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APPROVED
DEC 30 1974



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

DEC 23 1974

Posted in
Colorado
12/30
To Archive
1/2/75

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 939 - Land exchange authority,
Idaho
Sponsor - Sen. McClure (R) Idaho and Sen. Church
(D) Idaho

Last Day for Action

December 30, 1974 - Monday

Purpose

Amends the Admission Act for the State of Idaho to broaden the conditions under which certain public lands can be exchanged.

Agency Recommendations

Office of Management and Budget

Approval

Department of Agriculture

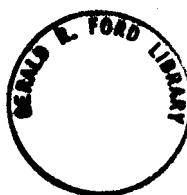
Approval

Department of the Interior

No objection (Informally)

Discussion

Under provisions of the Idaho Admission Act of 1890, the State received Federal land grants for educational purposes under the condition that such lands could be disposed of only by public sale with the proceeds dedicated to a permanent school fund. As amended, the 1890 Act further authorizes the lease of such lands for periods not to exceed 10 years, and in the case of an oil, gas, or other hydrocarbon lease, for as long thereafter as such product is produced.

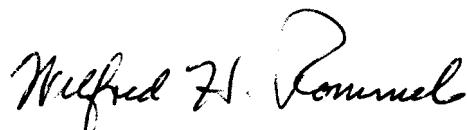


S. 939 would amend the Idaho Admission Act, as amended, to:

- a. allow the State to exchange such educational lands for lands of approximately equal value or, where the values are not approximately equal, for a payment of money as well;
- b. permit the completion of exchanges between the State and the Federal Government on which agreement has already been reached; and,
- c. stipulate that in the case of an oil, gas, other hydrocarbon, or geothermal resource and associated by-products lease, the period for the lease could be for as long as the product is produced in paying quantities or the lessee is, in good faith, conducting well drilling or construction operations.

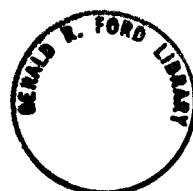
In its report on S. 939, the Senate Interior Committee explained the need for the bill as follows:

". . . Many restrictions placed on the use of lands granted to the States for educational purposes on or before passage of their statehood Acts are no longer appropriate . . . As the exchange authority would permit consolidation of State, Federal, and private ownerships for more efficient and economical management, it would not only benefit the State of Idaho but also individual landowners and the Federal Government."



Assistant Director for
Legislative Reference

Enclosures



ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: December 30

December 27, 1974

MEMORANDUM FOR

THE PRESIDENT

FROM:

KEN COLE

SUBJECT:

Enrolled Bill S. 939 - Land Exchange Authority, Idaho

Attached for your consideration is S. 939, sponsored by Senators McClure and Church, which would amend the Admission Act for the State of Idaho to permit that State to broaden the conditions under which certain public lands can be exchanged.

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

Phil Areeda and Max Friedersdorf both recommend approval.

RECOMMENDATION

That you sign S. 939 (Tab B)





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

December 19, 1974

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

Dear Mr. Ash:

In reply to the request of your office, the following report is submitted on the enrolled enactment S. 939, "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands, and for other purposes."

S. 939 would amend section 5 of the Act of July 3, 1890 (26 Stat. 215), the Admission Act for the State of Idaho. Section 5 now provides that Federal lands granted to the State for educational purposes can be disposed of by the State only at public sale. The amendment contained in S. 939 would permit the State to also exchange such lands.

The Department of Agriculture recommends that the President approve the enactment.

In Idaho, there are many tracts of State grant lands interspersed among National Forest lands. This situation does not facilitate efficient administration of either the State lands or the adjacent National Forest lands. For example, additional boundary lines must be maintained and rights-of-way must be negotiated to provide access to or through these tracts. In some cases the natural resources of isolated tracts cannot be effectively utilized or put under management because of the expense of building roads to get to them. Through land exchange, the State and the Forest Service could consolidate ownerships and as a result, conduct more efficient and effective land management.

In terms of potential activity, S. 939 will enable the State and the Forest Service to complete eight exchanges on which agreement has been reached, involving 14,279 acres of State lands and 13,576 acres of National Forest lands. It would also open the way for the consideration of exchange proposals involving 31,000 acres of State lands scattered throughout the National Forests.

S. 939 will also ratify five exchanges between the State and the Forest Service that were completed before it was discovered that the State did not have the requisite exchange authority.

Sincerely,

Phil Campbell
J. Phil Campbell
Under Secretary

OFFICE OF THE SECRETARY
AND BUDGET

74 DEC 19 AM 11:42

RECEIVED



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

ADVANCE

Dear Mr. Ash:

This responds to your request for the views of this Department on S. 939, an enrolled bill "To amend the admission Act for the State of Idaho to permit that State to exchange public lands, and for other purposes".

We have no objection to Presidential approval of this enrolled bill.

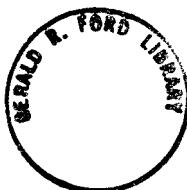
S. 939 would amend section 5 of the Admission Act for the State of Idaho to permit the State to exchange lands granted to it for educational purposes for other lands, public or private, of approximately equal value or for lands of differing value, if the difference is equalized through exchange of funds. The bill would also add exploration for, and production of, geothermal resources, and associated by-products, to the limited number of purposes for which the educational lands may be leased by the State for more than 10 years.

In our report on S. 939, we stated that we had no objection to the bill, if amended, to provide that there would be no Federal restrictions on land use, which although, now often interfere with sound land management by the State. However, the Senate did not so change the bill, but elected to add the geothermal use to those previously authorized. Nevertheless, since the bill essentially provides greater flexibility to the State in that area, which is the thrust of our original recommendation, as well as generally permitting the State to consolidate State, Federal and private ownership for more efficient and economical ownership, benefiting all parties, we recommend that the President approve the enrolled bill.

Sincerely yours,

Ken M. Brown
Legislative Counsel

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





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 24 1974

Dear Mr. Ash:

This responds to your request for the views of this Department on S. 939, an enrolled bill "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands, and for other purposes".

We recommend the President approve the enrolled bill.

S. 939 would amend section 5 of the Admission Act for the State of Idaho to permit the State to exchange lands granted to it for educational purposes for other lands, public or private, of approximately equal value or for lands of differing value, if the difference is equalized through exchange of funds. The bill would also add exploration for, and production of, geothermal resources, and associated by-products, to the limited number of purposes for which the educational lands may be leased by the State for more than 10 years.

In our report on S. 939, we stated that we had no objection to the bill, if amended, to provide that there would be no Federal restrictions on land use, which although once appropriate, now often interfere with sound land management by the State. However, the Congress did not so change the bill, but elected to add the geothermal use to those previously authorized. Nevertheless, since the bill essentially provides greater flexibility to the State in that area, which is the thrust of our original recommendation, as well as generally permitting the State to consolidate State, Federal, and private ownership for more efficient and economical ownership, benefiting all parties, we recommend that the President approve the enrolled bill.

Sincerely yours,


Jack R. Horton
Assistant Secretary of the Interior

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

OFFICE OF MANAGEMENT
AND BUDGET

74 DEC 24 AM 10:17

RECEIVED

THE WHITE HOUSE
WASHINGTON

December 26, 1974

MEMORANDUM FOR: WARREN HENDRIKS
FROM: *Verdunger* MAX L. FRIEDERSDORF
SUBJECT: Action Memorandum - Log No. 830
Enrolled Bill S. 939 - Land exchange authority, Idaho

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

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 830

Date: December 26, 1974

Time: 9:00 a.m.

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

FROM THE STAFF SECRETARY

DUE: Date: Thursday, December 26

Time: 3:00 p.m.

SUBJECT:

Enrolled Bill S. 939 - Land exchange authority, Idaho

ACTION REQUESTED:

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

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No Objec^t
P. Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 830

Date: December 26, 1974

Time: 9:00 a.m.

FOR ACTION: Mike Duval *oh.*
Max Friedersdorf *oh*
Phil Areeda *n.o.s.b.y.*

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Thursday, December 26

Time: 3:00 p.m.

SUBJECT:

Enrolled Bill S. 999 - Land exchange authority, Idaho

ACTION REQUESTED:

- For Necessary Action
 Prepare Agenda and Brief
 For Your Comments

- For Your Recommendations
 Draft Reply
 Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 830

Date: December 26, 1974

Time: 9:00 a.m.

FOR ACTION: Mike Duval *OL Ross*
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Thursday, December 26

Time: 3:00 p.m.

SUBJECT:

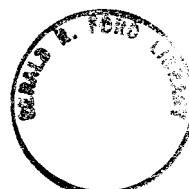
Enrolled Bill S. 939 - Land exchange authority, Idaho

ACTION REQUESTED:

- | | |
|---|--|
| <input type="checkbox"/> For Necessary Action | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Warren K. Hendriks
For the President

Calendar No. 718

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-744

AMENDING THE ADMISSION ACT FOR THE STATE OF IDAHO

MARCH 22, 1974.—Ordered to be printed

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

REPORT

[To accompany S. 939]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 939) to amend the Admission Act for the State of Idaho to permit that State to exchange public lands, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment is as follows:

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

That section 5 of the Admission Act for the State of Idaho (26 Stat. 215), as amended, is further amended, as follows:

- (a) In the first sentence of such section delete "That" and insert in lieu thereof "(a) Except as provided in subsection (b);".
- (b) In the second sentence of such section—
 - (1) delete "But said" and insert in lieu thereof "Such";
 - (2) after "hydrocarbon lease," insert "or a geothermal resource and associated byproducts lease"; and
 - (3) after "produced" insert "in paying quantities or the lessee in good faith is conducting well drilling or construction operations."
- (c) At the end of such section insert the following new subsection:
 - "(b) Such lands may be exchanged for other lands, public or private. The values of such lands so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of money by the appropriate party. If any such lands are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States are hereby approved."

Amend the title to read:

To amend the Admission Act for the State of Idaho to permit that State to exchange public lands, and for other purposes.

I. PURPOSE OF S. 939

S. 939, as amended would amend section 5 of the Admission Act for the State of Idaho to permit the State to exchange lands granted to it for educational purposes for other lands, public or private, of approximately equal value or if the land values are equalized by payment of money. Any exchange with the United States would be limited to public lands within the State that are subject to exchange under the laws governing their administration. In addition, all exchanges heretofore made with the United States involving lands granted for educational purposes would be ratified.

The bill, as amended, would also add exploration for and production of geothermal resources and associated by-products to the limited number of purposes for which the educational lands may be leased by the State for more than ten years.

II. BACKGROUND AND NEED

Section 5 of the Idaho Admission Act (Act of July 3, 1890, 26 Stat. 215), as amended (56 Stat. 48, 63 Stat. 714), allows for disposal of lands granted to Idaho for educational purposes only by public sale with the proceeds of any such sales becoming a permanent school fund. The section also permits the leasing of these educational lands by the State. However, the section does not provide for any exchanges of, and it tightly restricts the terms of any leases for, these lands.

During the nineteenth and early twentieth centuries, the public lands States received grants of Federal lands for various educational purposes. Although a number of these grants occurred during territorial days, educational lands were often granted to the States at the time they entered the Union, as was the case with Idaho. Many restrictions placed on the use of lands granted to the States for educational purposes on or before passage of their statehood Acts are no longer appropriate and often interfere with sound and effective land management. S. 939 would eliminate these unnecessary restrictions as they relate to the State of Idaho.

First, S. 939 would allow the State of Idaho to exchange these educational lands for lands of approximately equal value or, where the values are not approximately equal, for a payment of money as well. The educational lands allocated by the Admissions Act were sections 16 and 36. These 640 acre tracts are often isolated among private and Federal lands. As the exchange authority would permit consolidation of State, Federal and private ownership for more efficient and economical management, it would not only benefit the State of Idaho but also individual landowners and the Federal Government. (The amendatory Acts of May 7, 1932 (47 Stat. 150), and October 16, 1970 (84 Stat. 987), provided the Dakotas, Montana and Washington with specific authority to make public or private exchanges of educational lands similar to the authority for Idaho proposed in S. 939.)

Second, the bill would permit completion of exchanges on which agreement has already been reached (five exchanges involving 14,278.65 acres of State lands and 13,575.70 acres of National Forest lands) and allow continued consideration of proposed exchanges (involving 31,000 acres of scattered parcels of State lands within the National Forests).

Third, the bill would eliminate the 10-year limitation on leasing for leases to explore for and produce geothermal resources and associated by-products. The periods for such leases (and other leases exempted from the ten year limitation, see "III. Committee Amendments" below) could be for as long as the product is produced in paying quantities or the lessee is, in good faith, conducting well drilling or construction operations.

III. COMMITTEE AMENDMENTS

S. 939, as introduced, would have permitted land exchanges only when the lands involved were of equal value. The Interior Department recommended that the bill be amended to permit exchanges when the lands exchanged are of equal value or the land values are equalized by the payment of money. However, the Department of Agriculture stated that the general exchange authorities of the Forest Service do not provide for cash equalization, but it would have no objection to language in the bill which would provide that the exchanged lands be of "approximately equal value" and, if they are not, they may be equalized by the payment of money. As the differences in the two approaches were minor and as language similar to that proposed by the Forest Service was adopted by the Committee in section 3(d) of the Act of August 22, 1972 (86 Stat. 613) establishing the Sawtooth National Recreation Area and section 6(d) of the Wild and Scenic Rivers Act (82 Stat. 912), the Committee accepted, with minor changes, the Forest Service's suggested modification.

S. 939, as introduced, would have limited exchanges with the United States to "unreserved or reserved public lands within the State that are subject to exchange under the laws governing the administration of such lands." Both the Departments of the Interior and Agriculture recommended deleting the words "reserved or unreserved public" and replacing them with the word "Federal". Given the numerous meanings applied both by statute and usage to the words "reserved", "unreserved", and "public lands", the Committee agreed that the change would clarify the applicability of S. 939 to all Federal lands.

The Idaho Admissions Act originally prohibited the leasing of educational lands by the State for any period over 5 years. A 1942 amendment (Act of February 6, 1942, 56 Stat. 48) extended the maximum lease period from 5 years to 10 years. The lengthier permissible lease period still proved to be too restrictive for certain activities, particularly the exploration for and production of fuels. Thus, in 1949, the Admissions Act was again amended (the Act of October 6, 1949, 63 Stat. 714) to allow "oil, gas, or hydrocarbon" leases for more than ten years "as long . . . as such product is produced". Accompanying the recent, increased interest in geothermal resources is the expectation that such resources lie beneath some of the educational lands of Idaho. Therefore, the Committee agreed to accept an amendment suggested by the Attorney General of the State of Idaho (see the last letter in "VII. Executive Communications" below) to include "geothermal resource and associated by-product" leases among those leases exempted from the 10-year limitation. The exemption was also modified to allow the period for oil, gas, other hydro-

carbon, and geothermal leases to run for as long as the product is produced in "paying quantities or the lessee in good faith is conducting well drilling or construction operations".

IV. LEGISLATIVE BACKGROUND

S. 939 was introduced on February 21, 1973 by Senator James A. McClure, for himself and Senator Frank Church. Open hearings were held on the measure by the Subcommittee on Public Lands on December 11, 1973. The Subcommittee on Public Lands, in open mark-up session on December 11, 1973, unanimously ordered S. 939, as amended, reported to the full Committee on Interior and Insular Affairs. The bill was unanimously ordered favorably reported to the Senate by the Committee in open mark-up session on January 28, 1974. Subsequent to this action Senator Church received the communication from the Attorney General of Idaho discussed above in section III and reproduced below in section VII. S. 939, as amended, the report for which had not yet been filed, was reconsidered by the Committee in open mark-up on March 1, 1974, and the Committee amended it to incorporate the modification suggested by the Idaho Attorney General. The Committee then again unanimously ordered S. 939, as amended, favorably reported to the Senate.

V. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, in open mark-up session on March 1, 1974, by voice vote, unanimously recommended that S. 939, as amended, be enacted.

VI. COST

The enactment of S. 939 would result in minor expenditures of funds in the administration of land exchanges with the State of Idaho. These expenditures, however, would be more than offset by the savings in land management costs which would occur with the consolidation of Federal lands to be accomplished by the exchanges.

VII. EXECUTIVE COMMUNICATIONS

The reports of the Department of the Interior and the Department of Agriculture and other Executive Communications are set forth in full as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 11, 1973.

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

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on S. 939, a bill "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands."

We have no objection to enactment of the bill with the amendments suggested below.

The Act of July 3, 1890, 26 Stat. 215, provides for the admission of the State of Idaho into the Union. Section 5 of the Act states that lands granted to Idaho for educational purposes shall be disposed of only at public sale and that the sale proceeds will constitute a permanent school fund. Section 5 also allows for the leasing of such lands for periods of not more than five years.

S. 939 would amend section 5 to allow for leasing of lands granted for educational purposes for periods of not more than 10 years, and in the case of an oil, gas or other hydrocarbon lease, for as long thereafter as such product is produced. It would also allow such lands to be exchanged for other lands, public or private, of approximately equal value and as near as may be of equal area. If such lands are exchanged with the United States, the exchange would be limited to unreserved or reserved public lands within the State that are subject to exchange under the laws governing the administration of such lands. The bill would also approve all such exchanges heretofore made with the United States.

Many restrictions placed on the use of lands granted to States at the time they entered the Union are no longer appropriate and they often interfere with sound land management. S. 939 would benefit the United States as well as the State since it would specifically authorize exchanges of State and Federal lands. These exchanges would allow for consolidation of Federal lands and thus facilitate Federal land management. We therefore have no objection to the bill if subsection (b) is amended as suggested below.

Subsection (b) provides that when State land is exchanged for other land, the lands be of "approximately equal value and as near as may be of equal area". Similar provisions in other Federal exchange authority have often proven to be very inflexible. We therefore recommend that the bill permit exchanges when the lands exchanged are of equal value or the land values are equalized by the payment of money. This amendment would be consistent with the exchange authority in section 306(b) of the Administration's proposed "National Resource Lands Management Act of 1973" (S. 1041).

We also recommend that in subsection (b) the word "Federal" be substituted for the words "reserved or unreserved". This change would clarify the applicability of S. 939 to all Federal lands. Provisions of current exchange laws would continue to affect the availability of Federal lands for exchange in each instance.

When amended as we suggest, subsection (b) would read as follows:

"(b) Lands herein granted for educational purposes may be exchanged for other lands, public or private. The values of the lands exchanged shall be equal, or if they are not equal, the values shall be equalized by the payment of money by the appropriate party. If lands herein granted for educational purposes are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States are hereby approved."

Time has not permitted securing advice from the Office of Management and Budget as to the relationship of this report to the program of the President.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., December 19, 1973.

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

DEAR MR. CHAIRMAN: We would like to offer our views on S. 939, a bill "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands."

This Department recommends that S. 939 be enacted with the amendments suggested herein.

S. 939 would amend section 5 of the Act of July 3, 1890 (26 Stat. 215), relating to admission of the State of Idaho into the Union. Section 5 provides that Federal lands granted to the State for educational purposes can be disposed of by the State only by public sale. S. 939 would permit the State to exchange such lands.

Enactment of S. 939 would be beneficial to both the State of Idaho and the United States. There are many areas of intermingled State grant lands within the National Forests of Idaho. S. 939 would permit consolidation of State and National Forest ownerships for more efficient and economical management.

S. 939 would also ratify five exchanges that were completed in the past. It would permit completion of eight exchanges on which agreement has been reached, involving 14,278.65 acres of State lands and 13,575.70 acres of National Forest lands. It would also permit continued consideration of exchange proposals involving 31,000 acres of scattered parcels of State lands within the National Forests.

Subsection (b) of the proposed amendment would require that State lands be exchanged for lands "as near as may be of equal area." We recommend that this clause be deleted. Such a provision might prevent an important and desirable exchange merely because the land areas were not nearly equal. The authority of the State of Idaho to exchange its lands should not be so restricted because adequate protection against abuse of exchange authority exists in the requirements that the lands exchanged be of approximately equal value. When amended as we suggest, subsection 5(b) would read as follows:

"(b) Such lands may be exchanged for other lands, public or private, of approximately equal value, but if any of said lands are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States involving National Forest lands are hereby approved."

We also recommend that the words "reserved or unreserved" on page 2, lines 13 and 14, be deleted, and the word "Federal" be substituted therefor. This change would clarify the applicability of S. 939 to all Federal lands. Provisions of current exchange laws would continue to affect the availability of Federal lands for exchange in each instance.

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

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, D.C., December 13, 1973.

Hon. FLOYD K. HASKELL,
Chairman, Subcommittee on Public Lands,
U.S. Senate.

DEAR MR. HASKELL: At the hearing before your subcommittee on S. 939, the bill to amend the Admission Act for the State of Idaho, you pointed out that the testimonies of the Department of Agriculture and the Department of the Interior were generally in agreement except for the amendment relating to the equalization of land values through the payment of money that was recommended by Interior.

We have studied the Department of the Interior's proposed amendment.

In our testimony we recommended that section 5(b) of the bill be changed to read "Such lands may be exchanged for other lands, public or private, of approximately equal value—." In response to a question, we also stated that we would have no objection to language that would provide for the equalization of values through the payment of money. We would like to clarify this latter statement with respect to Interior's proposed amendment. Their amendment provides that "the land values shall be equal, or if they are not equal the values shall be equalized." Because exchanges seldom involve values that are precisely equal, the payment of money would be mandatory in almost all cases if the Interior's proposal is adopted.

The general exchange authorities of the Forest Service do not provide for cash equalization. We have been successful in negotiating exchanges within the framework of these authorities and would prefer to continue to process exchanges under their provisions. Also, we would have to obtain a special appropriation for money to equalize values in cases involving National Forest lands reserved from the public domain.

We would have no objection to language in the bill that would provide that the exchanged lands be of "approximately equal value" and if they are not they may be equalized by the payment of money. Precedent for this approach is contained in section 3(d) of the Act of August 22, 1972 (86 Stat. 613) which established the Sawtooth National Recreation Area in the State of Idaho. The applicable language of that Act reads:

"The values of the properties so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require."

Similar language may be found in section 6(d) of the Wild and Scenic Rivers Act (82 Stat. 912).

Sincerely,

PHILIP L. THORNTON,
Deputy Chief, Programs and Legislation.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
Washington, D.C., December 12, 1973.

Hon. FLOYD K. HASKELL,
Chairman, Subcommittee on Public Lands,
Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: This responds to your request for additional information at the hearing yesterday on S. 939.

Upon review of the acts granting educational lands to the public land States, as indicated below, we find that the Dakotas, Montana, and Washington have specific authority to make public or private exchanges of such lands similar to that proposed in S. 939. This authority was the result of amendatory statutes in 1932 and 1970.

Arizona, June 20, 1910 (36 Stat. 557)
California, March 3, 1853 (10 Stat. 244)
Colorado, March 3, 1875 (18 Stat. 474)
Idaho, July 3, 1890 (26 Stat. 215)
Montana, February 22, 1889 (25 Stat. 676)¹
Nevada, June 16, 1880 (21 Stat. 287)
New Mexico, June 20, 1910 (36 Stat. 557)
North Dakota, February 22, 1889 (25 Stat. 676)¹
Oregon, February 14, 1859 (11 Stat. 383)
South Dakota, February 22, 1889 (25 Stat. 676)¹
Utah, July 16, 1894 (28 Stat. 107)
Washington, February 22, 1889 (25 Stat. 676)¹
Wyoming, July 10, 1890 (26 Stat. 222)

Sincerely yours,

CURT BERKLUND, Director.

STATE OF IDAHO, OFFICE OF THE ATTORNEY GENERAL,
Boise, January 24, 1974.

Hon. FRANK CHURCH,
U.S. Senate,
Russell Office Building
Washington, D.C.

DEAR SENATOR CHURCH: As you are Chairman of the Water and Power Resources Subcommittee of the Senate Interior and Insular Affairs Committee, I would like to make you aware of a legal problem

¹ The amendatory Acts of May 7, 1932 (47 Stat. 150), and October 16, 1970 (84 Stat. 987), provided these States with specific exchange authority.

which may affect the ability of the State of Idaho to fully develop its geothermal resources.

The Idaho State Board of Land Commissioners is authorized and empowered by Title 47, Chapter 16 of the *Idaho Code*:

" . . . to lease for a term of ten (10) years, and as long thereafter as geothermal resources are produced in paying quantities, or as much longer thereafter as the lessee in good faith shall conduct geothermal resource well drilling or construction operations thereon, or for such lesser term as it finds to be in the public interest, any state or school lands which may contain geothermal resources, together with the right to use and occupy so much of the surface of said land as may be required for all purposes reasonably incident to the prospecting for, exploration for, drilling or other well construction for, and production of geothermal resources."

The statute goes on to define geothermal resources to include associated by-products.

As we prepare rules and regulations to implement this legislation, it has become apparent that the right of the State Board of Land Commissioners to execute a lease in excess of ten (10) years can be seriously questioned. Section 5 of the Idaho Admissions Act (26 Stat. 215) provides in pertinent part:

"All lands herein granted for educational purposes shall be disposed of only at public sale, . . . But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than ten years, and in the case of an oil, gas, or other hydrocarbon lease, for as long thereafter as such product is produced, . . ."

You can see that the same question arose in the past regarding oil and gas leases. The Idaho Admissions Act was Amended in 1949 to authorize leases in excess of ten years. We believe a similar amendment to the Act should be made at this time to authorize leases in excess of ten years to explore for and to produce geothermal resources and associated by-products.

We are aware of Senate Bill No. 939 sponsored by Senator McClure and you in the Ninety-Third Congress to amend Section 5 of the Idaho Admissions Act by adding a sub-part (b). We would like to request that you cause Section 5 of the Act to be further amended by inserting the following underscored language, so that Section 5(a) would read as follows:

"All lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than ten years, and in the case of an oil, gas, or other hydrocarbon lease, and in the case of a geothermal resources and associated by-products lease, for as long thereafter as such product is produced in paying quantities, or that the lessee in good faith is conducting well drilling or construction operations, and such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Thank you very much for your cooperation in this matter. It is of substantial importance to the development of this natural resource in Idaho. If you have any questions, please do not hesitate to contact me.

Best personal regards.
Very truly yours,

W. ANTHONY PARK,
Attorney General.

VIII. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 939, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JULY 3, 1890 (26 STAT. 215), AS AMENDED

* * * * *

SEC. 5. **[That]** (a) *Except as provided in subsection (b), all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools.* **[But said]** Such lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than ten years, and in the case of an oil, gas, or other hydrocarbon lease, or a geothermal resource and associated by-products lease, for as long thereafter as such product is produced in paying quantities or the lessee in good faith is conducting well drilling or construction operations, and such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or un-surveyed, but shall be reserved for school purposes only.

(b) *Such lands may be exchanged for other lands, public or private. The values of such lands so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of money by the appropriate party. If any such lands are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States are hereby approved.*



AMENDING THE ADMISSION ACT FOR THE STATE OF IDAHO

DECEMBER 4, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany S. 939]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 939) to amend the Admission Act for the State of Idaho to permit that State to exchange public lands, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

S. 939 would amend section 5 of the Admission Act for the State of Idaho to permit the State to exchange lands granted to it for educational purposes for other lands, public or private, of approximately equal value or for lands with different values if the differences are equalized by payment of money. Any exchange with the United States would be limited to public lands within the State that are subject to exchange under the laws governing their administration. In addition, all exchanges heretofore made with the United States involving lands granted for educational purposes would be ratified.

The bill would also add exploration for and production of geothermal resources and associated by-products to the limited number of purposes for which the educational lands may be leased by the State for more than ten years.

EXPLANATION AND NEED

Section 5 of the Idaho Admission Act (Act of July 3, 1890, 26 Stat. 215), as amended (56 Stat. 48, 63 Stat. 714), allows for disposal of lands granted to Idaho for educational purposes only by public sale with the proceeds of any such sales becoming a permanent school fund. The section also permits the leasing of these educational lands by the

State. However, the section does not provide for any exchanges of, and it tightly restricts the terms of any leases for, these lands.

During the nineteenth and early twentieth centuries, the public lands States received grants of Federal lands for various educational purposes. Although a number of these grants occurred during territorial days, educational lands were often granted to the States at the time they entered the Union, as was the case with Idaho. Many restrictions placed on the use of lands granted to the States for educational purposes on or before passage of their statehood Acts are no longer appropriate and often interfere with sound and effective land management. S. 939 would eliminate these unnecessary restrictions as they relate to the State of Idaho.

First, S. 939 would allow the State of Idaho to exchange these educational lands for lands of approximately equal value or, where the values are not approximately equal, for a payment of money as well. The educational lands allocated by the Admissions Act were sections 16 and 36. These 640 acre tracts are often isolated among private and Federal lands. As the exchange authority would permit consolidation of State, Federal and private ownership for more efficient and economical management, it would benefit not only the State of Idaho but also individual landowners and the Federal Government. (The amendatory Acts of May 7, 1932 (47 Stat. 150), and October 16, 1970 (84 Stat. 987), provided the Dakotas, Montana and Washington with specific authority to make public or private exchanges of educational lands similar to the authority for Idaho proposed in S. 939).

Second, the bill would permit completion of exchanges on which agreement has already been reached (five exchanges involving 14,278.65 acres of State lands and 13,575.70 acres of National Forest lands) and allow continued consideration of other proposed exchanges (involving 31,000 acres of scattered parcels of State lands within the National Forests).

Third, the bill would permit leasing of lands to explore for and produce geothermal resources and associated by-products in the same manner as for oil and gas. The periods for such leases extend as long as the product is produced in paying quantities or while the lessee is, in good faith, conducting well drilling or construction operations.

LEGISLATIVE BACKGROUND

H.R. 4683, which was identical to S. 939, was introduced by Mr. Symms and Mr. Hahsen of Idaho on February 22, 1973. Hearings were held on July 12, 1974, on H.R. 4683 and S. 939, as passed by the Senate. Subsequently, the Committee approved S. 939 without amendment. The Department of the Interior and the Department of Agriculture recommended further amendment to S. 939 as passed by the Senate, and to H.R. 4683, as introduced, but the Committee determined that S. 939 as passed by the Senate was and thereupon reported the measure acceptable without further amendment.

Cost

The enactment of S. 939 would result in minor expenditures of funds in the administration of land exchanges with the State of Idaho. It is anticipated, however, that this will be more than offset

by the savings in land management costs which would occur with the consolidation of Federal lands to be accomplished by the exchanges.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by a voice vote, unanimously recommends that S. 939 be enacted.

DEPARTMENTAL REPORTS

The reports of the Department of the Interior and the Department of Agriculture are set forth in full as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 11, 1974.

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

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on S. 939, an Act, and on H.R. 4683, a similar bill "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands."

We would have no objection to enactment of S. 939, as passed by the Senate, or to H.R. 4683 if they are amended as suggested below.

The Act of July 3, 1890, 26 Stat. 215 as amended, provides for the admission of the State of Idaho into the Union. Section 5 of the Act states that lands granted to Idaho for educational purposes shall be disposed of only at public sale and that the sale proceeds will constitute a permanent school fund. Section 5 also allows for the leasing of such lands for periods of not more than ten years with the exception of oil, gas and other hydrocarbon leases which may exist for as long as the product is produced.

S. 939

Sections (a) and (b) of S. 939, as passed by the Senate, would amend section 5 of the Act of July 3, 1890 to allow lands granted to Idaho for educational purposes to be leased for "a geothermal resource and associated byproducts" as well as oil and gas, and it would allow the lands to be leased for as long as the "product is produced in paying quantities or the lessee in good faith is conducting well drilling or construction operations". Generally, we favor the removal of Federal limitations on management of lands granted to the States under Statehood Acts. Therefore, rather than increase these limitations, we recommend that section (b) be amended to read as follows:

(b) In the second sentence of such section substitute the words "such lands may be leased under such regulations as the legislature may prescribe" for the words "But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than ten years, and in the case of an oil, gas or other hydrocarbon lease, for as long thereafter as such product is produced".

Section (c) of S. 939 would amend section 5 of the Idaho Statehood Act to allow lands granted to the State for educational purposes to be exchanged for other lands, public or private, of approximately equal value. If the lands are not of approximately equal value, they may be equalized by payment of cash. Lands may be acquired by exchange from the United States if they are within the State and are subject to exchange under the laws governing the administration of such lands. The bill would also approve all such exchanges heretofore made with the United States.

Many restrictions placed on the use of lands granted to States at the time they entered the Union are no longer appropriate and they often interfere with sound land management. Section (c) of S. 939 would benefit the United States as well as the State since it would specifically authorize exchanges of State and Federal lands. These exchanges would allow for consolidation of Federal lands and thus facilitate Federal land management. We therefore have no objection to section (c).

H.R. 4683

This bill is similar to S. 939 as passed by the Senate except that first, it does not contain the amendment pertaining to extensions of mineral leases, and second, it would not authorize land exchanges unless the land values and areas were approximately equal. As to the first point, we have recommended language above to delete Federal limitations on the leasing of lands granted to the State for educational purposes. As to the second point, we favor the more flexible authority in S. 939 to make exchanges as long as any differences in land values are equalized by the payment of cash. This authority would be consistent with the exchange authority in the Act of August 22, 1972, 86 Stat. 613, 16 U.S.C., S460aa-2 (Supp. II, 1972), and other laws.

We also recommend that in section (b) the words "Federal lands" be substituted for the words "unreserved or reserved public lands". This substitution would be consistent with S. 939 and would clarify the applicability of H.R. 4683 to all Federal lands.

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

Sincerely yours,

BRAD E. HAINSWORTH,
Deputy Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 14, 1974.

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

DEAR MR. CHAIRMAN: As you requested, here is the report of the Department of Agriculture on H.R. 4683, a bill "To amend the Admission Act for the State of Idaho to permit that State to exchange public lands and to use the proceeds derived from public lands for maintenance of those lands."

This Department recommends that H.R. 4683 be enacted with the amendments suggested herein.

H.R. 4683 would amend section 5 of the Act of July 3, 1890 (26 Stat. 215), relating to admission of the State of Idaho into the Union. Section 5 provides that Federal lands granted to the State for educational purposes can be disposed of by the State only by public sale. H.R. 4683 would permit the State to exchange such lands.

Enactment of H.R. 4683 would be beneficial to both the State of Idaho and the United States. There are many areas of intermingled State grant lands within the National Forests of Idaho. H.R. 4683 would permit consolidation of State and National Forest ownerships for more efficient and economical management.

H.R. 4683 would also ratify five exchanges that were completed in the past. It would permit completion of eight exchanges on which agreement has been reached, involving 14,278.65 acres of State lands and 13,575.70 acres of National Forest lands. It would also permit continued consideration of exchange proposals involving 31,000 acres of scattered parcels of State lands within the National Forests.

Subsection (b) of the proposed amendment would require that State lands be exchanged for lands "as near as may be of equal area." We recommend that this clause be deleted. Such a provision might prevent an important and desirable exchange merely because the land areas were not nearly equal. The authority of the State of Idaho to exchange its lands should not be so restricted because adequate protection against abuse of exchange authority exists in the requirements that the lands exchanged be of approximately equal value. Also, subsection (b) would provide that only "unreserved or reserved public lands" of the United States may be exchanged for State lands. We recommend that the words "unreserved or reserved public" be deleted, and the word "Federal" be substituted therefor. This change would clarify the applicability of H.R. 4683 to all Federal lands including acquired lands. Provisions of current exchange laws applicable to Federal lands would continue to affect the availability of Federal lands for exchange in each instance.

Our proposed amendments have been incorporated in the companion bill, S. 939, passed by the Senate on March 26, 1974. S. 939 also adds to subsection (b) a provision for the equalization of land values by the payment of money. The general exchange authorities of the Forest Service do not provide for cash equalization. We have been successful in negotiating exchanges within the framework of these authorities and would prefer to continue to process exchanges according to their provisions. However, inasmuch as a cash equalization provision may be needed to facilitate exchanges by other Federal agencies, we have no objection to the language as contained in S. 939 which provides that the exchanged lands be of "approximately equal value" and if they are not they may be equalized by the payment of money. Precedent for this approach is contained in section 3(d) of the Act of August 22, 1972 (86 Stat. 613), which established the Sawtooth National Recreational Area in the State of Idaho.

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

Sincerely,

J. PHIL CAMPBELL, *Under Secretary.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

Act of July 3, 1890 (26 Stat. 215), as amended.

* * * * *

Sec. 5. **[That]** (a) *Except as provided in subsection (b), all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools.* **[But said]** *Such lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than ten years, and in the case of an oil, gas, or other hydrocarbon lease, or a geothermal resource and associated by-products lease, for as long thereafter as such product is produced in paying quantities or the lessee in good faith is conducting well drilling or construction operations, and such lands shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.*

(b) *Such lands may be exchanged for other lands, public or private. The values of such lands so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of money by the appropriate party. If any such lands are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States are hereby approved.*

* * * * *



Ninety-third Congress of the United States of America
AT THE SECOND SESSION

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

An Act

To amend the Admission Act for the State of Idaho to permit that State to exchange public lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Admission Act for the State of Idaho (26 Stat. 215), as amended, is further amended, as follows:

- (a) In the first sentence of such section delete "That" and insert in lieu thereof "(a) Except as provided in subsection (b),".
- (b) In the second sentence of such section—
 - (1) delete "But said" and insert in lieu thereof "Such";
 - (2) after "hydrocarbon lease," insert "or a geothermal resource and associated byproducts lease,"; and
 - (3) after "produced" insert "in paying quantities or the lessee in good faith is conducting well drilling or construction operations,".
- (c) At the end of such section insert the following new subsection :
 - "(b) Such lands may be exchanged for other lands, public or private. The values of such lands so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of money by the appropriate party. If any such lands are exchanged with the United States, such exchange shall be limited to Federal lands within the State that are subject to exchange under the laws governing the administration of such lands. All such exchanges heretofore made with the United States are hereby approved.".

Speaker of the House of Representatives.

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

December 18, 1974

Dear Mr. Director:

The following bills were received at the White House on December 18th:

S.J. Res. 224 ✓	S. 3191 ✓
S.J. Res. 260 ✓	S. 4013 ✓
S. 425 ✓	H.R. 7978 ✓
S. 939 ✓	H.R. 8193 ✓
S. 2343 ✓	H.R. 8864 ✓

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

Sincerely,

Robert D. Linder
Chief Executive Clerk

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