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The Public Land Law Review Commission - Status Report 1968-1969

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This is the fourth in Mr. Phipps' series of annual articles on the organization, goals and current activities of the Public Land Law Review Commission, established by Congress in 1964 to review and recommend changes in the laws which control much of the land in the Western States. This article reports on the current activity of the Commission and the progress being made on the various studies being conducted under its direction. The reader will be interested to find appended to the article Secretary Udall's parting letter to the Commission, a draft of the proposed "Mineral Leasing Act Revision of 1969" and the Interior Department's section by section analysis of the proposed act.

THE PUBLIC LAND LAW REVIEW COMMISSION--STATUS REPORT 1968-1969

*David R. Phipps**

INTRODUCTION

PROGRESS of an unspectacular sort has been made in the work of the Public Land Law Review Commission since the preparation of the last article[1] in this series. At that time none of the Commission's studies, whether prepared by the Commission staff or by contractors, had been completed and

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1. Phipps, *The Public Land Law Review Commission—Status Report 1967-1968*, 3 LAND & WATER L. REV. 301 (1968). Prior articles were as follows: *The Public Land Law Review Commission—A Challenge to the West*, 1 LAND & WATER L. REV. 355 (1966); *The Public Land Law Review Commission—Identifying and Defining the Problems*, 2 LAND & WATER L. REV. 253 (1967).

less than one-third of the proposed studies were actually under way. The present count of studies completed, in process, or planned is thirty-nine. At this writing, eleven studies have been completed, eighteen studies are in the process of completion (several of these will probably be completed prior to publication of this article), and ten studies are still in the planning stage.

During this same period, the Department of the Interior or, more precisely, the Department of the Interior under the Johnson Administration has switched from its prior position of merely criticizing the mining laws to actively advocating the elimination of the present location system in favor of a leasing system. It is too early to know if a leasing system will be actively pursued by the Department of the Interior under the Nixon Administration; similarly, no firm indication is apparent at this time as to the position of the Public Land Law Review Commission. Even if Interior's proposal is deemed a mere trial balloon by an out-going Administration, it should, nevertheless, be given serious study as a reflection of the attitude of groups of people both within and without the Interior Department. Similar proposals are not unexpected. For this reason, Interior's proposal is hereinafter reported in full.

MEETINGS OF THE COMMISSION

As noted in the 1968 report,[2] the Commission held a public hearing on April 5 and 6, 1968, in Washington, D.C., to allow the federal departments and agencies concerned with the retention, management and disposition of the public lands to present their views on public land administration problems. Appearing before the Commission were representatives of the Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Housing and Urban Development, Atomic Energy Commission, Federal Power Commission and General Services Administration. In view of the importance of these expressions as an indicator of legislative proposals to come, a report on these viewpoints in certain areas is contained hereinafter.

2. Phipps, *supra* note 1, at 306.

On November 8 and 9, 1968, the Commission, Advisory Council and governors' representatives met in Tucson, Arizona, to consider the study reports covering "Revenue Sharing and Payments in Lieu of Taxes" and "Withdrawals and Reservations." Following this public meeting, the Commission considered these two areas further in executive sessions held on November 10 in Tucson and on January 24 and 25, 1969, in Washington, D.C.

Similarly, the Commission, Advisory Council and governors' representatives discussed the reports on "Outer Continental Shelf Lands" and "Administrative Rule-Making and Adjudication" in public sessions in Washington, D.C. on February 21, 1969, followed by an executive session of the Commission.

The reports on "Fish and Wildlife" and "Water on the Public Lands" were the subject of a meeting in Washington, D.C., on April 17 and 18, 1969 between the Commission, Advisory Council and governors' representatives, following which the Commission again met in executive session.

Presumably, the Commission will continue to schedule such meetings as further study reports are submitted by contractors.

PERSONNEL CHANGES

No changes in the membership of the Advisory Council, liaison officers or governors' representatives have been announced subsequent to the publication of the 1968 report. One change has been made in the Commission, however. Senator Paul J. Fannin of Arizona was appointed to replace Senator Thomas H. Kuchel of California.

New appointments to the Commission staff were announced on July 8, 1968, as follows: Dr. Eugene E. Hughes, Robert J. Lavell, Andrew C. Mayer, Valentine Payne, and Melvin L. Yuhas, as resource specialists; Arthur B. Meyer, as editor; and Dorothy M. McDonnell, as assistant editor.

STATUS OF BASIC STUDIES

The Public Land Law Review Commission has been prompt in issuing news releases announcing the completion of studies that are to be published or the award of contracts for the performance of studies, but it has been difficult to ascertain the current status of studies that do not fall into those two categories. In light of the Commission's statutory reporting date of June 30, 1970, it can probably be assumed that most of the study reports will be completed this year. The Commission had originally determined that study reports would not be made public at this time (except for the History of Public Land Law Development and the Digest of Public Land Laws) and apparently had also decided not to announce the completion of studies. On April 19, 1969, however, the Commission reversed its prior position and adopted the policy that the public should have access to all study reports, with the caveat that the reports do not necessarily represent the views of the Commission and that they are but one source of Commission information. At the present time, completed study reports may be examined at the office of the Commission during normal office hours and, additionally, the reports have been distributed to all governors' representatives and members of the Advisory Council and arrangements may be made with these individuals to examine the reports. Copies of the reports will be distributed to and available at the National Archives in Washington, D.C., the National Archives Federal Record Centers in Waltham, Mass., New York, N.Y., East Point, Georgia, Chicago, Illinois, Fort Worth, Texas, Denver, Colorado, San Francisco, California, and Seattle Washington, and the Conservation Library at the Central Library Building in Denver. Based upon the information now available, it appears that the status of the proposed studies is as follows:

History of Public Land Law Development

This study by Dr. Paul Wallace Gates of Cornell University and Professor Robert W. Swenson of the University of Utah has now been completed. The study report, containing 23 chapters and 828 pages, was published by the

Public Land Law Review Commission and may be purchased from the U. S. Government Printing Office for $8.25 a copy.

Revenue Sharing and Payments in Lieu of Taxes

EBS Management Consultants, Inc., the contractor for this study, completed its report on July 31, 1968. The scheduled deadline was April 15, 1968.

Digest of Public Land Laws

Publication of this Digest prepared by Shepard's Citations was announced by the Commission on July 1, 1968. The Digest, containing a chronological summary of 2,669 items comprising 3,700 separate public land statutes still in effect and a listing of 375 statutes which have been repealed, is available through the U. S. Government Printing Office for $6.50 a copy. Frank J. Barry, former Solicitor for the Department of the Interior, has severely criticized the accuracy, completeness and usefulness of this publication.[3]

Administrative Rule-Making and Adjudication

This study has evidently been completed by the University of Virginia School of Law and its study report submitted to the Commission, but there has been no formal announcement of completion. The report was due November 30, 1968.

Forage

Completion of this study was due on March 31, 1969.

Land Exchanges and Acquisitions

A study plan draft was submitted to interested parties for comment on December 14, 1966, and requests for proposals were to be circulated in May or June of 1968. It appears, however, that a request for proposals has not yet been prepared and submitted to prospective contractors.

Withdrawals and Reservations

The contractor's study report, due on May 30, 1968, was completed on October 15, 1968.

3. Barry, Book Review, 102 THE LIVING WILDERNESS 22 (1968).

Alaska

The study contract was granted to the University of Wisconsin in June 1967, with a scheduled deadline of December 31, 1968. This report has now been completed by the contractor.

Projection of Future National and Regional Demands for Commodities Producible from Public Lands

Robert R. Nathan Associates, Inc., the contractor, completed its study report on October 7, 1968. Completion of the study had been scheduled for March 15, 1968. The contract contained an option on the part of the Commission to expand the study, but this option apparently was not exercised.

Timber

This study, now titled "Timber Policies on the Public Lands," was contracted to George Banzhaf & Company of Milwaukee, Wisconsin, with completion scheduled for March 31, 1969. George Banzhaf of the organization bearing his name serves as project administrator, and the legal portion of the study is being performed by the Milwaukee law firm of Kaumheimer, Reinhart, Boerner, Van Deuren & Norris. Perry Hagenstein is the Commissions' staff project officer. The contract price is $199,400.

Nonfuel Minerals

The legal aspect of this study is being performed by the law firm of Twitty, Sievwright & Mills of Phoenix, Arizona, and their report was due on March 31, 1969. A contract covering the resource aspect of the study was awarded to the University of Arizona in July 1968, for the amount of $156,950. Dr. George F. Leaming, a research specialist for the University's Division of Economic and Business Research, assisted by Dr. William C. Peters of the College of Mines, Dr. James D. Forrester, Dean of the College of Mines, and Dr. Willard C. Lacey, head of the College's Department of Mining and Geological Engineering, will perform the study. The resource portion of the study was also due on March 31, 1969.

Energy Fuels

Three legal studies are being performed under this general heading. The legal study of federal oil and gas leasing systems, covering both competitive and noncompetitive leasing and being performed by the Rocky Mountain Mineral Law Foundation, was scheduled for completion on February 28, 1969. Similarly, the legal study dealing with oil shale resources and contracted to the University of Denver College of Law had the same due date. The University of Utah's legal study of coal resources, now completed, was originally due on November 30, 1968. Study reports have not yet been completed for the federal oil and gas leasing systems study nor the oil shale study.

On September 27, 1968, the Commission announced the award of the study contract covering "Energy Fuel Mineral Resources" to Abt Associates, Inc., of Cambridge, Massachusetts, and Los Angeles, California. Completion of the report was scheduled for April 30, 1969, at a contract price of $139,398. Richard H. Rosen of the Abt firm is in charge of the study and Edward M. Miller is deputy manager. Consultants include C. DeWitt Smith, geologist and mining engineer, Morris Adelman, Professor of Economics at Massachusetts Institute of Technology, and Richard G. Musgrave, Professor of Economics at Harvard University.

Regional and Local Land Use Planning

Completion of this study by Herman D. Ruth and Associates was scheduled for March 31, 1969.

Land Grants to States

As of the 1968 report, the Commission staff was working on this study. Evidently no completion date has been established for the study report and work on the study is still in process.

Water

Both the legal and the resource portions of this study have now been completed. The contract deadline was November 30, 1968.

Outdoor Recreation

Herman D. Ruth and Associates, contractor for the regional and local land use planning study, has also been awarded the study contract covering "Outdoor Recreation Use of the Public Lands." The contract price was set at $132,000 and the study is to be completed by June 15, 1969. John Kenneth Decker was named as the project director and he will be assisted by Professor John W. Dyckman, Chairman of the Department of City and Regional Planning at the University of California, and Roselyn B. Rosenfeld of Berkeley, directing the legal research.

Criteria for Judging Facts to Determine What Constitutes "Maximum Benefit for the General Public"

As was the case at the time the 1968 report was prepared, it appears that a draft of the study plan is still being circulated for comment and that the study will ultimately be prepared by the Commission staff.

Use and Occupancy of Public Lands

Daniel, Mann, Johnson and Mendenhall, of Los Angeles, California, was awarded the contract to perform the study of "Federal Public Land Laws and Policies Relating to Use and Occupancy" on December 5, 1968. Completion of the study was set for June 30, 1969, and the contract maximum is $116,000. Peter J. McMahon, chief of operations for the economics division of the firm, is project director for the resources portion of the study and R. G. Stubblefield is assistant project officer. The legal study will be directed by Donald G. Hagman and Lawrence G. Sager of the law faculty of the University of California at Los Angeles. Seven towns and cities have been selected for case study of the demand for public lands for urban use, as follows: Flagstaff, Arizona; South Tahoe, California; Aspen, Colorado; Reno, Nevada; Alamogordo, New Mexico; Salt Lake City, Utah; and Richland, Washington.

Fish and Wildlife

This study, scheduled for completion on December 15, 1968, by Colorado State University, has recently been completed.

Intensive Agriculture

The law firm of Kronick, Moskovitz & Vanderlaan of Sacramento, California, was selected to perform the legal study of intensive agriculture. This study was to be completed by January 31, 1969, at a cost not to exceed $49,000. The study contract covering the use of agricultural resources on public lands was awarded to South Dakota University, with a scheduled completion date of March 31, 1969, and a contract maximum of $93,562. Members of the University faculty participating in this study include Dr. Max Myers, project director, Dr. Russell L. Berry, Dr. Roy A. Bodin, and Dr. John E. Thompson. Neither portions of the study have been completed at the present time.

Outer Continental Shelf

This study was completed by the contractor on October 26, 1968. The original completion date was May 31, 1968.

Organization, Administration and Budgeting

A study plan has now been prepared and was submitted by the Commission staff to interested parties for comment on September 30, 1968.

Impact of Public Ownership on Local and Regional Economies

Consulting Services Corporation of Seattle, Washington, was selected to prepare this report. This study will involve an intensive review of the economic impact of public ownership in the State of Washington and that portion of the Upper Colorado Basin composed of the southwestern part of Wyoming, eastern Utah, western Colorado, and northeastern New Mexico. The study report was scheduled for a March 31, 1969, completion date, and the contract maximum was set at $87,900. Jack Harbeston, president of the contractor corporation, is project director.

Noneconomic Aspects and Implications of Public Land Ownership in Local and Regional Areas

A study plan draft is being prepared by the Commission staff.

User Fees and Charges

This study is being performed by the Commission staff.

Disposal Techniques and Procedures

A study plan has been prepared in draft form and was submitted for comment by interested parties on October 18, 1968.

Adjustment of Use Rights to Achieve Federal Land Management Objectives

A study plan has been prepared in draft form and was submitted for comment by interested parties on November 7, 1968.

Multiple Use

A study plan has been prepared in draft form and was submitted for comment by interested parties on October 9, 1968.

Federal Jurisdiction

A study plan has been prepared in draft form and was submitted for comment by interested parties on August 19, 1968.

Inventory

A study plan has been prepared in draft form and was submitted for comment by interested parties on October 18, 1968.

Environmental and Ecological Factors

A study plan has been prepared in draft form and was submitted for comment by interested parties on October 15, 1968.

State Land Policies

A study plan has been prepared in draft form and was submitted for comment by interested parties on October 11, 1968.

Trespass and Unauthorized Use of Public Lands

The award of this study contract to the law firm of Ireland, Stapleton, Pryor & Holmes of Denver, Colorado, was announced on March 4, 1969. The scheduled completion date is June 20, 1969, and the contract maximum was set at $27,334. Gary Hart of that firm will serve as project director, assisted by Gary Weatherford of the San Diego, California, law firm of Ferris and Weatherford.

As shown by the above review of the status of the basic studies, the Commission has been unable to meet the original completion dates. It is the author's understanding that most, if not all, contractors have been granted deadline extensions by the Commission. As an outside observer, it is impossible to definitely specify the reason for the failure to meet these deadlines but it is possible to make a relatively educated guess. It is readily apparent that the Commission consumed a substantial portion of its original statutory life in organizational matters. Further, it has taken an inordinate amount of time to develop the study plans and select the contractors. It appears that the Commission, faced with a rapidly dwindling life, has sought to impose upon its contractors unrealistic deadlines in an effort to offset the long delays within the Commission and Commission staff. The fact that none of the contractors has been able to meet its original contractual deadlines tends to support this proposition. If, in fact, the Commission's deadlines are unduly restrictive, it is likely to have an adverse effect upon the quality of the study reports.

VIEWS OF FEDERAL DEPARTMENTS AND AGENCIES

At the Commission meeting of April 5 and 6, 1968, eight federal departments and agencies presented their views upon public land problems through oral presentations and written submittals. As might be expected, departments such as the

Department of the Interior and the Department of Justice made presentations which touched upon many of the Commission's study areas, while departments and agencies such as the Department of Housing and Urban Development and the General Services Administration presented reports of limited scope.

Based upon the Commission's release[4] concerning this meeting, it appears that comments were directed to twenty-four different subject areas. Rather than attempting to highlight the viewpoints presented in all of these areas, the following constitutes a summary of a limited number of the subject areas.

Mineral Resources in General

It is interesting to contrast the approach of the Department of the Interior with that of the Atomic Energy Commission in this area. Interior first takes the position that to satisfy the vital national needs for minerals without increasing our reliance on foreign sources of supply necessitates the expansion of our domestic resource base and notes that substantial portions of known mineral reserves and resources lie within the public domain. The Department then poses four "basic questions," as follows: (1) Since mineral resources on the public domain may be valuable and provide a source of private gain, to whom are resources to be disposed? (2) When and at whose initiative are resources to be disposed? (3) What price must be paid when the disposal of resources takes place? (4) How are conflicting uses of the public domain to be handled? In essence, all of these questions are directed to one issue, *i.e.*, the Department's authority (or lack thereof) to manage the mineral resources upon the public domain. The presentation of the Department of the Interior makes it quite clear that it is their position that the necessary expansion of our domestic resource base is not likely to occur without "proper management of these resources in the public interest." Presumably, such management authority would be vested in the Department.

4. Public Land Law Review Commission Information Memorandum No. 10, June 5, 1968.

The Atomic Energy Commission takes a somewhat different approach. The fundamental problem, in the A.E.C.'s view, is the need for well-defined national objectives as a prerequisite to the enactment and administration of public land laws. It is noted that there are legislative goals and administrative policies with respect to uranium mining and the nuclear industry which are designed to ensure the reliability of a source of supply of uranium and to provide support for the United States nuclear industry. This objective is quite analogous to the Department's objective of expanding our natural resource base. After briefly describing the legislation and policies designed to ensure the accomplishment of A.E.C.'s objectives, they observe that it would make little sense to continue a legislative objective of encouraging and supporting the nuclear industry and, at the same time, adopt laws or policies that would curtail the nuclear industry by cutting off access to its base commodity or fail to recognize its legitimate needs as to prospecting, exploration and mining.

The approach of the Department of the Interior tends to indicate that the Department's basic interest is to acquire additional management authority over the public domain on the theory that only the Department can properly manage these lands in the public interest. In recent years, however, the exercise of authority by the Department has not always seemed to have as its objective the expansion of our natural resource base, but, rather, the minimization of mining activities upon the public domain. If the Department is to be granted any additional management authority, it may well be desirable to restrict the grant of authority through the use of specific statutory guidelines requiring that the authority be exercised in a manner consistent with the Department's stated objective of expanding our natural resource base.

Mining Laws

In general, the mining laws were subjected to more criticism than any other category of the public land laws. Although many specific aspects of the mining laws have come in for their share of criticism, the biggest single source of complaints is the fact that generally the prospector need not seek the permission of nor notify any federal agency

before locating a mining claim. This situation, which has been in existence for more than a century, has a strong tendency to get the management oriented federal administrator highly exercised.

In its presentation before the Public Land Law Review Commission, the Department of the Interior did not propose the adoption of an alternative in lieu of the location system although Interior commented at length upon the problems of security of title, lack of revenue to the government and the many difficulties presented in administering this body of law. The Department of Justice, however, after reviewing its list of the deficiencies of the location system, stated that nothing short of a complete revision of the mining law would suffice, then observed that in light of the existing problems perhaps some other system ("such as a leasing system") should be adopted in place of the present law. Justice's position may have given Interior courage. In any event, in the waning days of the Johnson Administration, Secretary of the Interior Stewart L. Udall directed a letter to the Chairman and members of the Public Land Law Review Commission urging the "complete replacement of the mining law of 1872" with "a modern system of mineral leasing keyed to the wise use of all resources of the public lands and the orderly availability of minerals on reasonable terms and conditions." Secretary Udall transmitted with his letter a proposed "Mineral Leasing Act Revision of 1969" which would accomplish this replacement and a section-by-section analysis of the proposal. Appendix A hereto contains the text of Secretary Udall's letter to the Commission; Appendix B contains the draft of the "Mineral Leasing Act Revision of 1969" and the Department's section-by-section analysis.

The inadequacies, inconsistencies and impracticalities present in the location laws of the various mining states were the subject of substantial comment. The Atomic Energy Commission, in particular, stressed the variations in the location statutes of the states with respect to discovery shafts or their alternatives, the marking of boundaries, and the posting and recording of claims, and noted that these variations increased the expense and risk of locating proper

claims, thereby tending to hinder orderly exploration and mining. Justice, on the other hand, contended that the state location laws have little relevance to today's mining exploration practices, citing as an example the requirement for discovery shafts when the ore body has been previously located by core drilling. The solution offered by the Justice Department was the elimination of state location laws. Interior noted that the difficulties caused by these statutory variations raised a question as to the efficacy of the laws of some states in accomplishing the intended controls and also raised a question as to the interest of the federal government in the existence of "proper standards" governing the use and disposal of its lands and resources.

The Departments of Agriculture, Justice and the Interior all devoted some attention to the obvious difficulties raised by the lack of a requirement that mining locations or notices thereof be recorded or filed in an appropriate federal office and, similarly, to the lack of simple procedures for terminating inactive or abandoned mining claims.

Security of title was also the subject of comment. This, of course, raises the numerous problems surrounding the requirement of the discovery of a valuable mineral deposit in order to validate a mining claim. In essence, the position of the Department of the Interior was that the present law is difficult to apply with respect to the deep deposits now being located (as opposed to the easily found ore bodies discovered at or near the surface in past years), that there is no satisfactory provision in the law for pre-discovery protection for the locator, and that the mining laws provide no practical or useful criteria for determining the fact of discovery. Similarly, the Department of Justice notes the uncertainties presented by the concept of discovery and the need for statutory guidelines for clearly determining the point at which the mining locator acquires certainty of tenure. As noted above, both Justice and Interior are promoting the substitution of a leasing system for the location system and security of title provides the carrot at the end of the pole. In this regard, one sometimes gets the distinct impression that the mining laws have been applied in recent

years so as to impair the mining locator's security of title in order to provide the missing incentive to mining companies to support a leasing system. The comments of the A.E.C. were primarily directed to the difficulty and expense of making a physical discovery of deep deposits and the need for protecting the rights of the prospector pending such discovery.

Changes in the assessment work requirement were also proposed. The A.E.C. noted that the 1958 legislation[5] providing that the cost of geological, geochemical and geophysical surveys would qualify as annual assessment work was subject to several limitations[6] and that such limitations may well have diminished the effectiveness of the provision. Justice's only specific recommendation for improvement was that the Secretary of the Interior should be given the authority to terminate claims for failure to perform assessment work. That Department also questioned whether the requirement was consistent with modern needs and concepts, but specified no desirable changes. The Department of the Interior felt that the limitations upon utilizing geological, geochemical and geophysical surveys as assessment work did, in fact, place a burden upon locators of mining claims. It also took the position that the requirement for only $100 worth of labor or improvements a year was not realistic at today's price levels.

Other problems raised by one or more of the federal departments or agencies included: (1) Difficulty in distinguishing between "locatable", "leasable" and "salable" deposits; (2) Difficulty in distinguishing between lode and placer deposits; (3) Uncertainties created by the existence of extralateral rights; (4) Spurious mining claims; (5) Difficulties in acquiring non-mineral lands for purposes incident to mining operations, such as for the side slopes of open pits or for waste disposal; and, (6) Problems created by surface operations, such as erosion and pollution.

5. 72 Stat. 1701 (1958), 30 U.S.C. § 28-1 (1964).
6. Such surveys may not be applied for more than two consecutive years or for a total of more than five years on any one mining claim, such surveys shall not be repetitive, and a detailed, verified report must be filed in the appropriate county office setting forth, among other matters, the basic findings from such study.

Mineral Leasing Laws

Probably the three major areas where changes in the leasing laws may be foreshadowed by departmental recommendations or approaches are those involving noncompetitive leasing, acreage limitations and oil shale. Only the views of the Department of the Interior and the Department of Justice are considered in this section; little or no attention was given to the leasing laws by the other six departments or agencies represented at the Commission's meeting of April, 1968.

When lands sought to be leased for oil and gas purposes are not within the known geologic structure of a producing oil or gas field, the Mineral Leasing Act specifies[7] that the first qualified applicant therefor is entitled to a lease without competitive bidding. This requirement, applicable to public domain lands, has also been made applicable to acquired lands by incorporation in the Mineral Leasing Act for Acquired Lands.[8] At the present time, most noncompetitive leases are granted pursuant to the simultaneous filing system established by regulation,[9] which system is frequently referred to as the "lottery". There is a certain amount of discomfort expressed with this system. Under noncompetitive leasing, the government receives only a nominal filing fee and annual rentals until such time, if ever, as production is obtained. Competitive leasing, on the other hand, frequently produces substantial bonus payments for the federal government. Although many of the tracts offered for noncompetitive leasing are valueless, the government does occasionally lose the opportunity to collect bonus payments on desirable tracts and this, of course, concerns some people. As a practical matter, it is also a fact that representatives of many major oil companies have tended to support the elimination of the noncompetitive leasing system in favor of competitive leasing, while many independents and small companies have tended to urge the retention of the noncompetitive system so that they might have an opportunity of acquiring federal oil and gas leases. Another factor militating against the noncompetitive leasing system, although rarely expressed by governmental authori-

7. 74 Stat. 781 (1960), 30 U.S.C. § 226(c) (1964) (Supp. III, 1962).
8. 61 Stat. 914 (1947), 30 U.S.C. § 352 (1964).
9. 43 C.F.R. § 3123.9 (1968).

ties, is the feeling that the operation of a "lottery" is offensive to the dignity. The Justice Department has expressed the opinion that the competitive-noncompetitive distinction should be terminated because of practical management considerations; *i.e.,* there are more administrative burdens in managing a noncompetitive leasing system. Interior also questions the validity of this distinction, and further notes that potential bonus payments to the federal government are lost under the noncompetitive system.

Acreage limitations have been a part of the mineral leasing laws since the enactment of the Mineral Leasing Act of 1920[10] in order to prevent monopoly control of federal oil and gas leases. Both Justice and Interior take the position, however, that these limitations are largely ineffective in that they do not truly serve to prevent monopoly and, further, that they present substantial administrative problems. In effect, both of these Departments seem to actively question the desirability of retaining the acreage limitations and a Commission recommendation that the limitations be eliminated would not be surprising.

The prospective development of oil shale has been an area of great controversy for many years and the controversy is unlikely to end soon. A good part of the heat seems to stem from the fact that the oil shale deposits upon the public domain are potentially of great value and a feeling by those afflicted with a Teapot Dome complex that private industry may not be sufficiently trustworthy to participate in their development. Without question, the potential value exists but no value whatsoever will be realized in the absence of development. In addition to the question of who is to develop these deposits, there are a number of legal problems which create difficulties in moving ahead with development. The Justice Department feels that there are three general problem areas, the first of which is primarily a policy question. In Justice's opinion, the first issue is how best to proceed with the practical development of oil shale deposits on the public lands. Although they take the position that this is a policy problem and no comment by Justice is required, the comment

10. 41 Stat. 448. The current provision was enacted in 1960. 74 Stat. 781 (1960), 30 U.S.C. § 184 (1964).

is nevertheless made that it must be determined whether oil shale lands should be leased under the existing terms of the Mineral Leasing Act of 1920 or whether a whole new approach should be adopted. Second is the problem of how to dispose of the conflicts resulting from the recent location of mining claims for dawsonite and similar minerals of a metalliferous chracter in oil shale withdrawal areas. These areas were withdrawn pursuant to the Pickett Act[11] and, accordingly, locations for metalliferous deposits are not barred. Finally, the Justice Department is concerned with the validity of the numerous oil shale claims located prior to the enactment of the Mineral Leasing Act of 1920 which act removed oil shale from the location system and placed it under the leasing system. The legality of attempts by the Department of the Interior to cancel a number of unpatented oil shale claims is now being litigated and, pending a final decision, these validity questions will diminish development by both the federal government and the owners of unpatented mining claims. Interior notes the resolution of the title problems as one part of its oil shale "program". The balance of Interior's so-called program relates to blocking up private ownership by exchange of federal lands, the issuance of provisional development leases, cooperative research by industry and the federal government on nuclear explosive fracturing and *in situ* retorting, and a "broad program of Federal research and investigations." To date, the Department's program has resulted in news releases and an abortive attempt to issue development leases, but no development. In the absence of a workable program of development, it can be assumed that the Commission will make a strong attempt to devise legislative recommendations designed to remove oil shale from its present dead center status.

Other issues are raised by Interior and Justice. Both Departments noted the problems which have arisen in administering the Right of Way Leasing Act of 1930[12] and a proposal to eliminate this legislation and bring such lands under the Mineral Leasing Act of 1920 may well be in the offing. Similarly, Justice noted that public domain lands and ac-

11. 36 Stat. 847 (1910), 43 U.S.C. §§ 141-3 (1964).
12. 46 Stat. 373, 30 U.S.C. §§ 301-6 (1964).

quired lands were treated as mutually exclusive under the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands notwithstanding the adoption by the latter act of the terms of the former, and takes the position that there is no justification for separate leasing arrangements. The Justice Department also recommended consideration of a grant of discretionary authority to the Secretary of the Interior under the Mineral Leasing Act to reinstate leases terminated under the automatic termination provision[13] where leases have been or otherwise would be terminated for insubstantial or technical lease violations. Interior appears to recommend that it be given the discretionary authority to lease lands situated within incorporated cities, towns and villages, national parks and monuments, and lands set apart for military or naval purposes. Geothermal steam was suggested by Interior as another problem area, because of the lack of statutory authority to dispose of this resource or the elements or minerals held in suspension or solution in geothermal steam. An absence of authority to reserve geothermal steam resources to the United States in patents was also noted.

Water—The "Reservation Doctrine"

Interior and Justice stated that by reason of decisions such as *United States v. Rio Grande Dam and Irrigation Co.*,[14] *Federal Power Commission v. Oregon*,[15] and *Arizona v. California*[16] the courts have recognized a reservation right in the United States to use an unquantified amount of water for the purposes of each federal reservation. This right is said to exist solely by reason of land and water ownership—not from any beneficial use of water—and dates for purposes of priority from the time a reservation of water for public purposes is manifested by act of Congress or executive order. Private appropriations that vested prior to the date of reservation are conceded to have priority, but all rights thereafter vesting by diversions from the reserved lands or by use

13. 41 Stat. 450 (1920), *as amended*, 30 U.S.C. § 188 (1964).
14. 174 U.S. 690 (1899).
15. 349 U.S. 435 (1955).
16. 373 U.S. 546 (1963).

of water anywhere in the river system are said to be subject to the paramount reserved rights.

Since, under this approach, the reserved rights date from the date of reservation, do not rest upon any beneficial use, are not lost by non-use, are not quantified in any way, and are not reflected in any permits, adjudication decrees or other records, the federal departments do acknowledge that rights asserted under the reservation doctrine present problems to private water users and state water administrators. Existing, adjudicated water rights are seriously jeopardized and may be lost without compensation, private development may be impaired, adjudications of the existence and scope of these rights cannot be obtained, nor can such rights be administered by the states.

Based upon the statements made by the Interior, Justice and Agriculture Departments, the position of the federal government seems to be that its potential claims upon water in the future ought not to be impaired in any manner. Opposition was voiced to any legislative proposal that might restrict or diminish the claimed water rights of the United States. In essence, the proposals made by the federal departments for resolving these difficulties are limited to two—the inventorying and identification of federal rights and their extent (including compliance with the recording requirements of the various states, but not conceding any impairment of the federal rights) and the enactment of legislation to establish a procedure whereby private water users could determine the validity of their claims as against the United States. These proposals patently do not make any real attempt to go to the heart of the problem nor to diminish the basic unfairness of the federal position.

CONCLUSIONS

Several areas of concern have been discussed rather consistently in this series of articles and, unfortunately, there is still ample basis for a continuing concern as to the effectiveness of the Public Land Law Review Commission. Much of the problem stems from the Commission's delay in getting the basic studies underway. As a likely result of this delay,

early completion dates have been imposed upon the study contractors and they have uniformly been unable to meet these deadlines. Also, the Commission has stated that hearings would be held to obtain recommendations on future policies, but, again, the delay in getting the studies underway may make such hearings impossible or ineffective in the waning months of the Commission's life. Further, most of the study plans have required the contractors to devote their primary attention to matters of background and historical development and the development by the contractors of workable alternatives to existing laws has not been encouraged.

The concern was expressed in this article that the completion requirements imposed upon contractors may diminish the quality of the study reports to some extent. Past articles have noted the likelihood that the Commission's report and recommendations might well be the product of the Commission staff rather than of the Commission and the Advisory Council. The Commission, in effect, appears to be discouraging the development of alternatives to unworkable laws by study contractors and users, reserving that function to itself. If that is the case, the Commission will lose the valuable contributions that can be made by these groups.

A final point should be made that is not directed toward the performance of the Commission. There is a strong tendency on the part of the mining industry to react emotionally against any leasing proposal. This negative reaction may well be justified, but arguments against the proposed "Mineral Leasing Act Revision of 1969" should not be based upon emotion. It is likely that other, similar proposals will be made and, if a leasing system is not workable as applied to mining in general, the industry should be prepared to make a factual showing of the basis for its opposition.

APPENDIX A

January 15, 1969

Dear Mr. Chairman and Members,

Public Land Law Review Commission:

Shortly I will complete my service as Secretary of the Interior. These eight years have been both challenging and rewarding. I take deep personal satisfaction in the progress this Nation has made in conservation, resource development, and in the efforts towards the orderly management of our public lands. The credit, of course, is due to many dedicated people—in the Congress, in the Executive Branch, and among our citizenry.

But there is much yet to be done; many new policies and laws are needed to put public land resource management on a sound foundation for the long-term future. After eight years in this office, I have come to the conclusion that the most important piece of unfinished business on the Nation's natural resource agenda is the complete replacement of the mining law of 1872.

This outmoded law has become the major obstacle to the wise conservation and effective management of the natural resources of our public lands. Many other problems in the administration of the public land laws are rooted in the mining law. For that reason I have decided to direct this communication to all of the members of the Public Land Law Review Commission.

Put simply, this obsolete and outdated statute inhibits the best kind of multiple-use management. It operates as an outright giveaway of vital national resources. At the same time it harms the American mining industry. It not only fails to meet the needs of today's mining industry; it retards the industry's development. By its lack of security of tenure during the pre-discovery period, the mining law inhibits the use of highly sophisticated but expensive modern exploration techniques to probe for deep, hidden deposits. Its discovery requirement militates against the maintenance of rights in low-grade deposits as reserves for future development.

For almost 100 years the mining law has been a veritable jungle of legal uncertainties, such as extralateral rights, discovery, placer v. lode, and varying state requirements. It is the considered judgment of all of my executives and experts that today the mining law obstructs rather than promotes the wise use of our mineral estate for the long-term

future of the Nation. At the same time the law inhibits effective conservation, not only of our mineral resources but of other vital resources as well. It permits, indeed it encourages, uncontrolled despoliation of the public lands with irreparable damage to other resources. In far too many instances there is no justifying social or economic benefit from this destruction; far too often the damage results from compliance with purposeless laws, such as annual "assessment work" or the digging of "discovery" pits.

Needed measures designed to coordinate and harmonize mining with other land uses are either precluded or made meaningless by the 1872 act, for it gives the mining of mineral resources—regardless of their relative value—an overriding priority over all other conservation plans. With today's overlapping uses of the public lands there is a need for controlled exploration and development, the recordation with the federal government of mining claims, and for the safety and reclamation of mined-out lands. Our ability to exploit the environment has far outstripped our capacity for balanced use of our public resources keyed to the welfare of other generations of Americans.

In addition, the mining law contains strong incentives for abuses and fraud. The ease by which property rights may be obtained under the mining law, by merely "staking a claim", makes it a favorite tool to fraudulently appropriate public lands for non-mining purposes, such as timber, home sites, subdivisions, etc. Such abuses defeat the proper development of public lands for mining purposes and the orderly management and use of the land for other vital needs.

Finally, the mining law is a blatant give-away of resources that should be managed in the long-term national interest under laws that take into account modern resource management techniques. For only a token payment of $2.50 or $5.00 an acre, depending upon whether the claim is placer or lode, and the expenditure of a nominal $500 in "improvements" on the claim, title to the land and all of its resources passes to a locator who has made a discovery, and if he desires to take the minerals without obtaining the legal title to the land, the locator pays the government nothing. No private owner would countenance a system whereby he extends a continuing invitation to others, regardless of his own needs, to come onto his land without even notice to him, to search for and take out the minerals, to leave it despoiled, and to pay nothing. The time is long since past when the

American people can afford such profligacy with their national heritage.

Such is the overriding applicability of the mining law that, except in special circumstances, the only way its harsh impact can be avoided is by the drastic step of complete withdrawal; that is, the complete closure of land to the law's applicability. Selectivity is impossible. Land cannot be left open for the mining of some minerals subject to the 1872 act but closed to others the mining of which is incompatible with what are, in a given case, more desirable land uses. Nor is there any practicable means of requiring observance of mining and prospecting practices designed to avoid or minimize damage to the lands themselves and their other resources of water, vegetation and animal life.

This state of affairs is, to put it mildly, not only undesirable in itself, it provokes needless conflict and controversy over the scope of authority to deal with the problem. This, in turn, leads to arguments over methodology which divert attention from consideration of the substantive issues of optimum land and resource management.

The reasons of public policy which led to the 1872 act have no validity today—indeed, they run counter to every lesson of 20th Century conservation. The needs of this Nation have changed drastically from what they were a century ago when this law was enacted. Today the demands for the orderly management and conservation of our natural resources are too important to allow any form of uncontrolled exploitation of our public lands to continue.

The deficiencies to which I have referred cannot be remedied by tinkering with the mining law; its inadequacies are too numerous—its rationale too outdated. The current consensus at Interior is that the mining law should be repealed outright and replaced with a modern system of mineral leasing keyed to the wise use of all resources of the public lands and the orderly availability of minerals on reasonable terms and conditions. I urge this not to lock up our mineral wealth or to frustrate the needs of our Nation to maintain a strong mineral industry in the interests of our own economic well-being and national defense. Rather this is the course we should now take in the interest of effective, efficient and balanced enjoyment of our public lands.

In 1920, the Congress had the courage and foresight to initiate a leasing system for such minerals as oil and gas, oil shale, coal, sodium, and phosphate. By coincidence, that

action came forty-eight years after passage of the 1872 act. It is time now, after another forty-eight years have elapsed, to complete the job by placing all minerals under a leasing system. To aid you in your deliberations, I enclose a draft of a leasing bill, with section-by-section analysis. I offer it in the hope that it can serve as a vehicle for crystallizing discussion. I am also attaching a report describing the mining law and its shortcomings in detail and summarizing some of the worst abuses which occur under the operation of this law.

To conclude, I want to urge that the Commission give priority attention to this most urgent public lands problem.

Sincerely yours,
Stewart L. Udall
Secretary of the Interior

APPENDIX B

Section-by-Section Analysis of the "Mineral Leasing Act Revision of 1969"

The bill would repeal the mining law of 1872, require the prompt exercise of valid rights existing thereunder, and provide a new system for the disposition of "hard rock minerals" by leasing. Under the leasing system an exclusive right to explore and mine could be acquired only by competitive bidding, except that in the case of existing valid mining claims or claims on which a workable deposit of hard rock minerals had been found, could be exchanged for production leases under the new system.

An exploration lease would give the lessee an exclusive right to prospect for three years in an area up to 10,240 acres, would require that prospecting work be conducted with diligence, and would provide for the protection and restoration of the lands and the protection of environmental and recreational values. From the area covered by the exploration lease, a lessee would be entitled to a production lease or leases covering all workable deposits found within its limits up to 5,120 acres. A production lease would be for a term of ten years and so long as there was production in paying quantities, subject to the renegotiation of its terms and conditions every ten years.

Section 2 of the bill defines various terms used therein. The term "hard rock minerals" is defined as all minerals except sulphur which immediately prior to the effective date

of the act were subject to location under the mining law (30 U.S.C., secs. 22-54, 161) and all varieties of sand, stone, gravel, pumice, pumicite, clay, and cinders, whether or not they were subject to location under the mining law.

Section 3 of the bill is designed to provide an efficient and inexpensive method for clearing title to the public lands. As long as title to the public lands remains in question, that is, unless rights claimed under the mining laws are promptly recognized or eliminated, the government's ability to lease may be impeded. Therefore, it is important that a method be worked out by which the validity of all rights claimed under the mining law can be determined as rapidly and inexpensively as possible. Section 3 would provide such a method.

Subsection (a) repeals the mining law and closes from the operation of the mining law all lands belonging to the United States and certain lands that were disposed of by the United States in which it has reserved mineral rights, except as stated in the next paragraph hereof.

Subsection (b) provides that all unpatented mining claims located on or before the effective date of the act would remain subject to the mining law only if each is recorded with the Department of the Interior within one year after issuance of regulations prescribing the place and manner of such recordation. Unpatented mining claims not so recorded would terminate by operation of law. Hundreds of thousands of inactive or abandoned mining claims would be eliminated thereby at no cost to the taxpayer, and, by so recording, rights claimed under active unpatented mining claims could be easily retained, subject to a determination of their validity.

Subsection (c) requires persons who have recorded unpatented mining claims within the one-year period promptly to exercise the rights claimed thereunder. This is accomplished by providing that a mineral patent application must be filed within three years after the claim was recorded, or the claim will terminate by operation of law. Where the validity of a mining claim or claims is in doubt, a contest proceeding would be initiated by the United States, and the validity of the rights claimed by the miner would be adjudicated in the usual manner.

If the validity of an unpatented mining claim is questionable, a claimant may be reluctant to go through the administrative proceedings only to find out that he does not have a valid mining claim. Subsection (d) affords the bona fide miner a reasonable alternative. It contains a provision re-

quiring a showing less strict than that required by the mining law which is designed to encourage the bona fide miner to exchange his mining claims for a production lease or leases under the new leasing system. This subsection would authorize the Secretary of the Interior to issue a production lease or leases as a preference right, that is, without competitive bidding, in exchange for (1) any mining claim or claims validly existing on January 1, 1969, that is, one which meets the "discovery" or "prudent man" test under the mining law, or (2) any mining claim or claims valid, except for lack of a discovery, on January 1, 1969, if the claimant shows that within the limits of each recorded mining claim he has found prior to, and that there was in existence on, January 1, 1969, a "workable" hard rock mineral deposit—the same showing that is required to obtain a production lease under the new leasing system.

The cut-off date of January 1, 1969, is designed to discourage a last-minute rush of locations under the mining law. All recorded mining claims satisfying the "workable deposit" test would be subject to exchange, but no one production lease so obtained could exceed 5,120 acres. Instead, if a mining claimant is entitled to production leases for more than 5,120 acres, more than one production lease would be issued.

Section 4 of the bill amends various sections of the Mineral Leasing Act to include hard rock minerals and updates the sulphur provisions to more nearly conform with the leasing provisions of other non-metallic minerals in the Mineral Leasing Act.

Subsection (a) amends the first sentence of Section 1 of the Mineral Leasing Act (30 U.S.C., sec. 181) to include hard rock minerals, and eliminates the present prohibition against mineral leasing in incorporated cities, towns, and villages. Since leasing is discretionary, the Secretary could still restrict or prohibit leasing in such areas.

Subsection (b) defines hard rock minerals, and Subsection (c) amends Section 34 of the Mineral Leasing Act (30 U.S.C., sec. 182) to extend hard rock minerals leasing to lands disposed of by the United States in which mineral rights have been reserved. Subsection (d) makes Section 39 of the Mineral Leasing Act (30 U.S.C., sec. 209) applicable to hard rock minerals, except as provided in Section 43, the new hard rock mineral leasing provision, of the Mineral Leasing Act.

Subsection (e) amends the sulphur leasing provisions of the act of April 16, 1926, as amended (30 U.S.C., secs. 271-276), to permit the leasing of sulphur in all states rather than only Louisiana and New Mexico and to more nearly conform with similar leasing provisions of other non-metallic minerals by increasing the size of the permit and the lease, the royalty, the annual rental, and the acreage limitations.

Section 5 of the bill sets forth the mechanics for the leasing of hard rock minerals by adding a new Section 43 to the Mineral Leasing Act. In addition, this section would be applicable to lands acquired by the United States by virtue of section 2 of the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C., sec. 351).

The provisions of Section 43 are designed to promote the development of mineral resources by requiring due diligence in the prosecution of exploratory work in accordance with a specific prospecting plan, by preventing speculation or hoarding by the mere holding for long periods of potentially valuable mineral lands without production, and by providing incentives to encourage production in paying quantities as soon as possible. Because of these safe-guards, coupled with the fact that in the case of hard rock mineral deposits little relation exists between reserves and acreage, no limits are imposed upon the number of leases that may be held.

Subsection 43(a) authorizes the Secretary of the Interior, when in his judgment the public interest would be served thereby, but only after consultation with the head of the agency where the surface of the land is administered by an agency other than the Department of the Interior, to offer in blocks containing up to 10,240 acres for lease by competitive bidding if such lands are not known to contain workable hard rock mineral deposits. The lands would be described by legal subdivisions of the public land surveys and reasonably compact in form.

Those interested in specific lands could nominate tracts of land for hard rock mineral lease offerings subject to approval of or modification by the Secretary. Terms on which bidders would compete and the method of sale would be determined by the Secretary and would be specified in the notice of sale. As in all such sales, the Secretary would have the right to reject any and all bids. The successful bidder would have the exclusive right to conduct exploration in the area for three years under an exploration lease in accordance with a prospecting plan subject to an annual rental of not less than $0.50 per acre. The prospecting plan would require

the lessee to exercise due diligence in the prosecution of prospecting work and include provisions for the protection and restoration of the lands and for the protection of environmental and recreational values. An exploration lease would be subject to cancellation for failure to comply with the prospecting plan. These provisions, particularly competitive bidding coupled with a diligence requirement or cancellation, are designed to discourage speculation in lands of the United States potentially valuable for mineral resources.

Subsection 43(b) permits the Secretary of the Interior, as he deems advisable, to extend an exploration lease for an additional period of up to two years if the lessee has exercised due diligence.

Subsection 43(c) entitles a lessee to a production lease or leases upon showing that he has found a "workable deposit" or deposits of hard rock minerals. To be entitled to a production lease, the lessee would not be required to show that the deposit found was of such a quality and quantity as is required to meet the "prudent man" test under the mining law. The term "workable deposit" as used in this section is one which has the requisite physical characteristics, such as quantity, thickness and depth, that would make it capable of being mined. The exploration lessee would be entitled to a lease for each workable hard rock mineral deposit he found within the limits and during the term of his exploration lease, but the total acreage of all production leases derived from one exploration lease is limited to 5,120 acres. There is no limit on the number of production leases that may be held.

Subsection 43(d) sets forth the terms and conditions for production leases. Production leases would be in compact form described by legal subdivisions of the public land surveys or, if not surveyed, executed at the cost of the lessee in accordance with regulations prescribed by the Secretary. Production leases would be conditioned upon payment of a royalty of not less than 5 per cent of the gross value of the output of hard rock minerals and a minimum annual rental of not less than $5.00 per acre. The minimum annual rental would be payable at the date of the lease and each anniversary date thereafter. The annual rental payable the first two years would be that initially prescribed in the lease. For the next eight years, the rental payable would be increased by ten percentum of the rental payable for the preceding year. However, in those years in which there was production in paying quantities, the amount the rental exceeded the initially

prescribed rental would be credited at the option of the lessee against the next year's royalty or rental or could be refunded.

This subsection provides that production leases shall be for a term of ten years and so long thereafter as there is production in paying quantities, subject to readjustment of the terms and conditions every ten years. It also requires filing of a formal objection by the lessee to the proposed terms within 30 days or he is deemed to have agreed thereto and provides for an absolute right to relinquish the lease at such time. These provisions are designed to promote the development of the mineral deposits by requiring a lessee to be producing in paying quantities by the tenth year and stay in production thereafter or lose the lease. Ten years gives the legitimate mining company sufficient time to project an orderly plan of development of the mineral deposits it holds and, at the same time the accelerating rental prevents low-grade deposits from being hoarded for purposes of speculation.

"Produced in paying quantities" is also defined.

Subsection 43(e) requires the Secretary of the Interior to subject lands known to contain workable deposits of hard rock minerals to a production lease by competitive bidding in the first instance. Such production leases are subject to the same provisions as production leases obtained through exploration leases.

Subsection 43(f) would entitle a hard rock mineral lessee to a preference-right lease in the event that hard rock minerals and other leasable minerals, except oil and gas, are commingled in the same deposit. A hard rock mineral lessee would be entitled to a preference-right lease only if the minerals existed in one deposit and could not be worked separately and if there was no outstanding lease covering the other mineral. Both leasable minerals would be subject to the terms of the hard rock mineral lease. Conversely, it also would provide for the situation where a non-hard-rock mineral lessee finds hard rock minerals commingled in the deposit for which he had a lease. Third, if a commingled deposit were found and there were outstanding leases for both leasable minerals, the Secretary could impose or approve terms and conditions, including joint development, to insure proper development of the deposit.

Subsection 43(g) authorizes the Secretary to permit the holder of a production lease to use so much of the surface of federally owned land as is necessary to conduct his mining

operation, except that lands under the jurisdiction of other federal agencies would be subject to designation by the head of such agency.

Subsection 43(h) authorizes the Secretary to permit operating or development contracts to be made by one or more production lessees with one or more persons, associations, or corporations, subject to his approval, where large-scale integrated operations are justified for the development, production or transportation of ores in order to provide for the conservation of mineral resources through more efficient mining or processing, to preserve environmental and recreational values by reducing the number of improvements or facilities required on the surface, or for any other purpose in the best interest of the United States. This provision will promote the orderly mining of large mineral deposits which may fall within one or more production leases by permitting their development by one operator.

Section 6 of the bill amends Section 1 of the Materials Act of July 31, 1947, as amended (30 U.S.C., sec. 601), by extending coverage of the latter Act to hard rock minerals and authorizes the disposition under that Act as an alternative, at the Secretary's option, to their lease under the Mineral Leasing Act. This amendment gives the Secretary maximum flexibility in the management of mineral resources essential to fully meet the varying needs of the mining industry, particularly since the disposition of many small deposits requiring only short-term operations would not readily be susceptible to the provisions of the Mineral Leasing Act designed for long-term operations.

A BILL

To amend the Mineral Leasing Act, and for other purposes. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this statute may be cited as "The Mineral Leasing Act Revision of 1969."

SEC. 2. As used in this Act the following terms have the following meanings:

(a) The term "Mining Law" means the mining law of May 10, 1872, as amended and supplemented (30 U.S.C., secs. 22-54), and section 1 of the Act of August 4, 1892 (30 U.S.C., sec. 161).

(b) The term "Mineral Leasing Act" means the Mineral Leasing Act of February 25, 1920, an Act to pro-

mote mining on the public domain, as heretofore amended and supplemented and as further amended by this Act.

(c) The term "Hard Rock Minerals" means all minerals except sulphur which immediately prior to the effective date of this Act were subject to location under the Mining Law and all varieties of sand, stone, gravel, pumice, pumicite, clay, and cinders whether or not they were subject to location under the Mining Law.

(d) The term "Secretary" means the Secretary of the Interior.

(e) The term "Department" means the Department of the Interior.

SEC. 3. (a) Except as otherwise provided in this section, the Mining Law is hereby repealed and all lands and interests in lands belonging to the United States are hereby closed to entry and location under the Mining Law as of the effective date of this Act. No new rights under the Mining Law may be acquired after the effective date of this Act.

(b) Any claim under the Mining Law existing on the effective date of this Act shall remain subject to the provisions of the Mining Law if it is recorded with the Department not more than one year after the issuance by the Secretary of regulations prescribing the manner in which mining claims will be recorded. Any mining claim not so recorded shall be null and void. However, recordation will not render valid any mining claim which is invalid on the effective date of this Act or which becomes invalid thereafter.

(c) Any mining claim on which application for patent has not been filed within three years after recordation shall be null and void.

(d) The Secretary may upon application made within one year after recordation, under general regulations, authorize the issuance of a production lease or leases under section 43 of the Mineral Leasing Act in exchange for (1) any mining claim or claims, validly existing on January 1, 1969, or (2) any mining claim or claims valid, except for lack of discovery, on January 1, 1969, if a showing is made that a workable deposit of Hard Rock Minerals, as required by section 43 of the Mineral Leasing Act, was found within the limits of each said claim prior to and was in existence on January 1, 1969. Each such production lease shall cover approximately the same land as the mining claim or claims for which it is

exchanged and shall conform as nearly as practicable to the public land surveys, but in no event shall a lease exceed 5,120 acres, and shall be subject to the terms and conditions specified in subsection 43(d) of the Mineral Leasing Act.

SEC. 4. (a) The first sentence of section 1 of the Mineral Leasing Act (30 U.S.C., sec. 181) is amended to read as follows: "Deposits of all minerals (including all varieties of sand, stone, gravel, pumice, pumicite, clay, and cinders) and the lands containing such deposits owned by the United States, including those in national forests, but excluding land acquired under the Act known as the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those in national parks and monuments (other than as to minerals covered by the Mining Law in those parks and monuments to which the Mining Law had been extended prior to the effective date of this Act), those acquired under other acts subsequent to February 25, 1920, and lands within the naval petroleum and oil shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or, in the case of coal, oil, oil shale, or gas, to municipalities."

(b) A new paragraph is hereby added to the end of section 1 of the Mineral Leasing Act (30 U.S.C., sec. 181) as follows: "As used in this Act the term 'Hard Rock Minerals' means all minerals except sulphur which immediately prior to the effective date of this paragraph were subject to location under the Mining Law (30 U.S.C., secs. 22-54) and all varieties of sand, stone, gravel, pumice, pumicite, clay, and cinders whether or not they were subject to location under the Mining Law."

(c) Section 34 of the Mineral Leasing Act (30 U.S.C., sec. 182) is amended to read as follows: "This Act shall also apply to all deposits of minerals (including all varieties of sand, stone, gravel, pumice, pumicite, clay, and cinders) in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits."

(d) Section 39 of the Mineral Leasing Act (30 U.S.C., sec. 209) shall be applicable to Hard Rock Mineral Leases

issued pursuant to section 43 of the Mineral Leasing Act except as in that section provided.

(e) The Act of April 17, 1926, as amended (30 U.S.C., secs. 271-276), is amended as follows: Section 1 (30 U.S.C., sec. 271) by deleting the words "located in the States of Louisiana and New Mexico" and by increasing the maximum acreage of a prospecting permit from "six hundred and forty" acres to "two thousand five hundred and sixty" acres; Section 2 (30 U.S.C., sec. 272) by inserting before the number "5", the words "not less than", and by deleting the proviso; Section 3 (30 U.S.C., sec. 272) by increasing the maximum acreage of a lease from "six hundred and forty" acres to "two thousand five hundred and sixty" acres, and by changing the rental from "50 cents" to "$1.00" per acre per annum; Section 5 (30 U.S.C., sec. 275) by changing the words "three sulphur permits or leases in any one State during the life of such permits or leases" to "20,480 acres under sulphur lease or permit in any one State at any one time"; and by deleting Section 6 (30 U.S.C., sec. 276).

SEC. 5. The following new section 43 is added to the Mineral Leasing Act:

"SEC. 43. (a) The Secretary of the Interior is authorized to issue, in accordance with general regulations which he shall prescribe therefor, an exploration lease for Hard Rock Mineral deposits to the highest responsible qualified bidder under competitive bidding, except as provided in subsection (e) of this section, when in his judgment the public interest will best be served thereby but only after consultation with the head of such agency in the case of land, the surface of which is administered by a federal agency other than the Department of the Interior. Terms on which bidders shall compete and the method of bidding, either by oral auction, sealed bids, or both, shall be specified in the notice of sale. An exploration lease shall give the exclusive right to prospect for Hard Rock Minerals for a period of not exceeding three years in an area reasonably compact in form, as defined by the Secretary in general regulations, and described by legal subdivisions of the public land surveys, of not more than 10,240 acres. Only such quantities of Hard Rock Minerals may be extracted under an exploration lease as are reasonably required for purposes of evaluating the Hard Rock Mineral deposits. Each exploration lease shall require that the lessee shall exercise due diligence in the prosecution of the prospecting work in accordance with a prospecting plan to be approved by an authorized repre-

sentative of the Secretary before prospecting operations commence. The prospecting plan shall also include provisions for protection and restoration of the lands covered by the lease and for the protection of environmental and recreational values. The Secretary shall reserve the right to and may cancel any exploration lease issued for failure to comply with the prospecting plan. The lessee shall pay an annual rental of not less than $0.50 per acre, and shall submit to the Secretary at the expiration of the lease all exploration data obtained during the term of the lease.

(b) An exploration lease issued under this section may be extended by the Secretary for an additional period, not in excess of two years, as he deems advisable ,if he finds that the lessee has been unable, with reasonable diligence, to determine the existence and workability of deposits of Hard Rock Minerals and the lessee desires to prosecute further prospecting.

(c) Upon application by the lessee made not later than three months after the expiration of the term of his exploration lease and upon a showing that he has found a workable deposit of Hard Rock Minerals, the lessee shall be entitled to a production lease covering that portion of the area subject to his exploration lease reasonably encompassing such deposit as determined by the Secretary. The lessee shall be entitled to a production lease for each such deposit found by him within the limits and during the term of the exploration lease but the total acreage embraced in all such production leases shall not exceed 5,120 acres.

(d) Each production lease shall be in compact form described by legal subdivisions of the public land surveys or, if the land be not surveyed, by survey executed at the cost of the lessee in accordance with regulations prescribed by the Secretary. Each lease shall be conditioned upon payment to the United States of (1) a royalty of not less than five percentum of the gross value of the output of Hard Rock Minerals thereunder; and (2) a minimum annual rental, payable at the date of the lease and on each anniversary date thereafter, of not less than $5.00 per acre. The initial annual rental prescribed shall obtain for the first two years of the term of the lease. Commencing with the rental payable for the third year of the lease, and for each of the seven succeeding years, the rental shall be increased each year by ten percentum over the rental payable for the preceding year: *Provided,* That for any year in which there is production in paying quantities, the amount by which the rental paid for

that year shall have exceeded the initial annual rental shall be credited at the option of the lessee against either royalties or the rental next coming due or refunded to him as he may elect: *Provided Further,* That section 39 of the Mineral Leasing Act shall not be applicable during this period.

Each production lease shall be for a term of ten years and so long thereafter as Hard Rock Minerals are produced in paying quantities. Unless otherwise provided by law at the time of expiration of such period, the terms and conditions of such leases shall be subject to readjustment by the Secretary ten years from the date of issuance and every ten years thereafter. Unless the lessee files objection to the proposed terms or a relinquishment of the lease, the right to which shall be absolute under this section notwithstanding the provision of section 30 of this Act, within 30 days after the receipt of the notice of proposed terms, he will be deemed to have agreed thereto. Notice of the proposed readjustments shall be given, whenever feasible, before the expiration of each such ten-year period, but receipt of notice after the expiration of each such ten-year period shall not be deemed a waiver of the right to adjust the terms and conditions of the lease.

As used in this subsection, the term "produced in paying quantities" means that the receipts from the sale or other commercial use of the output of Hard Rock Minerals under a lease exceed operating and marketing expenses for the leased premises for a six-month period of the lease year preceding the date on which the calculation is made.

(e) Lands known to contain workable deposits of Hard Rock Minerals and not covered by either exploration or production leases shall be subject to production lease by the Secretary to the highest responsible qualified bidder under competitive bidding, when in his judgment the public interest will best be served thereby but only after consultation with the head of such agency in the case of land the surface of which is administered by a federal agency other than the Department of the Interior. Leases under this subsection shall not exceed 5,120 acres and shall be in compact form described by legal subdivisions of the public land surveys. Terms on which bidders shall compete and the method of bidding, either by oral auction, sealed bids, or both, shall be specified in the notice of sale. Leases made pursuant to this subsection shall be subject to the terms and conditions specified in subsection (d) of this section.

(f) (1) If the holder of a Hard Rock Mineral exploration or production lease finds any other mineral or minerals,

except oil or gas, leasable under this Act so commingled with Hard Rock Minerals in the same deposit that none is separtely workable and if there is no lease or prosecuting permit covering such other commingled mineral or minerals, the Hard Rock Mineral exploration or production lease, as the case may be, shall embrace such other mineral or minerals.

(2) If the holder of a prospecting permit or lease for any other mineral, except oil or gas, leasable under this Act finds Hard Rock Minerals in the same deposit so commingled with such other leasable mineral that neither is separately workable and if there is no Hard Rock Mineral exploration or production lease covering such Hard Rock Minerals, the prospecting permit or lease, as the case may be, for the other commingled mineral shall embrace such Hard Rock Minerals.

(3) Where both an exploration or production lease for Hard Rock Minerals and a prospecting permit or lease for another mineral, except oil or gas, leasable under this Act are held by different persons include a deposit in which both minerals are so commingled that neither is separately workable, the Secretary may impose such terms and conditions upon both parties as he deems appropriate for the proper development of the intermingled minerals, but the parties in such a situation may, with the Secretary's approval, enter into an agreement for the joint development of the deposit, and, if the Secretary deems it in the public interest, he may exclude all or any portion of the leases subject to such an agreement from the acreage limitations of section 27.

(g) The Secretary under such terms and conditions as he may prescribe may permit the holder of a production lease issued under this section to use so much of the surface of federally-owned lands not included in the lands leased hereunder as he determines to be necessary or convenient for the extraction, treatment, and removal of the mineral deposits, but lands under the jurisdiction of any other federal agencies shall be subject to use under this subsection only with the consent of and as designated by the head of such agency.

(h) The Secretary under such terms and conditions as he may prescribe may permit operating or development contracts, or processing or milling arrangements to be made, subject to the Secretary's approval, by one or more production lessees with one or more persons, associations, or corporations, where operations on a large scale for the development, production or transportation of ores are justified, whenever in his discretion the conservation of the mineral resources, the preservation of environmental and recreational

values, or the public convenience or necessity may require it, or the interests of the United States may be best served thereby.

SEC. 6. (a) The first sentence of section 1 of the Materials Act of July 31, 1947, as amended by the Act of July 23, 1966 (69 Stat. 367) is amended to read as follows: "The Secretary, under such rules and regulations as he may prescribe, and if he concludes that such disposal would not be detrimental to the public interest, may dispose of Hard Rock Minerals, as an alternative to the disposition under Section 43 of the Mineral Leasing Act, or under the Mineral Leasing Act for Acquired Lands, and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public or acquired lands of the United States, including, for the purposes of this Act, land described in the Acts of August 28, 1937 (50 Stat. 874), and of June 24, 1954 (68 Stat. 270), if the disposal of such vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, the Act of June 28, 1934 (48 Stat. 1269), as amended, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States."

(b) The third sentence of section 1 of that Act is amended by inserting the words "or acquired" after the word "withdrawn."

(c) The last sentence of section 1 of that Act is amended by adding after the last word the phrase "and the term 'Hard Rock Minerals' means all minerals except sulphur which immediately prior to the effective date of this paragraph were subject to location under the Mining Law (30 U.S.C., secs. 22-54) and all varieties of sand, stone, gravel, pumice, pumicite, clay, and cinders whether or not they were subject to location under the Mining Law."