The original documents are located in Box 27, folder "Payments to Local Governments in Lieu of Taxes on Public Lands" of the John Marsh Files at the Gerald R. Ford Presidential Library.

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

September 30, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: Payment in Lieu of Taxes

Attached is a staff assessment of the payment in lieu of tax bill.

Attachment

September 29, 1976

HR 9719, "Providing for Payments to Local Governments Based Upon the Amount of Certain Public Lands Within the Boundaries of Each Such Government"

Issue: Should the Administration continue to oppose the Senate version of the bill providing payment in lieu of taxes on public lands (HR 9719)

Background of Issue:

- The basic premises on which arguments supporting payment in lieu of taxes traditionally rest are:
  - Counties, townships, and cities derive a substantial share of their income through taxes on land.
  - The Federal Government owns substantial amounts of land.
  - State and local governments cannot levy taxes on Federal property, and are therefore deprived of income.
  - Activities on the Federal land generate a need for local government expenditures (fire and police protection, schools, etc.) that should be directly compensated for.
- The basic traditional counter-arguments have been:
  - The greatest amount of Federal land in question was created from the Federal Public Domain or remains now in the Federal Public Domain in about 15 Western States (see attached map).
  - This Public Domain existed before the Western States were created and was never in private hands or subject to taxation.
  - A payment-in-lieu, based on land acreage, has no intrinsic relationship either to local need or to equity among State or local governments in the vicinity of Federal lands.
  - Local government need tends to be related to economic activity, and to the extent that Federal lands do not generate such activity, the need

remains small; to the extent that Federal lands do generate economic activity, that activity creates a tax base that State and local governments can tap to meet their needs.

- The issue rose around the turn of the century when it became evident that much of the Western Federal lands would not pass into private hands either because they were:

  . Withdrawn for permanent Federal use such as National Forests or Parks.

  . Not selected by States to be State-owned public lands, or

  . Not selected for private economic development and therefore not patented to private owners under mineral or homestead laws.

- The initial resolution of the issue in 1907 and 1920 was passage of legislation that authorized sharing of revenues derived from the Public Lands with the States (a percentage of stumpage fees, mineral bonuses, and royalties).

- Subsequent legislation establishing Wildlife Refuges and some Parks has authorized shared revenues or temporary payment in lieu of taxes.

- Though the issue received some attention in professional intergovernmental relations circles, it was largely dormant as a legislative issue until 1970.

- In 1970, the Public Land Law Review Commission recommended that the Federal Government make payments in lieu of taxes on most Federal land. This was one of about 140 recommendations on changing the public land laws made by the PLLRC, though little of their work has received legislative attention since. Their primary arguments were based on:

  . The basic premises described above.

  . The fact that they also recommended that most of the Federal lands remain in Federal control permanently.

  . Increased mobility has brought more visitors to the Federal lands, and these require more than anticipated local government expenditure.

- Since 1970 several factors have combined to push the issue legislatively:

  . The economic downturn that pinched all levels of government in the last few years.

  . The tremendous expansion in authorizations for Federal acquisition of land for Parks, Refuges, etc. that removes previously taxed lands from local rolls.

  . The thrust toward masive mining of Federal coal in the West threatened sizeable infrastructure requirements by sparsely-populated counties.

  . The development of strength by the National Association of Counties and their placing high priority on enactment of payment in lieu of taxes legislation and other forms of revenue sharing.

HR 9719 provides:

- Payments on a fiscal year basis to local governments having "entitlement" lands within their jurisdiction, defined as lands within the National Park System; National Forest System; public domain lands administered by the Bureau of Land Management; Indian lands; all lands dedicated to the use of water resource development projects and dredge disposal areas under the jurisdiction of the Corps of Engineers; and some military installations.

- Payments would be based on $.75 per acre offset by the amount of revenue payments received by the locality under the Mineral Leasing Act, Federal Power Act, Taylor Grazing Act, Bankhead Jones Act, Mineral Leasing Act for Acquired Lands, and Materials Disposal Act; or $.10 per acre. The total amount received is subject to a limitation varying directly with population.

- Payments may be used for any governmental purpose and will be in addition to other payments made under existing law such as General Revenue Sharing, block grants, categorical grants, project grants, or other assistance.

- Amendment of the Coastal Zone Management Act to allow States which obtain grants under that Act to expend monies for carrying out projects providing public facilities required as a result of all Outer Continental Shelf energy activities (rather than new

or expanded OCS activities.

- Expenditures from general revenue of approximately $115 million annually for local government beneficiaries under the payment scheme.

- Increased expenditures under the Coastal Zone Management Act of $250-300 million, most of which will go directly to Louisiana under the grant formula, rather than be distributed among all OCS States.

General Evaluation of the Bill:

- If the philosophy is accepted that the Federal Government should make payments in lieu of taxes, that portion of the bill is not too bad in that it:

  . Provides for both a floor and a ceiling for each recipient government.

  . Deducts that portion of the shared Federal revenue from the lands actually received by the local unit of government.

  . Specifically limits the kind of Federal lands subject to payments in lieu of taxes.

- Major shortcomings are that:

  . Corps and Reclamation reservoirs and dredge disposal areas are subject to payment in lieu and these are generators of significant local economic development. Indeed, the dredge disposal areas are part of the required local contribution to the Federal projects.

  . Indian reservations are included and these are already compensated for by significant impact aid payments in cash and in kind.

  . Relatively inactive military bases are included, and these were subject to impact aid while active, and additional Federal assistance was provided during local economic dislocation associated with deactivation.

  . States who now share the Federal land revenues with their affected counties could stop doing so, thus reducing the offsets and increasing the total Federal funds flowing into the State.

. The amendment to the outer continental shelf impact aid provisions give a major windfall to Louisiana that we opposed throughout the legislative battle on that subject -- and will cost $250-300 million.

Arguments for accepting HR 9719 now:

- The bill could be worse, and a veto could be overridden.

- Activities on Federal lands require local governments to provide services such as law enforcement and educational services.

- Some States (such as Colorado and Wyoming) do not return their portion of shared revenues from the Federal lands to the counties and townships most affected.

- Federal Government already recognizes the impact of Federal lands on State and local governments and shares with them revenues derived from Federal lands. Thus,

  . The question of compensation is academic.

  . The issue is how much should be paid.

- Current system of payments through shared revenues is not uniform and may be inequitable.

  . The bill is aimed at bringing uniformity of payments to local governments.

- Some counties may indeed have financing problems that would be alleviated by this bill.

- Would be popular with National Association of Counties and with most general purpose governments in 15 Western States, and their Congressional delegations.

Arguments against accepting HR 9719 now:

- The bill has major flaws as indicated above, and a veto may be successful in settling the issue for some time to come.

- Great bulk of Federal lands are public domain lands and Federal Government has no obligation to compensate State and local governments because these lands were

never on their tax rolls.

- State and local governments obtain substantial direct and indirect benefits from Federal land-related programs, e.g., National Forests and Parks.

- State and local governments can tax possessory interests in Federal land (e.g., mineral severance taxes, and taxes on commercial leases on Federal lands) as a source of revenue.

- Federal Government already compensates State and local governments for Federal lands through sharing of revenues from sales of Federal resources, impacted school aid program, special highway aid programs.

- Federal aid to State and local government from all domestic assistance programs as a percentage of general State and local revenue has grown from 10 percent in 1955 to 23 percent in 1977.

- Federal aid to State and local governments has grown from less than $15 billion in 1966 to nearly $60 billion in 1976.

- Many State and local governments strongly support Federal land acquisition for parks.

  . Thus, argument that Federal Government should compensate for taking land off of tax rolls is weak.

- Bill may result in gross inequities because of an arbitrary formula for payments.

- Meaningful and equitable improvements in the current system require comprehensive studies not yet undertaken.

- To the extent that States do not pass shared revenues from Federal lands to local governments, corrective action lies with State legislatures rather than a Federal statute which calls for additional payments.

- The bill heavily benefits about 15 Western States which are all (except for California) sparsely populated (see attached map).

- To the extent that economic development generated by coal and oil extraction from Federal lands generates a need for local expenditures, these are adequately

compensated for by the recently enacted energy development impact aid bill.

- The Administration has made a clear and consistent record of opposition to this bill for most of the reasons stated above.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 530pm

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann
Steve McConahey

cc (for information): Jack Marsh
Ed Schmults
Mike Duval
Paul Myer
Bill Seidman
Alan Greenspan

FROM THE STAFF SECRETARY

DUE: Date: October 18 Time: 100pm

SUBJECT:

H.R.9719-Payments in lieu of taxes

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

James M. Cannon
for the President

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

OCT 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 9719 - Payments in lieu of taxes
Sponsors - Rep. Evans (D) Colorado and 8 others

Last Day for Action

October 20, 1976 - Wednesday

Purpose

Provides for payments to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of each jurisdiction.

Agency Recommendations

Office of Management and Budget	Disapproval (Memorandum of Disapproval attached)
Department of the Interior	Disapproval (Memorandum of Disapproval attached)
Department of Agriculture	Disapproval (Memorandum of Disapproval attached)
Department of Justice	Defers to agencies more directly concerned
Department of the Treasury	No recommendation
Department of Defense	Approval

Background

Around the turn of the century, it became evident that much of the Western Federal lands would not pass into private hands because they were either: (1) withdrawn for permanent Federal use such as National Forests or Parks; (2) not selected by States to be State-owned public lands; or (3) not selected for private economic development and therefore not patented to private owners under mineral or homestead laws. This situation led to

the first broad consideration of the issue of providing payments in lieu of taxes for non-Federal units of government.

The initial resolution of the issue in 1907 and 1920 was passage of legislation that authorized sharing of revenues derived from the public lands with the States (a percentage of stumpage fees, mineral bonuses, and royalties). Subsequent legislation establishing Wildlife Refuges and some Parks has authorized shared revenues or temporary payments in lieu of taxes. Though the issue received some attention in professional intergovernmental relations circles, it was largely dormant as a legislative issue until 1970.

In 1970, the Public Land Law Review Commission (PLLRC) recommended that the Federal Government make payments in lieu of taxes on most Federal land. This was one of about 140 recommendations on changing the public land laws made by the PLLRC, though little of their work has received legislative attention since. Their primary arguments were the following:

-- counties, townships, and cities derive a substantial share of their income through taxes on land;

-- the Federal Government owns substantial amounts of land and the PLLRC recommended that most of these lands remain in Federal control permanently;

-- State and local governments cannot levy taxes on Federal property, and are therefore deprived of income;

-- increased mobility has brought more visitors to the Federal lands, and this requires greater than anticipated local government expenditures; and,

-- activities on the Federal land generate a need for local government expenditures (fire and police protection, schools, etc.) that should be directly compensated for.

However, opponents of the payments in lieu concept have also articulated sound arguments in defense of their position, as noted below:

-- the greatest amount of Federal land in question was created from the Federal public domain or remains now in the Federal public domain in about 15 Western States;

-- this public domain existed before the Western States were created and was never in private hands or subject to taxation;

-- a payment in lieu, based on land acreage, has no intrinsic relationship either to local need or to equity among State or local governments in the vicinity of Federal lands; and,

-- local government need tends to be related to economic activity, and to the extent that Federal lands do not generate such activity, the need remains small; to the extent that Federal lands do generate economic activity, that activity creates a tax base that State and local governments can tap to meet their needs.

Since 1970, several factors have combined to push the issue on to the legislative forefront. First, the continuation of rapid growth of government programs and the economic situation have put financial pressure on all levels of government. Second, the tremendous expansion in authorizations for the Federal acquisition of land for Parks, Refuges, and other areas has removed previously taxed lands from local rolls. Third, the thrust toward massive mining of Federal coal in the West threatened to impose sizeable infrastructure requirements on sparsely populated counties. And finally, the National Association of Counties has grown in strength. It has high priority on enactment of payment in lieu of taxes legislation and other forms of revenue sharing.

Description of the enrolled bill

H.R. 9719 represents the culmination of various

efforts over the course of the last several years to enact payments in lieu legislation. Briefly, the enrolled bill would provide for:

-- payments on a fiscal year basis to local governments having "entitlement" lands within their jurisdiction defined as lands within the National Park System; National Forest System; public domain lands administered by the Bureau of Land Management; and all lands dedicated to the use of water resource development projects and dredge disposal areas under the jurisdiction of the Corps of Engineers;

-- payments based on the greater of $0.10 per acre, or $0.75 per acre offset by the amount of revenue payments received by the locality under the Mineral Leasing Act, Federal Power Act, Taylor Grazing Act, Bankhead Jones Act, Mineral Leasing Act for Acquired Lands, and Materials Disposal Act. The total amount received, however, would be subject to a limitation varying directly with population; and,

-- payments to local governments of one percent of the fair market value of lands added to the National Park System and the National Wilderness Preservation System which were subject to local real property taxes within five years preceding their acquisition. The payment would apply prospectively for the first five years following land acquisition, although it would also apply to (1) lands acquired after December 31, 1970, and (2) lands acquired after October 2, 1968, in the Redwood National Park.

These payments could be used for any governmental purpose and would be in addition to other payments made under existing law such as General Revenue Sharing, block grants, categorical grants, project grants, or other assistance.

Under the above payment scheme, it is estimated that $115 to $120 million would be expended annually from Federal general revenues for the benefit of local governments.

Discussion

In reporting to the Congress, the Administration expressed strong opposition to H.R. 9719 on the grounds that the bill's payment formula has no apparent basis or rationale, but rather would be largely arbitrary and bear no relationship to any impact that Federal land ownership may have on local governments. In taking this position, the agencies agreed that the present systems used for sharing receipts from Federal lands are not uniform and have other shortcomings, but noted the Administration's belief that before any further changes are made to existing laws concerning the sharing of receipts from Federal lands or "in lieu" assistance, a comprehensive study will have to be made to assure that a meaningful and equitable approach to this issue is taken.

In their attached enrolled bill letters, both Interior and Agriculture strongly recommend disapproval as they reiterate the concerns which they had raised in their reports to the Congress. The two departments also cite the two recent enactments which provide for (1) energy impact assistance to the coastal States and (2) an increased share of mineral leasing receipts to all States as further reason why a comprehensive study of this issue should be undertaken before "in lieu" assistance or any other change in the law is considered.

Arguments for Approval

-- Activities on Federal lands require local governments to provide services such as law enforcement and educational services;

-- Some States (such as Colorado and Wyoming) do not return their portion of shared revenues from the Federal lands to the counties and townships most affected;

-- The Federal Government already recognizes the impact of Federal lands on State and local governments and shares with them revenues derived

-- Once the principle of in lieu payments is in law on this scale, there will be unrelenting pressure for incremental increases in the amount paid out;

-- State and local governments obtain substantial direct and indirect benefits from Federal land-related programs, e.g., National Forests and Parks;

-- State and local governments can tax possessory interests in Federal land (e.g., mineral severance taxes, and taxes on commercial leases on Federal lands) as a source of revenue;

-- The Federal Government already compensates State and local governments for Federal lands through sharing of revenues from sales of Federal resources, impacted school aid program, special highway aid programs, etc.;

-- Federal aid to State and local government from all domestic assistance programs as a percentage of general State and local revenue has grown from 10 percent in 1955 to 23 percent in 1977;

-- Federal aid to State and local governments has grown from less than $15 billion in 1966 to nearly $60 billion in 1976;

-- Many State and local governments strongly support Federal land acquisition for parks. Thus, the argument that Federal Government should compensate for taking land off of tax rolls is weak;

-- The bill may result in gross inequities because of an arbitrary formula for payments;

-- Meaningful and equitable improvements in the current system require comprehensive studies not yet undertaken;

-- To the extent that States do not pass shared revenues from Federal lands to local government, corrective action lies with State legislatures

rather than a Federal statute which calls for additional payments; and,

-- The bill heavily benefits about 15 Western States which are all (except for California) sparsely populated. Northeastern States are strongly protesting that they are not getting a fair share of Federal expenditures.

Conclusion

We believe the arguments for disapproval are decisively the stronger, and accordingly, we join Interior and Agriculture in recommending disapproval. We have prepared a draft Memorandum of Disapproval as an alternative to those prepared by Interior and Agriculture which incorporates most of the substantive points made by the two agencies.

James T. Lynn
Director

Enclosures

MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 9719, a bill "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

This bill would provide for annual payments by the Secretary of the Interior to units of local government within whose boundaries certain Federal lands are located. The bill establishes a formula for determining such payments which would be approximately $117 million in fiscal year 1977. The Federal lands upon which the payments would be based are those in the National Park System, the National Forest System, lands administered by the Bureau of Land Management, and lands under the jurisdiction of the Bureau of Reclamation and the U.S. Army Corps of Engineers.

It is important to remember that these lands are located primarily in the Western States and that most of these lands were in Federal ownership before the Western States were created. Such lands were never in private or State ownership and they have not been subject to State or local taxes. It is also important to remember that Federal aid to State and local government from all domestic assistance programs constitutes 23 percent or nearly $60 billion of the general revenues of these jurisdictions.

I recognize, as did the Public Land Law Review Commission, that the present systems used to share receipts from Federal lands are not uniform and have other shortcomings. I support equitable payments to State and local governments that recognize both local services which benefit Federal lands and any adverse impacts of Federal lands on local governments. In this regard, I fully supported the recent increase in the States' share of Federal mineral leasing revenues because it justifiably provided for assistance to communities affected by the development of federally-owned minerals.

However, in my judgment, meaningful and equitable improvements will require comprehensive studies and actions to assure that changes which are beneficial to some State and local governments do not create even more serious inequities for other State and local governments or for the Federal Government. Any equitable approach must recognize and take into account both the tangible and intangible benefits that State and local governments receive from Federal lands within their boundaries. No such comprehensive analysis has been done and thus, the payment formula proposed by H.R. 9719 is arbitrary and bears no relationship to whatever impact Federal ownership of lands may have on local jurisdictions.

At present, there are more than a dozen provisions of law which provide for either the sharing of receipts from Federal lands or for Federal payments to States

and local governments affected by certain Federal land management programs. In my judgment, H.R. 9719 would increase, rather than reduce, the inequities and complexities that characterize the present systems used to share Federal lands receipts with State and local governments.

Under this legislation, some counties could gain windfalls while others might be underpaid although their need for financial assistance could be more acute. The payment formula does not calculate actual tax revenues lost by the Federal holding; nor does it account for the benefits gained by Federal ownership, which can be of considerable benefit to a community.

As I have indicated above, any solution to the problems of counties caused by Federal land ownership must take into account many complex considerations, including the interests of the general taxpayer. H.R. 9719 does not do this.

Accordingly, I am not able to approve the bill.

THE WHITE HOUSE

October , 1976

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 7 - 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on the enrolled bill H.R. 9719, "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

We recommend that the President not approve this enrolled bill.

Under section 1 of the enrolled bill, the Secretary of the Interior is directed to make annual payments in lieu of taxes to each unit of local government in which there are certain Federally-owned lands. The amount of each such payment to each county is to be computed by a formula under section 2. Payment to the county shall be equal to the greater amount arrived at under one of two alternatives: (A) multiply the number of Federal acres in the unit of local government by 75 cents, but not to exceed a limitation based on population, and then subtract the amount of revenue payments received by the local government under any of the Federal statutes listed in section 4 of the bill; or (B) multiply the number of Federal acres by 10 cents, subject to the limitation for population.

Section 3 provides for an additional payment by the Secretary of one percent of the fair market value of lands added to the National Park Service and Wilderness Preservation Systems. This payment would apply prospectively for the first five years following acquisition of the lands, and for the first five years after enactment of H.R. 9719 for lands acquired prior to enactment but after December 31, 1970 (or October 2, 1968 in the case of Redwood National Park).

Entitlement lands under H.R. 9719 include those: in the National Park System; the Wilderness Preservation System (excluding U.S. Fish and Wildlife Service lands); the National Forest System; lands administered by the Bureau of Land Management; lands dedicated to the use of water resource development projects in the U.S.; and dredge disposal areas under the jurisdiction of the U.S. Army's Corps of Engineers.

H.R. 9719 would exclude from payments those lands which were owned and administered by a State or local government and exempt from the payment of real estate taxes at the time title to such lands was conveyed to the United States.

Estimates indicate that section 1 first year payments under H.R. 9719 could be approximately $106 million. Under the additional payment formula provided by section 3 of H.R. 9719, one percent of total land acquisition costs for the National Park Service, including wilderness areas, is estimated at approximately $9.7 million or $48.5 million over five years.

While we recognize that the present systems used to share receipts from Federal lands are not uniform, may be inequitable, and have other shortcomings, we believe that before any meaningful and equitable improvements can be made in such present systems, a comprehensive study would have to be made to assure that changes which are beneficial to some State and local governments do not create even more serious inequities for other State and local governments or for the Federal government. At the present time, no adequate comprehensive study has been completed on this highly complex issue and no useful recommendations or consideration of alternatives have been made.

The potential ramifications of H.R. 9719 are very broad. Gross inequities could result from using an arbitrary formula of subsidies totally unrelated to problems of the counties entitled to receive these funds. The possibility exists that under this bill some counties would gain windfalls, and other counties might be underpaid where the need may be more acute to have financial assistance. Among the States, principal beneficiaries of tax moneys collected from all the people of the United States for the benefit of all citizens will be Alaska, Arizona, California, Idaho, Colorado, Montana, Nevada, Utah, Wyoming, and New Mexico.

Any figure used for calculation of payment to a unit of local government is arbitrary unless based upon a procedure that calculates not only the tax revenue lost by the Federal holding, but the benefits gained by Federal ownership, which can be of considerable value to a community. We are not aware of any comprehensive analysis or rationale that produces a 75 cent or 10 cent payment based on acreage, or a regulation of payments by a sliding scale based on population.

At present, there are many provisions of law which provide for either the sharing of receipts generated from Federal lands or for Federal payments to States and local governments affected by certain

Federal land management programs. Two important changes have recently been made in these payments. The Coastal Zone Management Act Amendments of 1976 (90 Stat. 1013), provides for significant Federal assistance to those State and local governments impacted by energy development in coastal regions. The Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1083), increased the State share of public domain mineral leasing receipts from 37-1/2 percent to 50 percent, and from 90% to 100% for Alaska.

In addition, there is existing law which provides for in-lieu payments to States for lands acquired by the Federal government. For example, section 2 of the Act of September 30, 1950, as amended (20 U.S.C. 236, 237) provides for payments by the Department of Health, Education and Welfare to local educational agencies for Federal lands acquired in their school districts since 1938. During our consideration of the impact of these two bills, this program was one which we identified. There may be more.

There are also many programs of Federal grants-in-aid or direct Federal assistance to local governments for community development and land use, and for commercial, housing and environmental development, available to States and localities from, among others, HUD, HEW, EPA and the Departments of Commerce and Agriculture. No analysis has been conducted as to what extent payments under these two bills would be used by counties for the same purposes as existing Federal assistance is now being used and would thus over lap.

H.R. 9719 would result in complex problems of administration. For example, the Secretary of the Interior would be required to make payments for lands administered by the U.S. Forest Service and Army Corps of Engineers, which would greatly increase the complexity of administration.

Under most of the Acts listed in section 4 there is nothing that requires a State to redistribute moneys received under those Acts. Therefore, the State could retain those funds and the counties would then be entitled to the full 75 cents an acre subject only to population limitation.

Further, for a period of five years, many local governments will receive a dual payment under both sections 1 and 3 for newly acquired park service lands. We see no justification for this double payment.

In our judgment, the enrolled bill represents an arbitrary solution that would not mitigate any inequities or complexities in the present systems used to share Federal lands receipts with State and local governments.

Sincerely yours,

Assistant Secretary of the Interior

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C.

MEMORANDUM OF DISAPPROVAL

I have withheld my approval of H.R. 9719, a bill "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

This bill provides for annual payments by the Secretary of the Interior to units of local government within whose boundaries certain Federal lands are located. The bill establishes a formula for determining such payments. The Federal lands upon which the payments would be based are those in the National Park System, the wilderness Preservation System, the National Forest System, lands administered by the Bureau of Land Management, and lands under the jurisdiction of the Bureau of Reclamation and the U.S. Army Corps of Engineers.

The Administration recognizes, as did the Public Land Law Review Commission, that the present systems used to share receipts from Federal lands are not uniform, may be inequitable and have other shortcomings. However, before any meaningful and equitable improvements can be made in these systems, a comprehensive analysis is needed to assure that any changes will not create additional or greater inequities. No such comprehensive analysis has been done and thus, the payment formula proposed by H.R. 9719 is arbitrary and bears no relationship to whatever impact Federal ownership of lands may have on local jurisdictions.

H.R. 9719 may well exacerbate the inequities it seeks to remedy. Under this legislation, some counties could gain windfalls while others might be underpaid although the need for financial assistance might be more acute. The payment formula does not calculate actual tax revenues lost by the Federal holding nor does it account for the benefits gained by Federal ownership, which can be of considerable benefit to a community.

At present there are many provisions of law which provide for either the sharing of receipts generated from Federal lands or for Federal payments to State and local governments affected by certain Federal land management programs. Important changes have been recently made in some of these payments providing for substantial Federal assistance. Further, there are some existing provisions of law for in-lieu payments to States for lands acquired by the Federal government.

Any solution to the problems of counties caused by Federal land ownership must take into account all these considerations. H.R. 9719 does not do so. Accordingly, I feel that approval of H.R. 9719 would not be desirable.

THE WHITE HOUSE

October 1976

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

Honorable James T. Lynn
Director, Office of Management
and Budget

Dear Mr. Lynn:

As your office requested, here is our report on H.R. 9719, an enrolled enactment "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

The Department of Agriculture recommends that the President not approve the enactment.

H.R. 9719 would direct the Secretary of the Interior to make certain payments to units of local government having Federal "entitlement lands" within their jurisdictions. All land within the National Forest System would be designated as entitlement land. The payments would be based upon a formula which takes into account Federal acreage and population; they could be used for any governmental purpose; and they would be in addition to other payments made under existing law. H.R. 9719 would authorize the appropriation of such sums as might be needed to carry out its provisions.

The Department of Agriculture recognizes, as did the Public Land Law Review Commission, that the present systems used to share receipts from Federal lands are not uniform and have other shortcomings. We support equitable payments to State and local governments that recognize both local services which benefit Federal lands and any adverse impacts of Federal lands on local governments. However, in our judgment, meaningful and equitable improvements will require comprehensive studies and actions to assure that changes which are beneficial to some State and local governments do not create even more serious inequities for other State and local governments or for the Federal Government. Any equitable approach must recognize and take into account both the tangible and intangible benefits that State and local governments receive from Federal lands within their boundaries.

On November 14, 1975, the Forest Service entered into an agreement with the Advisory Commission on Intergovernmental Relations for an 18-month study of payments to State and local governments from National Forest System receipts. The Commission was established by the Act of September 24, 1959 (73 Stat. 703, as amended; 42 U.S.C. 4271), and its

responsibilities include making studies and investigations necessary or desirable to recommend the most desirable allocation of revenues among the several levels of government. We recognize that a study of Federal payments to States dealing with only the National Forest System should probably be supplemented by studies dealing with other Federal lands and real property.

At present, there are more than a dozen provisions of law which provide for either the sharing of receipts from Federal lands or for Federal payments to State and local governments affected by certain Federal land management programs. Two important changes in these payments have been made recently. The Coastal Zone Management Act Amendments of 1976 (90 Stat. 1013), provide for significant Federal assistance to those State and local governments impacted by energy development in coastal regions. The Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1083), effectively increased the State share of public domain mineral leasing receipts from 37-1/2 percent to 50 percent.

If the President approves S. 3091 ("The National Forest Management Act of 1976"), payments under the Acts of May 23, 1908 and section 13 of the Act of March 1, 1911 (35 Stat. 260, 36 Stat. 963, as amended; 16 U.S.C. 500) will be substantially increased, because collections under the Act of June 9, 1930 (46 Stat. 527, 16 U.S.C. 576-576b) and amounts earned or allowed timber purchasers for road construction within the National Forests will be included in the base from which the so-called 25 percent payments are made.

In our judgment, H.R. 9719 represents an arbitrary, piecemeal approach that would increase, rather than reduce, the inequities and complexities that characterize the present systems used to share Federal land receipts with State and local governments. We have several concerns about the practical effects of this enactment which are expressed in the enclosed supplemental statement.

A draft Presidential message is enclosed for your consideration.

Sincerely,

John A. Knebel
Acting Secretary

Enclosures

USDA SUPPLEMENTAL STATEMENT
ON THE ENROLLED ENACTMENT H.R. 9719

H.R. 9719 would direct the Secretary of the Interior to make payments to units of local government in which Federal "entitlement lands" are located. Eligible local governments would receive the greater amount of (1) 75 cents for each acre of entitlement land less certain other Federal payments during the preceding year, or (2) 10 cents for each acre of entitlement land. The payments would be limited by a sliding scale ranging from $50 per capita for units of local government with a population of 5,000 or less to $20 per capita for units of local government with a population of 50,000 or more. The maximum annual payment to any unit of local government would be $1 million, since no unit would be credited with a population of more than 50,000. In addition, the Federal Government would annually pay 1 percent of the fair market value of lands acquired for national parks and wildernesses during each of the 5 years following acquisition.

All lands within the National Forest System would be entitlement lands under H.R. 9719, and we have the following concerns about the enactment.

One of our overall concerns is the arbitrary nature of the proposed payment formula. We are not aware of any comprehensive analysis or rationale that leads to a 75-cent or 10-cent payment based on acreage. The regulation of payments via a $50-to-$20 per capita sliding scale also lacks a visible basis.

The proposed payment formula would accentuate the payment differences that now exist among units of local government that have National Forest System lands within their jurisdictions. Subject to per capita limitations, the formula would have the following effects. Each eligible unit of local government that received a total of 64 cents or less per entitlement acre from certain specified Federal land payments during the preceding fiscal year would be compensated to the extent necessary to bring its annual payment up to 75 cents per entitlement acre. Each eligible unit of local government that received a total of 65 cents or more per entitlement acre from certain specified Federal land payments during the preceding fiscal year would receive an additional 10 cents per entitlement acre. Thus, every unit of eligible local government would be assured of annually receiving at least 75 cents per entitlement acre, while those receiving more than 75 cents from other Federal land payment sources would annually receive an extra 10 cents per entitlement acre.

Under the 75-cent alternative in section 2(a)(1), the payment would be reduced "by the aggregate amount of payments, if any, received by such unit of local government during the preceding fiscal year under all of the provisions specified in section 4." One of the specified provisions is

the Act of May 23, 1908 (35 Stat. 251; 16 U.S.C. 500), which provides that 25 percent of all moneys received during any fiscal year from each National Forest shall be paid to the State in which the National Forest is located "to be expended as the State legislature may prescribe for the benefit of (emphasis added) the public schools and public roads of the county or counties in which the national forest is situated." Thus, States are not required to make direct cash payments of shared National Forest revenues to the counties. If the funds expended "for the benefit of" local governments were not properly reported and deducted under section 2, some unwarranted overpayments could result under H.R. 9719.

We understand the 10-cent alternative was included to provide at least some additional payment to each eligible unit of local government that could be used for any governmental purpose. Most existing laws requiring the sharing of Federal land revenues also require that State and local governments use the shared revenues for schools and roads. If the Congress feels these use requirements are too stringent, we believe the existing laws should be examined rather than create a new payment that is partially designed to avoid the use requirements attached to other payments.

Mutually beneficial land exchanges among Federal, State, and local governments are based upon equal value rather than equal acreage. Since the payments under H.R. 9719 would be based upon entitlement acreage, the legislation would discourage exchanges which would reduce entitlement acreage.

Federal land exchanges with State and local governments would be further confounded by section 6(a)(4) of H.R. 9719. That section would exclude from the entitlement land category any lands that were owned and/or administered by a State or local unit of government and exempt from the payment of real estate taxes at the time title to such lands was conveyed to the United States. Although we agree with the general principle that the Federal Government should not make in-lieu-of-tax payments for lands that were not being taxed at the time they were acquired, the application of section 6(a)(4) would create many questions and problems. For example, some units of local government receive State in-lieu-of-tax payments for State lands within their jurisdictions. It is not clear whether these payments would be considered as "real estate taxes" under section 6(a)(4). If they were not treated as real estate taxes, any State lands which became Federal lands through exchange would not be included in the payment calculation under section 2 of H.R. 9719. Units of local government would be understandably reluctant to participate in or agree to land exchanges that would reduce local revenues.

Section 6(a)(4) would also create an enormous and expensive administrative task. Before any payments could be made, each Federal land management agency would be required to search all of its land records to eliminate

any lands from the entitlement land category that were acquired from State and local governments and exempt from real estate taxes.

We recognize that a tax shock can result for units of local government whenever the Congress creates a large new Federal area. We believe there are special cases in which the Federal Government should make reasonable temporary payments that take into account the extent of the Federal impact and local needs. However, we question the advisability of establishing an across-the-board payment system like the one in section 3 of H.R. 9719. Of 12.7 million acres of National Forest wildernesses, about 509,000 acres (4 percent) are in private or other non-Federal ownership. Only 4,600 acres have been acquired within National Forest wildernesses since June 30, 1970. Although the overall Federal finanical impact of section 3 would be relatively small if applied to the National Forest System, it would set a serious precedent that could be applied to all Federal land purchases within the National Forest System.

There appears to be a lack of consistency between section 3(a) and section 6(a)(4) of H.R. 9719. The special additional payment under section 3(a) would apply to any Federally acquired land, regardless of previous ownership, if that land had been subject to local real property taxes for 5 years before acquisition. Meanwhile, the payment under section 2 would not apply to State or local government lands that were exempt from real estate taxes at the time of Federal acquisition.

Enactment of H.R. 9719 would substantially reduce Federal revenues from the National Forest System and thus contribute to the Federal deficit. If this legislation had been enacted in 1975, payments to units of local governments, as a result of entitlement lands within the National Forest System, would have increased by $60 million (from $89 million to about $149 million). The amount of the additional Federal payments under H.R. 9719 would fluctuate annually, increasing during the year following a year when Federal land receipts decreased, and decreasing during the year following a year when Federal land receipts increased.

(DRAFT STATEMENT OF THE PRESIDENT REGARDING H.R. 9719)

I am withholding my approval of H.R. 9719 "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

I recognize, as did the Public Land Law Review Commission, that the present systems used to share receipts from Federal lands are not uniform and have other shortcomings. I support equitable payments to State and local governments that recognize both local services which benefit Federal lands and any adverse impacts of Federal lands on local governments. However, in my judgment, meaningful and equitable improvements will require comprehensive studies and actions to assure that changes which are beneficial to some State and local governments do not create even more serious inequities for other State and local governments or for the Federal Government. Any equitable approach must recognize and take into account both the tangible and intangible benefits that State and local governments receive from Federal lands within their boundaries.

At present, there are more than a dozen provisions of law which provide for either the sharing of receipts from Federal lands or for Federal payments to States and local governments affected by certain Federal land management programs. In my judgment, H.R. 9719 would increase, rather than reduce, the inequities and complexities that characterize the present systems used to share Federal lands receipts with State and local governments.

H.R. 9719 would direct the Secretary of the Interior to make payments to units of local government in which Federal "entitlement lands" are located. The payments would be based upon a formula which takes into account Federal acreage and population; they could be used for any governmental purpose; and they would be in addition to other payments made under existing law.

Every unit of eligible local government would be assured of annually receiving at least 75 cents per entitlement acre, while those receiving more than 75 cents from other Federal land payment sources would annually receive an extra 10 cents per entitlement acre. In addition, the Federal Government would annually pay 1 percent of the fair market value of lands acquired for national parks and wildernesses during each of the 5 years following acquisition.

I am not aware of any comprehensive analysis or rationale that leads to a 75-cent or 10-cent payment based on acreage. The regulation of payments via a $50-to-$20 per capita sliding scale also lacks a visible basis.

I understand the Congress included the 10-cent payment to provide at least some additional payment to each eligible unit of local government that could be used for any governmental purpose. Most existing laws requiring the sharing of Federal land revenues also require that States and local governments use the shared revenues for schools and roads. If the Congress feels these use requirements are too stringent, I believe the existing payment laws should be examined rather than create a new payment designed to avoid the use requirements attached to other payments.

Mutually beneficial land exchanges among Federal, State, and local governments are based upon equal value rather than equal acreage. Since the payments under H.R. 9719 would be based upon entitlement acreage, the legislation would discourage exchanges which would reduce entitlement acreage.

I recognize that a tax shock can result for units of local government whenever the Congress creates a large new Federal area, and I believe there are special cases in which the Federal Government should make reasonable temporary payments that take into account the extent of the Federal impact and local needs. However, I question the advisability of establishing an across-the-board payment system like the one in section 3 of H.R. 9719, because it would set a serious precedent that could be applied to all Federal land purchases, regardless of their local significance or impact.

Enactment of H.R. 9719 would substantially reduce Federal revenues from the public lands and thus contribute to the Federal deficit. If this legislation had been enacted in 1975, payments to units of local government, as a result of entitlement lands, would have increased by more than $100 million. The amount of the additional Federal payment under H.R. 9719 would fluctuate annually, increasing during the year following a year when Federal land receipts decreased, and decreasing during the year following a year when Federal land receipts increased.

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

October 7, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 9719: "To provide certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

The bill provides for payments to local governments based upon the acreage of certain public lands as defined in Section 6 of the bill that lie within their boundaries. The amount shall be 75 cents per acre reduced by the aggregate amount received during the previous fiscal year under certain statutes specified by Section 4, but not less than 10 cents per acre. The total payment under the acreage computation is limited by a population factor found in Section 2(b).

The laws found in Section 4 allot to the states certain percentages of funds received by the Federal Government for various uses of public lands. These acts include the "Mineral Lands Leasing Act," "Federal Power Act", "Taylor Grazing Act," etc. Even though the monies received under some of these acts may only be used for public schools or roads, the monies received under H.R. 9719, "may be used by such unit for any governmental purpose."

The Department of Justice perceives no legal problems with H.R. 9719 and defers to those departments and agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 6 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

This report responds to your request for the views of this Department on the enrolled enactment of H.R. 9719, "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

The enrolled bill would direct the Secretary of Interior for fiscal years beginning on and after October 1, 1976, to make payments to units of local government in which certain lands owned by the United States are located. The payments would amount to between 10 cents and 75 cents per acre depending on the amounts of other Federal payments received by the unit of local government and the population of that unit.

In a November 11, 1975 report to the House Committee on Interior and Insular Affairs, this Department opposed H.R. 9719 as introduced because of the substantial cost involved and because there was no demonstration of net benefits. H.R. 9719 as introduced would have provided for a flat 75 cents per acre payment from the Federal Government and thus would have been more costly than the enrolled enactment. The House report on the measure stated that the Administration witnesses from the U.S. Forest Service and Interior opposed enactment of the bill as introduced, but endorsed the concept.

In the circumstances, the Department has no recommendation to make concerning the enrolled enactment.

Sincerely yours,

General Counsel

Richard R. Albrecht

DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

8 OCT 1976

Honorable James T. Lynn

Director, Office of Management and Budget

Dear Mr. Lynn:

The Secretary of Defense has delegated responsibility to the Department of the Army for reporting the views of the Department of Defense on enrolled enactment H. R. 9719, 94th Congress, "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

The Department of the Army, on behalf of the Department of Defense, recommends approval of the enrolled enactment.

Section 1 of the Act provides for the payment by the Secretary of the Interior on a fiscal year basis beginning on or after October 1, 1976 to each unit of local government in which entitlement lands as defined in section 6 are located. Such payment may be used by such unit for any governmental purpose. The amount of such payments shall be computed according to the formula set forth in section 2 of the Act, except that in the case of any payment under the Acts specified in section 4 of this Act which is received by a State, the Governor, or his delegate, shall submit to the Secretary a statement respecting the amount of such payment which is transferred to each unit of local government within the State.

Section 3 of the Act provides that in the case of any land or interest therein acquired by the United States for the Redwood National Park pursuant to the Act of October 2, 1968 (82 Stat. 931) or acquired for addition to the National Park System or National Forest Wilderness Areas after December 31, 1970 which was subject to local real property taxes within the five years preceeding such acquisition, the Secretary is authorized and directed to make payments to counties within the jurisdiction of which such lands or interest therein are located in addition to payments under section 1. Section 3 further provides the method by which such payment should be made.

Section 4 of the Act lists those Acts under which the Governor, or his delegate, shall submit to the Secretary a statement respecting the amount of such payment which is transferred to each unit of local government within the State.

Section 5 of the Act provides that no unit of local government which receives any payment with respect to any land under the Act of August 28, 1937 (50 Stat. 875) or the Act of May 24, 1939 (53 Stat. 753) during any fiscal year shall be eligible to receive any payment under this Act for such fiscal year with respect to such land. Section 5 further provides that if the total payment by the Secretary to any county or unit of local government under the Act would be less than 100 dollars, such payment shall not be made.

Section 6 of the Act defines the term "entitlement lands" as lands owned by the United States (1) within the National Park System, the National Forest System, including wilderness areas within each, or any combination thereof, but not limited to lands described in section 2 of the Act and referred to in paragraph (7) of section 4 of this Act (16 U.S.C. 577d) and the first section of the Act referred to in paragraph (8) of this Act (16 U.S.C. 577d-1); (2) administered by the Secretary of the Interior through the Bureau of Land Management; and (3) dedicated to the use of water resource development projects of the United States. This section further provides that no payments shall be made to any unit of local government for any lands otherwise entitled to receive payments pursuant to subsection (a) of this section, if such lands were owned and/or administered by a State or local unit of government and exempt from the payment of real estate taxes at the time title to such lands is conveyed to the United States; or dredge disposal areas owned by the United States under the jurisdiction of the Corps of Engineers. This section further defines "Secretary" to mean the Secretary of the Interior and "unit of the local government" to mean a county, parish, township, municipality, borough existing in the State of Alaska on the date of enactment of this Act, or other unit of government below the State which is a unit of general government as determined by the Secretary (on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also includes the Commonwealth of Puerto Rico, Guam and the Virgin Islands.

Section 7 of the Act authorizes the appropriation of funds for carrying out the provisions of the Act as may be necessary: provided, that notwithstanding any other provision of the Act no funds may be made available except to the extent provided in advance in appropriation acts.

It is noted that Section 206 of the Rivers and Harbors Act of September 3, 1956 (68 Stat. 1248-1266) which provides that 75 percentum of moneys received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United

States for flood control, navigation, and allied purposes, including the development of hydroelectric power, which money is returned to the States for the benefit of public schools and public roads, and for other purposes, of the county or counties in which such property is situated, is not included in the Acts listed in section 4 of this Act.

It is also noted that implementing the provisions of this Act would result in complex problems of administration in determining which properties comprising water resource development projects of the Department of the Army are located in the local governmental unit entitled to payment under this Act.

The fiscal effects of this legislation are not known to the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

Sincerely,

Charles R. Ford

Charles R. Ford
Deputy Asst. Secretary of the Army
(Civil Works)

from Federal lands. Thus, the question of compensation is academic and the issue really becomes how much should be paid;

-- The current system of payments through shared revenues is not uniform and may be inequitable. The bill is aimed at bringing uniformity of payments to local governments;

-- Some counties may indeed have financing problems that would be alleviated by this bill; and,

-- Such payments would be popular with National Association of Counties and with most general purpose governments in 15 Western States, and their congressional delegations.

If the philosophy is accepted that the Federal Government should make payments in lieu of taxes, the bill is not too bad in that it: (1) provides for both a floor and a ceiling for each recipient government; (2) deducts from the in lieu payment that portion of the shared Federal revenue actually received by the local unit of government under the revenue sharing programs (but allows $.10 per acre in any event, subject to a ceiling relating to population); and (3) specifically limits the kind of Federal lands subject to payments in lieu of taxes.

Arguments against Approval

-- The great bulk of Federal lands are public domain lands and the Federal Government has no obligation to compensate State and local governments because these lands were never on the tax roles;

-- Corps of Engineers and Bureau of Reclamation reservoirs and dredge disposal areas are subject to payments in lieu and generate significant local economic development. Indeed, the dredge disposal areas are part of the required local contribution to the Federal projects;

-- States which now share the Federal land revenues with their affected counties could stop doing so, thus reducing the offsets and increasing the total Federal funds flowing into the State;

THE WHITE HOUSE

WASHINGTON

October 15, 1976

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE

Jack, attached is enrolled bill on H. R. 9719 "Payments in Lieu of Taxes". Please note that this has not as yet been staffed...I got early copy from Kranowitz/Hagerty

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

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 9719 - Payments in lieu of taxes
Sponsors - Rep. Evans (D) Colorado and 8 others

Last Day for Action

October 20, 1976 - Wednesday

Purpose

Provides for payments to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of each jurisdiction.

Agency Recommendations

Office of Management and Budget	Disapproval (Memorandum of Disapproval attached)
Department of the Interior	Disapproval (Memorandum of Disapproval attached)
Department of Agriculture	Disapproval (Memorandum of Disapproval attached)
Department of Justice	Defers to agencies more directly concerned
Department of the Treasury	No recommendation
Department of Defense	Approval

Background

Around the turn of the century, it became evident that much of the Western Federal lands would not pass into private hands because they were either: (1) withdrawn from permanent Federal use such as National Forests or Parks; (2) not selected by States to be State-owned public lands; or (3) not selected for private economic development and therefore not patented to private owners under mineral or homestead laws. This situation lead to

the first broad consideration of the issue of providing payments in lieu of taxes for non-Federal units of government.

The initial resolution of the issue in 1907 and 1920 was passage of legislation that authorized sharing of revenues derived from the public lands with the States (a percentage of stumpage fees, mineral bonuses, and royalties). Subsequent legislation establishing Wildlife Refuges and some Parks has authorized shared revenues or temporary payments in lieu of taxes. Though the issue received some attention in professional intergovernmental relations circles, it was largely dormant as a legislative issue until 1970.

In 1970, the Public Land Law Review Commission (PLLRC) recommended that the Federal Government make payments in lieu of taxes on most Federal land. This was one of about 140 recommendations on changing the public land laws made by the PLLRC, though little of their work has received legislative attention since. Their primary arguments were the following:

-- counties, townships, and cities derive a substantial share of their income through taxes on land;

-- the Federal Government owns substantial amounts of land and the PLLRC recommended that most of these lands remain in Federal control permanently;

-- State and local governments cannot levy taxes on Federal property, and are therefore deprived of income;

-- increased mobility has brought more visitors to the Federal lands, and this requires greater than anticipated local government expenditures; and,

-- activities on the Federal land generate a need for local government expenditures (fire and police protection, schools, etc.) that should be directly compensated for.

However, opponents of the payments in lieu concept have also articulated sound arguments in defense of their position, as noted below:

-- the greatest amount of Federal land in question was created from the Federal public domain or remains now in the Federal public domain in about 15 Western States;

-- this public domain existed before the Western States were created and was never in private hands or subject to taxation;

-- a payment in lieu, based on land acreage, has no intrinsic relationship either to local need or to equity among State or local governments in the vicinity of Federal lands; and,

-- local government need tends to be related to economic activity, and to the extent that Federal lands do not generate such activity, the need remains small; to the extent that Federal lands do generate economic activity, that activity creates a tax base that State and local governments can tap to meet their needs.

Since 1970, several factors have combined to push the issue on to the legislative forefront. First, the economic downturn in the last few years has put financial pressure on all levels of government. Second, the tremendous expansion in authorizations for the Federal acquisition of land for Parks, Refuges, and other areas has removed previously taxed lands from local rolls. Third, the thrust toward massive mining of Federal coal in the West threatened to impose sizeable infrastructure requirements on sparsely populated counties. And finally, the National Association of Counties has grown in strength. It has high priority on enactment of payment in lieu of taxes legislation and other forms of revenue sharing.

Description of the enrolled bill

H.R. 9719 represents the culmination of various

efforts over the course of the last several years to enact payments in lieu legislation. Briefly, the enrolled bill would provide for:

-- payments on a fiscal year basis to local governments having "entitlement" lands within their jurisdiction defined as lands within the National Park System; National Forest System; public domain lands administered by the Bureau of Land Management; and all lands dedicated to the use of water resource development projects and dredge disposal areas under the jurisdiction of the Corps of Engineers;

-- payments based on the greater of $0.10 per acre, or $0.75 per acre offset by the amount of revenue payments received by the locality under the Mineral Leasing Act, Federal Power Act, Taylor Grazing Act, Bankhead Jones Act, Mineral Leasing Act for Acquired Lands, and Materials Disposal Act. The total amount received, however, would be subject to a limitation varying directly with population; and,

-- payments to local governments of one percent of the fair market value of lands added to the National Park System and the National Wilderness Preservation System which were subject to local real property taxes within five years preceding their acquisition. The payment would apply prospectively for the first five years following land acquisition, although it would also apply to (1) lands acquired after December 31, 1970, and (2) lands acquired after October 2, 1968, in the Redwood National Park.

These payments could be used for any governmental purpose and would be in addition to other payments made under existing law such as General Revenue Sharing, block grants, categorical grants, project grants, or other assistance.

Under the above payment scheme, it is estimated that $115 to $120 million would be expended annually from Federal general revenues for the benefit of local governments.

Discussion

In reporting to the Congress, the Administration expressed strong opposition to H.R. 9719 on the grounds that the bill's payment formula has no apparent basis or rationale, but rather would be largely arbitrary and bear no relationship to any impact that Federal land ownership may have on local governments. In taking this position, the agencies agreed that the present systems used for sharing receipts from Federal lands are not uniform and have other shortcomings, but noted the Administration's belief that before any further changes are made to existing laws concerning the sharing of receipts from Federal lands or "in lieu" assistance, a comprehensive study will have to be made to assure that a meaningful and equitable approach to this issue is taken.

In their attached enrolled bill letters, both Interior and Agriculture strongly recommend disapproval as they reiterate the concerns which they had raised in their reports to the Congress. The two departments also cite the two recent enactments which provide for (1) energy impact assistance to the coastal States and (2) an increased share of mineral leasing receipts to all States as further reason why a comprehensive study of this issue should be undertaken before "in lieu" assistance or any other change in the law is considered.

Arguments for Approval

-- Activities on Federal lands require local governments to provide services such as law enforcement and educational services;

-- Some States (such as Colorado and Wyoming) do not return their portion of shared revenues from the Federal lands to the counties and townships most affected;

-- The Federal Government already recognizes the impact of Federal lands on State and local governments and shares with them revenues derived

from Federal lands. Thus, the question of compensation is academic and the issue really becomes how much should be paid;

-- The current system of payments through shared revenues is not uniform and may be inequitable. The bill is aimed at bringing uniformity of payments to local governments;

-- Some counties may indeed have financing problems that would be alleviated by this bill; and,

-- Such payments would be popular with National Association of Counties and with most general purpose governments in 15 Western States, and their congressional delegations.

If the philosophy is accepted that the Federal Government should make payments in lieu of taxes, the bill is not too bad in that it: (1) provides for both a floor and a ceiling for each recipient government; (2) deducts from the in lieu payment that portion of the shared Federal revenue actually received by the local unit of government under the revenue sharing programs; and (3) specifically limits the kind of Federal lands subject to payments in lieu of taxes.

Arguments against Approval

-- The great bulk of Federal lands are public domain lands and the Federal Government has no obligation to compensate State and local governments because these lands were never on the tax roles;

-- Corps of Engineers and Bureau of Reclamation reservoirs and dredge disposal areas are subject to payments in lieu and generate significant local economic development. Indeed, the dredge disposal areas are part of the required local contribution to the Federal projects;

-- States which now share the Federal land revenues with their affected counties could stop doing so, thus reducing the offsets and increasing the total Federal funds flowing into the State;

-- Once the principle of in lieu payments is in law on this scale, there will be unrelenting pressure for incremental increases in the amount paid out;

-- State and local governments obtain substantial direct and indirect benefits from Federal land-related programs, e.g., National Forests and Parks;

-- State and local governments can tax possessory interests in Federal land (e.g., mineral severance taxes, and taxes on commercial leases on Federal lands) as a source of revenue;

-- The Federal Government already compensates State and local governments for Federal lands through sharing of revenues from sales of Federal resources, impacted school aid program, special highway aid programs, etc.;

-- Federal aid to State and local government from all domestic assistance programs as a percentage of general State and local revenue has grown from 10 percent in 1955 to 23 percent in 1977;

-- Federal aid to State and local governments has grown from less than $15 billion in 1966 to nearly $60 billion in 1976;

-- Many State and local governments strongly support Federal land acquisition for parks. Thus, the argument that Federal Government should compensate for taking land off of tax rolls is weak;

-- The bill may result in gross inequities because of an arbitrary formula for payments;

-- Meaningful and equitable improvements in the current system require comprehensive studies not yet undertaken;

-- To the extent that States do not pass shared revenues from Federal lands to local government, corrective action lies with State legislatures

rather than a Federal statute which calls for additional payments; and,

-- The bill heavily benefits about 15 Western States which are all (except for California) sparsely populated.

Conclusion

We believe the arguments for disapproval are decisively the stronger, and accordingly, we join Interior and Agriculture in recommending disapproval. We have prepared a draft Memorandum of Disapproval as an alternative to those prepared by Interior and Agriculture which incorporates most of the substantive points made by the two agencies.

James T. Lynn
Director

Enclosure

MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 9719, a bill "To provide for certain payments to be made to local governments by the Secretary of the Interior based upon the amount of certain public lands within the boundaries of such locality."

This bill would provide for annual payments by the Secretary of the Interior to units of local government within whose boundaries certain Federal lands are located. The bill establishes a formula for determining such payments which would be approximately $117 million in fiscal year 1977. The Federal lands upon which the payments would be based are those in the National Park System, the National Forest System, lands administered by the Bureau of Land Management, and lands under the jurisdiction of the Bureau of Reclamation and the U.S. Army Corps of Engineers.

It is important to remember that these lands are located primarily in the Western States and that most of these lands were in Federal ownership before the Western States were created. Such lands were never in private or State ownership and they have not been subject to State or local taxes. It is also important to remember that Federal aid to State and local government from all domestic assistance programs constitutes 23 percent or nearly $60 billion of the general revenues of these jurisdictions.

I recognize, as did the Public Land Law Review Commission, that the present systems used to share receipts from Federal lands are not uniform and have other shortcomings. I support equitable payments to State and local governments that recognize both local services which benefit Federal lands and any adverse impacts of Federal lands on local governments. In this regard, I fully supported the recent increase in the States' share of Federal mineral leasing revenues because it justifiably provided for assistance to communities affected by the development of federally-owned minerals.

However, in my judgment, meaningful and equitable improvements will require comprehensive studies and actions to assure that changes which are beneficial to some State and local governments do not create even more serious inequities for other State and local governments or for the Federal Government. Any equitable approach must recognize and take into account both the tangible and intangible benefits that State and local governments receive from Federal lands within their boundaries. No such comprehensive analysis has been done and thus, the payment formula proposed by H.R. 9719 is arbitrary and bears no relationship to whatever impact Federal ownership of lands may have on local jurisdictions.

At present, there are more than a dozen provisions of law which provide for either the sharing of receipts from Federal lands or for Federal payments to States

and local governments affected by certain Federal land management programs. In my judgment, H.R. 9719 would increase, rather than reduce, the inequities and complexities that characterize the present systems used to share Federal lands receipts with State and local governments.

Under this legislation, some counties could gain windfalls while others might be underpaid although their need for financial assistance could be more acute. The payment formula does not calculate actual tax revenues lost by the Federal holding; nor does it account for the benefits gained by Federal ownership, which can be of considerable benefit to a community.

As I have indicated above, any solution to the problems of counties caused by Federal land ownership must take into account many complex considerations, including the interests of the general taxpayer. H.R. 9719 does not do this.

Accordingly, I am not able to approve the bill.

THE WHITE HOUSE

October , 1976

THE WHITE HOUSE

WASHINGTON

October 20, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JACK MARSH

SUBJECT: H.R.9719 - Payments in Lieu of Taxes

I have followed the Payment in Lieu of Taxes legislation, H.R.9719, and studied the enrolled bill. As you are aware, it has both advantages and disadvantages and, therefore, is a close call. However, I would recommend that you sign this bill for the following reasons:

1. It is a form of revenue sharing.

2. A trend toward State-sharing of Federal resources did develop in the last Congress, i.e., coal leasing act, etc.

3. Congressional support in both Houses is so overwhelming that I would predict early passage of similar legislation in the next Congress by margins so large that the bill cannot be vetoed.

4. In light of this overwhelming Congressional interest, which I think will result in inevitable legislation, I feel the Congressional mandate is so clear that a veto would only be a temporary frustration of Congressional intent.

October 20, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JACK MARSH

SUBJECT: H.R.9719 - Payments in Lieu of Taxes

I have followed the Payment in Lieu of Taxes legislation, H.R.9719, and studied the enrolled bill. As you are aware, it has both advantages and disadvantages and, therefore, is a close call. However, I would recommend that you sign this bill for the following reasons:

1. It is a form of revenue sharing.

2. A trend toward State-sharing of Federal resources did develop in the last Congress, i.e., coal leasing act, etc.

3. Congressional support in both Houses is so overwhelming that I would predict early passage of similar legislation in the next Congress by margins so large that the bill cannot be vetoed.

4. In light of this overwhelming Congressional interest, which I think will result in inevitable legislation, I feel the Congressional mandate is so clear that a veto would only be a temporary frustration of Congressional intent.

JOM/dl