The original documents are located in Box 15, folder "12/22/74 HR7730 San Carlos Mineral Strip Purchases" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: December 23

December 20, 1974

Posted in Colorado 12/23

Transmitted 12/24

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill H.R. 7730
San Carlos Mineral Strip Purchase

Attached for your consideration is H.R. 7730, sponsored by Representative Udall and three others, which would authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip in the State of Arizona.

OMB recommends approval and provides you with additional background information in its enrolled bill report (Tab A).

Max Friedersdorf and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign H.R. 7730 (Tab B)

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 17 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7730 - San Carlos Mineral Strip Purchase
Sponsor - Rep. Udall (D) Arizona and 3 others

Last Day for Action

December 23, 1974 - Monday

Purpose

Directs the Secretary of the Interior to purchase certain property located within the San Carlos Mineral Strip in the State of Arizona.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	No objection
Department of Agriculture	No objection
Department of Justice	Defers to Interior and Agriculture

Discussion

The so-called San Carlos Mineral Strip comprises some 232,000 acres within the San Carlos Indian Reservation in the State of Arizona. Originally a part of the Reservation, this land became property of the Federal Government in 1896 pursuant to an agreement with the tribe under which the United States agreed to pay the tribe for the net proceeds from the Strip's mineral development. Over the period that the United States held the land, homesteading was incorrectly allowed and grazing permits were issued to ranchers. Very little mineral development actually took place.

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The San Carlos Mineral Strip was returned to the tribe in 1969, but by that time 8,000 acres had been purchased by non-Indians for use as ranches, and some 200,000 acres were being used for grazing under permits held by these landowners. In 1973, after 3 years' notice, the tribe terminated all grazing privileges on these lands, thus significantly lessening the value of the base ranches.

H.R. 7730 would direct the Secretary of the Interior to purchase within the San Carlos Mineral Strip (1) all privately-owned real property and (2) all permanent range improvements, taking title thereto in trust for the San Carlos Apache Indian Tribe. The Secretary would be required to make a "fair determination of compensation" for any property acquired on the basis of appraisals and other evidence which he deems necessary for such determination. The enrolled bill would authorize appropriations of not to exceed $3,000,000 although compensation to any person could not exceed $300,000.

In reporting to the Congress on this legislation, Interior and Agriculture both opposed enactment because the bill would establish two undesirable precedents. First, it could lead to a wholesale program of purchasing Indian reservation inholdings. Second, it would violate the traditional Federal policy against compensation for improvements made on range lands.

However, in its report on H.R. 7730, the Senate Interior Committee refuted the first precedent argument on the basis that numerous laws exist which authorize the purchase by the United States of inholdings within Indian reservations. Moreover, the Committee stated that because the Federal Government "acted contrary to law in disposing of the land" (by allowing homesteading), then it should "correct its mistake in law by purchasing back these inholdings at today's prices." Similarly, with respect to the surface improvements, the Committee argued that:

> "The facts concerning the San Carlos Mineral Strip situation are so unique . . ." (unlawful homesteading) ". . . as to warrant the improvements purchase . . . the Committee is certain that the uniqueness of these facts gives assurance that H.R. 7730, as amended, could never serve as a precedent to undermine existing law and policy."

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In its views letter on the enrolled bill, Interior expresses no objection to the purchase of privately-owned property within the Mineral Strip because:

> ". . . there are equities in favor of the ranchers because of the error committed by the United States in opening the lands to homesteading. Purchasing the privately-owned land would provide some compensation to the ranchers and it would return the land to the Indians that never should have been opened to homesteading."

With regard to the compensation for range improvements, Interior continues to believe that this would "conflict with well-established policy against such compensation" although because of the unusual facts in this case it would "set only a narrow precedent" which would "not seriously affect our range management policies." Interior concludes that:

> "Approval of this bill would end years of negotiating between the tribe, the ranchers, the Congress and the Administration to develop remedial legislation and it would solve a problem for which the Federal Government is largely the cause. Accordingly, we would have no objection to approval of the bill."

On balance, we concur with Interior's analysis and conclusion.

Wilfred H. Rommel

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 786

Date: December 17, 1974 Time: 7:00 p.m.

FOR ACTION: Mike Duval oh
Bill Timmons oh
Phil Areeda oh

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 20 Time: 11:00 a.m.

SUBJECT:

Enrolled Bill H.R. 7730 - San Carlos
Mineral Strip Purchase

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

x For Your Comments

x For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor, West Wing

GERALD R. FORD LIBRARY

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 786

Date: December 17, 1974 Time: 7:00 p.m.

FOR ACTION: Mike Duval ✓
Bill Timmons
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 20 Time: 11:00 a.m.

SUBJECT:

Enrolled Bill H.R. 7730 - San Carlos
Mineral Strip Purchase

ACTION REQUESTED:

_____ For Necessary Action

_____ Prepare Agenda and Brief

x____ For Your Comments

x___ For Your Recommendations

_____ Draft Reply

_____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor, West Wing

OK Mike Duval

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

WASHINGTON

December 18, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: MAX L. FRIEDERSDORF m.l.f.

SUBJECT: Action Memorandum - Log No. 786
Enrolled Bill H.R. 7730 - San Carlos
Mineral Strip Purchase

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

Must Sign,
per Rhodes

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 786

Date: December 17, 1974 Time: 7:00 p.m.

FOR ACTION: Mike Duval
Bill Timmons
Phil Areeda ✓

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 20 Time: 11:00 a.m.

SUBJECT:

Enrolled Bill H.R. 7730 - San Carlos
Mineral Strip Purchase

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

x___ For Your Comments

x___ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor, West Wing

Sign

P Ruel

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 16 1974

Dear Mr. Ash:

This responds to your request for the views of this Department on H.R. 7730, an enrolled bill "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip."

We would have no objection to the President's approval of the enrolled bill.

H.R. 7730, as enrolled, would direct the Secretary of the Interior to purchase all privately-owned land within the San Carlos Mineral Strip, taking title thereto in trust for the San Carlos Apache Indian Tribe. The Secretary would also be directed to purchase from the owners all permanent range improvements placed under the authority of a permit on lands restored to the San Carlos Apache Indian Tribe. The bill authorizes to be appropriated $3 million for the purposes of the Act, it limits compensation to $300,000 per person, and it requires the Secretary to determine the compensation in each case.

The San Carlos Mineral Strip was ceded by the San Carlos Apache Indians to the United States in 1896 because the land was believed to be valuable for coal. The United States agreed to pay the net proceeds from mineral development to the Tribe and the United States was authorized to patent lands within the Strip under the mining law only. The United States incorrectly opened the land to homesteading and in 1936 a decision was made to issue grazing permits to the ranchers. In 1969 the Mineral Strip was restored to the Tribe subject to valid existing rights. The Tribe subsequently notified the ranchers that all grazing permits would be cancelled. This action has naturally worked a hardship on the ranchers.

In essence, the legislation directs the Secretary to make two purchases. It directs him to purchase the privately-owned property within the Mineral Strip and it directs him to reimburse ranchers for improvements made under grazing permits on lands within the Mineral Strip. We have no objection to the former. We recognize that there are equities in favor of the ranchers because of the error committed by the United States in opening the lands to homesteading. Purchasing the privately-owned land would provide some compensation to the ranchers and it would return land to the Indians that never should have been opened to homesteading.

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

We do not favor compensating the ranchers for improvements made on the range lands. It would conflict with well-established policy against such compensation. However, because of the unusual facts in this case, compensation for range improvements would set only a narrow precedent in the event future private legislation directing the same compensation is introduced. Therefore, although we would prefer that Congress had deleted this requirement, we feel that it would not seriously affect our range management policies.

Approval of this bill would end years of negotiating between the Tribe, the ranchers, the Congress and the Administration to develop remedial legislation, and it would solve a problem for which the Federal Government is largely the cause. Accordingly, we would have no objection to approval of the bill.

Sincerely yours,

John C. Whitaker

Acting Secretary of the Interior

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

DEC 17 1974

Honorable Roy L. Ash
Director, Office of
Management and Budget

Dear Mr. Ash:

This is in response to the request of your office for a report on the enrolled enactment H.R. 7730, "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip."

Although the Department of Agriculture has some concerns with regard to the enactment, we will not object to approval by the President.

The enactment would authorize and direct the Secretary of the Interior to acquire through purchase all privately owned real property within the San Carlos Mineral Strip to be held in trust for the San Carlos Apache Indian Tribe. The Secretary of the Interior would also be authorized and directed to purchase from the owners all range improvements of a permanent nature placed, under the authority of a permit, on lands restored to the tribe for the reasonable value of such improvements. There would be authorized to be appropriated $3,000,000 for purposes of the Act with a maximum payment to any person of $300,000.

The "San Carlos Mineral Strip" is an area of about 232,000 acres which was originally part of the San Carlos Indian Reservation in Arizona, but which in 1896 was returned to the United States pursuant to an agreement with the tribe. In 1969, the Secretary of the Interior signed an order restoring the lands to the tribe, subject to valid existing rights. At the time of the Secretary's order, about 8,000 acres had been conveyed into private ownership, about 4,500 acres had been conveyed to the State, and 12,000 acres had National Forest status. Of the combination of National Forest lands and lands administered by the Bureau of Land Management, approximately 200,000 acres were under grazing permits or leases. The order which restored the Mineral Strip lands to the tribe included the National Forest lands. When we were informed that the order included the National Forest lands, we requested that the National Forest lands be exempted. We also questioned whether National Forest lands could be restored to the tribe under the authority of the order. The requested exemption was not granted, and the question regarding the authority of the order has not been resolved.

The 12,000 acres of National Forest lands are still being administered by the Forest Service of this Department. These lands are now being administered for National Forest purposes, including the grazing of cattle under two term permits. The language of the enactment and the accompanying legislative history do not make specific reference to National Forest lands, but it would appear that the phrase "on the lands restored to the San Carlos Apache Indian Tribe" in section 2 of the enactment would include the National Forest lands. If this is true, the provisions of section 2 would be applicable to the permittees holding the term permits on the National Forest.

This Department reported on the companion bills to H.R. 7730, H.R. 4414 and S. 813. In these reports we recommended that the bill not be enacted. Our strongest objection to the original bills was to the provision that the Secretary provide compensation for the loss of grazing permits. This provision is not included in the enactment. In our reports we also urged that compensation not be granted for improvements associated with the grazing permits. This latter provision is included in the enactment.

The terms and conditions of National Forest permits and associated cooperative agreements and special use permits clearly set forth arrangements for ownership of range improvements. The ownership of such an improvement is either with the United States or with the permittee. Generally, improvements owned by the permittee can be removed by him upon the cancellation of the permit. Improvements owned by the United States are not removed upon the cancellation of a permit, and the permittee is not entitled to compensation. If the enactment is approved, we would expect our permittees to seek compensation for certain improvements. The nature and extent of such improvements are such that we would expect total compensation to be less than $50,000.

With regard to the provision of section 1 of the enactment directing the Secretary of the Interior to acquire private inholdings, we defer to the Secretary of the Interior for analysis of the effects of this provision.

In essence the enactment would provide relief to ranchers whose private lands and grazing privileges have been adversely affected by the restoration of the Federal lands to the tribe. Since the enactment no longer includes a provision to provide compensation for the loss of permits and because the history of private lands within the San Carlos Mineral Strip indicates that the Federal action of restoring the lands to the tribe has resulted in a major hardship on the private landowners and permittees, we will not object to the approval of the enactment by the President.

Sincerely,

J. Phil Campbell

J.Phil Campbell
Under Secretary

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

Honorable Roy L. Ash
Director, Office of Management and
Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 7730, 93d Congress, "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip."

The bill would authorize and direct the Secretary of the Interior to (1) acquire through purchase all privately-owned real property within the so-called San Carlos Mineral Strip, to be held in trust for the San Carlos Apache Indian Tribe, and (2) purchase from the owners all range improvements of a permanent nature placed, under the authority of a permit from or agreement with the United States, on lands restored to the San Carlos Apache Indian Tribe. The price to be paid for any such range improvements would be reduced in proportion to any governmental participation in the original construction of the improvements. The bill would authorize the appropriation of not more than $3 million for the purposes contemplated and would limit the amount to be paid to any individual to $300,000.

The Department of the Interior has vigorously opposed the bill's provisions on grounds that (1) the payment of compensation to grazing permittees for improvements made on public lands is contrary to established practice and (2) the acquisition of private inholdings for addition to an Indian reservation is contrary to customary practice and seems unjustifiable in this case in light of

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the many sizable private inholdings in other Indian reservations. In recommending enactment of the bill the Senate Committee on Interior and Insular Affairs acknowledged the objections of the Department of the Interior, and it expressly recognized that, "as a matter of law, the ranchers holding cancelled grazing permits are not entitled to compensation for either the loss of the permits or the loss of improvements which cannot be removed such as wells, corrals, and fences." S. Rept. No. 93-1234, 93d Cong., 2d sess. (1974) p. 6. The Committee concluded, however, that the Department of the Interior's objection to the acquisition of private lands within the Indian reservation was not well founded in fact and that the circumstances under consideration are "sufficiently unique" to warrant the action contemplated under the bill and to preclude the relief to ranchers contemplated in this instance from establishing a precedent to be followed in future cases. We see nothing "unique" in the situation of the ranchers that would be affected by the bill that distinguishes them from other ranchers whose operations have been adversely affected by the termination of federal grazing privileges and who have received no compensation. We would view any form of compensation for lost grazing privileges, or for improvements constructed by grazing permittees on federal lands, as a pure gratuity.

Apart from the policy considerations involved, the limitation imposed on the compensation to be paid for private property to be acquired suggests some potential problems. We read the bill as limiting the Secretary of the Interior to the acquisition of such individual holdings as he is able to purchase for a price within the prescribed limitation and as precluding his condemnation of private lands which the owners refuse to sell or his purchase from any individual of property valued at more than $300,000. If this is correct, it may be that the bill, in directing the Secretary to acquire "all privately owned real property" within the designated area, would direct him to do more than it authorized him to do. If the limitation is to be construed in any other manner, the constitutionality of the bill would be most doubtful. As we do not know what individual values may be involved, we do not know whether, as a practical matter, the problem just mentioned is likely to arise.

With the foregoing comments, the Department of Justice defers to the land-administering agencies which would be affected as to whether this bill should receive Executive approval.

Sincerely,

W. Vincent Rakestraw
Assistant Attorney General
Legislative Affairs

To: Warren Hendricks
12-17-74
6:30 P.M.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 17 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7730 - San Carlos Mineral Strip Purchase
Sponsor - Rep. Udall (D) Arizona and 3 others

Last Day for Action

December 23, 1974 - Monday

Purpose

Directs the Secretary of the Interior to purchase certain property located within the San Carlos Mineral Strip in the State of Arizona.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	No objection
Department of Agriculture	No objection
Department of Justice	Defers to Interior and Agriculture

Discussion

The so-called San Carlos Mineral Strip comprises some 232,000 acres within the San Carlos Indian Reservation in the State of Arizona. Originally a part of the Reservation, this land became property of the Federal Government in 1896 pursuant to an agreement with the tribe under which the United States agreed to pay the tribe for the net proceeds from the Strip's mineral development. Over the period that the United States held the land, homesteading was incorrectly allowed and grazing permits were issued to ranchers. Very little mineral development actually took place.

The San Carlos Mineral Strip was returned to the tribe in 1969, but by that time 8,000 acres had been purchased by non-Indians for use as ranches, and some 200,000 acres were being used for grazing under permits held by these landowners. In 1973, after 3 years' notice, the tribe terminated all grazing privileges on these lands, thus significantly lessening the value of the base ranches.

H.R. 7730 would direct the Secretary of the Interior to purchase within the San Carlos Mineral Strip (1) all privately-owned real property and (2) all permanent range improvements, taking title thereto in trust for the San Carlos Apache Indian Tribe. The Secretary would be required to make a "fair determination of compensation" for any property acquired on the basis of appraisals and other evidence which he deems necessary for such determination. The enrolled bill would authorize appropriations of not to exceed $3,000,000 although compensation to any person could not exceed $300,000.

In reporting to the Congress on this legislation, Interior and Agriculture both opposed enactment because the bill would establish two undesirable precedents. First, it could lead to a wholesale program of purchasing Indian reservation inholdings. Second, it would violate the traditional Federal policy against compensation for improvements made on range lands.

However, in its report on H.R. 7730, the Senate Interior Committee refuted the first precedent argument on the basis that numerous laws exist which authorize the purchase by the United States of inholdings within Indian reservations. Moreover, the Committee stated that because the Federal Government "acted contrary to law in disposing of the land" (by allowing homesteading), then it should "correct its mistake in law by purchasing back these inholdings at today's prices." Similarly, with respect to the surface improvements, the Committee argued that:

> "The facts concerning the San Carlos Mineral Strip situation are so unique . . ." (unlawful homesteading) ". . . as to warrant the improvements purchase . . . the Committee is certain that the uniqueness of these facts gives assurance that H.R. 7730, as amended, could never serve as a precedent to undermine existing law and policy."

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In its views letter on the enrolled bill, Interior expresses no objection to the purchase of privately-owned property within the Mineral Strip because:

> ". . . there are equities in favor of the ranchers because of the error committed by the United States in opening the lands to homesteading. Purchasing the privately-owned land would provide some compensation to the ranchers and it would return the land to the Indians that never should have been opened to homesteading."

With regard to the compensation for range improvements, Interior continues to believe that this would "conflict with well-established policy against such compensation" although because of the unusual facts in this case it would "set only a narrow precedent" which would "not seriously affect our range management policies." Interior concludes that:

> "Approval of this bill would end years of negotiating between the tribe, the ranchers, the Congress and the Administration to develop remedial legislation and it would solve a problem for which the Federal Government is largely the cause. Accordingly, we would have no objection to approval of the bill."

On balance, we concur with Interior's analysis and conclusion.

(signed) Wilfred H. Rommel

Assistant Director for
Legislative Reference

Enclosures

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93D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 93-465

AUTHORIZING THE SECRETARY OF THE INTERIOR TO PURCHASE PROPERTY LOCATED WITHIN THE SAN CARLOS MINERAL STRIP

SEPTEMBER 11, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 7730]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 7730) To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 2, following line 11, insert a new section as follows:

> SEC. 3. Nothing in this Act is intended or shall be construed to alter, modify, or amend the Act of June 28, 1934 (48 Stat. 1271) as amended, providing that the granting or issuance of a grazing permit shall not create any right, title, interest, or estate in or to the lands. The provisions of this Act shall be construed and are intended to be an exception based on the unique circumstances on the San Carlos Indian Reservation, Arizona.

Page 2, lines 12 through 16, strike the present text of Section 3 and insert in lieu thereof the following:

> SEC. 4. (a) There are authorized to be appropriated for the purposes of this Act not to exceed $2,500,000, to be available without fiscal year limitation. In the event that the amount appropriated is not sufficient to make the payments required by section 2 and to make the purchases authorized by section 1, the available funds shall be used for the payments under section 2 on a pro rata basis if necessary, and the balance shall be available for purchases under section 1. In no event shall any claimant receive total compensation under sections 1 and 2 of this Act in excess of $200,000.

(b) For the purposes of this section the term 'claimant' means any person eligible for compensation under sections 1 and 2 of this Act.

H.R. 7730

PURPOSE

The purpose of H.R. 7730, as amended by the Committee on Interior and Insular Affairs, is to authorize the Secretary of the Interior to purchase certain real and personal property located within the San Carlos Mineral Strip, Arizona, and to compensate persons whose grazing permits, licenses or leases were cancelled because of restoration of the land to the San Carlos Apache Tribe.

H.R. 7730 was introduced by Mr. Udall, Mr. Rhodes, Mr. Steiger of Arizona and Mr. Conlan. Identical bills were also introduced by Mr. Steiger of Arizona and Mr. Conlan (H.R. 4414), and Mr. Udall (H.R. 7673).

BACKGROUND

The San Carlos Mineral Strip is an area of approximately 232,000 acres which was originally part of the San Carlos Indian Reservation in Arizona. These lands were returned to the United States in 1896 pursuant to an agreement with the San Carlos Apache Tribe. In 1963, the mineral rights in these lands were returned to the Indians and subsequently in 1969, the land was also returned to the Indians by order of the Secretary of the Interior, subject to valid existing rights. During the interval between the 1896 reconveyance to the United States and the 1969 return to the Indians, about 8,000 acres of the Mineral Strip lands passed into private ownership, about 4,500 acres had passed to the State and some 200,000 acres had been leased for grazing purposes by various agencies of the Federal government.

In June of 1970, the tribe declared its intention to terminate all grazing leases on the Mineral Strip land as of June 30, 1971. Subsequently, this termination date was set for June 30, 1973.

NEED

Enactment of H.R. 7730, as amended, will permit the equitable settlement of a long standing problem created by the reconveyance of the land to the San Carlos Tribe and the termination of federal grazing leases.

Numerous individual ranchers have, over a period of more than seventy years, bought and sold grazing privileges on lands within the San Carlos Mineral Strip and have paid grazing fees to the federal government. They have also secured title to some 8,000 acres of land from the federal government within the Strip by various means, including homesteading and federal land sales. In addition, the State of Arizona secured title to some 4,500 acres from the federal government through school and indemnity grants. During this time, homes have been established on the private lands, cattle ranching operations have been built up that use both private and federal lands, and thousands of dollars and many lifetimes of effort and toil have been invested in developing the area. This was all done legally, honorably and in com-

plete good faith and in full reliance upon the continued use of federal grazing permits in the usual and customary manner as a supplement to base property rights.

The determination of the San Carlos Apache Tribe to terminate grazing privileges on the Mineral Strip land will present severe hardships to the grazing permittees since it will most certainly substantially reduce the economic value of the base property. It could, in fact, reduce the value of the private property within the Strip to a mere fraction of its present value.

The records of the Bureau of Land Management indicate there are (1) some 28 federally issued grazing permits outstanding that are held singly or in combination by about 32 individuals; (2) about 7,560 acres of private land is held by some 12 individuals; (3) approximately 3,276 cattle are grazed on the strip lands which involve about 30,179 AUMs (Animal Unit Months); and (4) the original cost of range improvements placed upon federal lands by individuals was about $200,000. Subsequent information received from the Bureau would indicate that while there has been a substantial depreciation in the value of original range improvements, the overall estimated value of the private property involved, plus the estimated value of the outstanding federal grazing leases, is approximately $3.2 million.

In this area, as in most of the western states where federal grazing privileges are involved, the value of base or fee property is customarily considered in relation with, and is largely governed by, federal grazing privilege. In other words, the base or fee property may have little value without the privilege to graze upon nearby federal lands. That is certainly the case with the private land involved in the San Carlos Mineral Strip. The cancellation of the federal grazing privilege will not only deprive the present grazing lessees and permittees of the use of the federal lands for grazing purposes but will very substantially reduce the value of the fee properties and improvements. As previously indicated, an overall gross value of approximately $3.2 million has been estimated for these properties and privileges.

During consideration of H.R. 7730, the Committee had two objectives in mind in addition to the recognition of the need for some form and degree of compensation for the individual ranches involved. First, the Committee wishes to clearly go on record that as a general principle, it is opposed to compensation of grazing permittees or lessees for loss of grazing privileges issued in the normal course of business pursuant to the Taylor Grazing Act of 1934. Only in unusual and unique circumstances can such compensation be justified.

H.R. 7730 is, in the opinion of the Committee, such a case and both equity and fairness to the individual ranchers and to the San Carlos Apache Tribe indicates that this situation is unusual and that compensation is justified. Secondly, while the Committee recognized the unusual circumstances and the need for redress, it stopped short of recommending compensation at full market value. H.R. 7730, as amended by the Committee, places a limiting overall authorization of $2.5 million and an individual limitation of $200,000 for compensation authorized under the bill.

These two amendments assure that H.R. 7730 will not establish an undesirable precedent regarding compensation for loss of grazing priv-

ileges and also, even in this unusual situation, stops short of granting full compensation.

In addition to the approximately 8,000 acres of privately held land within the Mineral Strip that is considered under provisions of H.R. 7730, as amended, the Committee is also aware of the State of Arizona's land ownership within this area. It is the Committee's considered opinion that a program of land exchanges under existing exchange authority, can and should be worked out between the State Land Department and the Bureau of Land Management and the Bureau of Indian Affairs. Such an exchange program will protect the interests of all parties involved and will avoid the necessity of additional legislative action.

COMMITTEE AMENDMENTS

The two amendments adopted by the Committee have already been discussed. Briefly, the first amendment asserts that the compensation for loss of grazing privileges authorized by H.R. 7730 shall not be construed as establishing a precedent. The second places a $2.5 million overall and a $200,000 individual limitation on funds authorized to be appropriated.

COST

Enactment of H.R. 7730, as amended, will authorize the appropriation of not to exceed $2.5 million to be available without fiscal year limitation.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs recommends the enactment of H.R. 7730, as amended. The motion ordering the bill reported favorable was adopted by voice vote.

DEPARTMENTAL REPORTS

The Departments of Interior and Agriculture reported unfavorably of H.R. 7730. These reports follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 9, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on H.R. 4414, "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip."

We recommend that the bill not be enacted.

H.R. 4414 would authorize the Secretary of the Interior to purchase privately owned property in a part of the San Carlos Indian Reservation, Arizona; known as the Mineral Strip from persons having grazing privileges in such areas as of January 24, 1969. The land so purchased would be taken in trust for the San Carlos Apache Indian Tribe. In addition, the bill would direct the Secretary to pay such grazing

permittees (1) for improvements placed on the land, and (2) compensation in accordance with the standard prescribed by the Act of July 9, 1942. That Act requires "fair and reasonable" compensation for cancellation of grazing permits resulting from the use of public lands for war or national defense purposes.

The "San Carlos Mineral Strip" is an area of some 232,000 acres which was originally part of the San Carlos Indian Reservation in Arizona, but which in 1896 was returned to the United States pursuant to an agreement with the tribe. In 1969 this land was given back to the tribe "subject to valid and existing rights". As of that time about 8,000 acres had been conveyed into private ownership, and about 4,500 acres conveyed to the State. In addition, almost 200,000 acres were under grazing permit or lease. In June 1970, the tribe declared its intention to terminate all grazing rights on June 30, 1971. This was twice extended, so that the present termination date is June 30, 1973.

H.R. 4414 is in the nature of a private relief bill for the ranchers whose grazing permits would be cancelled by the San Carlos Indian Tribe.

The termination of grazing privileges on public land can present hardships to the permittees since it can reduce the economic value of their base ranch. Ranchers who make use of grazing privileges on Indian lands held in trust and public lands and who acquire or hold base ranches related to such use do so with the knowledge that the lands may be sold or dedicated to a higher use which is inconsistent with continuation of the grazing privilege. When this is necessary the Department makes every effort to give maximum advance notice so that the ranchers may phase out their operations on the lands affected with as little dislocation as possible. In the present case the ranchers have known since 1970 that their permits would be cancelled.

The principle has well been established that grazing permits confer no vested rights but merely a privilege which may be withdrawn without compensation. The Taylor Grazing Act is very explicit in this respect. It states that ". . . the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest or estate in or to the lands", 43 U.S.C. 315b. The exception to this rule enacted by Congress in 1942 was narrowly limited to cancellation of grazing privileges because of war or national defense needs for the land and no other exception has been made in the subsequent thirty years. To now create an exception for a specific group of ranchers by compensating them for termination of their permits and purchasing their base ranches would establish a dangerous precedent which could expose the United States to substantial liability whenever it dedicates public land to use with which grazing is inconsistent such as a national monument or wildlife refuge. The precedent could also inhibit the future granting of grazing permits in many areas where the projected use is uncertain, as there would be a desire to avoid exposure to liability based on subsequent determinations.

Another dangerous precedent, in our view, is compensating ranchers for improvements made on public lands. This is also contrary to a well recognized principle. We understand that the tribe has agreed to let the ranchers remove any improvements which are removeable.

The final precedent which we view with alarm would authorize the acquisition of private inholdings for addition to the reservation. Con-

gress has prohibited this practice in some States because it has the effect of taking land off the State tax rolls. Our primary concern, however, is that many other reservations contain sizable private inholdings. We know of no particular justification for acquiring inholdings on behalf of this tribe as opposed to any other tribe similarly situated.

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 yours,

JOHN C. WHITAKER,
Under Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 31, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives.

DEAR MR. CHAIRMAN: This is the report of the Department of Agriculture on H.R. 4414, a bill "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip."

This Department does not recommend enactment of the bill.

H.R. 4414 would authorize the Secretary of the Interior to acquire through purchase privately owned property within the San Carlos Mineral Strip to be held in trust for the San Carlos Apache Indian Tribe. The Secretary of the Interior would also be authorized and directed to compensate owners of range improvements on lands restored to the Tribe for the value of such improvements; and, the Secretary would be authorized to compensate permit or lease holders for grazing permits or leases canceled as a result of the restoration of the lands to the Tribe. Funds would be authorized to be appropriated for use in property purchase and payment of compensation.

The San Carlos Mineral Strip is an area of approximately 232,000 acres which was originally part of the San Carlos Indian Reservation in Arizona. In 1896 these lands were returned to the United States pursuant to an agreement with the Tribe. More recently the Indians have sought to recover the lands. In 1963 the Department of the Interior reconveyed the mineral rights in these lands to the Indians. On January 16, 1969, the Secretary of the Interior ordered the restoration to the San Carlos Indian Tribe of the surface rights of the lands in the San Carlos Mineral Strip "subject to valid and existing rights."

Located within the San Carlos Strip are 12,000 acres which have been a part of the Coronado National Forest administered by the Forest Service of this Department. These lands are now being administered for National Forest purposes, including the grazing of cattle under two term permits. The question of whether these National Forest lands were restored to the Tribe by the Secretary of the Interior, along with the other public lands, has not been fully resolved.

We strongly recommend that compensation not be allowed for the loss of grazing permits associated with the restoration of lands to the San Carlos Indian Tribe. Grazing on National Forest and other public lands is granted under permits. The principle that such grazing is

a privilege and not a right is well established. Because the permit is treated as a privilege, the loss of a grazing permit does not result in compensation to the permittee.

The National Forests are available to the public for a variety of uses. Use permits are granted to individuals and groups to confine and control their uses and not to grant them permanent rights or interests in the lands involved. The control of the land remains with the United States to insure that the lands remain generally open to the public, and that uses can be altered with changing times and conditions. If a grazing permit were to become a compensable right, the United States would in effect lose the control and flexibility needed to protect the use of the lands by the public for other benefits. If compensation were awarded in this situation, thousands of grazing and other permittees would be in a position to claim compensation when their use was restricted as part of overall adjustments in land use.

We also urge that compensation not be granted for improvements associated with the grazing permits. The provisions and requirements of the grazing permit and associated cooperative agreements and special use permits clearly set forth arrangements for ownership of range improvements. The ownership of such an improvement is either with the United States or with the permittee. Generally, improvements owned by the permittee can be removed by him upon the cancellation of the permit. Improvements owned by the United States are not removed upon the cancellation of a permit, and the permittee is not entitled to compensation. Granting of compensation for such improvements would be a windfall for permittees, and provide benefits beyond those actually agreed to under the permit.

With respect to the question of the desirability of acquisition of private inholdings within the San Carlos Mineral Strip, we defer to the views of the Secretary of the Interior. We note, however, that many other reservations contain sizeable private inholdings. The justification for acquiring private inholdings on behalf of this tribe would have to be compared to the justification of acquiring similar inholdings for other tribes similarly situated.

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

Sincerely,

J. PHIL CAMPBELL,
Acting Secretary.

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Calendar No. 1172

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-1234

AUTHORIZING THE SECRETARY OF THE INTERIOR TO PURCHASE PROPERTY LOCATED WITHIN THE SAN CARLOS MINERAL STRIP IN THE STATE OF ARIZONA

OCTOBER 4, 1974.—Ordered to be printed

Mr. FANNIN, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 7730]

The Committee on Interior and Insular Affairs, to which was referred the Act (H.R. 7730) to authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following language:

That the Secretary of the Interior (hereinafter referred to as the "Secretary") is hereby authorized and directed to acquire through purchase within the so-called San Carlos Mineral Strip as of January 24, 1969, all privately owned real property, taking title thereto in the name of the United States in trust for the San Carlos Apache Indian Tribe.

SEC. 2. The Secretary is authorized and directed to purchase from the owners all range improvements of a permanent nature placed, under the authority of a permit from or agreement with the United States, on the lands restored to the San Carlos Apache Indian Tribe for the reasonable value of such improvements, as determined by the Secretary: *Provided, however,* That, if any such range improvements were constructed under cooperative agreement with the Federal Government, the reasonable value shall be decreased proportionately by the percentage of original Federal participation. Such permanent improvements shall include, but not be limited to, wells, windmills, water tanks, ponds, dams, roads, fences, corrals and buildings. The Secretary shall take title to such range improvements in the name of the United States in trust for the San Carlos Apache Indian Tribe.

SEC. 3. There are authorized to be appropriated for the purposes of this Act not to exceed $3,000,000 to be available without fiscal year limitation: *Provided,* That the Secretary shall make a fair determination of compensation for property acquired pursuant to this Act: *And provided further,* That the Secretary shall make such appraisals and require the owners to present such documents as title, tax assessment, bills of sale, other paper, and other evidence which he may deem necessary for such determination.

38-010

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I. Purpose

The purpose of H.R. 7730, as amended, is to direct the Secretary of the Interior to purchase all privately owned real property within the San Carlos Mineral Strip in Arizona. He would also be directed to purchase all permanent improvements placed on Mineral Strip lands which have been subject to grazing permits and leases. All purchases would be held in trust for the San Carlos Apache Indian Tribe to which the San Carlos Mineral Strip was restored in 1969.

II. Historical Background

ORIGINS OF THE MINERAL STRIP

The San Carlos Mineral Strip is an area of about 232,000 acres which was originally part of the San Carlos Indian Reservation in Arizona. The Reservation was set aside for the San Carlos Apache Tribe by executive orders in 1871 and 1872. Shortly after creation of the reservation, non-Indian interests began to exert pressure to take the Mineral Strip from the Tribe. This pressure was based on the commonly-held belief that the Mineral Strip contained valuable deposits of minerals, particularly coal. As a result, an item in the Appropriations Act of March 2, 1895, authorized negotiations with the San Carlos Apache Tribe for the cession of the Mineral Strip. These negotiations led to a cession agreement on February 25, 1896. Under the Act of June 10, 1896, the San Carlos Mineral Strip was formally ceded to the United States. Although no payment was made for the land, the United States agreed to pay to the Tribe the net proceeds from any subsequent disposal of the Mineral Strip land under the mineral land laws.

DISPOSITION OF MINERAL STRIP LANDS

The 1896 Act provided that the Mineral Strip lands would be "open to occupation, location, and purchase under the provisions of the mineral land laws only." However, this restriction was not followed. The Federal Government subsequently allowed the lands to be homesteaded and patented by individuals and deeded to the State for school grant selection and indemnity bonds under the Arizona Enabling Act.

WITHDRAWAL OF THE MINERAL STRIP AND ITS USE FOR GRAZING

From 1896 until 1931, the Tribe received net revenues amounting to only $12,433 from the disposition of the Mineral Strip lands under the mineral land laws. Because of the insignificant financial returns, the First Assistant Secretary of the Interior, on March 30, 1931, withdrew the Mineral Strip lands from all forms of entry or disposition. On June 18, 1934, the Indian Reorganization Act (48 Stat. 984, 25 USC 463) was enacted. This Act specifically authorized the Secretary of the Interior to restore to tribal ownership the remaining surplus lands of any Indian reservation opened before June 18, 1934, or authorized to be opened to sale or any other form of disposal by Presidential proclamation or by any of the public land laws of the United States. On September 19, 1934, the Secretary of the Interior directed that all undisposed-of lands of certain reservations, including the San

Carlos Reservation, be temporarily withdrawn from disposal until the matter of their permanent restoration to tribal ownership as authorized by the Indian Reorganization Act could be given appropriate consideration.

On November 17, 1936, the Assistant Commissioner of Indian Affairs and the Acting Director of Grazing stated in a letter to the Secretary of the Interior concerning the undisposed-of lands in the Mineral Strip that, "Since these lands are within the exterior boundaries of Arizona Grazing District No. 4, established February 14, 1936, it is hereby agreed that they may be placed temporarily under range management in accordance with the provision of the Taylor Grazing Act until final disposition has been made thereof, provided that any action taken to place these lands under range management shall be consistent with any prior valid withdrawal from entry, and that the right, title, and interest of the Indians in and to these lands shall in no way be jeopardized."

In a memorandum from the Assistant Commissioner of Indian Affairs, the Commissioner of the General Land Office and the Director of Grazing, approved by the First Assistant Secretary of the Interior on June 21, 1941, the following was stated: "In view of the foregoing, and in order to clarify the administrative authority of the General Land Office and the Division of Grazing in the temporary administration of the ceded lands of the San Carlos Reservation, it is hereby agreed that the ceded lands of the San Carlos Reservation which lie within an established grazing district shall be placed temporarily under range management of the Grazing Service and that the ceded lands which do not lie within an established grazing district shall be temporarily administered under lease by the General Land Office, pursuant to the conditions set forth in the letters of November 17, 1936 and August 12, 1937."

Subsequently, grazing permits and leases were issued to various individuals who are the present occupants of the Mineral Strip or their predecessors.

RESTORATION OF THE MINERAL STRIP TO THE TRIBE

Once the Mineral Strip lands were withdrawn, all possibility of revenues for the Tribe ended. Therefore, in 1958, the San Carlos Tribal Council adopted a resolution requesting the Secretary of the Interior to restore both the surface and subsurface rights in the land to the Tribe in accordance with the provisions of the Indian Reorganization Act. In February, 1960, the Secretary held public hearings in Globe, Arizona, to determine the desirability of the requested action.

On November 28, 1962, the Solicitor of the Department held that vacant, unappropriated and undisposed of portions of the Mineral Strip were "surplus lands" within the meaning of Section 3 of the Indian Reorganization Act, and that the Secretary had discretionary authority to restore them to Tribal ownership (Sol. Op. 69 I.D. 195).

Before any decision was reached on the Tribal request, the Tribal Council, on April 2, 1963, adopted another resolution requesting the restoration of the subsurface rights only. The 1958 resolution was to be held in abeyance by the Secretary until reactivated by the Council.

On June 17, 1963, the Under Secretary issued Order No. 2874 (28 F.R. 6408), restoring all "mineral, oil and gas resources" in the Mineral Strip to the Tribe, "subject to any valid existing rights" and excluding any patented lands and the subsurface interests therein.

During the pendency of the Tribe's application for restoration, a number of the ranchers who had testified against restoration at the Globe hearing filed an action in Federal Court to block the restoration. The action, in which the State of Arizona later intervened as a party plaintiff, was finally dismissed when the Court held that there was no case over which it could assume jurisdiction. In ordering the dismissal, the Court reasoned that there was no controversy because, first, the Tribe had withdrawn its application for the restoration of the surface, and second, Secretarial Order No. 2874 had been made subject to valid existing rights and had also specifically excluded patented lands and the surface of the Mineral Strip (Bowman v. Udall, 243 F. Supp. 672 (D.D.C. 165), aff'd sub. nom. Hinton v. Udall, 364 F. 2d 676 (D.C. Cir.), cert. denied 385 U.S. 878 (1966)).

On September 12, 1968, the San Carlos Apache Tribal Council adopted another resolution requesting the Secretary to restore the surface interests in the Mineral Strip lands to Tribal ownership. On January 16, 1969, Secretary of the Interior Stewart Udall signed the order restoring the surface of the land to the Tribe, subject to valid existing rights (34 F.R. 1195, January 24, 1969). The restoration of the surface was protested by various ranchers and the State of Arizona; however, Secretary of the Interior Walter Hickel affirmed the action taken by Secretary Udall on the basis that, among other things, title had vested.

PRESENT STATUS: PRIVATE OR STATE OWNERSHIP

About 40,000 acres of the 232,000 acres originally ceded under the 1896 agreement have been disposed of, or are claimed under color of title or other interest. The bulk of that acreage, about 20,900 acres, has been claimed by the State of Arizona as "School Sections in Place," "Indemnity Lieu Lands," "Miners Hospital Grants," and "County Bond Grant Lands." Approximately 4,500 of those acres have been formally conveyed to the State. Approximately 11,000 acres have been included in the Colorado (formerly Crook) National Forest, and about 6,340 acres have been patented under the homestead laws. Only a small portion, 1,740 acres has been actually patented under the mineral land laws as provided by the 1896 agreement.

PRESENT STATUS: RANCHERS AND GRAZING PERMITS

In addition, almost 200,000 acres were under grazing permits or leases at the time of restoration. In June 1970, the Tribe declared its intention to terminate all grazing privileges on June 30, 1971. This termination date was extended twice until June 30, 1973. The leases have been extended beyond that date by the Tribe while it completes financial and developmental arrangements for the use of the Mineral Strip lands.

The records of the Bureau of Land Management indicate there are (1) some 28 federally issued grazing permits outstanding which are held singly or in combination by about 32 individuals; (2) about

7,560 acres of private land are held by some 12 individuals; (3) approximately 3,276 cattle are grazed on the Mineral Strip lands, involving about 30,179 AUMs (Animal Unit Months); and (4) the original cost of range improvements placed upon federal lands by individuals was about $200,000.

III. Legislative Background, Committee Action, and Summary of H.R. 7730, as Amended

Pending legislation and committee action

H.R. 7730, introduced by Mr. Udall, Mr. Rhodes, Mr. Steiger of Arizona, and Mr. Conlan, passed the House of Representatives on December 18, 1973. S. 813 was introduced by Senator Fannin on February 8, 1973. A hearing was held on both bills by the Subcommittee on Public Lands on April 10, 1974. Both bills, which "authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip", are, in essence, private bills for the relief of ranchers who own fee land within the Mineral Strip and who have grazing permits on Strip land.

S. 813 authorizes the Secretary of the Interior to purchase privately owned property in the San Carlos Mineral Strip from persons having grazing permits or leases in the Mineral Strip as of January 24, 1969. The purchased lands would be taken in trust for the San Carlos Apache Indian Tribe. In addition, the bill directs the Secretary to pay those persons for improvements placed on lands which have been subject to grazing permits and leases and to compensate them for the cancelled permits and leases in accordance with the standard prescribed by the Act of July 9, 1942. That Act requires "fair and reasonable" compensation for cancellation of grazing permits resulting from the use of public lands for war or national defense purposes.

H.R. 7730, as passed the House, directs the Secretary to purchase all privately owned real property within the San Carlos Mineral Strip. He would also be directed to purchase, "for reasonable value", all permanent improvements placed on lands within the Mineral Strip which have been subject to grazing permits and leases. The bill authorizes up to $1,500,000 for such purchases, but no claimant is to receive more than $150,000. (The first version of H.R. 7730 reported from the House Interior Committee provided for compensation for cancelled permits, a total authorization of $2,000,000, and an individual limitation of $200,000. However, when the bill failed to pass on the consent calendar, it was recalled to Committee. There, the cancelled permit compensation provisons were removed and the total authorization and individual limitation were reduced.) All purchases under the bill would be held in trust for the San Carlos Apache Indian Tribe. The Indian Claims Commission would be directed to determine the extent to which the purchases would be set off against any claims of the Tribe against the United States.

On July 29, 1974, the Subcommittee on Public Lands, by unanimous voice vote in open mark-up session, approved an amendment in the nature of a substitute to H.R. 7730. The full Committee ordered H.R. 7730, as amended, reported favorably to the Senate by unanimous voice vote in open mark-up session on September 10, 1974.

COMMITTEE AMENDMENT

In the Committee amendment, the base property and improvements would be purchased, but no compensation for cancelled permits would be provided. Furthermore, absent from the Committee amendment is the language of section 3 of H.R. 7730, as passed the House, directing the Indian Claims Commission to determine the extent to which the United States' expenditures under the bill would be set off against the Tribe's claims against the United States. Finally, the Committee altered H.R. 7730 in the following additional ways: It raised the authorization from $1,500,000 to $3,000,000, deleted the personnel limitation on compensation of $150,000, directed the Secretary to make a fair determination of compensation, and placed the burden on the property owners to present sufficient evidence to permit that determination to be made.

DISCUSSION OF COMMITTEE CONSIDERATION OF THE LEGISLATION

As the Department of the Interior objected strenuously to the various legislative proposals concerning the San Carlos Mineral Strip and in light of the history of controversy which accompanied H.R. 7730 in the House, the Committee wishes to set forth below a summary of its thinking and intent in framing the amendment to H.R. 7730.

The Committee fully recognizes that, as a matter of law, the ranchers holding cancelled grazing permits are not entitled to compensation for either the loss of the permits or the loss of improvements which cannot be removed such as wells, corrals, and fences.

Legal Objections. Among the most controversial of public lands policies are the two principles that a grazing permit is a privilege and not a right, and that the privilege may be withdrawn without compensation. A significant portion of the ranching community strenuously opposes these principles. This is because, despite the principles' explicit message that grazing permits, as a privilege, have no significant monetary value, the termination of permits does work financial hardships on permittees in that, absent the ability to use public land for grazing, the market value of their base ranches may be reduced substantially. However, ranchers who make use of grazing privileges on public lands or Indian lands and who acquire or hold base ranches related to such use clearly do so with prior knowledge that the lands may be sold or dedicated to a higher use which is inconsistent with continuation of the grazing privilege, and that there will be no compensation. Section 3 of the Taylor Grazing Act explicitly states that ". . . the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands" (48 Stat. 1270 as amended, 43 U.S.C. § 315b). Grazing permits contain provisions which state that the permits are terminable and revocable in whole or in part pursuant to 25 CFR 151.15.

There is one significant exception to the principle that a grazing permit is only a privilege and that it confers no vested rights: The Act of July 9, 1942 requires "fair and reasonable" compensation for cancellation of grazing permits resulting from the use of public lands for war or national defense needs. As the report of the Interior Department on S. 813 and H.R. 7730 notes, the exception of the 1942 Act is

narrowly limited, is inappropriate in this Mineral Strip situation, "and no other exception has been made since then".[1]

Another legal principle of long standing is that the Federal Government shall not compensate holders of cancelled permits for improvements which are not removeable. There is a provision of law for compensation by a third party, i.e., payment of compensation by a grazing permittee to a prior permittee for improvements made on grazing lands by the prior permittee. Section 4 of the Taylor Grazing Act, 48 Stat. 1271, 43 USC § 315c, specifically provides that:

> No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior.

The Departmental regulations provide procedures for third party compensation (43 CFR 4115.2–5(a)). These procedures cover compensation to former grazing permittees by applicants for grazing permits and by applicants for lands classified for disposal under the homestead laws and the Isolated Tract Act.

However, the San Carlos Mineral Strip situation does not fit the requirement for third party compensation under the law or Departmental regulations. The Strip lands have been returned to the Tribe and, whatever use the Tribe makes of the land, tribal members will not be applicants for grazing permits or applicants under the homestead laws or the Isolated Tract Act.

Policy Objections. The Department of the Interior opposes compensation of the San Carlos Mineral Strip ranchers as a matter of policy as well as law. It also argues against compensation for the base property, not as contrary to law, but as unwise policy.

In speaking against compensation for the cancelled permits, the Departmental report states:

> To create an exception now for a specific group of ranchers by compensating them for termination of their permits and by purchasing their base ranches would establish a dangerous precedent. It could expose the United States to substantial liability whenever it dedicates public land to a use which is inconsistent with grazing. The precedent could also inhibit the future granting of grazing permits in many areas where the projected use is uncertain since there would be a desire to avoid exposure to liability in the event of subsequent land use changes.

The Departmental report also argues against compensation for improvements as a "dangerous precedent" and "contrary to a well rec-

[1] As the hearing record discloses, it sometimes appears that, in the case of grazing permits cancelled by the development of a reclamation project, compensation is provided for the loss of the permits. This appearance is the result of the Bureau of Reclamation practice of placing high values on the base property which the Bureau purchases. There is no statutory authority for compensation for cancelled permits in reclamation projects. Permits also take on an aura of a property right when permittees offer them as a security for loans. This practice, however, is specifically recognized in the Taylor Grazing Act and the Act's general caveat that permits are privileges and not rights applies fully to any permits which are used to secure loans. This was made manifest in *LaRue* v. *Udall*, 1963, 324 F. 2d 428, 116 U.S. App. D.C. 396, cert. denied 84 S.Ct. 660.

ognized principle". From testimony in the House and Senate hearings it is clear that the Department is concerned about the potentially large financial liability it would assume should the precedent of compensation for improvements be established.

The environmentalists (the other major interest, beside the ranchers, the Federal Government, and the Tribe, which testified) join with the Department in opposing compensation for either the permits or the improvements. However, they apparently acquiesced in the improvements compensation provision in H.R. 7730, once the permit compensation provisions were removed. Their reasons for opposing compensation in both cases were similar to the Department's. In addition, they had the deep-seated concern that, if expensive compensation bills were to be presented to the Government each time grazing lands were converted to national park or refuge lands, then few such conversions would occur.

The Department also "view[ed] with alarm" the precedent of acquiring inholdings for addition to the San Carlos Indian Reservation. The Department notes that because this practice has the effect of taking land off the State tax rolls, Congress, in Appropriation Acts, has prohibited such purchases in some States. The Department's "primary concern", however, is that such acquisition can become a precedent for a wholesale program of purchasing reservation inholdings. The Departmental report states: "We know of no particular justification for acquiring inholdings on behalf of this tribe as opposed to any other tribe similarly situated."

Committee's Viewpoint. The Committee believes that law and policy both firmly dictate against any compensation for the cancelled permits. Although the 1969 Secretarial action restoring the Strip lands was precipitous, the ranchers were or should have been aware of the possibility, under law, that the permits could be cancelled without compensation. That they were aware of the possibility of impending cancellation is clearly demonstrated by the 1960 Globe hearing and the fact that they brought suit to stop the restoration of the Mineral Strip. The permit holders are still grazing their livestock even though they were officially informed of the impending cancellation in January 1969.

As will be noted in the discussion below concerning compensation for other items, the facts in the San Carlos Mineral Strip situation are sufficiently unique to limit the applicability of any precedent set by enactment of a San Carlos Mineral Strip bill when that precedent is based on a *reasonable interpretation* of law. However, because the law is so direct and firmly set against compensation for cancelled grazing permits, no matter how unique the facts, to compensate Mineral Strip ranchers for their cancelled permits would be to set a very strong precedent.

The Committee however, believes that the Department's position against compensation for base properties does not stand up to analysis. Numerous laws, including the Indian Reorganization Act, clearly authorize the purchase by the United States of inholdings within Indian reservations for the purpose of providing lands for Indians. Furthermore, the language in the Appropriations Act (the Act of October 4, 1973, 87 stat 429) limiting this authorization applies the limitation

only to the States of Nevada, Oregon, and Washington. The authorization continues in effect for reservation inholdings in Arizona. Finally, staff believes there would be no value as a precedent to any provision allowing purchase of Mineral Strip inholdings. Not only is the precedent already embodied in existing law, as noted directly above, but the facts in the Mineral Strip situation are sufficiently unique as to be easily distinguished from future inholding purchase requests. In most cases, the Federal Government allowed these Mineral Strip lands to go to patent for homesteading and other purposes despite the provision in the 1896 Act prohibiting disposal of the lands except under the mineral land laws. Clearly, the Department acted contrary to law in disposing of the land and those who obtained the land and passed it on in good faith should not be made to suffer. The Department should correct its mistake in law by purchasing back these inholdings at today's prices.

The Committee recognizes that law and policy do stand in opposition to purchase of range improvements which cannot be removed. However, the Committee believes that the facts concerning the San Carlos Mineral Strip situation are so unique as to warrant the improvements' purchase. These facts suggest that purchasing the improvements would effect the purpose, though not the letter, of that existing law and policy. Furthermore, the Committee is certain that the uniqueness of these facts gives assurance that H.R. 7730, as amended, could never serve as precedent to undermine existing law and policy.

A careful reading of the Departmental report refers to cancellation of permits without compensation because the land is being used for a "higher use" or for a use "inconsistent with grazing". In the case of improvements related to cancelled permits, the difference between grazing (and other farming) use and nongrazing use is enshrined in law and regulation by the aforementioned section 4 of the Taylor Grazing Act and 43 CFR 4115.2–5(a) which provide for third party compensation by grazing permit, homestead, and isolated tract applicants. Although the Tribe does not constitute a third party under the law or the regulation, it can be analogized to the third party situation because it plans to graze livestock on the restored Mineral Strip. It does not plan to commit the Strip to a "higher" use or a use "inconsistent with grazing". Thus, although the Mineral Strip situation does not fit the letter of the law, the Committee believes it certainly fits the basic fact situation envisioned by the law. Attempts to distinguish the fact situation—e.g., the return of land to Indians could in and of itself be considered "higher use", the Indians are grazing their own land and not "renting" public land, etc.—were not regarded as very persuasive.

The framing of the analogy, however, was only the first step in the Committee's decision to provide compensation for improvements to the Mineral Strip permit holders. The logical next step in the analogy would be for the Tribe, the actual third party which will continue to graze the Strip lands. to assume the compensation burden. In fact, statements in the hearing record suggest that the Tribe, on its own, may very well compensate the ranchers for the improvements. However, the Committee believes that the United States, as trustee

over the Strip lands for the Tribe, is the proper party to compensate the ranchers. The Federal Government was not acting in the capacity of a trustee when, contrary to law, it disposed of the Strip's lands to the ranchers because the Strip lands were not trust lands at the time. Therefore, there was no direct failure to fulfill trust responsibilities. (As the Federal Government had entered into an agreement and passed a law to provide the Tribe with the revenues from disposal of the land under the mineral land laws, it could be argued that the Government did have a limited trust responsibility to protect those revenues—a responsibility it did not fulfill when it disposed of the land under other laws.) However, it was these disposal actions which permitted the establishment of base ranches and thus provided the opportunity for the private use of the remaining Federal land in the Mineral Strip for grazing and the construction of improvements on that land. Under these circumstances, the Committee judged it inappropriate, even inequitable, for the trustee—the Federal Government—to, in effect, force the persons—the Tribe—for whom it serves as trustee to pay costs which were incurred as a direct result of unlawful conduct of the trustee whether or not that conduct was related to the trustee's fiduciary duties. Furthermore, the Committee deemed it equally inequitable to force the ranchers who originally entered the land by wrongful Federal action to assume the loss, particularly when an analogy can be made which would justify payment of compensation to them for the improvements—an analogy which provides only a very limited precedent because of the unique facts in the Mineral Strip situation.

The Committee decided to delete the Indian Claims Commission set-off language for the following reasons: First, the purpose of H.R. 7730 is to provide relief to those ranchers who were adversely affected by the return of the Mineral Strip to the San Carlos Apache Indian Tribe. The Act's purpose clearly is not to provide compensation to the Tribe for any existing or potential tribal claim against the Federal Government. Secondly, it cannot be ascertained with any degree of certainty whether the Commission will determine that there are claims by the Tribe against the United States or whether any claims would exceed the amount expended by the United States under H.R. 7730, as amended.

The $150,000 limitation on compensation was deleted when no documentation could be found to serve as a basis for this figure in the hearing record. Should the property and improvements of one or another individual prove to have a value considerably in excess of the ceiling, then the ceiling would be patently inequitable. However, to avoid any suggestion that, without a limitation, claim values could be inflated, the Committee inserted the language placing the burden of supplying the necessary evidence of value on the owners themselves.

The Committee raised the $1,500,000 authorization to $3,000,000 in order to reflect new estimates of property value communicated to the Committee. Again, to make certain that this authorization increase would not result in the honoring of inflated claims, the proviso concerning the owner's responsibility to provide evidence of value is equally applicable to this authorization increase as to the removal of the individual limitation. This authorization level reflects the Committee's desire to equitably resolve all claims with adequate funding.

IV. Cost

In accordance with subsection (a) of section 252 of the Legislative Reorganization Act of 1970, the Committee states that the new obligational authority provided in H.R. 7730, as amended, would be not to exceed $3 million to be available without fiscal year limitation.

V. Committee Recommendation

The Committee on Interior and Insular Affairs, by unanimous voice vote in open mark-up session on September 10, 1974, recommends the enactment of H.R. 7730, as amended.

VI. Tabulation of Votes Cast

The unanimous voice votes in Subcommittee and full Committee to accept the amendment and to order reported the Act, as amended, were taken in open mark-up sessions. As these votes were previously announced by the Committee in accord with the provisions of section 133(b) of the Legislative Reorganization Act of 1946, as amended, tabulation of the votes in this report is unnecessary.

VII. Executive Communications

The reports of Federal agencies to the Committee concerning H.R. 7730 and S. 813 are set forth in full below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., April 9, 1974.

Hon. Henry M. Jackson,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for this Department's views on S. 813, a bill "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip" and H.R. 7730, an Act "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip."

We recommend against enactment of both proposals.

The "San Carlos Mineral Strip" is an area of about 232,000 acres which was originally part of the San Carlos Indian Reservation in Arizona, but which in 1896 was returned to the United States pursuant to an agreement with the tribe. In 1969 this land was given back to the tribe "subject to valid and existing rights". As of that time about 8,000 acres had been conveyed into private ownership, and about 4,500 acres had been conveyed to the State. In addition, almost 200,000 acres were under grazing permits or leases. In June 1970, the tribe declared its intention to terminate all grazing privileges on June 30, 1971. The termination date was extended twice and on June 30, 1973 all privileges were terminated.

Both bills are, in essence, private bills for the relief of ranchers whose grazing privileges have been cancelled by the San Carlos Indian Tribe.

S. 813—The bill authorizes the Secretary of the Interior to purchase privately owned property in the San Carlos Mineral Strip from persons having grazing permits or leases in the Mineral Strip as of January 24, 1969. The purchased lands would be taken in trust for the San Carlos Apache Indian Tribe. In addition, the bill directs the Secretary to pay those persons for improvements placed on lands which have been subject to grazing permits and leases and to compensate them for the cancelled permits and leases in accordance with the standard prescribed by the Act of July 9, 1942. That Act requires "fair and reasonable" compensation for cancellation of grazing permits resulting from the use of public lands for war or national defense purposes.

The termination of grazing privileges on public land can present hardships to the permittees since it can reduce the economic value of their base ranches. Ranchers who make use of grazing privileges on public lands or Indian lands and who acquire or hold base ranches related to such use do so with the knowledge that the lands may be sold or dedicated to a higher use which is inconsistent with continuation of the grazing privilege. When termination is necessary, the Department makes every effort to give maximum advance notice so that the ranchers may phase out their operations on the lands affected with as little dislocation as possible. In the present case the ranchers have known since 1970 that their permits would be cancelled.

The payment of compensation to ranchers for cancelled grazing permits or the purchase of the base ranches would be recognition of a vested right in a grazing permit. The principle is well established that grazing permits confer no vested rights but merely a privilege which may be withdrawn without compensation. Section 3 of the Taylor Grazing Act explicitly states that ". . . the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest or estate in or to the lands", 48 Stat. 1270 as amended, 43 U.S.C. § 315b. The exception to this rule enacted by Congress in 1942 was narrowly limited to cancellation of grazing privileges because of war or national defense needs for the land and no other exception has been made since then. To create an exception now for a specific group of ranchers by compensating them for termination of their permits and by purchasing their base ranches would establish a dangerous precedent. It could expose the United States to substantial liability whenever it dedicates public land to a use which is inconsistent with grazing. The precedent could also inhibit the future granting of grazing permits in many areas where the projected use is uncertain since there would be a desire to avoid exposure to liability in the event of subsequent land use changes.

Another dangerous precedent, in our view, is compensating ranchers for improvements made on public lands. This is also contrary to a well recognized principle. We understand that the tribe has agreed to let the ranchers remove any improvements which are removeable.

The final precedent which we view with alarm is acquiring private inholdings for addition to the Indian reservation. Congress has prohibited this practice in some States because it has the effect of taking land off the State tax rolls. Our primary concern, however, is that many other reservations contain sizable private inholdings. We know of no particular justification for acquiring inholdings on behalf of this tribe as opposed to any other tribe similarly situated.

H.R. 7730.—This proposal directs the Secretary to purchase all privately owned real property within the San Carlos Mineral Strip. He would also be directed to purchase, "for reasonable value", all permanent improvements placed on lands within the Mineral Strip which have been subject to grazing permits and leases. All purchases under the bill would be held in trust for the San Carlos Apache Indian Tribe. The Indian Claims Commission would be directed to determine the extent to which the purchase would be set off against any claims of the tribe against the United States.

As explained above, we oppose legislation that would direct the Secretary to compensate ranchers for improvements made on public lands, to acquire base ranches within grazing areas or to acquire inholdings within an Indian reservation for addition to the reservation.

H.R. 7730 includes a provision directing the Indian Claims Commission to determine the extent to which United States expenditures under the bill would be set off against the Tribe's claims against the United States. It is not possible at this time to ascertain whether the Commission will determine that there are claims against the United States or whether any claims would exceed the amount expended by the United States under the bill. We view the purchase of inholdings and range improvements to satisfy possible claims against the United States simply as a method for compensating ranchers for the termination of their grazing privileges. It would not avoid the undesirable precedent of acquiring inholdings within an Indian reservation for addition to the reservation.

H.R. 7730 presents an additional problem. It does not indicate how the purchase price of private real property would be determined. It does not state whether purchase prices would be determined by the Secretary or whether purchases would be made for fair market value.

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 yours,

NATHANIEL P. REED,
Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 28, 1974.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed is the transcript of the hearings held before the Committee on Interior and Insular Affairs, Wednesday, April 10, 1974, on S. 813 and H.R. 7730, bills "To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip." We have reviewed the transcript and corrected the Departmental witness's remarks.

At the hearing on S. 813 and H.R. 7730 the Departmental witness was asked to supplement the record with answers to three questions.

The first question was whether there are precedents for Congress or the Administration refusing to buy inholdings within Indian reservations. There are precedents but this point needs some clarification.

The Indian Reorganization Act of June 18, 1934, § 3, 48 Stat. 984, 25 U.S.C. § 463, and other laws authorize the purchase by the United States of inholdings within Indian reservations for the purpose of providing land for Indians. However, these authorizations have not been open-ended. Congress has recognized that the purchase of inholdings to be held in trust for the Indians can raise problems at State and local levels because it takes land off the tax rolls. The Act of October 4, 1973, P.L. 93–120, 87 Stat. 429, which appropriated funds for the Department of the Interior and related agencies for the fiscal year ending June 30, 1974, includes the following proviso in connection with the "Construction" appropriation for the Bureau of Indian Affairs:

". . . no part of this appropriation shall be used for the acquisition of land or water rights within the States of Nevada, Oregon, and Washington either inside or outside the boundaries of existing reservations . . ."

That Act also includes the following proviso in connection with the appropriation of funds of Indian tribes held in the Treasury:

". . . no part of this appropriation or other tribal funds shall be used for the acquisition of land or water rights within the States of Nevada and Oregon, either inside or outside the boundaries of existing Indian reservations, if such acquisition results in the property being exempted from local taxation."

The second question was whether there is precedent for compensating a permittee for improvements made on grazing lands after a permit has been cancelled. Our records do not show any precedent for such compensation.

The third question was whether there is precedent for compensating a permittee for cancellation of a permit. Again, our records do not show any precedent for such compensation. The Taylor Grazing Act explicitly states that a grazing permit "shall not create any right, title, interest or estate in or to the lands", 48 Stat. 1270 as amended, 43 U.S.C. § 314(b). Accordingly, the Department has a policy of not compensating graziers for the termination of grazing permits or for improvements on the grazing lands.

Sincerely yours,

JOHN M. POWELL,
(For Ken M. Brown,
Legislative Counsel).

VIII. CHANGES IN EXISTING LAW

In compliance with subsection 4 of Rule XXIX of the Standing Rules of the Senate, the Committee states that no changes in existing law would be made by H.R. 7730, as amended.

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H. R. 7730

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To authorize the Secretary of the Interior to purchase property located within the San Carlos Mineral Strip.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior (hereinafter referred to as the "Secretary") is hereby authorized and directed to acquire through purchase within the so-called San Carlos Mineral Strip as of January 24, 1969, all privately owned real property, taking title thereto in the name of the United States in trust for the San Carlos Apache Indian Tribe.

SEC. 2. The Secretary is authorized and directed to purchase from the owners all range improvements of a permanent nature placed, under the authority of a permit from or agreement with the United States, on the lands restored to the San Carlos Apache Indian Tribe for the reasonable value of such improvements, as determined by the Secretary: *Provided, however*, That, if any such range improvements were constructed under cooperative agreement with the Federal Government, the reasonable value shall be decreased proportionately by the percentage of original Federal participation. Such permanent improvements shall include, but not be limited to, wells, windmills, water tanks, ponds, dams, roads, fences, corrals and buildings. The Secretary shall take title to such range improvements in the name of the United States in trust for the San Carlos Apache Indian Tribe.

SEC. 3. There are authorized to be appropriated for the purposes of this Act not to exceed $3,000,000 to be available without fiscal year limitation: *Provided*, That in no event shall any person receive total compensation under this Act in excess of $300,000: *Provided further*, That the Secretary shall make a fair determination of compensation for property acquired pursuant to this Act: *And provided further*, That the Secretary shall make such appraisals and require the owners to present such documents as title, tax assessment, bills of sale, other paper, and other evidence which he may deem necessary for such determination.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

December 11, 1974

Dear Mr. Director:

The following bills were received at the White House on December 11th:

S. 2193	H.R. 7730
S. 2363	H.R. 8352
S. 3906	H.R. 8824
S. 4040	H.R. 11929
H.R. 6274	H.R. 14214
H.R. 6925	H.R. 17026

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C.