B. E. Penny

CHAMBER OF COMMERCE OF THE UNITED STATES
REFERENDUM NO. 88 OF ORGANIZATION MEMBERS

on

PUBLIC LAND POLICIES

March 14, 1946

March 14, 1946

To Members of the Chamber:

THE NATURAL RESOURCES DEPARTMENT COMMITTEE of the Chamber of Commerce of the United States has proposed that these declarations of policy be approved by the Chamber. The Board of Directors has approved the submission of the proposed declarations for immediate vote by the organization members of the Chamber, and has authorized the President to approve the form of referendum pamphlet including the negative arguments.

The Declarations relate to the following subjects:

I. Government policies respecting public land withdrawals and reservations.
II. Government policies looking to ultimate private ownership of grazing lands.
III. Amendments to the Mineral Leasing Act of February 25, 1920, as amended.
IV. Registration of government lands in Department of Interior.
V. Amendments to the land disposal provisions of the Surplus Property Act.
VI. Extension of leasing policy to metalliferous minerals opposed.
VII. State vs. federal ownership of "submerged" lands.

On subsequent pages is reproduced a list of the Committee members; a breakdown of the declarations as submitted on the ballot; the Committee's report; and Arguments in the Negative.

Eric A. Johnston

PRESIDENT

Individual and Associate Members should express their views on this referendum to the local or state organizations or trade associations in which they hold membership. The votes of the organizations or associations must reach the Chamber of Commerce of the United States in Washington, D. C., on or before April 23, 1946, to be counted.

Personnel of Natural Resources Department Committee

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DAVID J. GUY, *Secretary*,
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* Did not participate in the deliberations of the committee.

Proposed Declarations

For the purpose of voting by the member organizations the Committee's recommendations were divided into the proposed declarations below.

This page is not intended to be used as a ballot but is included here to show the text of the proposed declarations as carried on the official ballot submitted to the organization members.

I. Respecting the practice of locking up public lands by withdrawing them from settlement and disposal and holding them in "reserves" for various "public purposes" the Chamber of Commerce of the United States recommends:

(a) That the Congress continue its review of Western land policies, particularly the withdrawal policies, until the full facts are known.

(b) That Congress promptly provide, that before land withdrawals of any consequence are made, there be public notice and opportunity for public hearing in the state or states affected.

(c) That there be a time limit on temporary withdrawals.

(d) That existing withdrawals of whatever nature be re-examined and either eliminated or reduced in size to where a preponderance of facts support reservation for the major purpose indicated.

II. Since grazing lands constitute one of the greater permanent natural resources of the 11 public land states of the West; and since the highest use and conservation of grazing lands is vitally essential both sectionally and nationally; and since in the West the use of lands for grazing purposes, under permits or other legal status, involving payment of fees, has been generally recognized as establishing a right to the continued use thereof, which right is capable of sale and transfer; the Chamber of Commerce of the United States recommends:

(a) That all grazing rights that have developed through recognized use and custom be protected and preserved, subject to and consistent with sound principles of conservation and the protection of the public interest, including the reservation of rights to minerals and metals, timber, water resources development and other potentialities not involving grazing.

(b) That, in order to attain the highest use and fullest conservation of the grazing resources of public lands, private ownership should be reestablished as the ultimate objective in government land policy.

III. The Chamber of Commerce of the United States recommends:

(a) That the Mineral Leasing Act of February 25, 1920, as amended, be further amended to remove all acreage limitations, or at least to greatly expand the acreage allowable in any state,—and remove the limit to the acreage held on a geologic structure.

(b) That the royalty on all government leases be fixed at 12½% for leases heretofore and hereafter issued that are not on a proven oil or gas structure.

(c) That in order to encourage and make possible the exploration and development of deeper pools, a 12½% royalty be fixed for all deeper discoveries in presently proven fields, the same to apply to all leases in such new zones.

(d) That the government either take the royalty in kind for sale or accept the market price of the royalty oil, gas or gasoline.

(e) That provision be made in the law that will grant the free right of assignment and relinquishment of government oil and gas leases, with proper safeguards.

IV. The Chamber of Commerce of the United States recommends: That all lands of the United States be registered with the Interior Department.

V. The Chamber of Commerce of the United States recommends: That the Surplus Property Act be repealed with respect to disposition of lands and that new legislation be enacted applicable to all "acquired lands" in order to provide:

(a) That all acquired lands not necessary and useful for a clearly defined governmental purpose be disposed of.

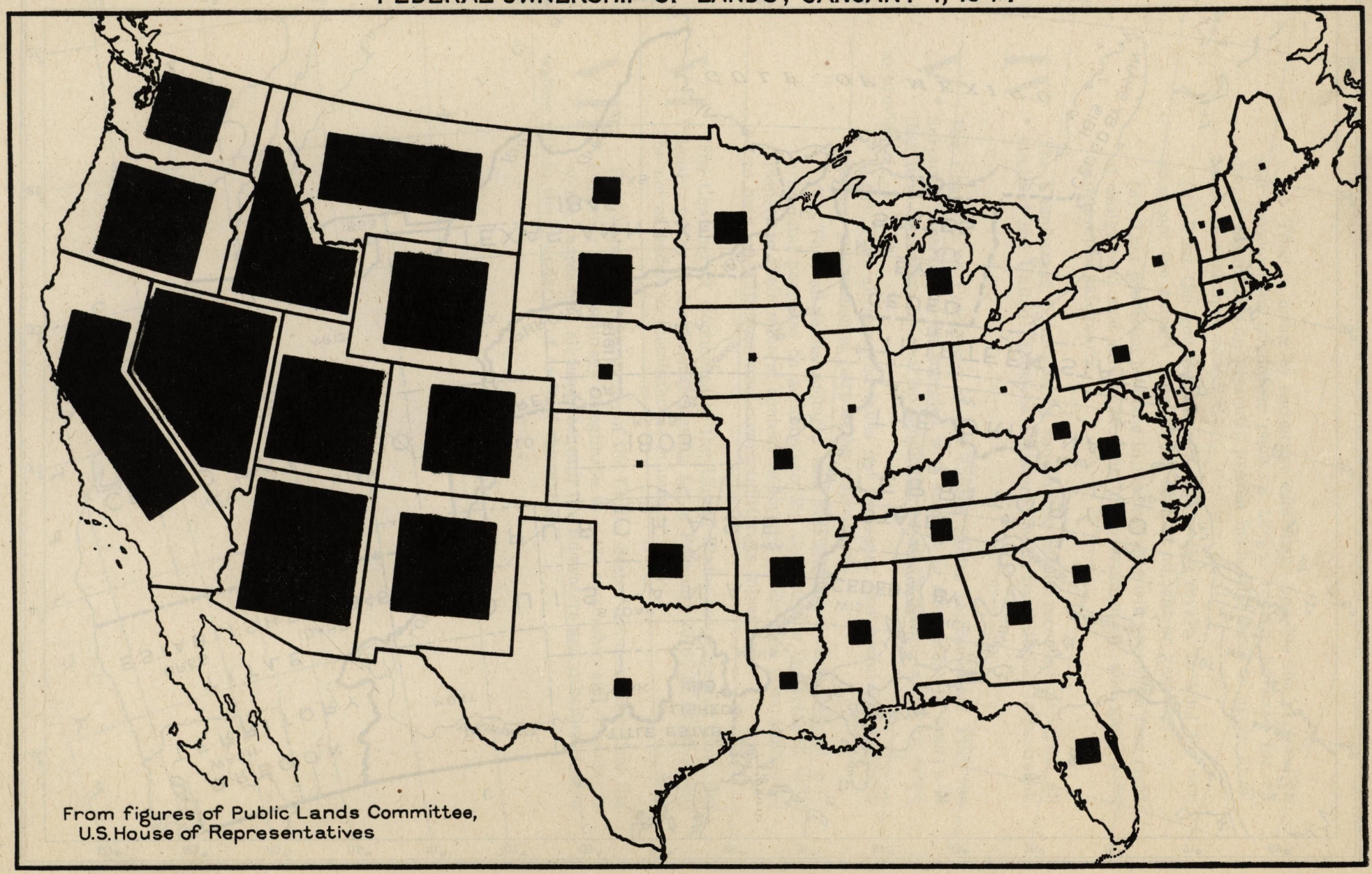
(b) That all lands acquired and retained for clearly defined governmental purposes be administered by the Interior Department with respect to their mineral content under the public land laws applicable to both metalliferous and non-metalliferous minerals.

VI. The Chamber of Commerce of the United States recommends: That the leasing policy of the Mineral Leasing Act of February 25, 1920, as amended, be not extended to metalliferous minerals.

VII. The Chamber of Commerce of the United States recommends: That the Congress give statutory recognition to state ownership and disposition of the shores and all lands beneath the tidewaters and other navigable waters within the boundaries of each of the states.

PUBLIC LAND ACQUISITIONS

FEDERAL OWNERSHIP OF LANDS, JANUARY 1, 1944



From figures of Public Lands Committee,
U.S. House of Representatives

Area, in Acres, of Lands in Federal Ownership—January 1, 1944

State	Grand Total Federal Owned Land	Land Area of State	Federal Lands Percent of Area of States
Alabama	1,188,075	32,689,920	4%
Arizona	53,363,273	72,691,200	73
Arkansas	2,849,702	33,744,000	8
California	46,484,371	100,353,920	46
Colorado	25,492,803	66,538,880	38
Connecticut	15,475	3,135,360	*
Delaware	22,398	1,265,920	2
District of Columbia	9,369	39,040	24
Florida	2,340,558	34,727,680	7
Georgia	1,768,063	37,451,520	5
Idaho	33,730,114	52,997,120	64
Illinois	357,609	35,806,080	*
Indiana	297,509	23,171,200	1
Iowa	62,140	35,831,040	*
Kansas	289,155	52,552,320	*
Kentucky	906,993	25,669,760	4
Louisiana	1,045,955	28,913,280	4
Maine	140,024	19,865,600	*
Maryland	132,706	6,327,680	2
Massachusetts	25,544	5,060,480	*
Michigan	2,555,496	36,494,080	7
Minnesota	3,626,282	51,205,760	7
Mississippi	1,449,196	30,348,800	5
Missouri	1,457,206	44,332,800	3
Montana	32,966,241	93,642,240	35
Nebraska	717,135	49,057,920	1
Nevada	61,378,360	70,273,280	87
New Hampshire	668,819	5,775,360	12
New Jersey	65,808	4,814,080	1
New Mexico	34,211,071	77,767,040	44
New York	278,817	30,674,560	*
North Carolina	1,728,068	31,450,880	5
North Dakota	2,477,475	44,834,560	6
Ohio	187,373	26,318,080	*
Oklahoma	3,441,224	44,341,120	8
Oregon	32,781,306	61,664,000	53
Pennsylvania	588,041	28,828,800	2
Rhode Island	19,589	677,120	3
South Carolina	890,194	19,580,160	5
South Dakota	8,820,845	48,983,040	18
Tennessee	1,591,491	26,855,040	6
Texas	2,409,242	168,732,160	1
Utah	37,898,177	52,701,440	72
Vermont	175,893	5,937,920	3
Virginia	2,158,379	25,535,360	8
Washington	15,034,462	42,865,280	35
West Virginia	943,702	15,417,600	6
Wisconsin	2,085,802	35,017,600	6
Wyoming	32,055,721	62,403,840	51
Total	455,183,251	1,905,361,920	24% (Average)

* Less than 1 percent.

Data compiled from Report of Public Lands Committee, U. S. House of Representatives.

Committee Report

To the Board of Directors of the
Chamber of Commerce of the United States:

The Public Domain

Few people appreciate the public land situation today. And, what is more, few people today have any appreciation of the tremendous part played by federal land policies in shaping the political and social history of this nation. Whether these policies stem from the British Crown, through Colonial charters or through cession treaties with, and purchases from, other nations the chain of influence is unbroken and is still a strong, almost controlling factor in the 11 Western states where, taken collectively, the federal government still owns, controls and manages, over half of the land area.

The area embraced in the federal landed estate in continental United States reached a peak of nearly one and a half billion acres in 1853 with the Gadsden Purchase. One billion of these acres have been disposed of, 70% of which went mostly for settlement and for home building, 20% went to states created out of this vast domain in aid of education, and 10% went to pioneer transportation systems across the new country.

The half billion acres still federally owned are no longer free and open public land. It has all been locked up in various forms of federal "withdrawal" where it will remain under continuous management by federal bureaus unless present policies and practices are changed or redirected.

Within most states of the Union, public land matters have long since been forgotten. Title has largely passed into private hands and state economy is free and unencumbered by federal landlordism. The states can tax the lands within their borders, and citizens of the states are free to use, as they see fit, the resources they own. The sovereign states can impose any needed regulations "in the public interest."

The free land economy prevalent among the original Colonial states, spread Westward under the egis of the right to acquire title. Land settlement reached a maximum rate in 1913 when over 53,000 homesteads were established, removing in excess of 10,000,000 acres from federal ownership. Since that record year, settlement declined to 294 units in 1945 involving 40,265 acres.

Two circumstances have accelerated the decline in settlement on Western land, namely, the government's withdrawal policy, and the unsuitableness in most instances of the remaining lands for permanent home sites.

Present Situation

Over 80% of the government's remaining half billion acres is so-called public land or public domain. The balance is "acquired" land, that is, land which the federal government has purchased from citizens, states or municipalities for various federal purposes. The latter is not ordinarily subject to the Public Land Laws. Ninety per cent of the still federally-owned public domain lands are in the 11 Western states. See following tabulation:

	Acres in Federal Ownership	*Per cent of State Area*
Nevada	61,378,360	87
Utah	37,898,177	72
Idaho	33,730,114	64
Wyoming	32,055,721	51
Oregon	32,781,306	53
Arizona	53,363,273	73
California	46,484,371	46
Colorado	25,492,803	38
New Mexico	34,211,071	44
Montana	32,966,241	35
Washington	15,034,462	35
Total	405,595,899	54%

As the table and the map (page 2) show, the federal government owns the larger half of the Rocky Mountain and Pacific Coast region, and, as already indicated, practically all of its holdings have been withdrawn from homestead settlement or other appropriation by the public, and reserved for administration and use by various government bureaus. These "withdrawals" impose different degrees of restrictions upon use by the public, while the uses that are permitted are always subject to a multiplicity of rules and regulations promulgated by the supervising bureau. *(Continued on page 6)*

Arguments in the Negative

History of the Public Domain

Growth

The public domain or "public lands" of the United States has had a very interesting history.

> "At the close of the Revolutionary War, and upon ratification of the Constitution, several of the States owned large tracts of unoccupied lands extending Westward to the Mississippi River, which they had secured under grants from Great Britain while still colonies of that Government.
>
> "The States which held no Western land contended that the unoccupied areas should be held by all the States as common property for the benefit of the Nation. In response to this suggestion, these unoccupied lands were ceded to the Federal Government at various times from 1781 to 1802 by the States which owned them—New York, Virginia, Massachusetts, Connecticut, North Carolina, South Carolina, and Georgia.
>
> "Constituting the first area of the public domain, these cessions involved two large tracts, containing approximately 266,427,520 acres, embraced within the present States of Ohio, Indiana, Illinois, Michigan, Wisconsin and Tennessee, that part of Minnesota lying east of the Mississippi River, and all of Alabama and Mississippi lying north of the thirty-first parallel of latitude."[1]

Then began a steady advance Westward by purchase, conquest, and settlement. The Louisiana Purchase from France in 1903 cost about 5 cents per acre, and added practically the entire western drainage basin of the Mississippi to the public domain. This vast territory of 529,911,680 acres later became all of the States of Arkansas, Missouri, Kansas, Iowa, Nebraska, and South Dakota, and embraced parts of the States of Louisiana, Texas, Oklahoma, Minnesota, North Dakota, Montana, Wyoming, Colorado, and New Mexico. Florida was purchased from Spain in 1819 at about 17 cents per acre.

The explorations of Lewis and Clark in the Northwest in 1804-06, and later occupation by Americans, established the claim of the United States to 183,386,240 acres embracing the present States of Oregon, Washington, and Idaho, and parts of Montana and Wyoming. A treaty with Great Britain in 1846 fixed the northern boundary of the territory.

As a result of the Mexican War, the United States in the treaty of Guadaloupe Hidalgo, February 2, 1848, purchased for about 4½ cents per acre, some 338,680,960 acres now embracing the States of California, Nevada, Utah, and parts of Colorado, Wyoming, Arizona, and New Mexico.

In 1845, when the Republic of Texas voted to join the United States, she retained control of her public lands. Later, the United States purchased from Texas her claim to 78,892,800 acres, west and north of her present boundaries, now included in Kansas, Colorado, and New Mexico, at a cost of about 20 cents per acre. The Gadsden Purchase from Mexico in 1853 added 18,988,800 acres to Arizona and New Mexico at a cost of about 52 cents per acre. In all, the cash outlay for this vast area of public domain, almost 1,500,000,000 acres, was about $81,000,000, an average of 5½ cents per acre.

Subsequently there were acquired the outlying possessions—Alaska, Guam, Hawaii, Panama Canal Zone, Philippine Islands, Puerto Rico, Samoa, and the Virgin Islands, aggregating about 455,000,000 acres—but these are not considered in this referendum.

Administration

The administration of the public lands is a function of the General Land Office, established in 1812 and now a part of the Department of the Interior. The policy of its administration has passed through four distinct cycles of operation: (1) disposal of public lands by sales and grants, (2) disposal by homesteading and mineral claims, (3) an era of gradual withdrawals for conservation of the land and mineral resources, and (4) the present era of almost complete withdrawals and administration by federal bureaus as a "heritage for future generations."

During the first period, the public lands were used as a source of revenue with which to pay the expenses of the Revolution, the War of 1812, and the Mexican War, and to support and maintain governmental institutions. Lands were sold at public auction to the highest *(Continued on page 7)*

[1] Land of the Free: General Land Office, 2nd Ed., pp. 5-6, 1940.

The principal reservations, involving overlapping acreage in many instances, are:

Kind	Western States Acres	Other States Acres	Total Acres
National Forests.....	135,048,000	22,570,000	157,618,000
Grazing Districts....	140,798,000	.....	140,798,000
Indian Reservations..	43,881,000	11,368,000	55,249,000
National Parks.....	11,539,000	2,046,000	13,585,000
Soil Conservation....	4,218,000	3,262,000	7,481,000
Navy Department...	758,000	678,000	1,326,000
War Department....	14,021,000	5,334,000	19,355,000
Fish & Wild Life.....	883,000	1,877,000	2,760,000

These withdrawals were made by "act of Congress"; by "implied mandate of Congress"; by "acquiescence" therein by Congress; by Presidential Proclamation; by Executive Order; by "inherent power of the President"; "in aid of legislation"; and "for classification." It is not the object of this report to review the purpose, history, administration, or legality of public land withdrawals. Presumably they were made in the interest of the conservation of natural resources "for all the people." The early "conservationists" thought of these government reserves as a trusteeship, something to be preserved for posterity, and also as a means of protecting resources from unwarranted exploitation. Administratively, the emphasis has been on proprietorship, and the more deep-seated this emphasis became the more independent and arbitrary was the administration. Today public land administration is conceived as management, federal management of uses that are almost wholly local in character.

The last great withdrawals were made, by Executive Order, in 1934 and 1935 when all of the remaining public domain was set aside for classification to be converted into grazing districts mainly, and administered by the Secretary of the Interior as provided in the Taylor Grazing Act of 1934. The 1935 Annual Report of the General Land Office states:

> "Because of the withdrawals made by the Executive Orders of November 26, 1934 and February 5, 1935, there were no unreserved public lands at the close of business on June 30, 1935."

Congress Investigates

Five years later, on May 24, 1940, the Senate undertook "a full and complete investigation of the purchase, withdrawal, and allocation of lands and the administration and use thereof by and on behalf of the federal government or any agency thereof; . . . ." (S. Res. 241, 76th Congress, Third Session).

Back of this Senate action lie repeated complaints from the public land states about overregulation, excessive withdrawals, unnecessary acquisitions and other instances of assumed authority that the complainants allege were neither authorized nor contemplated by the Congress in legislative measures. Pursuant to the provisions of the Resolution, a Subcommittee of the Senate Committee on Public Lands and Surveys has held many hearings in the West and taken much testimony. Serious charges are made in reports of the Subcommittee particularly against the Interior Department. Repeatedly the Committee speaks of the "doubtful legal authority" for departmental action both in making withdrawals and with regard to administrative action and procedure. It is stated that "the citizens of the public land states are strenuously demanding that abuses of withdrawal authority be curbed." Recently the Chamber has made representation to Congress and at hearings against the enlargement of national parks (a function of Congress) by the device of using the Antiquities Act, which Act authorizes the President to create National Monuments. According to the Senate Subcommittee, many withdrawals are "ill-advised and needless" and "seriously hamper the orderly development of resources, communities and industries, in addition to affording constant consternation and confusion to the citizens of public land states."

The Interior Department has made many temporary withdrawals "in aid of legislation" and these stand, regardless of whether Congress acts or not, and temporary withdrawals as effectively lock up resources as if the Congress had confirmed the Department's action. One such withdrawal has to do with a bill now pending in Congress (S. 882) under which all the potash and phosphates in the public lands "shall be held by the government" in perpetuity. The bill contemplates putting the federal government into the fertilizer business on a large scale. A more sweeping withdrawal, the President's Executive Order 9613, dated September 15, 1945, includes all public lands of the United States and Alaska, which contain deposits of radio-active mineral substances. Since the withdrawal does not specify any degree of radio-activity, it can be interpreted to include nearly every rock and mineral deposit. No one can say what is withdrawn and what is not. *(Continued on page 8)*

bidder for cash, or were opened to private purchase at a fixed price, and nearly 200,000,000 acres were disposed of under the various cash sales. More than 60,000,000 acres were granted to soldiers for military services rendered before March 3, 1855.

The second period, of pioneering and homesteading, began in 1863, when the first homesteading law, signed by President Abraham Lincoln, became effective.

> "As white settlements pushed Westward, treaties were made with the Indians under the terms of which their lands were ceded to the Federal Government. These treaties frequently made provisions for the reservation of other areas for the use and benefit of the Indians and from time to time public lands were set apart by Act of Congress or Executive Order as Indian reservations.
>
> "The principle of use and development found in the homestead law has been carried into many other public land laws since enacted. The desert land act, the reclamation law, and the mining law of 1872 are notable instances.
>
> "During the period of development, along with the enactment of laws applying directly to individuals, a series of laws was put into the statutes by which great areas of public lands were disposed of in the form of grants to States and railroads.
>
> "Railroad, canal, and wagon road grants were made to afford settlers in the newly opened public lands outlets to markets of means of communication with the people of the East.
>
> "Out of the wilderness which constituted the public domain of 150 years ago has been developed one of the richest agricultural areas in the world. Today, the greater part of the agricultural wealth of the Nation lies within the public land States.
>
> "As a natural outgrowth of the theory of development of our natural resources, Congress early began to make liberal donations of the public lands for the support of common schools.
>
> "Extensive grants of lands were given to each new State as it entered the Union, affording the States large permanent school funds. The foundation of the agricultural and mechanical colleges, supported in part from the sale or lease of public lands, was laid in these grants, and today one out of every five college students in the United States attends a land grant school."[2]

The third period, marked by the gradual development of the idea of conservation and reservation of the public domain, began in earnest with Yellowstone National Park in 1872, took a more practical turn with the Reclamation Act of 1902 and ended with the Taylor Grazing Act of 1934. A Nation, which had extended its borders from the Atlantic to the Pacific, found the time had come to take stock of its vast storehouses of natural resources.

The Reclamation Act of 1902 provided for the construction of reservoirs and water-supply ditches to irrigate arid lands where the problem of water supply was too big for private interests to solve. Other expressions of the conservation theory are found in the reservation of large areas of public lands as national parks and monuments, forest reserves, and wildlife and game refuges. The enactment of the first Mineral Leasing Act in 1920 was followed by extensive withdrawals of land for classification.

The fourth or present period, marking the end of the free land, began with the passage by Congress of the Taylor Grazing Act of 1934 and the subsequent issuance of Executive Orders, withdrawing the public lands from entry. The administration of the public domain was divided among numerous federal bureaus "to insure protection of its assets of land, minerals, and forests, for the benefit of generations yet to come."

Withdrawals

Early Beginnings

Withdrawals of the public domain from sale, homesteading, and mineral leasing or patent have often been made for various purposes. In 1866, when the Congress extended its public land surveys to Nevada, it reserved from sale all lands "valuable for mines of gold, silver, quicksilver or copper." Yellowstone National Park was created by Act of Congress in 1872. In 1888 Congress passed an Act reserving from sale lands valuable for reservoir sites or other use in connection with irrigation. The President was authorized, by public proclamation, to declare the establishment of national forests in 1891, and many withdrawals for this purpose have since been made. Other acts, such as the Reclamation Act, authorized temporary withdrawals.

General Withdrawal Act

The Secretary of the Interior, allegedly without specific authority granted by Congress, made many early withdrawals of natural resource lands, including coal, oil, phos- *(Continued on page 9)*

[2] Land of the Free: General Land Office, 2nd Ed., pp. 10-13, 1940.

Representations have been made to the Chamber, through its three Western Divisions, through the Western conferences conducted by the Public Land Subcommittee of the Chamber's Natural Resources Department, and by other means, confirming many of the observations of the Senate Subcommittee and indicating dissatisfaction and unrest among the Chamber's Western membership with public land practices.

The Natural Resources Department Committee recommends:

> *That the Congress continue its review of Western land policies, particularly the withdrawal policies, until the full facts are known. Congress should promptly provide that before withdrawals of any consequence are made, there should be public notice and opportunity for public hearing in the state or states affected. There should be a time limit on temporary withdrawals. Existing withdrawals should be re-examined and eliminated or reduced in size to where a preponderance of facts support reservation for the major purpose indicated.*

Grazing

The cattle-raising and wool-growing industries of the West are the latest industries to come almost completely under the control of the federal government by way of land withdrawals. The Taylor Grazing Act was intended "to promote the highest use of the public lands *pending its final disposal.*" Before its passage, and the withdrawals which followed it, most of the unreserved government lands of the West were literally "public" domain. Much of this land lies in the semi-arid Rocky Mountain region and is valuable principally for grazing. Cattlemen and sheepmen used it supplementary to their private holdings—to use the Interior Department's withdrawal language—"by acquiescence on the part of Congress." This use enhanced the value of the private lands and states frequently taxed the private lands on the enhanced valuation. The men engaged in these two grazing industries allege, with much justification, that a measure of "vested rights" attaches to that use. In fact, the Taylor Grazing Act took cognizance of this right by giving some preferences to existing users, although leases and permits under the Act, by specific provision, create no vested right.

Interspersed among the government's 142 million acres of reserved grazing lands are approximately 123 million acres of state, county, and private lands valuable principally for grazing. This total area has been divided into 60 grazing districts for operational and administrative functions. Over 21,650 livestock operators use the federal range under licenses and permits for their 10,000,000 livestock. Permittees on the federal range had an investment at prewar values of approximately $175,000,000 in land and water alone. The foundation of the economy of 200 counties in 10 states is based upon the livestock industry. Such is the 1945 picture as painted by the Grazing Service.

There are numerous differences between the livestock operators and the regulating government bureaus, but the main issues are "fees" and "priorities" or vested rights. This Committee does not judge those administrative matters. That is for Congress to make so clear that wide differences cannot develop. We are concerned, however, over the ultimate end of this kind of government management. There seem to be but two possible eventualities. Either the vast Western range shall forever remain in federal hands and the stock raising industry, together with its dependent communities, counties and states accept the role of tenants subject to the "rules and regulations" of Washington bureaus; or the whole legislative and administrative program must be reoriented with complete state sovereignty and private ownership as the distant but ultimate objective. The stock raising industry has no other choice but to accept or liquidate. Its assets are, of all industry, the most perishable. The Natural Resources Department Committee proposes the following declaration:

> *Grazing lands constitute one of the greatest permanent natural resources of the eleven public land states and their highest use and conservation is vitally essential both sectionally and nationally.*
>
> *The right to the use of these lands for grazing purposes has been established by a system of leases and permits based upon long established use and payment of fees.*
>
> *Use of lands for grazing purposes under permits or other legal status establishes a right to the continued use thereof, which is capable of sale and transfer.*
>
> *In order to provide the highest use and fullest conservation of these grazing lands private ownership should be the ultimate objective, and subject to, and consistent with, sound principles of conservation and the protection of the public interest, including the reservation of rights to minerals and metals, timber, water resources development and other potentialities not* *(Continued on page 10)*

phate and power sites, but these withdrawals by the Secretary were challenged and led to legal disputes. Many claimants had been asserting an absence of such authority by disregarding withdrawals. Such action was especially frequent in the oil fields of California. Accordingly, Congress, on June 25, 1910, passed what is known as the General Withdrawal Act. Immediately after its passage, the President, by Executive Order, ratified, confirmed and continued in full force all outstanding withdrawal orders that the Secretary of the Interior had issued. Many subsequent withdrawals have been made in accordance with the provisions of this Act.

Minerals

An important provision of the original Withdrawal Act was that lands withdrawn remained "open to exploration, discovery, occupation and purchase under the mining laws of the United States so far as the same apply to minerals other than coal, oil, gas and phosphates." In effect, this provision exempted from the Act the right to withdraw lands valuable for minerals other than the four mentioned. Thus, when interest in the potash situation became general, it was not possible to make the desired withdrawals. On August 24, 1912, Congress amended the original Withdrawal Act by providing that withdrawn lands should be open to exploration and purchase under the mineral laws for *metalliferous minerals only.* This law stands today.

Types

Withdrawals of the public domain fall into two types: (1) Permanent withdrawals for such purposes as establishing national parks and monuments, national forests, grazing districts, etc.; and (2) Temporary withdrawals for the establishment of reclamation projects, for purposes of classification, and "in aid of legislation." It should be noted that the permanent withdrawals, except in the case of national parks and oil reserves, do not prevent the leasing or patent of mineral deposits. The principal purpose of the temporary withdrawals is to afford an opportunity for the government to determine the character of lands and classify them before allowing patent to issue or the making of permanent withdrawals.

The temporary withdrawals "in aid of legislation" have less justification, although some may be necessary from time to time. They began years ago when public land policies were being formed and legislation implementing them was being passed. Without such withdrawals to protect against encroachments on the public domain under consideration, the legislation, when passed, would have had little value.

Present Status

According to the annual report of the Secretary of the Interior for the fiscal year 1945:

> "The area of public lands remaining in Federal ownership, including Indian trust and tribal lands, as of June 30, 1945, amounted to about 413 million acres in the public land States and about 365 million acres in Alaska. Approximately 400 million acres of these public lands were vacant, unappropriated, and unreserved as follows:—37 million acres in the States outside of Federal grazing districts; 133 million acres within such districts; and 230 million acres in Alaska. During the year 692,000 acres were withdrawn for various public purposes while withdrawals reserving 9,497,000 acres were revoked."

Grazing

Over-grazing

The public domain was long a great grazing common, free to all-comers. Much of it was suited only for grazing. It was unlawful to fence the land, and no public control was exercised over it. As a result, over-grazing took its toll in the form of large areas unfit for grazing, or a greatly reduced carrying capacity for livestock generally. Erosion, increased by the destruction of the forage cover, silted the streams and damaged large areas of more valuable land.

Taylor Grazing Act

To remedy this situation, Congress, in 1934, passed the Taylor Grazing Act "to promote the highest use of the public lands pending its final disposal." By this Act the Secretary of the Interior was authorized to set up and administer Grazing Districts not to exceed an aggregate of 80,000,000 acres of "vacant, unappropriated, and unreserved" public land, and to lease the grazing rights in these districts to citizens of the United States with preference given "to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights." Amendments to the Act in 1936 raised the limitation to 142,000,000 acres. *(Continued on page 11)*

involving grazing, these grazing rights should be protected and preserved.

Oil and Gas

The development of oil and gas is a major activity in many of our Western states. Inasmuch as public lands comprise such a large percentage of lands in those Western States, it is appropriate to examine the oil land leasing policies of the federal government.

During the war a great drain of our oil reserves was necessary to victory. Ours was the good fortune to be endowed by nature with vast areas of country where oil deposits were discovered and developed by a free and active industry. Before entering the war our oil reserves were ample for all peacetime requirements and wise state conservation laws encouraged development. Application of the best known engineering methods of discovery and of the withdrawal of oil and gas from the proven reserves left us with a cushion of producible oil and gas that could be drawn upon when needed. To a certain extent that cushion between current domestic needs and wartime needs has disappeared.

We now require new reserves to be added to those now proven and currently being drawn upon, and the reserved and unreserved public lands as well as "acquired" government lands constitute important areas upon which to explore.

An examination of the oil land leasing policies indicates that existing laws and government policies need revisions in the light of all the facts.

The Mineral Leasing Act of 1920 was passed in that period in our oil history when new reserves were badly needed and although the law was imperfect in many respects, its terms and conditions led to extensive exploration and development on the public domain. Later, in 1935, the Mineral Leasing Act was amended. This happened during a period of overproduction of oil and the restrictive nature of many of the amendments then made, and the many regulations and rules consequent thereto does not square with the country's need today. Rather it has created the necessity for a complete reexamination of the law and administration so as to encourage the fullest possible exploration with the newest technology available to the industry.

We find the restrictions of acreage limitations unnecessary. The Act limits one company or individual to leasing not more than 7,680 acres in any one State or more than 2,560 acres on one geologic structure.

Various circumstances have developed that make the continuation of these acreage restrictions both inappropriate and unwise. Most important from the viewpoint of discovering oil is the impracticability of projecting exploration operations, using modern technology, where the lease option is so limited. Modern scientific practice in the search for new oil reserves is known as "geophysical exploration." Without attempting any definition of this term, it will suffice to point out that geophysical exploration has to do with the deeper underlying geologic formations and that these can be determined only when extensive areas are taken into consideration, areas which far exceed the limitations of the Leasing Law. In oil and gas prospecting the industry expression is that "everything visible to the eye has been taken." Furthermore, geophysical explorations imply regional operation and by the same token, they are more costly. Another need is to encourage competent oil producers to undertake more intensive surface mapping and more extensive aerial geologic observations.

In the vast public land regions of the West, the application of geophysical prospecting for oil requires extensive leasing privileges that cannot be had under present acreage limitations. Many operators in the public domain states have already acquired the maximum acreage permitted them under the law. Experience in states like Texas, where there are no public domain lands and no acreage limitations, and in New Mexico with its vast areas of state owned lands with no acreage limitations, and in other states where private lands are leased without limitation, exploration has progressed along with technological development. Actually, there is no need that the Committee can see for any acreage limitations on federal lands. We recommend:

> *That the Mineral Leasing Act of February 25, 1920, as amended, be further amended to remove all acreage limitations, or at least grant a great expansion of acreage allowable in any state,— and remove the limit to the acreage held on a geologic structure.*

Under the original Act of 1920, and the amendments thereto, are many and varying royalty provisions, nearly all of which are burdensome and restrictive. There are the so-called 5% leases issued under the original *(Continued on page 12)*

Administration

Nearly 40 percent of the range land in the eleven Western States is situated within grazing districts. Somewhat more than half of this is federal land; the remainder is in private, State, and county ownership. The 60 grazing districts are administered by the Grazing Service of the Department of the Interior, aided by local grazing district advisory boards. The aim of the administration is twofold; the protection, improvement, and proper utilization of the natural resources on these lands and the stabilization of the livestock industry dependent upon them. The two go hand-in-hand, for the natural forage cover cannot be improved by protection and natural and artificial reseeding without stabilization of the livestock industry, accomplished by the system of grazing permits. Of equal, if not greater importance, is the relation of these lands to water supply for irrigation and other purposes. Maintaining adequate plant cover conditions is the key to adequate watershed protection.

Fees

The Taylor Grazing Act provides (Section 3): "That the Secretary of the Interior is hereby authorized to issue or cause to be issued permits to graze livestock on such grazing district . . . upon the payment annually of reasonable fees in each case to be fixed or determined from time to time."

Other Grazing

Grazing on the public domain, however, is not limited to the 60 grazing districts administered by the Grazing Service. The General Land Office of the Department of the Interior administers grazing on 12,479,270 acres of public land in Alaska and in the United States outside of the 60 grazing districts. The Forest Service of the Department of Agriculture administers grazing on about 85 million acres within the National Forests that are open range.

These lands are now consolidated and use is regulated to conserve soil, forage, water and other resources. It is a serious question whether the gradual disintegration of these blocked-out areas by grants to states or by patent would not so divide ownership and administration as to make conservation impracticable.

Oil and Gas

History

The oil industry did not extend its exploration and development work into the public land states of the West until just before the turn of the century. When it did, some right of search and discovery required recognition so in 1897 Congress decided that oil, being a mineral, lands principally valuable for oil should be disposed of under the provisions of the mining laws, as distinct from the disposition of agricultural lands under the homestead law. Upon proof of discovery and payment of a fee by the locator, he got title to the oil-bearing land.

Right upon the heels of this migration of the industry, came the birth of the "gasoline age," mass production of automobiles, aviation, and finally World War I, during which period the demand for petroleum products shot skyward. Oil discoveries were sporadic and resulted in alternate periods of shortage and overproduction. Large tracts of public domain oil lands were withdrawn from mineral patent as naval reserves or to prevent the wasteful practices of overproduction. It was recognized that the old mining laws should not apply to the development of oil, and Congress finally enacted the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

Under the Act, applicants were granted a two-year permit to prospect upon limited areas of the public domain, usually a tract 4 miles square for each lease, with the assurance that if they discovered oil or gas they would receive a 20-year lease with certain preferential rights of renewal. And, as a reward for discovery, one-fourth of the area covered by the permit was leased at a royalty of but 5 percent, and the balance at a sliding-scale royalty of from 12½ to 33⅓ percent.

During the first 10 years of the Leasing Act a significant amount of prospecting and development took place, stimulated not only by the provisions of the Act but also by high prices then prevailing for crude oil and by improved technology. By 1929 the development of oil lands in the United States had again reached a state of extreme overproduction. Conservation, rather than development, was necessary and the granting of prospecting permits under the Leasing Act was halted.

Recently, especially since the United States entered World War II, the unprecedented demand for petroleum products has developed into a national concern over our *(Continued on page 13)*

1920 Act of ¼ the acreage included in a prospecting permit as a reward for discovery, the so-called sliding scale lease with royalties running from 12½ to 33⅓% covering the remaining ¾ of the permit acreage, the so-called step-scale leases carrying a royalty of 12½% to 32%, the maximum having been recently reduced by the Secretary to 25%, and numerous special rate leases issued under unit agreements and carrying varying rates of royalties payable to the United States.

In order to bring the law and policies in line with the long-accepted practices of the leasing of private lands, we recommend:

That the royalty on all government leases be fixed at 12½% for leases heretofore and hereafter issued that are not on a proven oil or gas structure, and that, in order to encourage and make possible the exploration and development of deeper pools, a 12½% royalty be fixed for all deeper discoveries in presently proven fields, the same to apply to all leases in such new zones.

Although the Act does not so specify nor imply, in recent years leases have contained a provision granting the Secretary of the Interior the right to fix the value for royalty purpose of the oil, gas and gasoline. Inasmuch as this provision was voted down by Congress in the original Act and further because it is but a device to increase royalties, we urge and recommend:

That the government either take the royalty in kind for sale or accept the market price of the royalty oil, gas or gasoline.

The present Act provides that the Secretary of the Interior approve all assignments of oil and gas leases and also approve any surrender or relinquishment of such leases. These provisions have become onerous because it may, and frequently does, take more than a year to secure such approval during which time legal uncertainties may create serious hazards to the leaseholder. We recommend:

That provision be made in the law that will grant the free right of assignment and relinquishment of government oil and gas leases, with proper safeguards.

There are many other changes necessary to bring the Act into line with existing conditions and they are to be described in more detail in a special study paper to be presented and released.

"Acquired" Lands

The public domain lands are the only government lands subject to the Mineral Leasing Act and if the "acquired lands" (lands acquired over a period of years under various Acts of Congress and otherwise) are to be explored, they should also be subject to the same law. At the present time there is no defined statutory authority to lease for oil or gas development any of the "acquired lands."

Although Congressional Committees have attempted to determine the amount of land the government owns, they, in their studies, have had to admit great difficulty. It is necessary to know what land the government owns. We recommend:

That all lands of the United States be registered with the Interior Department.

As has been pointed out earlier in this report, the trend in federal land ownership continued downward until, say, within the past decade. Some years ago, the Government began acquiring lands through its many agencies for a great variety of purposes. A 1944 Report of the House Committee on the Public Lands shows 12 agencies in Interior and 5 in Agriculture administering government land. There are 13 other Departments and Agencies so employed, making a total of 30. Practically all of these Agencies have control of "acquired land." A large percent of federal land purchases since 1939 has to do with the prosecution of the war. Under the Surplus Property Act such "real property" may or may not be declared "surplus to its needs and responsibilities." If the Surplus Property Board thinks any owning agency is holding property that should be "surplus" all it can do is "report that fact to the Senate and House of Representatives." When surplus real property is reported, the Surplus Property Board "shall classify such property as agricultural, grazing, forest, mineral, or otherwise, as it may deem advisable." The Act provides in considerable detail for disposal of agricultural lands but is vague, unsatisfactory and unworkable with respect to the other classifications. We recommend:

That the Surplus Property Act be repealed with respect to disposition of lands and that new legislation be enacted applicable to all "acquired lands" in order to provide (1) that all acquired lands not necessary and useful for a clearly defined governmental purpose be disposed of, (2) that all acquired lands retained for governmental purposes be ad- *(Continued on page 14)*

ability to continue the necessary rate of production. Today the country is faced with the dilemma of either continuing excessive and uneconomical draft from producing oil structures necessitated by the war, or of doubling its efforts to discover and bring new fields into production. The first alternative is so unwise as to be unthinkable. Some revision in the oil and gas leasing laws is undoubtedly necessary in order to stimulate legitimate production on the public domain.

Acreage Limitation

It is a grave question whether the acreage limitations of the Leasing Act should be completely removed. There may be a need for some liberalizing, retaining however, limits sufficient to prevent monopolies or the leasing of large tracts to prevent competitive drilling. A step in this direction is the Hatch and O'Mahoney Bill (S. 1236), now being considered by Congress, that would limit the lease holdings to an aggregate of 15,360 acres in any one state and remove entirely the structural limitation. The bill also provides that option agreements for the purchase of one or more oil and gas leases, "when coupled with the express obligation to conduct geophysical examination of the leased land," are not to be chargeable under the acreage limitations of the Act. However, such option agreements shall not be entered into for a period of more than two years without the prior approval of the Secretary of the Interior, and no person, association or corporation shall hold, at any one time, option agreements covering more than 100,000 acres in any one state.

Royalties

The Mineral Leasing Act, as administered, uses several types of royalties. The almost universal royalty on wildcat leases on private lands is one-eighth (or 12½ percent) of the market price. Considering the risks of prospecting and development, this is probably a fair and just royalty for public lands not within the boundaries of a known geologic structure of a producing oil or gas field. However, for public lands within such known structures, the risk is by no means as great and the royalties in the lease should be on a fixed sliding scale depending on the depth and amount of production.

Any revision of the Mineral Leasing Act to make assignment and relinquishment provisions that are more nearly compatible with the common practice of the oil and gas industry on private lands, should retain provisions to make the assignee establish his qualification under the law and to file the necessary bond. Unnecessary delays could be avoided, however, by making the assignments or relinquishments automatically effective in 90 days after proper qualification unless objected to in writing by the Secretary rather than waiting for the Secretary to act.

Question may be raised as to whether general war conditions are not as much responsible for the lack of new discovery as are provisions of the Leasing Act. The 1945 annual report of the Secretary of the Interior states that:

> "On public lands, 7,041 oil and gas properties were under supervision at the end of the fiscal year, aggregating 4,596,053 acres in 20 States and Alaska, an increase of 32 percent in the number of properties and nearly 48 percent in the acreage under supervision at the close of the previous fiscal year.
>
> "Drilling on public lands during the year included the spudding of 566 wells and the completion of 626 wells, 440 of which were productive of oil and gas and 186 of which were barren. In all, 11,460 public-land wells, including 6,289 capable of oil and gas production, were under supervision on June 30, 1945. The production from petroleum deposits of the public lands during 1945 was somewhat more than in 1944."

Metalliferous Minerals

History

The Mineral Leasing Act concerns only specific nonmetallic minerals including fuels. Public lands containing metalliferous minerals, such as gold, silver, copper, and iron, and nonmetalliferous minerals not specified under the Mineral Leasing Act, are still subject to discovery, location, and patent under the lode and placer laws, thus passing into private ownership.

The lode and placer laws date back to the discovery of gold in California in 1848. The "forty-niners" found practically nothing in existence in the way of a mining law and, perforce, set up their own mining customs that were eventually recognized by the local courts and respected by State and Territorial legislatures. These local usages were confirmed by Congress in the mining laws of 1866 and 1872. Mining claims are recorded in county recorders' offices. They may be maintained year after year if a minimum amount of "assessment" work, amounting to $100 a year, is done. They may be patented, *(Continued on page 15)*

ministered by the Interior Department with respect to their mineral content under the public land laws applicable to both metalliferous and non-metalliferous minerals.

Metalliferous Minerals

In our recommendations respecting grazing, we deal only with the surface rights to the land. The amendments to the Mineral Leasing Act have to do with administrative practices regarding oil and gas, without raising any question as to other non-metalliferous minerals covered by the Leasing Act or in regard to title to the land. The National Chamber has long supported the well established public land policy based on discovery, location and patent where metalliferous minerals are involved. Its policies say that:

> The need for the initiative of private enterprise is nowhere more apparent than in the exploration and development of mineral resources. The long-established public land policy based on discovery, location, and patent, which has encouraged development, should be continued.

We recommend:

That the leasing policy be not extended to metalliferous minerals.

Conservation

The principles of true conservation,—whether the resources be parks or forests, minerals or water, grazing or recreation, are the same regardless of the level of government that put them into practice. We believe that in the final analysis, the nearer the responsibility for conservation gets to the people themselves, the greater will become the total good to all the people.

Tide and Submerged Lands

Ever since the thirteen original states organized themselves into the Federal Union of States the title to tide and submerged lands as well as the so-called marginal sea has been within the several states, except for commerce regulation by the federal government. Recently the title to the tidelands (those areas lying below mean high tide and the three-mile limit) has been attacked by the federal government in an action of the United States against the State of California.

This action by the Attorney General purports to claim title in the United States and is being vigorously opposed by the Attorneys General for 46 of the 48 states. The other two states' Attorneys General agree with the 46 but did not join in the action.

The House of Representatives on September 20, 1945, passed by an overwhelming vote and sent to the Senate H. J. Res. 225, quitclaiming any right, title or interest of the United States in the tidelands and navigable lakes and streams to the respective states.

The Senate Judiciary Committee held hearings February 5-7, 1946, on H. J. Res. 225. Arguments were heard before the U. S. Supreme Court on January 28, 1946, the State of California being heard and a comprehensive brief was filed.

We recommend:

That the Congress give statutory recognition to state ownership and disposition of the shores and all lands beneath the tidewaters and other navigable waters within the boundaries of each of the states.

NATURAL RESOURCES DEPARTMENT COMMITTEE
RALPH L. CARR, *Chairman.*

when proof of discovery has been furnished and when improvements amounting to $500 have been made, for a payment of $5 an acre for lode claims or $2.50 an acre for placer claims. Until patented, no records of these claims exist except in the several hundred county recorder offices in the Western States. Furthermore, there is no limit on the number of claims an individual or a corporation may hold, and there appears to be no adequate authority for the enforcement of the provisions of the law concerning annual assessments on these claims. Frequently claims are held by a mere pretense of performing assessment work.

There appears to be valid reason why the mineral-leasing principle should be expanded to include all minerals, both metallic and nonmetallic, which have any commercial value. According to former Secretary Ickes:[3]

> "The old mining laws aided materially in the settlement and development of the West, but they no longer are effective for that purpose. There are certain defects inherent in them which should be corrected. These laws were enacted at a time when the individual prospector, so frequently portrayed trudging up a dry gulch carrying a pick and leading his faithful burro, was the principal factor in the production of at least the precious and semiprecious metals. Every attempt that has been made within recent years to revise the mining laws has met with the loud protest that any change in these laws would deprive this prospector of an opportunity to make a livelihood. As a matter of fact, the individual prospector no longer exists as a significant factor in the mining industry. Since few metalliferous mineral deposits of consequence have been discovered by superficial prospecting in the past 30 years, it appears probable that surface prospecting of the old-fashioned type is not likely to add appreciably to our reserves of minerals."

"Acquired" Lands

Need for Acquisitions

The federal government has for years been purchasing land for many purposes, both in the public land and other States. The National Forests, National Parks and Monuments, and Wild Life Refuges in the eastern States are largely "acquired" lands, and the ones in the public land States have been "rounded out" by purchases of private lands within their borders. Large tracts have been purchased by the various agencies recently established, and millions of acres were purchased for war purposes. Many of these purchases were necessary for the proper administration of legislation passed by Congress, but some officials may have been overzealous in their purchases. Much of the land acquired for military purposes will undoubtedly be disposed of as fast as it can be declared surplus property.

Each of the 25 or more agencies that have acquired land formerly privately owned maintains its own records of these lands, and no estimate of the total acreage of government-owned lands outside of the public domain can be made without getting the information from each of these agencies. No one can object to the proposal of requiring these agencies to register their "acquired" lands with the Interior Department, probably in the General Land Office.

Tide and Submerged Lands

The colonial charters to what later became the thirteen original States granted not only the land and the waters thereon but also the sea for distances ranging from 3 miles to 20 leagues (about 60 miles). Later as new States were created out of the wild lands of the West, the boundaries of those bordering on the ocean were given as extending for three miles to sea from the shore line. The unsettled lands of most of these States, however, were recognized as federal and became the public domain, over which the State had jurisdictional sovereignty but not title.

The question, therefore, boils down to whether the navigable rivers, the harbors, and the ocean to the so-called "three-mile limit" including the land between high and low tides, were included in the public domain reserved by the federal government in forming the States; or whether the public domain included only lands not submerged. This is a matter for decision by the courts, whereas an act of Congress quitclaiming the title might still be subject to a decision by the Supreme Court as to its constitutionality. On the other hand, it does not seem probable that a decision in favor of the federal government with respect to offshore submerged land would have the same force where lands under lakes, rivers and harbors are involved.

[3] Development of Mineral Resources of the Public Lands: Hearings before a Subcommittee of the Committee on Public Lands and Surveys, United States Senate, Part 1, Mineral Resources, p. 11, 1942.