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APPROVED  
DEC 31 1974

THE WHITE HOUSE  
WASHINGTON

ACTION

Last day - Tuesday, Dec. 31

December 27, 1974

*Posted in Colorado 1/1/75*

*To ARCHIVES  
1/3/75*

MEMORANDUM FOR:

THE PRESIDENT

FROM:

KEN COLE *C*

SUBJECT:

Enrolled Bill: Land Conveyance,  
Yuma County, Arizona -- S. 3574

BACKGROUND

Attached for your consideration is Senate bill S. 3574, sponsored by Senator Fannin of Arizona. This legislation would disclaim any right, title, or interest in 320 acres of land in Yuma County, Arizona, except for a 52 acre portion which was condemned by the United States for a Colorado River rechannelization project. The bill would direct the Secretary of the Interior to convey without consideration a separate 52 acre tract of public land to the Wide River Farms, Inc. of Arizona, as compensation for the rechannelization acreage.

ARGUMENTS FOR SIGNING

There has been established a precedent in that Public Law 91-505 involved essentially the same facts and circumstances as this bill except that here the court decision came first, whereas there it was to come afterwards. After an exhaustive review of the case the Court of Claims concluded that, on the facts of the case, there were equities in favor of the occupant to justify awarding them title to the land.

The occupants have exercised the rights and have met the responsibilities of ownership of the land for about 50 years and have made substantial improvements on it. The bill removes the unfairness to the occupants growing out of the protracted and continuing uncertainty about ownership of the land which has been caused by the failure of the Government to resolve land titles in this area.



The Senate Committee has made it unmistakably clear that this bill does not set a precedent and that it will not act favorably on another. A number of bills are approved each year on the basis of Congressional referrals in which the Court of Claims determines there are equities in favor of the claimants and the fact that these customarily involve monetary awards instead of land grants does not alter the basic factors involved in the process.

Senator Fannin's office has called as well Representative Rhodes urging approval of this bill. It should be noted that you have approved two -- H. R. 7730, San Carlos Mineral Strip and H. R. 10337 Navajo-Hopi -- of the three other bills they specifically called about. The third bill, S. 1296, Grand Canyon Boundary Extension, is in the process of review and analysis before being sent to you.

#### ARGUMENTS FOR VETO

The root cause of the uncertainty about title to the land results from the basic facts in the case and not from the failure of the Federal Government to move more decisively. Exercise of the rights and privileges of ownership and meeting its responsibilities has traditionally never been regarded as creating an equitable right to land owned by the United States.

Public Law 91-505 essentially altered the normal process by instructing the Court of Claims to consider equitable claims against the United States, but stopped short of an outright grant of the property as in this bill. Both bills are bad and there is no reason to compound the mistake made in Public Law 91-505 by approving this bill.

The statement in the Senate Committee report that this bill should not be considered as a precedent and should be treated as unique does not carry much conviction in light of similar statements in the House Committee report on Public Law 91-505. Even though many bills based on Court of Claims referrals are approved, the Congress and certainly the Executive are expected to exercise independent judgment concerning the merits of such legislation after giving due consideration to the court's views.



STAFF AND AGENCY POSITIONS

Friedersdorf  
Areeda  
Cole  
Ash )Tab A provides detailed comments)  
Interior  
Justice

Approval  
Approval  
Approval  
Pocket veto  
Pocket veto  
Defers to Interior's  
pocket veto recommendation

RECOMMENDATION

That you approve S. 3574 at Tab B.

DECISION - S. 3574

Sign (Tab B) PTT

Veto \_\_\_\_\_  
(Sign Paul Theis approved  
memorandum of disapproval  
at Tab C)





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 20 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3574 - Land conveyance, Yuma  
County, Arizona

As the attached enrolled bill memorandum indicates, Interior and OMB with the acquiescence of Justice are recommending veto of this bill.

While the pros and cons are fully set out on pages 6 and 7 of the enrolled bill memorandum, I believe that veto is particularly important to preserve the basic protection of Federal lands against squatters rights. This protection, embodied in the doctrine of sovereign immunity, is vital because there is simply no way in which the Federal Government can adequately police its vast land holdings.

Although nowhere mentioned in the legislative history of this bill, President Nixon in 1970 approved legislation involving a comparable situation. The relationship of that case to the present one is discussed in the enrolled bill memorandum and Interior's enrolled bill letter points out that "both bills are bad procedure and (we) see no reason to compound the mistake made in Public Law 91-505." (the 1970 Act).

Senator Fannin's office has called to urge approval of this bill. I think it should be noted that you have approved two--H.R. 7730, San Carlos Mineral Strip and H.R. 10337, Navajo-Hopi--of three other bills the Senator specifically called Tom Korologos about, and in regard to the third bill--S. 1296, Grand Canyon Boundary Extension--we are in the process of reviewing and analyzing the bill.

  
Acting Director

Enclosures





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

DEC 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3574 - Land conveyance, Yuma  
County, Arizona  
Sponsor - Sen. Fannin (R) Arizona

Last Day for Action

December 31, 1974 - Tuesday

Purpose

Relinquishes and disclaims any title to certain lands and directs the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona.

Agency Recommendations

Office of Management and Budget	Disapproval (Memorandum of Disapproval Attached)
Department of the Interior	Disapproval (Memorandum of Disapproval Attached)
Department of Justice	Defers to Interior's Veto Recommendation (Memorandum of Disapproval Attached)

Discussion

S. 3574 would disclaim any right, title, or interest in 320 acres of land in Yuma County, Arizona, except for a 52 acre portion which was condemned by the United States for a Colorado River rechannelization project. The enrolled bill would direct the Secretary of the Interior to convey without consideration a separate 52 acre tract of public lands to the Wide River Farms, Inc. of Arizona, as compensation for the rechannelization acreage.



During the early part of this century, lands on the western, or California side of the Colorado River were open to homesteading while lands across the river in Arizona were withdrawn from entry and have always been public domain. During this period and before the Hoover and Parker Dams were constructed in the mid-1930's the Colorado River was subject to tremendous floods and it was constantly meandering throughout the alluvial valley encroaching on homestead entries and other lands in the process.

The lands in question under this enrolled bill were among those originally homesteaded on the California side of the Colorado River, but which because of the movement of the river some 40 to 50 years ago are now on the Arizona side. Interior believes that the 320 acres became a part of the public domain in Arizona through gradual shifts in the river called accretion (only if avulsion occurred -- a sudden shift in the river -- would the original homesteaders have retained title).

In 1964, the United States, asserting that it was the owner of the land, instituted a condemnation action on 52 acres of the 320 acre tract for use in a rechannelization project on the Colorado River. This project is now complete and the 52 acres of land are in the river. The Government acquired this tract at nominal value and without the court making a definitive ruling as to ownership.

Subsequently, pursuant to Senate Resolution 143 of the 91st Congress, the Chief Commissioner of the United States Court of Claims filed a report which, based on both legal and equitable considerations, recommended that relief along the lines of S. 3574 would be appropriate. In this regard, the Senate Resolution stipulated that the Court of Claims should look upon the Federal Government as a private party as opposed to a sovereign, thus opening the way for the court to consider the equitable defenses of the plaintiffs. The Court of Claims based its opinion in favor of the plaintiffs on the finding that they had met their adverse possession burden in that they had:

". . . since the issuance of patents, occupied and improved the land for agricultural purposes, paid

their state and local real estate taxes, and paid their Irrigation District water assessments far in excess of the minimum statutory requirements."

However, in reporting on S. 3574 the Department of the Interior took strong exception to the Court of Claims report and to the use of such referrals on the part of the Congress and opposed the bill on the basis that:

- land ownership disputes involving the United States should be resolved by quiet title actions in the Federal district courts or in higher courts on appeal;
- the United States has a program underway to clear title to lands adjacent to the Colorado River and the lands in question are being studied for such action;
- the use of Congressional referrals to the Court of Claims where equitable considerations are made will weaken the United States' sovereign immunity in such cases -- it is essential that immunity to equitable claims be preserved if our public lands are to be efficiently and effectively managed -- otherwise trespassers could establish claims based on their occupancy without notice to vacate as it is difficult to continuously police our public lands which constitute over three-quarters of a billion acres; and,
- if advisory Court of Claims opinions are followed in the form of special relief bills such as S. 3574, it would prompt a flood of requests for similar relief from the Congress. Action on these would be quite unfair to other individuals who have agreed to a settlement or have litigated in accordance with the law.

Interestingly enough, the Senate Interior Committee, in its report on S. 3574, agreed with Interior's substantive arguments, but then proceeded to approve the bill:

"The Committee concurs with the Department's objections based on law and policy. The Department



is entirely correct in stating the long standing legal principle that the United States is not subject to equitable claims and that efficient, effective, and not unreasonably costly management of the public lands is dependent on that immunity. In addition, the Committee fully supports the Department's position that title questions should not be referred to the Court of Claims.

"In ordering reported S. 424, the National Resource Lands Management Act (passed by the Senate on July 8, 1974), the Committee favored an administrative and, if necessary, judicial approach to land ownership disputes. S. 424 clearly does not provide for the referral of such disputes to the Court of Claims.

"However, until such time as S. 424 is enacted into law, the Committee believes it has a responsibility to continue to consider individual bills concerning title questions on their merits. In this case, the Senate in an earlier Congress made a decision to refer the question to the Court of Claims. Such an action would have been futile unless that Senate expected future Senates to be bound by the judgment of the Court of Claims. Therefore, although this Committee would not refer this dispute to the Court of Claims, nor would it give the same weight to equitable claims, it feels compelled to honor the action of that earlier Senate.

"The Committee unanimously approved S. 3574, as amended, with the understanding that the Committee would not follow the procedure of S.Res. 143 and S. 3574 in future land ownership disputes and that, because of the unique circumstances concerning S. 3574, the principle of Federal immunity from equitable remedies would not be eroded by its enactment."

Although the subsequent House Interior Committee report on S. 3574 largely followed the Senate Committee's reasoning, the House report did express a differing opinion on two points as it stated:

". . . the Committee cannot fully agree that efficient, effective, and not unreasonably costly management of the public lands is dependent on that immunity. Neither can the Committee support the Department's position that title questions should not be referred to the Court of Claims. Under the circumstances such as we have here there appears to be no other viable alternative."

S. 3574 passed the House and Senate by voice vote and without debate.

Although not mentioned anywhere in the legislative history of the present bill, there is 1970 legislation in the nature of a precedent for S. 3574. That legislation involved some 2,100 acres of land within a mile of the land covered by the enrolled bill and was also the subject of an accretion-avulsion controversy. Originally, President Johnson twice vetoed predecessor legislation, but the Nixon Administration agreed in a White House meeting to defer to the judgment of Congress as to whether or not the 1970 bill (somewhat revised and improved over the vetoed bills) should be enacted which in turn led to its passage and approval by President Nixon.

Under the 1970 bill the occupants of the land were empowered to quiet their title in a suit against the U.S. which was deprived of its sovereign immunity and placed in the same position as a private defendant. Thus, the Government was subject to the State's adverse possession law (as was applied by the Court of Claims in the present case) along with a further condition that the occupants there had to meet the test wherein "a reasonably prudent man would have believed that, when he acquired title to the property in question, he had obtained title free of any likelihood of claim by the U.S., any State, or any private person." Parenthetically, it may be noted that the Court of Claims referred to the 1970 Act in its

opinion, but did not consider it relevant to its decision.

#### Arguments in Favor of Approval

- The occupants have exercised the rights and have met the responsibilities of ownership of the land for about 50 years and have made substantial improvement on it.
- After an exhaustive review of the case in a 42-page opinion the Court of Claims concluded that, on the facts of the case, there were equities in favor of the occupants justifying awarding them title to the land.
- A number of bills are approved each year on the basis of Congressional referrals in which the Court of Claims determines there are equities in favor of the claimants and the fact that these customarily involve monetary awards instead of land grants does not alter the basic factors involved in the process.
- The 1970 Act involved essentially the same facts and circumstances as this bill except that here the court decision came first, whereas there it was to come afterwards (that case is still in litigation).
- The Senate Committee has made it unmistakably clear that this bill does not set a precedent and that it will not act favorably on another.
- The bill removes the unfairness to the occupants growing out of the protracted and continuing uncertainty about ownership of the land which has been caused by the failure of the Government to resolve land titles in this area.

#### Arguments Against Approval

- Exercise of the rights and privileges of ownership and meeting its responsibilities has traditionally

never been regarded as creating an equitable right to land owned by the U.S.; indeed the contrary has invariably been the rule.

- The Congressional referral resolution stacked the deck against the U.S. by specifying that it was to be considered as a private party litigant, thereby making the Government subject to State adverse possession laws and depriving it of the protection of sovereign immunity -- a doctrine which recognizes that the Government cannot be expected to protect its far-flung land holdings in the same manner as a private owner is expected to do.
- Even though many bills based on Court of Claims referrals are approved, the Congress and certainly the Executive are expected to exercise independent judgment concerning the merits of such legislation after giving due consideration to the court's views.
- The legislative history of the 1970 Act shows a clear Congressional intent that it was not considered to be a precedent, that fact is supported by the omission of any reference to it in the legislative history of the enrolled bill, and it can be argued that the prudent man condition contained in that bill was a more stringent test than was applied here (hundreds of property owners along the Colorado River could seek similar relief).
- The statement in the Senate Committee report that this bill should not be considered as a precedent and should be treated as unique does not carry much conviction in light of similar statements in the House Committee report on the 1970 bill.
- The root cause of the uncertainty about title to the land results from the basic facts in the case and not from the failure of the Government to move more decisively.

In its enrolled bill letter recommending disapproval, Interior after setting out many of the arguments cited above, goes on to say:

"The Congress has by-passed this procedure once before, by passing Public Law 91-505. That Act essentially altered the normal process by instructing the United States District Court to consider equitable claims against the United States, but stopped short of an outright grant of the property as in this bill. Limited to the specific dispute in that case, it directed the matter back to District Court for final adjudication. This bill, based on the Court of Claims approach, goes in another direction from Public Law 91-505. We feel both bills are bad procedure and see no reason to compound the mistake made in Public Law 91-505 by approving this bill. The inconsistencies in these approaches underscores the confusion in Congress and complexity of the facts and issues in these problems. Both bills essentially substitute the Congress for the judicial process in adjudicating tangled legal disputes and establish precedents which could lead to a stampede to Congress of claimants who may be unsuccessful in District Court."

We believe that the arguments in favor of disapproval outweigh those for approval and, accordingly, join Interior in recommending your veto of the bill.

We have prepared and attached for your consideration a revised Memorandum of Disapproval which we recommend for your issuance in lieu of those prepared by Interior and Justice.

A handwritten signature in black ink, appearing to read "Paul H. Deim". The signature is fluid and cursive, with a large initial "P" and "D".

Acting Director

Enclosures

## MEMORANDUM OF DISAPPROVAL

I have today withheld approval of S. 3574, a bill that would "relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona."

This bill would relinquish and disclaim any Federal title to approximately 320 acres of land, and authorize the Secretary of the Interior to convey title to some 52 acres of land without consideration to the Wide River Farms, Inc. of Arizona as compensation for 52 acres taken and used in the rechannelization of the Colorado River.

This dispute arose because the Colorado River shifted during 1920 - 1936, causing a gain of acreage claimed by the United States and corresponding reduction for the land owners on the other side. Normally, in such disputes, the United States institutes an action to quiet title to the land in the United States District Court. In such an action, the legal issue as to who owns the property is settled, depending basically on how the shift occurred, gradually or suddenly. I strongly support this orderly judicial procedure.

Disregarding the traditional District Court approach, the 91st Congress referred this case to the United States Court of Claims with instructions that the United States was to be regarded as no more than a private land owner and, as such, subject to equitable considerations. Thus, the Court of Claims findings of equities in favor of the land's occupants and the subsequent enactment of S. 3574 stripped the Federal Government of its long-standing sovereign immunity thereby eliminating its protection against loss of its land through adverse possession.

In my judgment there is no basis for waiving the United States' sovereign immunity in regard to Federal lands. That doctrine rests on the well-established fact that the United States cannot be expected to protect all of its vast land holdings in the same manner a private owner does. Preservation of the Government's immunity is crucial to the efficient and effective management of some three-quarters of a billion acres.

The seriousness of this problem has been well documented -- in the late 1950's investigation by the Department of the Interior disclosed that more than 1,000 persons were illegally occupying public lands along the Lower Colorado River. Subsequently, the Department initiated actions under which most of these occupants either vacated the land or explicitly recognized Federal ownership. Other occupants were removed following successful legal action by the Government. Litigation in regard to others is still pending.

I see no reason for making a special exception here and thus interfering with the orderly judicial process. The effect of this legislation would be to single out a few individuals for preferred consideration and thereby to discriminate against others. It would also serve as a precedent for future attacks against the Government's sovereign immunity.

Additionally, the land now claimed by the United States, including the 52 acres granted as compensation for the rechannelization condemnation, is valuable from the standpoint of wildlife protection. The area is close to the Cibola National Wildlife Refuge and is a natural habitat for migrating birds and other forms of wildlife which would face an uncertain future in private hands. Additionally, the Government has constructed water control works on three

sides of the area, as well as a \$785,000 Bridge to enhance its utilization for wildlife purposes. The purpose of this expenditure would be frustrated if the property changes hand.

For the above reasons, I am compelled to withhold my approval of this bill.







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

10  
Harris Handwritten  
12-26-74  
1:00 p.m.

DEC 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3574 - Land conveyance, Yuma  
County, Arizona

As the attached enrolled bill memorandum indicates, Interior and OMB with the acquiescence of Justice are recommending veto of this bill.

While the pros and cons are fully set out on pages 6 and 7 of the enrolled bill memorandum, I believe that veto is particularly important to preserve the basic protection of Federal lands against squatters rights. This protection, embodied in the doctrine of sovereign immunity, is vital because there is simply no way in which the Federal Government can adequately police its vast land holdings.

Although nowhere mentioned in the legislative history of this bill, President Nixon in 1970 approved legislation involving a comparable situation. The relationship of that case to the present one is discussed in the enrolled bill memorandum and Interior's enrolled bill letter points out that "both bills are bad procedure and (we) see no reason to compound the mistake made in Public Law 91-505." (the 1970 Act).

Senator Fannin's office has called to urge approval of this bill. I think it should be noted that you have approved two--H.R. 7730, San Carlos Mineral Strip and H.R. 10337, Navajo-Hopi--of three other bills the Senator specifically called Tom Korologos about, and in regard to the third bill--S. 1296, Grand Canyon Boundary Extension--we are in the process of reviewing and analyzing the bill.

*Paul X. Quinn*  
Acting Director

Enclosures



THE WHITE HOUSE  
WASHINGTON

12.28.74

TO: Warren Rudnick

Pls check to make  
sure this is the  
approved text.

*RDL*

Robert D. Linder

MEMORANDUM OF DISAPPROVAL

I have today withheld approval of S. 3574, a bill *that would* relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona."

This bill would relinquish and disclaim any Federal title to approximately 320 acres of land, and authorize the Secretary of the Interior to convey title to some 52 acres of land without consideration to the Wide River Farms, Inc. of Arizona as compensation for 52 acres taken and used in the rechannelization of the Colorado River.

This dispute arose because the Colorado River shifted during 1920 - 1936, causing a gain of acreage claimed by the United States and corresponding reduction for the land owners on the other side. Normally, in such disputes, the United States institutes an action to quiet title to the land in the United States District Court. In such an action, the legal issue as to who owns the property is settled, depending basically on how the shift occurred, gradually or suddenly. I strongly support this orderly judicial procedure.

Disregarding the traditional District Court approach, the 91st Congress referred this case to the United States Court of Claims with instructions that the United States was to be regarded as no more than a private land owner and, as such, subject to equitable considerations. Thus,



the Court of Claims findings of equities in favor of the land's occupants and the subsequent enactment of S. 3574 stripped the Federal Government of its long-standing sovereign immunity thereby eliminating its protection against loss of its land through adverse possession.

In my judgment there is no basis for waiving the United States' sovereign immunity in regard to Federal lands. That doctrine rests on the well-established fact that the United States cannot be expected to protect all of its vast land holdings in the same manner a private owner does. Preservation of the Government's immunity is crucial to the efficient and effective management of some three-quarters of a billion acres.

The seriousness of this problem has been well documented -- in the late 1950's investigation by the Department of the Interior disclosed that more than 1,000 persons were illegally occupying public lands along the Lower Colorado River. Subsequently, the Department initiated actions under which most of these occupants either vacated the land or explicitly recognized Federal ownership. Other occupants were removed following successful legal action by the Government. Litigation in regard to others is still pending.

I see no reason for making a special exception here and thus interfering with the orderly judicial process. The effect of this legislation would be to single out a few

individuals for preferred consideration and thereby to discriminate against others. It would also serve as a precedent for future attacks against the Government's sovereign immunity.

INSERT above

For the ~~following~~ reasons, I am compelled to withhold my approval of this bill.

THE WHITE HOUSE

December , 1974

*suggestion:*

*insert here last paragraph of Internal Department's proposed disapproval memo - to help beef up the case for veto.*

However, this bill sets the precedent for equitable relief in this type of case, which commonly arises, as well as granting relief to certain claimants, where others have either litigated in accordance with the law, or agreed to a settlement.

*Insert*  
Additionally, the land now claimed by the United States, <sup>including</sup> as well as the 52 acres to grant compensation for the rechannelization condemnation, is valuable from the standpoint of wildlife protection. The area is close to the Cibola National Wildlife Refuge and is a natural habitat for migrating birds and other forms of wildlife which would face <sup>an</sup> uncertain future in private hands. Additionally, the Government has constructed water control works on three sides of the area, as well as a \$785,000 Bridge to enhance its utilization for wildlife purposes. The purpose of this expenditure would be frustrated if the property changes hand.

For these reasons I feel that the approval of S. 3574 would establish an undesirable precedent and do not approve the bill.

THE WHITE HOUSE  
December 20, 1974

Date: December 26, 1974

Time: 3:30 p.m.

*M/GAS*

FOR ACTION: Mike Duval  
Max Friedersdorf  
Phil Areeda  
Paul Theis

cc (for information): Warren Hendriks  
Jerry Jones

1974 DEC 27 PM 12 14

*JL 12/27/74*

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 27

Time: noon

SUBJECT:

Enrolled Bill S. 3574 - Land conveyance, Yuma County, Arizona

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



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

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 844

Date: December 26, 1974

Time: 3:30 p.m.

FOR ACTION: Mike Duval  
Max Friedersdorf *9/11*  
Phil Areeda - *Sign*  
*Paul Theris*

cc (for information): Warren Hendriks  
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 27

Time: noon

SUBJECT:

Enrolled Bill S. 3574 - Land conveyance, Yuma County, Arizona

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

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  
WASHINGTON

December 27, 1974

MEMORANDUM FOR: WARREN HENDRIKS  
FROM: MAX L. FRIEDERSDORF  
SUBJECT: Action Memorandum - Log No. 844  
Enrolled bill S. 3574  
Land conveyance, Yuma County, Arizona

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

Attachment

*See comments*

THE WHITE HOUSE  
WASHINGTON

DATE: 12/27/74

TO: ~~POD/VL~~

FROM: Max L. Friedersdorf

Please handle \_\_\_\_\_

Please see me \_\_\_\_\_

For your information \_\_\_\_\_

Other

Farrin says its a  
must  
POD

Comments

Rhodes says "must sign"  
but might back off if other  
3 are signed - 2 already signed -  
VL

Date: December 26, 1974

Time: 3:30 p.m.

FOR ACTION: Mike Duval  
Max Friedersdorf  
Phil Areeda ✓cc (for information): Warren Hendriks  
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 27

Time: noon

SUBJECT:

Enrolled Bill S. 3574 - Land conveyance, Yuma County,  
Arizona .

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

- 1) I would sign the bill for the reasons stated on p. 6 of OMB memo.
- 2) If vetoed, message should be received as noted on attached copy.

P. Areeda

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 24 1974**

Dear Mr. Ash:

This responds to your request for the views of this Department on S. 3574, an enrolled bill "To relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona."

We recommend that the President not approve the enrolled bill.

S. 3574 would disclaim any right, title or interest of the United States in 320 acres of land in Yuma County, Arizona, except for 52 acres condemned for a rechannelization project, and require the Secretary to transfer a designated 52 acres to the owner of the condemned land as compensation.

The issue which this bill seeks to resolve arose from the shifting of the Colorado River from 1920-36, which added most of the land in question to Federal land from tracts owned by the private parties across the Colorado River.

In the 91st Congress, pursuant to Senate Resolution 143, this dispute was referred to the Court of Claims to rule on the matter, considering equities as well as legal principles. The Court of Claims recommended that substantially all of the land in question be granted to the private parties. The Senate report, basically supporting the Department's position that the Court of Claims should not resolve title disputes and the United States not be subject equitable claims, indicated an obligation to honor the action of the 91st Congress.

Normal procedure would be a resolution of the legal issues by a Federal District Court in an action to quiet title. In such an action, the basic fact to be determined is whether the land in question became part of Federal land through accretion, whereby the United States is entitled to land which comes into its possession through gradual shifts in the river, or whether there was an avulsion, a sudden shift leaving title with the original owner. Senate Resolution 143 however, established a unique procedure by which the United States was to be treated as any other private landowner. Therefore, S. 3574 short circuits the doctrine which bars the assertion of equitable claims against the United States in such actions. The Department of Interior has been instituting actions in cases such as this to



quiet title throughout this area and the Bureau of Land Management is preparing to recommend such an action in this case.

The Congress has by-passed this procedure once before, by passing Public Law 91-505. That Act essentially altered the normal process by instructing the United States District Court to consider equitable claims against the United States, but stopped short of an outright grant of the property as in this bill. Limited to the specific dispute in that case, it directed the matter back to District Court for final adjudication. This bill, based on the Court of Claims approach, goes in another direction from Public Law 91-505. We feel both bills are bad procedure and see no reason to compound the mistake made in Public Law 91-505 by approving this bill. The inconsistencies in these approaches underscores the confusion in Congress and complexity of the facts and issues in these problems. Both bills essentially substitute the Congress for the judicial process in adjudicating tangled legal disputes and establish precedents which could lead to a stampede to Congress of claimants who may be unsuccessful in District Court.

We must support the long standing principal that the United States is not subject to equitable claims such as a private landowner since effective and not unreasonably costly management of public lands is dependent on that immunity. Basing relief on equitable theories to which the United States is normally immune, the bill weakens this immunity and sets a precedent which could burden the United States with the responsibility of policing the vast public lands, 3/4 billion acres, to prevent trespass which gives rise to claims against which it has been immune.

Additionally, the land covered by this bill has significant wildlife value. The area is near the Cibola National Wildlife Refuge, and includes valuable wetlands important to migrating waterfowl. As a part of the fish and wildlife protection program, works facilitating the control of water have been constructed on three sides of the area and a \$785,000 bridge was built to facilitate access to the area improve the utilization of the land for wildlife purposes. Conveyance of these lands to private control would substantially nullify these wildlife mitigation efforts and the bridge would no longer serve its intended purpose of facilitating public access to the wildlife area. In light of the wildlife value of the land and for its protection, any compensation due the private parties for the land condemned should be monetary, rather than in kind from public lands, as in the bill.

This bill is not only inconsistent with the current program to quiet title in District Court, but would give relief to these claimants when many other claimants, similiary situated, have litigated under established legal principles or entered into a settlement agreement with the United States. Approval of this special relief bill would obviously be unfair to these other claimants. Moreover, additional claims such as this can be expected in the future if this precedent is established. In fact, two other bills of this nature were introduced in this Congress, H.R. 4450 and H.R. 2218, and vigorously opposed by the Department.

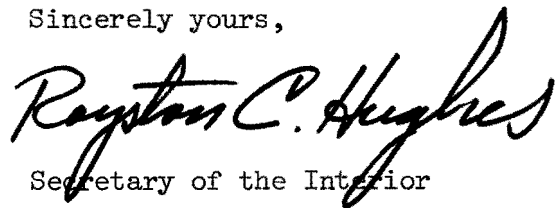
While the argument can undoubtedly be made that this bill is unique, it cannot be distinguished from other cases which will surely arise. The apprehension of the Interior Committee is reflected in the Committee report on the bill:

"The Committee concurs with the Department's objections based on law and policy. The Department is entirely correct in stating the long standing legal principle that the United States is not subject to equitable claims and that efficient, effective, and not unreasonably costly management of the public lands is dependent on that immunity. In addition, the Committee fully supports the Department's position that title questions should not be referred to the Court of Claims."

We are aware of strong sentiments on behalf of the beneficiaries of the bill, however, we feel that the approval of this bill would lead only to great numbers of similar appeals in the future and effective management of the public lands would be seriously jeopardized.

For the reasons stated above, we recommend against approval of the enrolled bill.

Sincerely yours,



**Assistant**

Secretary of the Interior

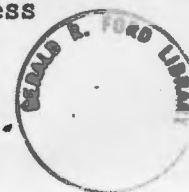
Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D. C. 20503

TO THE HOUSE OF REPRESENTATIVES

I return herewith, without my approval, S. 3574, a bill that disclaims any interest right or title of the United States in a 320 acre tract in Yuma, Arizona and authorize the Secretary of Interior to convey the property to private parties. The acreage includes 52 acres which is to be compensation for 52 acres condemned by the Government for rechannelization, and the remainder is formerly private land now claimed by the United States for the <sup>purpose</sup> set forth below.

This dispute arose because the Colorado River shifted during 1920-36, causing a gain of acreage to the United States and corresponding reduction for the land owners on the other side. Normally, in such disputes, the United States institutes an action to quiet title to the land in United States District Court. In such an action, the legal issue as to who owns the property is settled, depending basically on how the shift occurred, gradually or suddenly. The <sup>Administration</sup> United States strongly supports this procedure and opposes this bill as an aberration from that general policy.

Under the present bill, the property in question would be awarded to the private parties based on a Court of Claims decision requested by the Senate when the issue was before the 91st Congress. This method of resolving the issues through Congress, rather than through the Courts, could institute a rash of similar claims by various parties dissatisfied with the status of the present law. Additionally, if such a precedent of obtaining private relief is established, individual parties could press their claims in Congress utilizing the Court of Claims without the limitations and precedents placed upon them by the Judicial process, involved over many years. Several theories of <sup>equitable</sup> ownership, to which the United States is immune in disputes in the District Courts, such as adverse possession, could be perhaps successfully pursued in the Congressional route, as in the present case, with the result that the Government would have to begin patrolling some 3/4 billion acres of land to prevent such claims from existing. If it is the intention of Congress to substantially change the law regarding the immunity of the United States to these ~~Court~~ Court of Claims, then the law itself should be changed.



**Department of Justice**  
**Washington, D.C. 20530**

DEC 23 1974

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 S. 3574, "To relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona."

This bill would relinquish and disclaim title to approximately 320 acres of land and authorize the Secretary of the Interior to convey title to some 52 acres of land without consideration to the Wide River Farms, Inc. of Arizona, as compensation for 52 acres taken and used in the rechannelization of the Colorado River.

Passage of the bill was based in part on a Report to the United States Senate furnished by the Chief Commissioner of the United States Court of Claims pursuant to a referral made by S. 1343, 91st Congress, 1st Session. It appears from the Report of the Chief Commissioner that the lands in question were originally homesteaded in 1910, 1914, and 1919. At the time the homestead entries were made the lands were located on the California side of the river and were described in relation to the San Bernardino meridian, California. The Colorado River is an alluvial stream which was then subject to tremendous floods and meandered throughout the valley. The river was encroaching on the homestead entries at the time they were first settled and by the time the patents were issued a good part of the lands were actually in the river bed or located on the Arizona side of the river. The lands are described in the bill as





being in Arizona and the description refers to the Gila and Salt River meridian, it may be noted. The land in Arizona was withdrawn from entry at all times herein pertinent.

The movement of the Colorado River during its flood stages made settlement and development of the land along its banks very difficult and hazardous. After the river was subjected to control by the construction of the Hoover and Parker Dams, circa 1936-1938, settlers began to move into the flood plain and develop the highly fertile lands. We have consistently claimed title to the lands on the Arizona side of the river, since it has always been public domain.

The Chief Commissioner's report was based in part on equitable considerations. The use of the Congressional Reference procedures weakens the United States' immunity to equitable claims. Preservation of that immunity is crucial to efficient and effective management of the public lands. The Congress has provided certain right to bring a quiet title suit against the United States (see 28 U.S.C. 2409a). If the present bill is approved, there is little doubt that it will prompt a flood of requests for similar special relief from Congress, whereas the true remedy lies in the courts.

The Department of Justice is advised that the Department of the Interior is recommending against Executive approval of the bill. For the reasons indicated above the Department of Justice would join in such recommendation, but is deterred because it took no action against passage of the bill by the Senate and the House, not having been invited to do so. Nevertheless, and in view of the fact that the Department of the Interior has the primary interest in the subject matter of this bill, we defer to that Department in respect of its recommendation of a veto, and as to what should be included in any veto message. However, a draft message is attached hereto.

Sincerely,



W. Vincent Rakestraw  
Assistant Attorney General

STATEMENT OF DISAPPROVAL  
ON S. 3574

I am required, in the public interest, to withhold my approval from S. 3574, "To relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona."

This bill would relinquish and disclaim title to approximately 320 acres of land, and authorize the Secretary of the Interior to convey title to some 52 acres of land without consideration to the Wide River Farms, Inc. of Arizona as compensation for 52 acres taken and used in the rechannelization of the Colorado River.

Passage of the bill was based in part on a Report to the United States Senate furnished by the Chief Commissioner of the United States Court of Claims pursuant to a congressional referral made in the 91st Congress. It appears from the Report of the Chief Commissioner that the lands in question were originally homesteaded during the period from 1910 to 1919. At the time the homestead entries were made the lands were located on the California side of the river and were described in relation to the San Bernardino meridian, California. The

Colorado River is an alluvial stream which was then subject to tremendous floods and meandered throughout the valley. The river was encroaching on the homestead entries at the time they were first settled, and by the time the patents were issued a good part of the lands were actually in the river bed or located on the Arizona side of the river. The lands are described in the bill as being in Arizona, and the description refers to the Gila and Salt River meridian. However, it is a fact that the land in Arizona was withdrawn from entry at all times pertinent to any title dispute in this case.

The movement of the Colorado River during its flood stages made settlement and development of the land along its banks very difficult and hazardous until relatively recent times. After the river was subjected to control by the construction of the Hoover and Parker Dams, circa 1936-1938, settlers began to move into the flood plain and develop the highly fertile lands. The lands on the Arizona side of the river have always been public domain and the Government has consistently claimed title to them.



In the late 1950's investigation by the Department of the Interior disclosed that more than 1,000 persons were illegally occupying public lands along the Lower Colorado River. Subsequently, the Department initiated actions under which most of these occupants either vacated the land or explicitly recognized Federal ownership. Other occupants were removed following successful legal action by the Government. Litigation in regard to others is still pending.

The Chief Commissioner's report was based in part on equitable considerations. The use of the Congressional Reference procedures weakens the United States' immunity by subjecting it to equitable claims. Preservation of the Government's immunity is crucial to efficient and effective management of the public lands. The courts are the traditional forum for determining legal questions relating to land ownership and I see no reason for making a special exception here thus interfering with the orderly judicial process.

The effect of this legislation would be to single out a few individuals for preferred consideration and thereby to discriminate against others.

- 4 -

For the foregoing reasons, I am compelled to withhold my approval of this bill.

THE WHITE HOUSE

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accretion survey plat of said township published by the United States Department of the Interior, Bureau of Land Management, dated June 5, 1962, except that the provisions of this section shall not apply to the 52-acre portion of such property that was condemned by the United States pursuant to the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ. 5188-Phx) and any portion of such property submerged in the bed of the Colorado River and owned by the States of California and Arizona.

SEC. 2. The Secretary of the Interior is authorized and directed to convey by patent to Wide River Farms, Incorporated, an Arizona corporation, 52 acres of land, more or less, described as the southwest quarter of the northwest quarter and the southwest quarter of the northeast quarter of section 13, township 9 south, range 21 east, San Bernardino meridian as depicted by the original plat of survey of such township published by the United States Surveyor General's Office, dated March 21, 1857, being a portion of section 26, township 1 north, range 24 west, Gila and Salt River meridian, as depicted by the dependent resurvey and accretion survey plat of said township published by the United States Department of the Interior, Bureau of Land Management, dated June 5, 1962, except that the provisions of the this section shall not apply to any portion of such property that was described in the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ., 5188-Phx.) and any portion of such property submerged in the bed of the Colorado River and owned by the States of California and Arizona.

SEC. 3. The Secretary of the Interior is authorized and directed to prepare and execute without consideration such instruments as may be appropriate to carry out the purposes of this Act.

#### I. PURPOSE

S. 3574, as amended, would disclaim any right, title, or interest of the United States in 320 acres of land in Yuma County, Ariz., except for a 52-acre portion which was condemned by the United States for a Colorado River rechannelization project. It would also direct the Secretary of the Interior to convey without consideration to the Wide River Farms, Inc. of Arizona some 52 acres as compensation for the acreage used in the rechannelization project.

#### II. BACKGROUND

S. 3574, as amended, is based in part on a Court of Claims decision described below. The bill would legislatively settle a dispute of title to 320 acres along the Colorado River in Yuma County, Ariz. The dispute arises from changes in the course of the Colorado River several years ago which caused additions of land on one side of the river and

corresponding reductions on the other. It is the ownership of a portion of that land which is disputed.

An action (*U.S.A. v. 527.92 acres of land No. Civ. 5188-Phoenix*) was filed in the latter part of 1964 by the United States, seeking to condemn the east 52 acres of the land described in the first paragraph of S. 3474. Asserting that the United States was the owner of the land, the condemnation action sought to pay one dollar for the rights of any claimants. Pursuant to the Declaration of Taking filed with the condemnation action, the rechannelization of the Colorado River has been completed and the east 52 acres of the land are now in the river. Hearings on the condemnation action were continued while negotiations were conducted regarding the title question.

On March 4, 1969, Senator Murphy of California introduced S. 1343, a bill directing the United States to relinquish and disclaim any right, title or interest which it may have in the land described in the first paragraph of S. 3574. As a companion to S. 1343, Senator Murphy submitted Senate Resolution 143, referring S. 1343 to the United States Court of Claims, for a report with findings of fact and conclusions sufficient to inform the Congress whether the waiver and relinquishment of any claim of title by the United States would be appropriate in light of any legal or equitable claim to the real property in dispute.

Pursuant to Senate Resolution 143, S. 1343 was referred to the U.S. Court of Claims. Trial of *Congressional Reference Case No. 3 69, Robert D. Bechtel, et al., v. United States*, was held before Commissioner C. Murray Bernhardt, sitting in Phoenix, Ariz. Extensive testimony and exhibits were presented to the Commissioner and on April 11, 1972, he filed an opinion with the U.S. Court of Claims. Thereafter, a panel of Commissioners of the U.S. Court of Claims filed a report to the U.S. Senate. That report provided, among other things, that:

(1) The waiver and relinquishment of any claim of title by the United States to the real property described in S. 1343, 91st Cong., 1st Sess., is appropriate in the light of legal and equitable claims to such real property by private claimants, except that there should be excluded from such waiver and relinquishment the 52-acre portion of such property that was condemned by the United States pursuant to the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ. 5188-Phx.) and the portion of such property submerged in the bed of the Colorado River and owned by the States of California and Arizona.

(2) The accretion claim of the United States to the lands in question accrued at various times during the period 1920-36.

(3) There would presently exist equitable defenses to the assertion of the Government's accretion claim if it had accrued to and were now being asserted by a private party rather than the Government.

The Trial Commissioner's report, in addition to covering the matters on which the Senate specifically requested advice in S. Res. 143, concluded that the plaintiffs have an equitable claim against the

United States for "monetary relief or relief in kind as to the 52 acres of their property previously condemned and utilized by the Government for a rechannelization project \* \* \*"

As indicated in the Trial Commissioner's opinion and findings of fact, the United States on June 30, 1964, instituted a condemnation suit in the U.S. District Court for the District of Arizona (No. Civ. 5188-Phx.) against 527.93 acres of land, including 52 acres that are involved in the present proceedings, for the purpose of a river channelization project. The complaint asserted that the United States actually possessed the full fee simple title to the 52 acres, and that any ownership claim of the present plaintiffs was unfounded. The present plaintiffs were awarded \$1 in the condemnation suit as compensation for the 52 acres.

The opinion of the Trial Commissioner, together with findings of fact, is incorporated in the report submitted by the Court of Claims to the Senate. These findings of fact include information regarding the chain of title which began by the issuance of patents by the United States and concluded with title vesting in Wide River Farms, Inc. These facts also include all of the available information regarding the accretive or avulsive movements of the Colorado River in the area of the subject lands.

The Department of the Interior opposed enactment of S. 3574 on, among others, the following grounds:

We oppose referring cases to the United States Court of Claims for advisory opinions on whether legislation should be enacted to transfer the United States' title to lands. It is our opinion that land ownership disputes involving the United States should be resolved by quiet title actions in the Federal district courts or in higher courts on appeal. Several years ago the United States commenced a program to clear title to lands adjacent to the Colorado River, and we are presently studying whether to initiate an action involving the land in question.

The Court of Claims decision is based in part on equitable claim. We oppose legislation which, by ordering a quitclaim of land, would weaken the United States' immunity to equitable claims. Preservation of that immunity is crucial to efficient and effective management of the public lands. It saves the United States from the enormous task and expense of continuously having to police public lands in order to prevent trespassers from establishing claims based on their occupancy without notice to vacate. Public lands amount to more than three-quarters of a billion acres which gives rise to countless opportunities for persons to occupy Federal lands without authorization. \* \* \*

In conclusion, the Court of Claims decision is purely an advisory opinion which Congress must weigh in light of Federal land management policies. S. 3574 would grant relief that is not only inconsistent with the current program to quiet titles in the Federal District Courts but would also give special relief to certain claimants when others have either

agreed to a settlement with the United States or have litigated in accordance with the law. There is little doubt that S. 3574 would also prompt a flood of requests for similar special relief from Congress. We therefore urge Congress not to enact S. 3574 and to protect the process provided by law for resolving these title disputes.

The Committee concurs with the Department's objections based on law and policy. The Department is entirely correct in stating the long standing legal principle that the United States is not subject to equitable claims and that efficient, effective, and not unreasonably costly management of the public lands is dependent on that immunity. In addition, the Committee fully supports the Department's position that title questions should not be referred to the Court of Claims.

In ordering reported S. 424, the National Resource Lands Management Act (passed by the Senate on July 8, 1974), the Committee favored an administrative and, if necessary, judicial approach to land ownership disputes. S. 424 clearly does not provide for the referral of such disputes to the Court of Claims.

However, until such time as S. 424 is enacted into law, the Committee believes it has a responsibility to continue to consider individual bills concerning title questions on their merits. In this case, the Senate in an earlier Congress made a decision to refer the question to the Court of Claims. Such an action would have been futile unless that Senate expected future Senates to be bound by the judgment of the Court of Claims. Therefore, although this Committee would not refer this dispute to the Court of Claims, nor would it give the same weight to equitable claims, it feels compelled to honor the action of that earlier Senate.

The Committee unanimously approved S. 3574, as amended, with the understanding that the Committee would not follow the procedure of S. Res. 143 and S. 3574 in future land ownership disputes and that, because of the unique circumstances concerning S. 3574, the principle of Federal immunity from equitable remedies would not be eroded by its enactment.

## II. LEGISLATIVE HISTORY

S. 3574 was introduced by Senator Fannin on June 4, 1974. The Subcommittee on Public Lands held a hearing on the measure on July 17, 1974, and, by unanimous voice vote in open markup session, ordered it reported on September 26, 1974. The Committee on Interior and Insular Affairs, also by unanimous voice vote in open markup session, ordered S. 3574, as amended, reported to the Senate on October 1, 1974.

## III. TABULATION OF VOTES CAST

The unanimous voice votes on the orders to report the measure in Subcommittee and full Committee were taken in open public session. 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 Committee Report is unnecessary.

#### IV. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, in open markup session on October 1, 1974, by voice vote, unanimously recommended that S. 3574, as amended, be enacted.

#### V. COST

In accordance with subsection (a) of section 255 of the Legislative Reorganization Act, the following is a statement of estimated costs which would be incurred in the implementation of S. 3574, as amended:

Enactment of S. 3574, as amended, could result in only a minor expenditure of funds in administering the land conveyance. No authorization is necessary or provided in the measure.

#### VI. EXECUTIVE COMMUNICATIONS

The report of the Department of the Interior to the Committee concerning S. 3574 is set forth in full, as follows:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., July 17, 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. 3574, a bill "To relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona."

We recommend against enactment of the bill.

S. 3574 would disclaim any right, title, or interest of the United States in 320 acres of land in Yuma County, Arizona, except for a 52-acre portion which was condemned by the United States for a Colorado River rechannelization project. It would also direct the Secretary of the Interior to convey without consideration to the Wide River Farms, Inc. of Arizona some 52 acres as compensation for the acreage use in the rechannelization project.

S. 3574 is presumably based on a Court of Claims decision described below. The bill would legislatively settle a dispute of title to the 320 acres. The dispute arises from changes in the course of the Colorado River several years ago which caused additions of land on one side of the river and corresponding reductions on the other. It is the ownership of a portion of that land which is disputed.

The 91st Congress passed a resolution, S.Res. 143, which was intended to assist Congress in determining whether remedial legislation was appropriate in this specific case to settle the title disputes. The resolution ordered that the United States Court of Claims report findings of fact and conclusions "sufficient to inform congress whether the waiver and relinquishment of any claim of title by the United States is appropriate in light of any legal or equitable claim to the real property". The Court of Claims subsequently filed a report, *Robert D. Bechtel et al.*, 198 Ct. Cl. 929 (1972), which found for the claimants.

We oppose referring cases to the United States Court of Claims for advisory opinions on whether legislation should be enacted to transfer the United States' title to lands. It is our opinion that land ownership disputes involving the United States should be resolved by quiet title actions in the Federal District Courts or in higher courts on appeal. Several years ago the United States commenced a program to clear title to lands adjacent to the Colorado River, and we are presently studying whether to initiate an action involving the land in question.

The Court of Claims decision is based in part on equitable claim. We oppose legislation which, by ordering a quitclaim of land, would weaken the United States' immunity to equitable claims. Preservation of that immunity is crucial to efficient and effective management of the public lands. It saves the United States from the enormous task and expense of continuously having to police public lands in order to prevent trespassers from establishing claims based on their occupancy without notice to vacate. Public lands amount to more than three-quarters of a billion acres which gives rise to countless opportunities for persons to occupy Federal lands without authorization.

The land in question is very near the Cibola National Wildlife Refuge. It is also within the mitigation area for fish and wildlife protection as contemplated under the Colorado River Frontwork and Levee System program of the United States. The higher portions of the river bottomland are valuable for white-wing doves, mourning doves and quail. Wetlands in the area are important to migrating and wintering waterfowl, and Yuma Clapper Rail, an endangered species, have been observed utilizing lands in section 12.

As a feature of the fish and wildlife mitigation program, inlet and outlet works were constructed by the Bureau of Reclamation in the Palo Verde Oxbow which surrounds the land in question on three sides to facilitate control of water to the area. To improve the utilization of the lands for wildlife purposes, the Bureau also expended Federal funds to build the Cibola Bridge. The total expenditure for this area has amounted to about \$785,000. The bridge crosses the Cibola Valley Levee and is the only access from Arizona to these lands and adjacent federally owned lands. Conveyance of the subject lands into private ownership would nullify the wildlife mitigation efforts and place almost all of the land between the Oxbow and Cibola Channel under private control. Furthermore, the bridge constructed with public funds would no longer serve its intended purpose of providing public access to a wildlife management area.

In conclusion, the Court of Claims decision is purely an advisory opinion which Congress must weigh in light of Federal land management policies. S. 3574 would grant relief that is not only inconsistent with the current program to quiet titles in the Federal District Courts but would also give special relief to certain claimants when others have either agreed to a settlement with the United States or have litigated in accordance with the law. There is little doubt that S. 3574 would also prompt a flood of requests for similar special relief from Congress. We therefore urge Congress not to enact S. 3574 and to protect the process provided by law for resolving these title disputes.



RELINQUISHING TITLE TO CERTAIN LANDS, AND DIRECTING THE  
SECRETARY OF THE INTERIOR TO CONVEY CERTAIN LANDS, SITU-  
ATED IN YUMA COUNTY, ARIZ.

OCTOBER 10, 1974.—Ordered to be printed

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

## REPORT

[To accompany S. 3574]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 3574) to relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Ariz., having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 1, line 4, strike "that".
  2. On page 2, line 17, strike "That the" and insert in lieu thereof "The".
  3. On page 2, line 17, between "of" and "Interior" insert "the".
- The bill, as amended, is set forth in full below:

That the United States hereby disclaims any right, title, or interest in or to certain real property situated in Yuma County, Arizona, within the boundaries of the east half of the northwest quarter and the north half of the northeast quarter and the northwest quarter of the northwest quarter of section 13; and the northeast quarter of the southwest quarter and the south half of the southwest quarter of section 12, township 9 south, range 21 east, San Bernardino meridian as depicted by the original plat of survey of such township published by the United States Surveyor General's Office, dated March 21, 1857, being a portion of sections 23, 25, and 26, township 1 north, range 24 west, Gila and Salt River meridian as depicted by the dependent resurvey and

RELINQUISHING AND DISCLAIMING ANY TITLE TO CERTAIN LANDS  
AND AUTHORIZING THE SECRETARY OF THE INTERIOR TO CONVEY  
CERTAIN LANDS SITUATED IN YUMA COUNTY, ARIZ.

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DECEMBER 13, 1974.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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

REPORT

[To accompany S. 3574]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 3574) to relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 3574<sup>1</sup> is to disclaim any right, title, or interest of the United States in 320 acres of land in Yuma County, Arizona, except for a 52-acre portion which was condemned by the United States for a Colorado River rechannelization project. It would also direct the Secretary of the Interior to convey without consideration to the Wide River Farms, Inc. of Arizona some 52 acres as compensation for the acreage used in the rechannelization project.

BACKGROUND

S. 3574 is based in part on a Court of Claims decision described below. The bill would settle legislatively a dispute of title to 320 acres of land along the Colorado River in Yuma County, Arizona, arising from changes in the course of the river several years ago which caused additions of land on one side of the river and corresponding reductions on the other.

An action (*U.S.A. v. 527.92 acres of land No. Civ. 5188—Phoenix*) was filed in the latter part of 1964 by the United States, seeking to condemn the east 52 acres of the land described in the first paragraph

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<sup>1</sup> H.R. 15469 by Representative Steiger of Arizona, an identical bill, was the subject of the report of the Department of the Interior on this legislation.

of S. 3574. Asserting that the United States was the owner of the land, the condemnation action sought to pay one dollar for the rights of any claimants. Pursuant to the Declaration of Taking filed with the condemnation action, the rechannelization of the Colorado River has been completed and the east 52 acres of the land are now in the river. Hearings on the condemnation action were continued while negotiations were conducted regarding the title question.

On March 4, 1969, S. 1343 was introduced directing the United States to relinquish and disclaim any right, title or interest which it may have in the land described in the first paragraph of S. 3574. Under an accompanying Senate Resolution, S. 1343 was referred to the United States Court of Claims, requesting findings of fact and conclusions sufficient to inform the Congress whether the waiver and relinquishment of any claim of title by the United States would be appropriate in light of any legal or equitable claim to the real property in dispute.

Trial of *Congressional Reference Case No. 369, Robert D. Bechtel, et al., v. United States*, was held before Commissioner C. Murray Bernhardt, sitting in Phoenix, Ariz. Extensive testimony and exhibits were presented to the Commissioner and on April 11, 1972, he filed an opinion with the U.S. Court of Claims. Thereafter, a panel of Commissioners of the U.S. Court of Claims filed a report with the U.S. Senate. That report provided, among other things, that:

(1) The waiver and relinquishment of any claim of title by the United States to the real property described in S. 1343, 91st Cong., 1st Sess., is appropriate in the light of legal and equitable claims to such real property by private claimants, except that there should be excluded from such waiver and relinquishment the 52-acre portion of such property that was condemned by the United States pursuant to the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ. 5188-Phx.) and the portion of such property submerged in the bed of the Colorado River and owned by the States of California and Arizona.

(2) The accretion claim of the United States to the lands in question accrued at various times during the period 1920-36.

(3) There would presently exist equitable defenses to the assertion of the Government's accretion claim if it had accrued to and were now being asserted by a private party rather than the Government.

The Trial Commissioner's report, in addition to covering the matters on which the Senate specifically requested advice, concluded that the plaintiffs have an equitable claim against the United States for "monetary relief or relief in kind as to the 52 acres of their property previously condemned and utilized by the Government for a rechannelization project \* \* \*."

As indicated in the Trial Commissioner's opinion and findings of fact, the United States on June 30, 1964, instituted a condemnation suit in the U.S. District Court for the District of Arizona (No. Civ. 5188-Phx.) against 527.93 acres of land, including 52 acres that are involved in the present proceedings, for the purpose of a river channelization project. The complaint asserted that the United States actually

possessed the full fee simple title to the 52 acres, and that any ownership claim of the present plaintiffs was unfounded. The present plaintiffs were awarded \$1 in the condemnation suit as compensation for the 52 acres.

The opinion of the Trial Commissioner, together with findings of fact, is incorporated in the report submitted by the Court of Claims to the Senate. These findings of fact include information regarding the chain of title which began by the issuance of patents by the United States and concluded with title vesting in Wide River Farms, Inc. These facts also include all of the available information regarding the accretive or avulsive movements of the Colorado River in the area of the subject lands.

The Department of the Interior opposed enactment of S. 3574 or the companion House bill H.R. 15469 on, among others, the following grounds:

We oppose referring cases to the United States Court of Claims for advisory opinions on whether legislation should be enacted to transfer the United States' title to lands. It is our opinion that land ownership disputes involving the United States should be resolved by quiet title actions in the Federal district courts or in higher courts on appeal. Several years ago the United States commenced a program to clear title to lands adjacent to the Colorado River, and we are presently studying whether to initiate an action involving the land in question.

The Court of Claims decision is based in part on equitable claim. We oppose legislation which, by ordering a quitclaim of land, would weaken the United States' immunity to equitable claims. Preservation of that immunity is crucial to efficient and effective management of the public lands. It saves the United States from the enormous task and expense of continuously having to police public lands in order to prevent trespassers from establishing claims based on their occupancy without notice to vacate. Public lands amount to more than three-quarters of a billion acres which gives rise to countless opportunities for persons to occupy Federal lands without authorization. \* \* \*

In conclusion, the Court of Claims decision is purely an advisory opinion which Congress must weigh in light of Federal land management policies. H.R. 15469 would grant relief that is not only inconsistent with the current program to quiet titles in the Federal District Courts but would also give special relief to certain claimants when others have either agreed to a settlement with the United States or have litigated in accordance with the law. There is little doubt that H.R. 15469 would also prompt a flood of requests for similar special relief from Congress. We therefore urge Congress not to enact H.R. 15469 and to protect the process provided by law for resolving these title disputes.

While the Department is correct in stating the long standing legal principle that the United States is not subject to equitable claims, the

Committee cannot fully agree that efficient, effective, and not unreasonably costly management of the public lands is dependent on that immunity. Neither can the Committee support the Department's position that title questions should not be referred to the Court of Claims. Under the circumstances such as we have here there appears to be no other viable alternative.

The Committee believes it has a responsibility to continue to consider individual bills concerning title questions on their merits. In this case, the Senate in an earlier Congress made a decision to refer the question to the Court of Claims. Such an action would have been futile unless it could be anticipated that the views of the Court of Claims would be taken into consideration. Therefore, this Committee can find no fault with the procedure followed by the Senate. The Committee recognized that the Court of Claims decision is advisory; however, that decision fully supports the conclusion that the plaintiffs have an equitable claim against the United States.

#### COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, reported S. 3574 favorably.

#### COST

Enactment of S. 3574, will result in only a minor expenditure of funds in administering the land conveyance. No authorization is necessary or provided in the measure.

#### EXECUTIVE COMMUNICATIONS

The report of the Department of the Interior to the Committee concerning H.R. 15469 is set forth in full, as follows:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., December 6, 1974.

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. 15469, a bill to relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona.

We recommend against enactment of the bill.

H.R. 15469 would disclaim any right, title, or interest of the United States in 320 acres of land in Yuma County, Arizona, except for a 52-acre portion which was condemned by the United States for a Colorado River rechannelization project. It would also direct the Secretary of the Interior to convey without consideration to the Wide River Farms, Inc. of Arizona some 52 acres as compensation for the acreage use in the rechannelization project.

H.R. 15469 is presumably based on a Court of Claims decision described below. The bill would legislatively settle a dispute of title to the 320 acres. The dispute arises from changes in the course of the

Colorado River several years ago which caused additions of land on one side of the river and corresponding reductions on the other. It is the ownership of a portion of that land which is disputed.

The 91st Congress passed a resolution, S. Res. 143, which was intended to assist Congress in determining whether remedial legislation was appropriate in this specific case to settle the title dispute. The resolution ordered that the United States Court of Claims report findings of fact and conclusions "sufficient to inform Congress whether the waiver and relinquishment of any claim of title by the United States is appropriate in light of any legal or equitable claim to the real property". The Court of Claims subsequently filed a report, *Robert D. Bechtel et al.*, 198 Ct. Cl. 929 (1972), which found for the claimants.

We oppose referring cases to the United States Court of Claims for advisory opinions on whether legislation should be enacted to transfer the United States' title to lands. It is our opinion that land ownership disputes involving the United States should be resolved by quiet title actions in the Federal District Courts or in higher courts on appeal. Several years ago the United States commenced a program to clear title to lands adjacent to the Colorado River, and we are presently studying whether to initiate an action involving the land in question.

The Court of Claims decision is based in part on equitable claims. We oppose legislation which, by ordering a quitclaim of land, would weaken the United States' immunity to equitable claims. Preservation of that immunity is crucial to efficient and effective management of the public lands. It saves the United States from the enormous task and expense of continuously having to police public lands in order to prevent trespassers from establishing claims based on their occupancy without notice to vacate. Public lands amount to more than three-quarters of a billion acres which gives rise to countless opportunities for persons to occupy Federal lands without authorization.

The land in question is very near the Cibola National Wildlife Refuge. It is also within the mitigation area for fish and wildlife protection as contemplated under the Colorado River Frontwork and Levee System program of the United States. The higher portions of the river bottomland are valuable for white-wing doves, mourning doves and quail. Wetlands in the area are important to migrating and wintering waterfowl, and Yuma Clapper Rail, an endangered species, have been observed utilizing lands in section 12.

As a feature of the fish and wildlife mitigation program, inlet and outlet works were constructed by the Bureau of Reclamation in the Palo Verde Oxbow which surrounds the land in question on three sides to facilitate control of water to the area. To improve the utilization of the lands for wildlife purposes, the Bureau also expended Federal funds to build the Cibola Bridge. The total expenditure for this area has amounted to about \$785,000. The bridge crosses the Cibola Valley Levee and is the only access from Arizona to these lands and adjacent federally owned lands. Conveyance of the subject lands into private ownership would nullify the wildlife mitigation efforts and place almost all of the land between the Oxbow and Cibola Channel under private control. Furthermore, the bridge constructed with public funds would no longer serve its intended purpose of providing public access to a wildlife management area.

In conclusion, the Court of Claims decision is purely an advisory opinion which Congress must weigh in light of Federal land management policies. H.R. 15469 would grant relief that is not only inconsistent with the current program to quiet titles in the Federal District Courts but would also give special relief to certain claimants when others have either agreed to a settlement with the United States or have litigated in accordance with the law. There is little doubt that H.R. 15469 would also prompt a flood of requests for similar special relief from Congress. We therefore urge Congress not to enact H.R. 15469 and to protect the process provided by law for resolving these title disputes.

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 KYL,  
*Assistant Secretary of the Interior.*

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# 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 relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the United States hereby disclaims any right, title, or interest in or to certain real property situated in Yuma County, Arizona, within the boundaries of the east half of the northwest quarter and the north half of the northeast quarter and the northwest quarter of the northwest quarter of section 13; and the northeast quarter of the southwest quarter and the south half of the southwest quarter of section 12, township 9 south, range 21 east, San Bernardino meridian as depicted by the original plat of survey of such township published by the United States Surveyor General's Office, dated March 21, 1857, being a portion of sections 23, 25, and 26, township 1 north, range 24 west, Gila and Salt River meridian as depicted by the dependent resurvey and accretion survey plat of said township published by the United States Department of the Interior, Bureau of Land Management, dated June 5, 1962, except that the provisions of this section shall not apply to the 52-acre portion of such property that was condemned by the United States pursuant to the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ. 5188-Phx) and any portion of such property submerged in the bed of the Colorado River and owned by the States of California and Arizona.

SEC. 2. The Secretary of the Interior is authorized and directed to convey by patent to Wide River Farms, Incorporated, an Arizona corporation, 52 acres of land, more or less, described as the southwest quarter of the northwest quarter and the southwest quarter of the northeast quarter of section 13, township 9 south, range 21 east, San Bernardino meridian as depicted by the original plat of survey of such township published by the United States Surveyor General's Office, dated March 21, 1857, being a portion of section 26, township 1 north, range 24 west, Gila and Salt River meridian, as depicted by the dependent resurvey and accretion survey plat of said township published by the United States Department of the Interior, Bureau of Land Management, dated June 5, 1962, except that the provisions of this section shall not apply to any portion of such property that was described in the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ., 5188-Phx.) and any portion of such property

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submerged in the bed of the Colorado River and owned by the States of California and Arizona.

SEC. 3. The Secretary of the Interior is authorized and directed to prepare and execute without consideration such instruments as may be appropriate to carry out the purposes of this Act.

*Speaker of the House of Representatives.*

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

December 19, 1974

Dear Mr. Director:

The following bills were received at the White House on December 19th:

✓ S.J. Res. 234	S. 2838 ✓	S. 3578 ✓
S. 184 ✓	S. 3341 ✓	S. 3615 ✓
S. 194 ✓	S. 3397 ✓	H.R. 3538 ✓
S. 1283 ✓	S. 3418 ✓	H.R. 14401 ✓
S. 1357 ✓	S. 3489 ✓	H.R. 15912 ✓
S. 2125 ✓	S. 3518 ✓	H.R. 16609 ✓
S. 2594 ✓	S. 3574 ✓	H.R. 16901 ✓

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.