility rate base only when a plant begins service. Prior to the online date, construction costs, and debt service on funds borrowed to finance construction are usually credited to the company's assets in an account referred to as allowance for funds used during construction (AFUDC), which is a paper asset only. No revenue is earned on these assets until PUC's (or FERC) allow them in the rate base when the plant commences service.

Because of falling utility bond ratings, long construction lead times, and the high cost of capital, significant support has been found for allowing utilities to include a portion of the costs of construction in rate base, referred to as construction work in progress (CWIP). CWIP in rate base allows utilities to increase their internally generated cash, thus reducing their demand for expensive capital in the market, which in turn benefits ratepayers. The ability of utilities to finance their construction through methods other than expensive borrowed funds increases the likelihood that companies will make needed investment to maintain reliability and that customer rates will be lower.

CURRENT FERC POLICLY

There are two kinds of utility rate bases: That devoted to FERC-regulated service and that devoted to intrastate service that is regulated by State utility commissions. The policy of the Federal Power Commission, FERC's predecessor, prior to 1976 was to admit no CWIP in the FERC-regulated rate base. In 1976, three conditions were specified by the Commission under which CWIP might be granted: First, construction of pollution control facilities; second, conversion from oil or gas to another fuel; and, third, severe financial distress which might be alleviated through admission of CWIP to the rate base.

The General Accounting Office (GAO) criticized the Commission's CWIP policy as being "vague and general" in a 1980 report. (See "Construction Work In Progress Needs Improved Regulatory Response for Utilities and Consumers." Comptroller General of the United States, Washington, D.C., June 23, 1980, EMD-80-

75.) In response to this criticism, the Commission issued a notice of proposed rulemaking during the summer of 1981 that would reform and clarify FERC's criteria for allowing CWIP in rate base. Under the proposed rule, a utility must have a BBB or lower Standard & Poor's bond rating or a BAA or lower rating from Moody's. Further, a company must show that its CWIP to be used in FERC-regulated services and currently excluded from the rate base is in excess of 40 percent of its FERC-regulated rate base. If both criteria are satisfied, the company could include an amount of FERC-regulated CWIP in its rate base so as to reduce the amount excluded to 40 percent of the FERC-regulated rate base.

States vary in their allowance of CWIP in rate base; 15 States allow no CWIP under any conditions in 1980, compared to 21 in 1978. More State PUC's will doubtless allow some CWIP as the utility financial crisis worsens. States admit CWIP under differing circumstances. For example, Florida, Illinois, Iowa, New Jersey, Nevada, Oklahoma, and Washington allow CWIP based on the facts and circumstances of each case. The District of Columbia allows CWIP for pollution control only. Of course, PUC's usually admit only a portion of CWIP, usually an amount much less than requested by the applying utility. The Texas PUC allows CWIP, but makes a determination about the amount at each application, depending on the facts of the case.

NEED FOR CWIP IN RATE BASE

Utility regulatory policy shoud seek to stabilize utilities' financial condition such that companies can finance construction programs that will provide a reliable power supply at the lowest possible cost to ratepayers. One of the most expensive ways to finance construction today is to borrow money in the capital markets. Utilities, already in poor financial shape, must pay the highest rates for borrowed money. Thus, there is a vicious circle wherein low utility earnings quality requires utilities to pay the highest interest rates for borrowed money which in turn causes stock prices to fall, often below book; this leads to bonds being downgraded with the end result that the combination of low prices and quality discourages investment.

Unless broken, this cycle will repeat until the utility industry is so financially shaken that FERC Chairman C. M. "Mike" Butler's warning that utilities could be eventually nationalized begins to seem more threatening. Including CWIP in rate base could help break this downward financial spiral by helping utilities become less dependent on external financing in the capital markets. This is particularly crucial as utilities are forecast to have to invest over $100 billion in plant and equipment by 1985. Rates do not offer much hope of relief. From 1970 to 1980, the price of electricity rose less than 4 percent annually in real terms. This compares to 9 to 16 percent annual price increases for natural gas, coal, and oil prices. In their present financial condition, utilities' ability to raise enough capital and ratepayers to afford it is highly questionable. CWIP is an excellent source of internal capital generation to be used to finance essential construction programs.

Mr. Charles Benore, of Paine Webber Mitchell Hutchins, suggests several tests of financial integrity against which the financial health electric utility industry can be judged. Mr. Benore suggests that a financially sound company generates cash flow to construction of at least 50 percent. In 1981, utilities were only at 34 percent. He suggests the common equity ratio should be at least 40 percent. The utility industry was only at 37 percent between 1976 and 1980. Benore says profitability should be at least 18 percent. Utility profitability, as measured by return on average common stock equity, was 12.6 percent in 1981 and only 11.3 percent for the period from 1976 to 1980. This compares to the 1981 inflation rate of 10.3 percent. Finally, Benore suggests the pretax earnings to debt interest coverage of a healthy company should be at least four times. The industry could manage only a 2.5 ratio in 1981. In short, the electric utility industry flunked all the tests that measure financial health.

According to a Congressional Research Service study prepared at the request of the Energy Conservation and Power Subcommittee, "the heart of the rationale for inclusion of CWIP in the rate base" is the need to rescue utilities from being condemned to pay high interest rates to finance construciton. (See "Construction Work In Progress in Electric Base Rate," Committee Print 97-FF, Energy and Commerce Committee, June 1982.) Internal cash generation for construction through CWIP is critical in this regard.

Another strong argument documenting the need for CWIP in rate base is that, according to FERC Chairman Butler, "* * * current utility regulation discourages them (utilities) from making capital expenditures that would ultimately result in lower costs and, therefore, lower prices to consumers." (See testimony before Energy Conservation and Power Subcommittee, April 23, 1982.) Utilities must be able to earn at least their cost of capital, which is not happening under current regulation. As Butler pointed out in his April 23 testimony, investments in even cost-effective plants such as coal-fired generation "have too often become, for existing utility investors, exercises in assured losses." This unattractiveness of investment which prejudices utilities against necessary current construction may adversely affect the cost of producing electricity by 1990. (See Energy Information Administration, "Impact of Financial Constraints On the Electric Utility Industry, 1981.") CWIP in rate base would alleviate some of this investment disincentive which may impact future power cost and reliability.

Utility regulation should not create a bias for or against capital investment. There is a strong case to be made that inclusion of CWIP in rate base will aid utilities to avoid unnecessary investment. Chairman Mike Butler spoke to this issue in the April 23, 1982 hearing of our Energy Committee.

On the consumption side, inclusion of CWIP in rate base may provide price signals that permit utilities to form a more accurate assessment of their long run demand curves and thus help them to avoid unneeded investment. This possibility arises from three basic facts. First, utilities must make plant investment decisions long before the plant will begin to produce electricity. Second, the price of electricity will be significantly higher when a plant comes on line than at the time the investment decision is made. This is true not only because of the general effect of inflation but also because the widespread use of historic costs in utility rate regulation means that the price being paid for electricity today probably does not equal even the current cost of additional supply, much less its cost in the future. Third, the difference between present and future prices is increased by the exclusion of CWIP from rate base, because its exclusion both makes current prices lower and future prices higher. It seems to me that two conclusions may follow from these propositions. The first is that utilities face an inescapably difficult problem as they seek to decide whether investment in additional capacity is justified, since they can only observe current demand while the need for additional capacity depends on the future demand that will exist in the face of higher prices. The second possible conclusion is that the danger of investing in unneeded future capacity might be reduced if CWIP were included in rate base.

PURPA AMENDMENT

Congress should not take sides on hotly contested regulatory issues such as CWIP in the rate base. To establish a tacit Federal presumption against CWIP would remove the flexibility of FERC to formulate a policy that could be applied with discretion to different cases and shifting economic conditions. Congress is not equipped to become involved in the nuts and bolts of utility regulation.

My legislation, H.R. 6738, would amend section 111(d) of PURPA to require State utility commissions to consider the appropriateness of including CWIP in the rate base of their jurisdictional utilities. State PUC's know their utilities' regulatory situations best and should have discretion with regard to CWIP. At the Federal level, the FERC should proceed in a deliberate fashion in its CWIP rulemaking.

The rationale for amending PURPA is that the need for CWIP in rate base is so important that PUC's should give it serious consideration in generic hearings. PUC's should provide the public with a complete explanation of their decision whether or not to include CWIP in rate base.

PURPA, among other things, requires State PUC's to consider the adoption of various ratemaking standards and make public their reasons for agreeing or failing to adopt them. These standards include declining block rates, time-of-day rates, lifeline rates, load-management techniques, cost of service, and interruptible rates, among others. As these standards are designed to benefit the ratepayer, so the consideration of the adoption of CWIP in rate base is a standard the adoption of which could present significant ratepayer benefits. Ultimately, however, the decision should be left to the regulators on a case-by-case basis.

The financial crisis of electric utilities requires immediate legislative and regulatory responses that benefit both the industry and ratepayers. I hope serious thought will be given to the issue of including construction work in progress in rate base. A copy of H.R. 6738 is provided below:

H.R. 6738

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 111(d) of the Public Utility Regulatory Policies Act of 1978 is amended by adding the following new paragraph at the end thereof:

"(7) CONSTRUCTION WORK IN PROGRESS.—The cost of construction work in progress shall be included in the rate base for the purposes of establishing electric utility rates.".

(b)(1) Section 112(b) is amended by striking out "Not" in each place it appears in paragraphs (1) and (2) and substituting "Except as provided in paragraph (3), not".

(2) Section 112(b) is amended by adding the following new paragraph at the end thereof:

"(3) In applying paragraphs (1) and (2) in the case of the standard established under paragraph (7) of section 111(d), the date of the enactment of this paragraph shall be substituted for the date of the enactment of this Act.".●

LEBANON

HON. DOUGLAS K. BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. BEREUTER. Mr. Speaker, the recent events in Lebanon, no matter what we may think of them, have if nothing else created a new political landscape in the Middle East. This new situation creates both new opportunities and new dangers for the United States.

Philip Geyelin recently noted in a column appearing in the Washington Post that the opportunity has arisen for a fresh round of negotiations on the future of the Palestinians but that to be successful such negotiations will require new initiatives on all sides, including the United States. I have had excerpts from that column included in the RECORD.

The article follows:

BUT WHAT LIES AHEAD?

According to the you-have-to-break-eggs-to-make-an-omelet school of thought, as practiced by Israel and applauded by the likes of Irving Kristol, the solution to the Palestine problem is simple. First you crack the PLO wide open, pulverizing Lebanon in passing. Then you somehow herd the hapless, stateless, widely scattered, former Palestinian Arabs in the general direction of the Hashemite Kingdom of Jordan.

What's urgently needed is a fresh start at the beginning of the road: renewed negotiations on some variation of Camp David's experiment with "full autonomy" on the West Bank.

In this, the Arab moderates, even the Europeans, can help. But first you need Egypt. President Hosni Mubarak has promising ideas about how to exploit the "new condition" of the PLO by promoting a political Palestinian government-in-exile in Cairo composed of "moderates" prepared for reciprocal recognition and negotiation with Israel. You also need an Israel whose West Bank policy and performance convey a readiness to reciprocate and negotiate.

But for that you need an American administration strong enough to stand up to Israel. Only then can the United States hope to restore the influence it will need on the Arab side—the leverage lost in the smoke and thunder of American-supplied weapons in Lebanon—to make the most of "new" conditions in the Middle East.

"PAY AS YOU GO" VERSUS BALANCED BUDGET AMENDMENT

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. MILLER of California. Mr. Speaker, a large number of the Members of the House has voted in favor of a sound, workable program to balance the Federal budget by 1985—the "pay as you go" budget alternative which I offered. It is of considerable interest to note that 80 percent of the Democratic Members of this body who voted that day voted for the "pay as you go" balanced budget plan, which according to the Congressional Budget Office would result in a $27.5 billion surplus by 1985.

By comparison, the Congress passed, with the full blessings of the administration, a budget which will add a quarter trillion dollars to the debt in only 3 years, and that will result in a $60 billion deficit even in 1985.

We continue to hear that a balanced budget amendment is the only way to end reliance on the deficit. The fact is that were a balanced budget amendment in the Constitution today, we would simply be in violation of the Constitution.

The proposed amendment is an expression of the viewpoint we all feel: we should reduce the deficit and balance the budget. But the amendment provides absolutely no idea how to achieve that goal. It sets out no program or process. As a result, the amendment is really just a symbol.

We need more than symbols to end reliance on the deficit, high interest rates, and economic stagnation. The "pay as you go" plan, as those who supported it recognized, provided a workable and equitable method for actually achieving a balanced budget: hold spending to current levels, and require offsetting, equivalent savings or new revenues to pay for all new spending.

Let us subject all new spending to this same process, and let us find out just what this Congress really is committed to support.

Let us stop trying to deceive the American people by marching around in lock step, singing a chorus of "Balance the Budget" while continuing to vote for reckless spending and endless reliance on the deficit. I am willing to submit the programs I support to that test. So were 80 percent of the Democrats. Unfortunately, over 98 percent of the Republicans in the House who voted on the balanced budget "pay as you go" plan failed the test and voted instead for big deficits.

So, I would caution voters to be very skeptical of those Members who vote for the goal of a balanced budget in the form of an amendment, but who voted against the "pay as you go" means of achieving it. A balanced budget amendment without "pay as you go" budget-making is meaningless; with a "pay as you go" budget, a constitutional amendment is totally unnecessary.

The Oakland Tribune, one of the leading newspapers in California, editorialized on this subject earlier this week. I would like to share that editorial with my colleagues.

A BUDGET NOSTRUM

If words could balance budgets, the federal government would have no fiscal problems. Not since the days of Herbert Hoover has Washington seen a president so quick as Ronald Reagan to denounce the evils of deficit spending.

But when it comes to the federal budget, words are useful mostly as disguises. Had balancing the budget been as simple as railing against deficits, the deed would already have been done. Alas, none of the president's stern denunciations of federal red ink have kept him from becoming the champion deficit maker of American history, with deficits of $100 billion-plus for this year and next.

Nor would the words of the balanced-budget amendment to the Constitution, now being debated in the Senate, have saved the

president from himself. This amendment, warmly embraced yesterday by Reagan, would require Congress to adopt a balanced budget each fiscal year, except in wartime or when three-fifths of Congress votes for a deficit.

The president submitted a budget this year with a projected $121 billion deficit not because he loves deficits—all evidence points to the contrary—but because he hates taxes more.

His budget could have been balanced, but only at the cost of jettisoning his tax cuts, his plan to build up the military and his promise to protect the Social Security benefits of current pensioners. A balanced-budget amendment would have changed nothing, because no government looking out for the good of the country would have drastically raised taxes in the middle of a painful recession. This year three-fifths of Congress would have voted for a deficit.

Had the amendment been in effect this year, though, a budget compromise would have been much more difficult to achieve.

Under the amendment, a shifting minority of 41 percent of the members of Congress would have been in a position to sabotage any budget worked out by the majority. The Democrats in the Senate could have blocked the third year of the tax cut. The opponents of the president's Pentagon spending could have held the budget hostage until he agreed to cut back. Control over government would have shifted from the majority elected by the people to minority veto groups. It is not a good way to run a government.

Railing against federal deficits is politically popular, but not as popular as deficits themselves. Managing the economy through federal fiscal policies has proved an effective way of smoothing out the worst bumps in the business cycle. Neither Democrats nor Republicans will give up the tactic, nor should they.

Unfortunately, Congress has not always over the past decade, had the discipline to match deficits in tough times with surpluses or balanced budgets in good years. Thus the impetus for the balanced budget amendment.

More discipline in the budget process is necessary. An approach something like the "pay-as-you-go" budget process suggested by Rep. George Miller, D-Contra Costa, which would require Congress to match each increase in spending with new tax revenue or commensurate cuts in other programs, would be useful. But putting the budget process into a constitutional amendment that tampers with majority rule in Congress is the wrong way to go.●

CARRIER PROCUREMENT: A BOLD PROPOSAL

HON. ELDON RUDD

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. RUDD. Mr. Speaker, it is evident that if we are to retain the freedoms that we cherish: that if we are to remain free politically, and economically, that a strong Navy is a must. However, while no budgetary problems should dictate national security policy, we must take into account our financial well-being as we build the Navy that we need. To that end, the administration has come up with a bold proposal to satisfy our national security needs in a timely and efficient manner, and at the same time, reduce the pressures on the budget coming from the Department of Defense.

To protect our interests around the globe, and to counter the growing encirclement of our trade and freedom by the Soviet Union, the Navy, in its mission profile, has decided that a 15-battle group Navy is essential to our national security needs. These battle groups would be centered on the large-deck nuclear-powered aircraft carrier. The normal method of acquisition is beginning of construction of one carrier and then procurement of the next near the end of the construction of the first. In an imaginative effort to combine urgent and badly needed shipbuilding with cost savings, the Navy has proposed that the next two carriers built, be built concurrently, thus giving this country additional naval strength many months in advance of earlier planning and at a lower cost. In addition to bringing the new carriers CVN72 and CVN73 in at an earlier date, this bold procurement plan will allow for earlier delivery of the CVN71, already under construction.

Studies indicate that concurrent procurement of the next two line carriers will result in a savings of over $754 million, as opposed to the traditional method of procurement. These savings can be broken down into four specific areas: one, reduced startup costs, $100 million; two, enhanced productivity, $100 million; three, multiple purchases of material, $250 million; and four, reduced escalation, $304 million.

The reduced escalation costs are the most significant. They are the most significant in any weapons systems purchase.

The mostly significant feature of this bold procurement proposal, however, that the Navy estimates that by procuring the carriers at the same time, there will be bonus in having both the CVN72 and CVN73 delivered for operations 22 months before the regular procurement schedule would permit. In addition, the Navy, and the shipyard that would do the construction have indicated that concurrent procurement would enable the already authorized CVN71, to be delivered 14 months ahead of schedule. This means that the United States would receive the operating capacity amounting to 5 years between the three ships that it would not have had under the normal procurement procedure. Even more importantly, this two-ship procurement will have a neglible effect on the fiscal year 1983 deficit as outlay difference between one- and two-ship procurement for the first year is only $25 million.

Clearly, the Nation can use an additional 5 years of operations out of our badly needed fleet in the tryng years to come. Even more importantly, this Nation needs to see this bold budgetary planning in these days of fiscal constraint. The procurement plan for CVN72 and CVN73 is not only the less expensive, and more efficient way to bring back the needed power to our naval forces, it is the right thing to do.

I urge all my colleagues to look at the plain sense of the need to initiate this bold procurement plan.●

POLITICS AS USUAL

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. GRADISON. Mr. Speaker, social security is at the brink of bankruptcy. How could Congress have allowed a financial crisis to come so close? Unfortunately, the answer is "politics as usual."

Last September, politics derailed a strong bipartisan bill to finance the system that the House Ways and Means Social Security Subcommittee had been working on for over 6 months and that was near completion. It now seems unlikely that the 97th Congress will even address the issue. Thus, this Congress rightfully will be viewed as irresponsible with regard to our country's largest social program.

Despite this evidence that politics has prevented responsible congressional action, our political parties are again playing with the fiery issue of social security. And once again it is the beneficiaries that will be harmed the most.

The political fire was lit in 1969 when social security was first included in the unified Federal budget. In the 1970's, consecutive deficits in social security which created the need for reform of the system coincided with large budget deficits and the desire to cut back general revenue spending. Because social security was part of the budget, confusion over the need to reform the system and the need to balance the overall budget resulted. Consequently, proposed changes to slow the rate of growth in social security benefits have been portrayed as cuts "to balance the budget on the backs of the elderly." Politics have forced these unfortunate public perceptions that have kept reform from moving forward.

Taking social security offbudget would eliminate much of the basis for political maneuvering. For this reason, support for moving if offbudget has been growing ever since it was placed in the budget. The 1971 Social Security Commission endorsed this proposal, as have four former Social Security Administration Commissioners, including Robert Ball, and two former Secre-

taries of HEW, including Wilbur Cohen. President Carter's National Commission on Social Security and, in particular, Bob Myers, one of the architects of the social security system, recommeded separation in 1981. Richard Schweiker, Secretary of HHS, stated in Ways and Means testimony that he personally likes the idea. A majority of the members of President Reagan's National Commission on Social Security Reform, which must report by December 31, 1982, support separation.

Last October, I introduced a bill to separate the social security trust funds from the Federal budget. In June, I reintroduced a technically amended version, House Joint Resolution 499, which now has over 80 cosponsors from both parties.

Separation will strengthen the budgeting of general revenues by ending the distortion of the deficit that occurs when the independently financed social security trust funds are incuded in the budget. Moreover, separation will save the independent social security system from ill-conceived cuts designed to balance the budget. Perhaps most importantly, separation may dampen the politics enough to allow a responsible reform of the system to be made.●

PERSONAL EXPLANATION

HON. CLINT ROBERTS

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. ROBERTS of South Dakota. Mr. Speaker, official business in my congressional district prevented me from being on the floor for votes on July 13 and 14. Had I been here, I would have voted as follows:

On July 13: Rollcall No. 177, yea; rollcall No. 178, nay; rollcall No. 179, nay; rollcall No. 180, yea; rollcall No. 181, yea.

On July 14: Rollcall No. 182, yea; rollcall No. 183, nay.●

MAINTAIN WIDE COMPETITION FOR GSA CONTRACTS

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. GINGRICH. Mr. Speaker, a home-State friend of mine, Mr. Eliott Barrow, has been manufacturing metal office furniture since 1956. Most of his production has been sold to the General Services Administration and to the U.S. Postal Service.

Now Congress is considering a proposal called the Uniform Federal Procurement System. Legislation pushed by the administration creates a statutory preference for the use of commercial products to meet the Government's needs.

That change would mean that Mr. Barrow's small business, because it sells much more to Government than to commercial sources, would lose the right to bid for GSA and other Government contracts. A company like Mr. Barrow's, even if it might be the lowest priced supplier of Government office furniture, would be shut out because its products are not generally diverse or numerous enough to grab a share of the commercial market.

This possible policy change should be scrutinized very carefully. Would it discourage full and free competition, while centralizing the sources of Government furniture? Would it penalize small businesses who have specialized in designing goods for the Government because it was the only way to compete against bigger companies who sell large amounts to both public and private sectors?

What follows is the testimony of Mr. Barrow's lawyer, Mr. Lee Henkel, before the Government Affairs Committee of the other body on June 29. It makes a very good case for opposing any legislated change in GSA's present policy of seeking widespread competitive bids.

The testimony follows:

Mr. Chairman and Members of the Committee:

I am Lee H. Henkel, Jr. of the law firm of Henkel, Hackett, Edge & Fleming, P.C. of Atlanta, Georgia. I am here today on behalf of our client, Jebco, Inc. (Jebco), a contract manufacturer of metal office furniture located in Warrenton, Georgia. I am accompanied by Mr. J. Eliott Barrow, owner of Jebco, and by my partner, Stanley H. Hackett.

Jebco manufactures metal office furniture, principally for sale to the United States Government (GSA), and postal storage and handling equipment (mailboxes, etc.) for the U.S. Postal Service (USPS). Through the years, Jebco has also made sales to the military. Jebco makes some commercial sales each year, but such sales are negligible in terms of its total sales volume.

Jebco does not manufacture a full line of metal office furniture on an on-going basis. However, on a contract basis, Jebco has manufactured double and single pedestal office desks; clerical and secretarial desks; card file cabinets; map and plan filing cabinets; tables and stands; costumers; various filing cabinets; mail boxes; USPS workroom furniture; lockers; wardrobes; and a variety of other office furniture. Jebco's present capitalization is approximately $2,500,000. Its sales volume has ranged from $5,000,000 to $8,000,000 in recent years. Jebco's present capitalization is insufficient to permit ongoing production of the broad line of furniture to achieve and maintain viable commercial sales.

Jebco normally employs 200-250 people; employment has been as high as 350 in recent years. Jebco's minority employment normally averages 70 percent. For the last several years, Jebco's employment has been reduced considerably. The reduced employment has been attributable directly to the curtailment in GSA purchases of metal office furniture which has existed for the last several years. Only recently, GSA once again began buying furniture and Jebco was fortunate to be low bidder on several contracts. However, if Jebco is precluded from bidding on future GSA purchases, it will be unable to operate. Jebco's sales to the U.S. Postal Service are insufficient, standing alone, to sustain operations over the long term.

With that background, I would like to turn to the proposed Uniform Federal Procurement System (UFPS).

From Jebco's standpoint, the most significant change in the proposal is the creation of a new, statutory preference for "the use of commercial products to meet the government's needs." Commercial products are not specifically defined in the legislation most recently proposed by the Administration. However, earlier draft legislation defined commercial products as ". . . property or services which are regularly sold or made available to the public at established catalogue or market prices."

Implementation of this commercial items preference will discourage competition in the metal office furniture industry. Office furniture is unique in that desks, credenzas, file cabinets and other furniture in an office typically must be the same color and style and be otherwise compatible. Commercial buyers rarely buy one type of metal office furniture which does not match others. As a result, to be viable in the commercial market place, a producer must offer a fairly complete line of metal office furniture at all times. This requires capitalization and a sales volume much greater than Jebco has, or realistically could hope to have. In the past, the Federal Government has achieved desired coordination through specification. Jebco has been able to compete and to bid and produce particular items to specification. Under the commercial items preference, the Federal Government would still achieve coordination through specification, although the new specifications may be less detailed than in the past. Jebco has no objection to commercial specifications or functional specifications per se. Jebco could manufacture quality products which would meet these specifications at a competitive price. However, Jebco and similarly situated producers, in effect, would be precluded from bidding under the proposed statutory commercial items preference, regardless of their ability to produce pursuant to the new specifications.

The commercial items preference appears to be based on the presumption that if an item is offered in the commercial market place it is "good". Conversely, if an item is not offered in the commercial market place it is "bad". However, all that is really being done with the preference is that one set of specifications (i.e., commercial industry specifications) is being substituted for another set (i.e., GSA or DoD specifications). Furthermore, the only specific assurance of quality is a representation by a bidder that the product it proposes to supply is the same grade as supplied in the commercial market place. Jebco can make the equally valid representation that the product it would propose to supply to the Government in the same grade as that supplied by others to the Government and in the commercial market. The bottom line on quality is the same in both cases—the Government is looking to the integrity of the manufacturer and its ability and willingness to repair or replace products which may be defective.

The proposed statutory preference for commercial products effectively would exclude a large body of current suppliers from competing in the future for government business. Again I refer to contract manufacturers, such as Jebco, who typically bid to supply volume purchases pursuant to some type of specification and who do not maintain a full inventory for sale to the general public on an ongoing basis at established prices.

A contract manufacturer invariably can beat a commercial manufacturer on price for a specified product, with quality and other relevant factors defined by specification. The new statutory preference, in excluding such contract manufacturers from even bidding for government business, is blatently anticompetitive. Please understand that in practical effect, a statutory preference in favor of one type of product will operate as a statutory exclusion of others.

However, to deal with this obvious objection, the proposed UFPS would simply redefine competition from the "full and free" standard, which has been the federal standard in one form or another since the early 1800s, to the "efficient and effective" standard. The proposal makes clear that this new standard of competition could be satisfied by going to as few as two producers.

A traditional response to competition is to reduce prices; the response articulated in the proposal is to redefine certain competitors out of the system. We find that quite disturbing, and sincerely pray that this Subcommittee—and this Congress—will not go along with such a blatent grab for the public dollar.

However, when S. 2127 is considered together with Executive Order 12352—which has already been promulgated—the effect is very close to the statutory preclusion contained in the proposed UFPS. Executive Order 12352 provides in part that the Government shall "establish criteria for enhancing effective competition..." and that these criteria shall include such actions as "...expanding the purchase of available commercial goods and services." We already know that there is a certain amount of Orwellian "double-speak" here. "Effective competition" clearly means something less than "full and free" competition. When we have statutorily permissable limited competition as contained in S. 2127, and an Executive Order that requires the expanded purchase of commercial items, then it is not too difficult to conclude that manufacturers such as Jebco will find themselves excluded from the system.

All we ask, Mr. Chairman, is that under whatever system is ultimately designed, we have the right to compete. We are extremely concerned that efforts are underway to deny us this right. We resent it, we will resist it, and we sincerely hope this Congress will resist it.

That concludes my formal statement. We would be delighted to respond to any questions the Committee may have.

Thank you.●

ROBERT E. HULL, A DISTINGUISHED HOOSIER

HON. JOHN HILER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. HILER. Mr. Speaker, many of us here in Congress frequently speak of those who have made special imprints on our lives, or inspired not only us but hundreds of fellow Americans whose lives also have been touched by the character, leadership, and wisdom of those close to us.

Mr. Speaker, such a man passed away earlier this year. His name was Robert E. Hull, a close family friend, respected community leader, and outstanding achiever in the foundry industry.

Mr. Hull typified the greatness that inspired the successful growth of our Nation years before him. He advocated the virtues of free enterprise, not only in words, but in deeds. He cofounded Kingsbury Castings, Inc., a ductile iron foundry, serving as vice president until his retirement in 1980. He was involved in the experimentation that led to the development of that new metal. He was also one of the early foundrymen who worked on the development of the highly successful Meehanite process.

Mr. Hull's leadership did not stop there. He was active in the American Foundryman's Society for 45 years, holding numerous postions of responsibility. He also served as a member of the National Foundry Association and Cast Metals Federation of Indiana.

Mr. Speaker, Mr. Hull is deeply missed by those of us who were fortunate enough to have known him, and will long be remembered for his service to his community, his State, and his Nation.●

WHY VIETCONG FLEE

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. DORNAN of California. Mr. Speaker, during the Vietnam war, there was a great hue and outcry among protestors that the "struggle", as they referred to it, was simply one of national liberation—liberation, that is, from the corrupt officials of the pro-American Diem regime. Many in the media hammered away incessantly that those in the north merely sought to reunite the oppressed people of the south so that there would once again be a single, united, and prosperous Vietnam. Once the "imperialistic" Americans were defeated and driven out—so the propaganda went—all would be well.

But all is not well. A recent article that appeared in the July 11 issue of Parade magazine entitled "Why Vietcong Flee," based upon firsthand revelations from former high-ranking Vietcong officials, strongly confirms what many of us have been arguing all along—that the situation in Vietnam is infinitely worse now under totalitarian communism than it ever was under Presidents Diem or Thieu. The conquering armies from the north were quick to banish the National Liberation Front flag of the Vietcong. They confiscated the best houses, the richest plantations, and the luxuries of the black market. Thousands of Vietnamese have been sent to prisons or "reeducation camps", 500,000 are being exported to Siberian labor camps—many to work on the Soviet pipeline—and nearly a million Vietnamese have fled by boat. As Truong Nhu Tang, a founder of south Vietnam's National Liberation Front and later its minister of justice, candidly admitted: "The living situation in the South has never been as bad as it is now. The Hanoi Communist Party has concentrated power into a small caste of corrupt and incompetent bureaucrats and brutal security forces. Current repression is far worse than during Thieu's regime, and there is nothing to eat. Hanoi blames these problems on the Americans or the Chinese, but the real cause is themselves."

Mr. Speaker, at this time I would like to submit this excellent eye-opening article for the RECORD.

WHY VIET CONG FLEE

(By Al Santoli)

Nguyen Tuong Lai, the former Viet Cong national chief of intelligence, guided his wife and children across the rickety bamboo catwork suspended above the mudflats surrounding the boat dock on Vietnam's tropical coast of Rach Gia. Using the stealth he had learned as a Viet Cong surviving jungle wars for 21 years, he kept the movement of their shadows camouflaged within the moonlit walls of the pier.

Quietly, after lifting the last of his children onto the boat, he untied the small craft, which slowly drifted out to Sea. Eighteen people—grandparents, adults and children—huddled. All on board kept a nervous watch for the Soviet-made PT boats of the Vietnamese navy. Capture would mean years of prison labor or death. Worse, in these waters prowled pirates who preyed upon defenseless refugees, looting valuables killing the men, carrying off the women and children as slaves. Two old grandmothers prayed aloud for safety. Lai wondered whether they'd make it. It was autumn, 1979.)

Since the Americans left their country in 1975, nearly a million Vietnamese have fled by boat; an estimated half of them have died at sea. Parade has found that a surprisingly high number—thousands, according to refugee leaders—were Viet Cong and Communist Party members. These unusual and rarely noted refugees have resettled in Thailand, Hong Kong, Malaysia, Switzerland, Paris and even Boston and San Jose, Cal. What follows is the result of interviews

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with high-level Viet Cong and Communist leaders we believe representative of those who have escaped. They made the following assertions about conditions in Vietnam today and the actions of the Communist government since its takeover in 1975:

Thousands of citizens—including many former Viet Cong—have been imprisoned, sent to "reeducation camps" or executed. In addition, 500,000 Vietnamese are being exported to Siberian labor camps by agreement with the Soviets.

Large amounts of Vietnam-grown rice, rubber and other raw materials are shipped to the Soviet Union, while the Vietnamese at home go hungry and the economy deteriorates.

Religious freedom has been restricted greatly, with church and temple properties confiscated or desecrated.

U.S. pilots were seen doing hard labor in North Vietnam several months after Hanoi said it had freed all POWs. These men are still there.

The once-questioned "domino theory" seems to be proving out. The Vietnamese Communists plan, after conquering Cambodia and Laos, to "liberate" Thailand.

Nguyen Tuong Lai's family and friends were lucky. After nearly a week at sea in their small boat, they arrived at a refugee camp on Bidong Island, Malaysia. Lai was given a job helping to question other former Communist soldiers and political cadre members, who continue to arrive in the Bidong camp. For two years, the family waited to emigrate. Today, in a small town in the mountains of Switzerland, Lai is learning the local language and how to drive a car.

He had been a soldier all his life. At 14, he joined the Viet Minh to fight the French in the swamps of his native Mekong Delta. After the defeat of the French at Dienbienphu, Lai was assigned to organize resistance units in the delta. By 1959, he had elite membership in the Vietnamese Communist Party. He commanded Viet Cong units in early battles and, having proven his valor, was sent to military academies in the Soviet Union and Hanoi, then home to lead a commando regiment against U.S. forces.

Lai is a huge man who stood head and shoulders above the troops in whom he had to instill fearless obedience—their work was among the most daring and bloody in the war. During the 1968 Tet Offensive, in which the Viet Cong was decimated, his troops led a suicide attack on the Bien Hoa airfield.

Lai was assigned to National Liberation Front (Viet Cong) headquarters in the hotly contested region near Cambodia and was named chief of Viet Cong intelligence and counterintelligence. For years, he lived beneath the jungles, coming out only to oversee guerrilla operations in the Saigon area until the war ended.

"After the liberation in 1975," Lai recalls, "after 12 years of fighting, I believed that peace had finally come and the new life would begin." But after North Vietnamese regiments marched into Saigon, the Communist Central Committee in Hanoi ordered Viet Cong units disbanded. The National Liberation Front flag, usually displayed in public places alongside the flag of North Vietnam, was banished by party officials and forcefully removed by the army. Revolutionary leaders like Lai were demoted and integrated into "The People's Army." The Viet Cong did not understand the attitude of the Northern Communists. Lai remembers their disillusionment: "We contributed so much during the war, and suddenly we don't have any responsibility and are not trusted by the party."

Like most Viet Cong leaders, Lai had relatives who had been officials in the defeated Southern regime. "After years of fighting," he says, "I reestablished close contact with my relatives. I had brothers, and my sister's husband, who fought in the ARVN [South Vietnamese Army], and my uncle, a landowner. I developed good relationships with them. But at party self-criticism sessions, cadre members from the North condemned Southern cadres like myself for associating with our 'capitalist' family members."

Though given a reduction in rank, Lai was named head of security and counterintelligence in southwest Vietnam. There, he found himself participating in the formation of a police state. Every citizen was suspected of being a counterrevolutionary who had to be watched or sent to prison or one of the "reeducation camps," which actually were forced-labor compounds. Among the thousands sent away were many former revolutionaries, imprisoned because they had opposed the severity of the Northern Communists and the Soviet presence in Vietnam.

Lai's disenchantment increased when he was made commander of the reeducation camp at Long Tan and ordered to draw up a stricter national surveillance policy. But what finally drove him to leave his country were the invasions of Cambodia and Laos.

"I am not afraid to die or sacrifice for my country," Lai says, "but I was against the mission in Cambodia. As a party member, I was obliged to obey orders. But many Southern members questioned the reasons and merits for going into Cambodia. Many of us felt it was because of Cambodia's alliance with China and our own party's obedience to Soviet dictates. After 21 years of war, another battle was beginning. I felt it would not be good for the reconstruction of Vietnam. So, even though I was unsure how my former enemies in the West would accept me, I decided to leave."

Truong Nhu Tang was another who emerged from Viet Cong jungle headquarters in 1975 as the last U.S. helicopters flew out of Saigon. Today, at age 59, he lives in Paris, writing his memoirs while his wife works as a pharmacist to help make ends meet. Small, white-haired, conservatively dressed, soft-spoken—Tang hardly seems the dedicated former revolutionary leader in a vicious civil war.

Yet this French-educated sugar industry executive from one of South Vietnam's most respected families was one of 60 nationalists who formed the National Liberation Front in December 1960 in a rural plantation near Bien Hoa. His revolutionary identity discovered, he was imprisoned by the South Vietnamese government and traded to the Viet Cong in 1968 for three American colonels.

He joined the Viet Cong command in the jungle. During the war, he says, his unit was "usually within 300 meters of U.S. troops, observing their movements." He adds: "Even helicopters flying at tree level couldn't spot our positions. We had at least five hours' warning on every B-52 raid. After the bombing, U.S. intelligence would say they had killed 500 Viet Cong in the area. But we had moved out before the bombers came."

Appointed justice minister of the Provisional Revolutionary Government, Tang conducted psychological warfare—which included both friendly and deadly persuasion—in the villages.

He also helped develop the NLF's "Ten-Point Plan for National Reconciliation," which was approved by Hanoi's Communist leaders and became the centerpiece of the 1973 Paris Peace Agreement. It called for a coalition government in Vietnam, free and democratic elections and no foreign interference in government affairs.

When the war ended, Tang recalls, North Vietnamese political officials went South with the conquering army. They fought among themselves, sometimes at gunpoint, to confiscate the best houses, richest plantations and luxuries of the black market—while refugees fled the country by the thousands. The economy deteriorated rapidly because of inadequate industrial planning by the Soviet-trained Northern cadre, Tang says.

"The living situation in the South has never been as bad as it is now," says Tang. "The Hanoi Communist Party has concentrated power into a small caste of corrupt and incompetent bureaucrats and brutal security forces. Current repression is far worse than during [President Nguyen Van] Thieu's regime [1967-75], and there is nothing to eat. Hanoi blames these problems on the Americans or the Chinese, but the real cause is themselves.

"For example, the damage caused by American defoliation during the war has been exaggerated to give an alibi for the catastrophic agricultural situation. But the real reason is that the farmers have adopted a form of passive resistance and protest toward the government." Farmers refused to join government cooperatives based on the Soviet model, Tang says, because of unfair compensation for their work and broken promises by the Communists, who had agreed to grant the peasants ownership of their land.

Much of the rice grown in Vietnam today, Tang notes, is shipped to the Soviet Union or goes to the army to continue the unpopular wars in Cambodia and Laos. Meanwhile, the people at home starve.

"We were betrayed by the Hanoi regime," Tang says, "because they immediately brought the Russians into the South, and today they are everywhere in Vietnam." To help pay its debts to the Soviet Union, the Vietnamese government recently agreed to export 500,000 "guest workers" for Siberian slave labor, Tang says. He estimates that most of these slaves came from the reeducation camps and jails for political prisoners.

Tang knew that his authority as justice minister of the revolutionary government was illusory. He had assembled a staff of legal experts, but those not approved of by the Northern cadre were sent to reeducation camps.

The policy of "reeducation" increased Tang's disaffection. Shortly after the liberation, he advised his brother, who had been a medical doctor in the ARVN, to report voluntarily to what Hanoi officials promised would be a 10-day camp. After a month, when his brother had not returned, Tang asked top government officials why nobody had been released. He recalls telling them: "This violates the reconciliation that we promised the people. Now we are strong, we have all the power in our hands. Why do we have to act as conquerors?" They gave him no answers, he says.

Tang recalls the frustration: "People would stop me on the street and demand to know what I was doing about their friends and relatives whose property was being seized, who were disappearing in reeducation camps or were forced to move to 'new

economic zones.' I felt helpless. There was nothing I could do."

In protest, Tang resigned as justice minister. The government—to save face, he says—resettled him on a lush farm complete with servants and guards and offered him the ceremonial post of vice minister of food.

He says he could not accept the deal for long, and on a rainswept August night in 1979, Tang and his wife joined 62 others in a wooden boat and braved winds, waves, navy patrols and pirates. One week later, their weathered vessel was washed ashore somewhere on the Indonesian coast.

In San Jose, Cal., Nguyen Cong Hoan and other members of the Vietnamese community there have transformed an old house into a Buddhist temple. Though he works as an electronics technician and his children spend Saturday mornings watching cartoons on TV, he seems preoccupied with his wartime days in the Buddhist peace movement, when he helped lead the opposition to the Saigon government.

"The Buddhist movement, like other opposition groups in Vietnam, was tired of the long war and only wanted peace." Hoan explains. "The U.S. had supported governments that were corrupt and had no contact with the common villagers. Our main objective was to get rid of Thieu. Many people joined the NLF only because they felt that anything would be better than Thieu. NLF propaganda promised a just unification of our society, and the Communists promised peace, justice, democracy, independence and a better life. On paper, the NLF was a coalition of many groups. We did not realize that, in reality, only one group controlled—the Communist Party."

Shortly after the "liberation," Hoan says, the Communists cracked down on all religious groups. Most prominent antiwar leaders were imprisoned, church and temple properties confiscated, pagodas and churches desecrated and the laity was prevented from going to religious services. A few temples—run, Hoan says, "by puppets of the Communists"—were allowed to remain for cosmetic purposes.

After the fall of Saigon, Hoan returned to his home in South Vietnam to teach school. He was informed that within the first days of the "liberation," 700 people were executed in his province and thousands imprisoned.

According to former intelligence chief Lai, "people's courts" were staged in public throughout the country. All tried were sentenced to death, but Communist Party policy was to kill them in secret places so the international media would not pick up the story and local populations would not be repulsed by the spectacle. Another former government official estimates that 200,000 executions took place.

In 1975, the Communist made Hoan a "legislator" in the National Assembly of the Socialist Republic of Vietnam. But, like other Southerners appointed to the assembly in Ho Chi Minh City, he was never allowed to speak or act on anything substantial, as the assembly was controlled by a dozen party members from North Vietnam. As assemblyman, Hoan took two trips to North Vietnam, where he had access to information on national objectives and government policies.

Hoan says the Vietnamese do not want to stop fighting after the conquest of Laos and Cambodia. "During the first session of the National Assembly in Hanoi," he recalls, "Tran Quynh, assistant to party secretary Le Duan, told me: 'The liberation of Thailand will be next. It is a historical necessity and a responsibility of the Vietnamese Communist Party.' At the same session, we were given a document titled 'Vietnam-Southeast Asia,' expressing the party's drive for domination." Hoan decided to leave Vietnam, he says, to tell the outside world about conditions in his country.

Nguyen Duc Yen fled by boat from Hanoi to Hong Kong in 1979, after 20 years of membership in the Vietnamese Communist Party. During the war, he served as a propaganda minister in the prime minister's office and the Foreign Press Relations Bureau.

Today, Yen, an impeccably dressed man in his mid-40s, works as a reporter for a rural village newspaper in Switzerland, where he and his family live in the foothills of the Alps.

His job during the war was to translate Soviet propaganda and doctrine into Vietnamese. Few Westerners realize, he says, that most of the information and assertions from Hanoi at that time originated in the Soviet Union and East Germany.

As propaganda minister, Yen divided his time between Hanoi and Moscow. "In Eastern Europe and the Soviet Union," he says, "I saw the kind of poverty and misery that Marxism has caused everywhere. After the war, I saw the same thing happening in my country. To speak out against this meant prison or death, which happened to many party members, even veterans of the French war."

In June 1973, Yen says, he saw 30 or 40 American pilots still held as POWs in the highlands of North Vietnam. It was two months after the North Vietnamese government said it had released all POWs, and to this day, adds Yen, these men have not been released. "The district chief of that region told me the party's central committee in Hanoi had sent these prisoners to his region for him to take care of," says Yen. "The men were doing hard labor." Today, the fate of these Americans is still in Hanoi's hands.

Yen says that Hanoi will try to use these prisoners as bargaining chips to reestablish diplomatic relations with the U.S.—which, he says, "would be a grave mistake." He emphasizes, "It would only help them to make war with other countries and further oppress the Vietnamese people. The aid would be used to buy weapons and supply the army to invade the rest of Southeast Asia. In addition, the Soviets would like to use the Vietnamese to divide the U.S. and China."

According to Nguyen Tuong Lai, resistance to the government is increasing in Vietnam—passive resistance by civilians and organized armed resistance by former Viet Cong and ARVN members and tribespeople. In 1977, Lia says, the resistance forces blew up a major fuel storage facility at Long Binh—something the Viet Cong could never accomplish during the war. Yen adds that the resistance has been largely hidden by the government.

"My job in Hanoi was to prepare people for visits by Western media," Yen says. "When Western delegations come to visit Hanoi or other cities, the people are prepared ahead of time as to how they should act and what they should say. Even on the streets, the reality is quite different from what a journalist will be shown. The secret police are everywhere. A journalist will be taken to see only trusted party members, who will say what the party has told them to say and nothing more. When Westerners see a Vietnamese smile, they do not realize that it is a form of social dignity, not a reflection of that person's inner feelings. If a journalist reports that the Vietnamese are happy, he does not know anything about Vietnam."

(Nguyen Tuong Lai, the former Viet Cong intelligence chief who now lives in the Swiss mountains, concludes our interview: "I would like to contribute the rest of my life to the reconstruction of Vietnam into a free democratic country." It is spring, 1982.)

ENTERPRISE ZONES: COMMUNITY INVOLVEMENT AND VENTURE CAPITAL ARE VITAL

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1982

● Mr. KEMP. Mr. Speaker, on July 13 I had the opportunity to testify about how enterprise zones can increase community involvement and bring venture capital to America's inner cities. I would like to share this testimony with my colleagues.

TESTIMONY OF HON. JACK KEMP, REPUBLICAN OF NEW YORK, ON THE ENTERPRISE ZONE TAX ACT BEFORE THE SUBCOMMITTEE ON ECONOMIC STABILIZATION OF THE COMMITTEE ON HOUSING, BANKING, AND URBAN AFFAIRS, JULY 13, 1982

Mr. Chairman and Members of the committee, I want to thank you for giving me this opportunity to testify on behalf of the Enterprise Zone Tax Act.

Let me also say how pleased I am that these hearings will focus on two of the issues most crucial to the success of enterprise zones: community involvement and venture capital. These two issues have been repeatedly raised in my own discussions with community leaders in my Congressional District, particularly the Black Leadership Forum, and the Enterprise Zone Task Force. I understand that today you are taking testimony on the role of the community; however, I'd like to take the liberty to discuss both this and potential sources of venture capital in my testimony this morning.

The notion of community lies at the heart of enterprise zones. Not that this is always popular! Enterprise zone supporters are often accused of "confusing" people and places, of refusing to accept that urban redevelopment is really very different from helping inner city residents find new jobs and opportunities.

In fact, I think this so-called "confusion" is one of enterprise zones' greatest strengths. My good friend and colleague Representative Robert Garcia sums this up very movingly when he describes the South Bronx of his childhood. It was a true community, a place where people worked and lived, shopped and spent their leisure time. Yet today in areas like the inner city Buffalo or the South Bronx, money flows in from outside and escapes back out again. Very little economic activity is being generated within.

This economic stagnation produces more than just the outward signs of urban decay—the derelict streets and burnt shells of buildings. It drastically limits the opportunities of people who live there. Many of these individuals, like each new wave of immigrants that arrived in America's cities,

came seeking opportunity. As innovation and economic growth has dried up in these cities, so has their chance to get on that crucial bottom rung of the ladder to economic success.

It's just not enough to say that many of these individuals can pick up and move somewhere else. With the disintegration of communities comes the abandonment of valuable intrastructure, and far worse the abandonment of the very poorest Americans to areas where there is no longer any tangible opportunity and therefore no incentive to preserve and invest the human capital which all of us possess.

This is why I have been so deeply disappointed by the British approach to enterprise zones. Instead of trying to revitalize communities, the British government chose to take enterprise zones outside of communities altogether. By creating zones in abandoned areas, and concentrating incentives on investment and construction, rather than job creation and training, the British approach runs completely contrary to our bill.

Because American enterprise zone supporters view cities—and indeed towns and rural areas as well—as far more than just places with an arbitrary collection of people, we have included strong protections for community involvement in the legislation. "Involvement in the (zone) program by private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area" is listed as a central element in an enterprise zone "contract." In addition, preference in selecting zones will be given not only to those zones with the greatest community involvement, but also to those where there is a "strong likelihood that zone residents . . . will receive jobs in the zone."

We can't just impose urban programs from Washington, without any regard to the wishes and needs of people living in urban communities. The tragic aftermath of many urban renewal projects attests to the disaster this can bring.

But ignoring community concerns is not only cruel; it is stupid as well. In recent years, even as inner city communities were being written off as hopeless, small self-help groups sprung up to rehabilitate homes, plant gardens, train youth, and inspire new hope in their neighborhoods. In Philadelphia one neighborhood family concerned about their child's future took on a supposedly insoluble youth gang problem and started to solve it—with the help of the gangs themselves. All across the country neighborhood "crime watch" progams have made streets safer and brought communities together.

My own community of Buffalo has witnessed impressive successes by individuals and groups who have been unwilling to concede defeat for our city. The Linwood-Oxford Association has rehabilitated homes and combated juvenile crime. My good friend Donald Lee's Planning Assistance Consultants, Inc., has helped minority and neighborhood entrepreneurs start up and expand. The Urban League under Leroy Cole's leadership has provided job training, while the NAACP under Dan Acker has fought hard against discrimination and for economic justice and opportunity. One reason I believe enterprise zones will work well in Western New York is that I know how much ability, energy, and commitment these groups and individuals will bring to making them work.

Our colleague Bill Gray, of Philadelphia, has made another important point about the community's role in enterprise zones. In a speech before a Seminar on Enterprise Zones held in Philadelphia on March 27 he made the following observation:

"A strong local business community—representative of the residents of that community—is critical to the stabilization of any neighborhood. Local owners have a stake in the community, and therefore provide positive role models for others. They also are acutely sensitive to the needs and characteristics of their neighborhoods—a sensitivity which would be difficult for owners who reside elsewhere."

I have been focusing on what community groups and local leaders can bring to enterprise zones. At this point, however, I usually get a question back—a very fair question. "What's in it for us, the community group?"

One blunt answer is that it can give these groups clout with the local, state, and federal government. I have always argued that enterprise zones cannot be a substitute for other programs, and that instead they should be seen as an additional urban policy tool. By encouraging state and local governments to use some of their resources (including federal resources) in the very poorest communities, enterprise zones should help community groups in these areas gain new commitments for help. I know that many of these groups have felt in recent years that their areas were overlooked as city governments sought more politically rewarding downtown development projects. Enterprise zones could help redress the balance.

Enterprise zones also bring opportunity for community groups to work directly with private enterprise for their mutual gain. To consider just one possible scenario, the Enterprise Zone Tax Act provides an unprecedentedly large tax credit for hiring disadvantaged workers—50% of wages without a cap for 3 years, followed by 40%, 30%, 20%, and 10% in the subsequent four years. A business hiring a qualified worker at $10,000 a year and employing him or her for seven years would reap a $25,000 tax benefit—and that's leaving out the likely increase in productivity and salary as the worker gains experience. The business, then, has a substantial financial interest in hiring qualified workers; but it has to identify those workers and find those who are or can be trained to do the job.

My friend Rev. Leon Sullivan, head of Opportunities Industrialization Centers, Inc. has told me that his and other community-based groups would have a chance to step in here. They can find and train disadvantaged workers, a job they've been accomplishing for many years. And if this can be done at a fraction of the tax benefit, then both the community group and the private sector business will benefit.

Yes, comes the next question, but where will the private business get the capital to start up an enterprise zone business?

I recognize that the availability of venture capital has become the greatest concern of those analyzing enterprise zones—friends as well as critics. I have come to agree that enterprise zone legislation needs an additional "venture capital" provision. Before discussing just what such a provision could be, however, I would like to review some basic facts about venture capital.

Recent studies of venture capital in cities (most notably Michael Kieschnick's "Venture capital and Urban Development," 1979) have revealed some surprising information. Federal business assistance programs account for at most 3% of new business capital—that is, capital for newly forming firms. Banks provide less than 10%. More than 85% of all new businesses start without using any outside debt or equity at all.

What this suggests, it seems to me, is that any significant venture capital program must seek out the greatest potential source of capital: the private savings of individuals. UDAG and SBA loans together will provide a little over $1 billion in new capital this year—and most of this will not be venture capital. At the same time Americans have almost $200 billion invested in money market funds. if we could capture just one-half of one-percent of this for our inner cities we would have drastically increased the venture capital available for investment in these areas.

Aside from sheer quantity, there is another advantage to creating new incentives for private capital rather than trying to create a new public capital program. The big job creators, especially for cities and for disadvantaged workers, are small businesses. Yet even as they are creating virtually 100% of the net new jobs in America's older cities, these small businesses are notoriously difficult to help with direct government assistance.

Most entrepreneurs are hard to identify, and many avoid direct government assistance because they fear encouraging interference as well. What's more, almost 4 out of 5 small businesses fail in their first year. Even if government officials were willing to forego largescale, immediately rewarding projects for risky small ventures, how would they justify even a statistically successful failure rate, like 50%? The government can't take those kind of risks with the taxpayer's money. Only the individual taxpayer can.

Finally, I think we need to recognize that while up-front incentives are important, they aren't all that is important. Only the most optimistic—and unrealistic—entrepreneur is looking for immediate profits. Most new small businesses don't make money for their first five years, when they beat the odds and survive at all. Entrepreneurs must by nature and circumstance be seeking a long-run balance between initial risks and ultimate rewards. The risks are higher in enterprise zones . . . but then, so are the after-tax rewards. The reduction in taxes on investment and employment, and the elimination of capital gains taxes, will also come into the calculus when an individual is deciding whether or not to risk his or her savings on a venture in an enterprise zone.

What I conclude from these venture capital "facts of life" is that any new enterprise zone venture capital proposal should seek to attract private investors to put money into enterprise zones. This taps the greatest potential source of capital for the inner cities. It avoids the problem of government trying to select likely winners and losers. And it allows the market ultimately to award winners and losers without putting all taxpayers at risk.

There are a number of suggestions about how this could best be accomplished. The original Kemp-Garcia legislation contained refundable credits, and exempted interest income on loans to enterprise zone firms from taxation. Another promising proposal, which I understand will be discussed at some length before the committee tomorrow, is "equity expensing."

Under this proposal investors would be able to deduct immediately (up to some limit) the cost of purchasing enterprise zone stock or debentures. By offering an immediate tax advantage it would help attract up-

front capital, and significantly improve its rate of return.

I have had the opportunity to discuss this idea with several groups and individuals, including our colleague Charlie Rangel, a leading member of the Ways and Means Committee, and Malcolm Corrin, President and Chief Executive Officer of the Interracial Council for Business Opportunity. While there are still important questions remaining about how such a provision would be designed, certain advantages have become apparent:

1. It dramatically improves the rate of return on venture capital, thus providing an incentive for risk-taking investment in enterprise zones. For an investment held five years, and then sold at a gain, the expensing proposal increases the discounted rate of return by over 70%.

2. It provides an important capital source for small firms. By limiting eligible stock and debentures to those of smaller firms, this proposal could target benefits to the businesses which create the most jobs, yet have the least access to traditional sources of capital.

3. It would offer community development corporations, MESBICs, and other community-based organizations a tool with which to seek private capital. With the "expensing" incentive these groups could bring together potential enterprise zone entrepreneurs, especially minority entrepreneurs, with investors seeking a greater rate of return on their capital.

I am inserting some questions and answers about equity expensing prepared by Paul Prude, of Paul Pryde Associates, in the record at this time.

ENTERPRISE STOCK AND DEBENTURES—QUESTIONS AND ANSWERS

1. *How will this provision help firms located in enterprise zones?*

New companies generally obtain most of their start-up capital from the entrepreneur's friends, family members and business associates. Unfortunately, firms located in distressed areas designated as enterprise zones may find it difficult to secure financing from individual investors who have other, more attractive options. Our proposal is designed to overcome this problem by providing tax relief to people who purchase enterprise stock or debentures.

2. *How would it work?*

In simple terms, any individual who purchased enterprise stock or debentures (a long-term unsecured loan) would be entitled to a Federal tax deduction equalling the amount of the investment. For example, a person who put $10,000 into a qualified zone company would be able to claim a $10,000 deduction on his or her Federal tax return for that year. If the taxpayer were in the 50% bracket, the deduction would reduce taxes owed for that year by 50% of the $10,000, or $5,000. The deduction essentially allows the investor to get up to half of his or her investment back almost immediately in the form of tax savings. This should be a strong incentive to invest in zone firms.

3. *Won't this proposal encourage people to make investments with no real economic value just to get a tax break?*

Not really. Again, the proposed tax incentive would only give the taxpayer up to one half of the money invested back in the form of Federal tax savings. Most of the return of and on the investor's capital would have to come from principal and interest payments, dividends or from the subsequent sale of the investment. In other words, the investment will only pay off if the firm succeeds.

4. *Would there be any restrictions on the types of firms which could issue enterprise stock and debentures?*

Small firms—defined as those with a net worth of $5 million or less—which obtain at least 50% of their income from other than passive sources (e.g., rents, royalties, and interest payments) would be entitled to issue enterprise stock or debentures. Real estate trusts, investment companies, and other firms in the business of lending or investing money would not be able to use this form of financing.

5. *Won't this proposal encourage tax-conscious people to make investments at the end of one year and sell them the next?*

Under our proposal, there would be a minimum holding period for enterprise stock and debentures of three years. Taxpayers who sold their stock or debentures during the holding period would have the proceeds taxed as ordinary income. Thus, the investor who bought stock in one year and sold it the next would have to pay back, perhaps with interest, all or part of the previous tax savings.

6. *What about people who purchase enterprise stock and debentures from the original investor? Would they also be entitled to the deduction?*

No. Only the original purchaser of enterprise stock or debentures will be entitled to the deduction. Once the investment is sold to a second owner, it would lose its special tax status.

7. *What about firms which are already in business and need money to expand?*

Any firm meeting the definition of "qualified zone small business" would be entitled to issue enterprise stock and debentures.

8. *Will corporations be able to get the deduction by investing in subsidiaries or other firms located in enterprise zones?*

No. The incentive is available to individuals only.

9. *Given the high failure rate of new and small firms, won't this proposal simply make it easy for people to lose money?*

Some investors will undoubtedly lose money. However, the incentive is aimed principally at people in high tax brackets who can afford the risk. In addition, our proposal would permit the formation of professionally managed investment partnerships to assess and make risky investments on behalf of individual investors. For example, MESBICs and SBICs might form subsidiaries to develop and manage such investment pools.

10. *Won't this provision cost the Treasury a lot of money?*

No. Treasury losses attributable to the investment deduction will be more than offset by corporate taxes paid by subsequently profitable firms. According to our estimates, about 90 percent of the firms issuing enterprise stock or debentures would have to fail before the Treasury would face a long-term revenue loss.

Ever since Bob Garcia and I first introduced an enterprise zone bill in the summer of 1980, we have emphasized that we want suggestions—and that we will listen to them. I welcome these hearings, and look forward to learning from the committee and the witnesses just how we can reach our mutual goal of encouraging strong community participation in enterprise zones, and enticing venture capital into some of America's poorest communities.●