The Desert Land Act in Mid-Twentieth Century:

Issues and Problems

Resource Development Economics Division Economic Research Service
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CONTENTS

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The cover photograph is used by courtesy of the Bureau of Land Management.

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HIGHLIGHTS

During the last two decades, the Federal Government has encountered many policy and administrative problems in connection with federally owned lands in the West. Greatly increased activity under the Desert Land Act of 1877 has been prominent among the causes of these problems.

The Desert Land Act was passed to permit transfer of federally owned land to private ownership for the purpose of developing irrigation farming. Under the Act, applicants can obtain title to tracts of up to 320 acres upon proof of availability of water and payment of specified fees, followed within a limited period by evidence that the water supply is actually being developed. The Act is administered by the Bureau of Land Management of the U. S. Department of the Interior. At present the Bureau administers 178 million acres, or 48 percent of all Federal land in the 13 desert land States. Desert land applications are confined to this area.

In recent years, the water supplies that have been developed in connection with the desert land program have come almost entirely from ground water pumping. The study reported here reveals that in some States, notably Idaho, highly successful irrigated farms have been developed since World War II. But capital requirements, inadequate supplies of water, poor soils, and water-right conflicts have seriously deterred development in many areas.

Tracts covered by more than 12,000 applications totaling about 3,000,000 acres, were classified from 1946 to 1961. Numerous other cases were closed without reaching the classification stage. About 30,000 cases were closed--that is, disposed of by transfer of the land, rejection of application, etc.--in the 16-year period, largely in three or four States.

About 10 million acres have been transferred to private ownership under the Desert Land Act since 1877. About 285,000 acres have been patented since 1946. Most activity under the Act has been in Idaho, California, Nevada, Arizona, Wyoming, and Utah.

There have been numerous unwarranted applications for land resulting in excessive administrative actions and costs. Many applicants have had neither the capital nor the intent to develop the land. Other applicants have been confronted with high investment risks because of uncertain water supplies.

Southern California has been one scene of an excessive number of applications. During the 1950's, nearly 9,000 applications were filed, of which only 450 were allowed. As of September 1958, 4,500 applications involving 1,400,000 acres were pending in the Los Angeles Land Office; most of these applications were later rejected because of poor soil and insufficient water. Promotional and speculative activities were primary factors leading to the great number of applications for unsuitable land.

The issue of rights in ground water has affected administration of the Desert Land Act, especially in Arizona and California. Doctrines of prior appropriation, reasonable use, and correlative rights have all been involved. Desert land entries have not been permitted in Arizona since 1955 following a decision by the Solicitor of the Department of the Interior that Arizona ground water laws do not permit the applicants to satisfy the water right requirements of the Act.

The desert land program has been hampered by promotion and speculation in both California and Nevada during the postwar years. Many applicants have paid high fees to "locators" of desert land tracts and received nothing. The heavily populated area of Los Angeles has been one of the centers of such activity.

The critical question now with respect to the Desert Land Act is whetner it should be revised or repealed, or allowed to remain as it is. Is this Act operational for the future? What is the best use for these public lands? What are the most adequate means, including changes in ownership, of achieving a transition to these uses?

THE DESERT LAND ACT IN MID-TWENTIETH CENTURY: ISSUES AND PROBLEMS

by

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INTRODUCTION

On February 14, 1961, the Secretary of the Interior declared a moratorium on applications for all kinds of homesteading of nonmineral public lands. The moratorium expired September 4, 1962, but it brought into focus the many problems that have arisen in recent years in connection with our public land laws and the accelerated efforts by thousands of people to achieve ownership of a tract of public land. Then, on August 14, 1963, legislation was introduced in the 88th Congress to establish a Public Land Review Commission to study existing statutes and procedures relating to the administration of the public lands of the United States. 1/ The Desert Land Act is one of these statutes.

The Desert Land Act, which became law on March 3, 1877, permits individuals to acquire title to public land for the purpose of developing irrigated farms. In passing the Act, Congress emphasized the importance of private enterprise. In many respects, the bill was more liberal than the Homestead Law. But the limited amount of public control permitted many abuses. Proof for patent was made frequently without meeting the requirements of the Act. Much land was transferred to private ownership under the Act during the first several decades after its passage, but the program in general has fallen short of Congressional expectations in this respect (7). 2/

As early as 1880, the observation was made that the main objective of applicants was to get control of water for purposes other than irrigation of desert land tracts. At that time the General Land Office favored repeal of the law. A survey in 1883-84 showed that few entries were made in good faith, and that the program was used mainly to control water for stock (2). However, despite the opposition of the General Land Office, and some proven cases of fraud and speculation, the Desert Land Act remained in force, and many acres of land patented under the Act are now irrigated.

1/ U. S. House of Representatives. H. R. 8070 and H. R. 8071. 88th Cong., 1st Sess. (1963).

2/ Underscored numbers in parentheses refer to items in the Bibliography.

Twenty years ago, the conclusion that the Desert Land Act was dead seemed warranted, because there were few prospects for further development of surface water under this program. But since World War II, technological development, high incomes, and high land values have led to renewed activity under the Act based on development of underground water.

Research studies of irrigation development under the Act in recent years were made in Idaho (4) and Utah (8) in 1956 and 1957. The policy and administrative problems that prompted those studies have become even more acute since that time, especially in several other States. The present report deals with overall aspects of desert land activity in the West, mainly during the 16 years from 1946 and 1961, and explores in detail some of the problems encountered during the postwar years by the Bureau of Land Management in administering the Act and by individuals in attempting to acquire public land under its provisions.

Problems related to the desert land program may be divided into three main categories: (1) The basic legislation--the Desert Land Act as amended, and other pertinent legislation in terms of present needs; (2) administrative machinery and costs of administration; and (3) individual and community problems connected with development of land and water resources under the program. In this report, consideration will first be given to the basic legislation and to the administrative policies that constitute the framework within which individuals try to develop the land and water and to obtain ownership. We will next examine and appraise activity under this legislation in the last 16 years. Finally, we will review and analyze the main problems with respect to administration, water supply, water rights, and promotion and speculation. It is hoped that the report will provide basic information for use of those interested in administration of public land programs.

LEGISLATION

The basic features of the Desert Land Act of 1877 are still in effect, although some modifications were made in 1891. The Taylor Grazing Act of 1934 further modified the operation of the act by defining land eligible for entry. It is essential to consider both acts together. In Nevada, the Pittman Act, passed October 1919, also affects operations under the Desert Land Act.

The Desert Land Act

The Desert Land Act of 1877 grew out of the Homestead Act of 1862. It was, in effect, an application of the Homestead Act to the West. The emphasis on development and use of water for irrigated crop production distinguishes the Desert Land Act from other public land laws. An important difference from the Homestead Act is that residence on the land is not required.

A combination of factors led to its passage: the need for irrigation development in the West, the prevailing emphasis on private capital and enterprise, the growing need for group efforts in developing water, and the need to modify certain restrictive elements of the Homestead Act of 1862 in terms of these needs.

The stated purpose of the Desert Land Act is "...to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have been rendered more productive and habitable." 3/

The original Act applied to 11 States and Territories (3). Desert land entry can now be made in the 11 Far Western States and in North Dakota and South Dakota.

Individuals may obtain patent to or ownership of 320 acres of public land by meeting specified requirements. Originally, the Act provided for 640 acres, but on March 3, 1891, this was reduced to 320 acres. Applicants must be citizens 21 years of age or more and, except in Nevada, residents of the State in which the land is situated. Residence on the land is not required.

Applications for desert land must be supported by evidence that the applicant "has already acquired by appropriate purchase, or contract, a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land." If the irrigation water is to come from wells or be pumped from underground sources, "a statement must be submitted as to the existence of such water supply upon or near the land." 4/

The applicant must invest in the land yearly for 3 years from the date of entry at least $1.00 per acre, or a total of $3.00 per acre. The applicant must pay 25 cents an acre when the application is submitted, and an additional $1 per acre when final proof is made. Thus, the total minimum expenditure is $1,360 for a 320-acre tract.

After the application is allowed, a maximum of 4 years is permitted for compliance with the requirements. Final proof may be submitted at any time within the statutory period after (a) an expenditure of $3.00 per acre has been made, (b) one-eighth of the entire tract "has been properly cultivated and irrigated," and (c) requirements as to water rights and supply have been met.

The applicant must establish that his water right entitles him to the use of water sufficient "to irrigate successfully all the irrigable land embraced in his entry." The regulations state that "a water right and a water supply are not the same thing and that the two are not always or necessarily found together."

3/ The Desert Land Act, 19 Stat. 377 (1877), as amended, 43 U.S.C., Secs. 321-339 (1958). Also see 43 CFR 232.1 (1954). CFR refers to Code of Federal Regulations. Miscellaneous amendments as of January 1, 1963, are published in the Federal Register (28: June 14, 1963).

4/ The Desert Land Act. See footnote 3.

Over the years, Congress has passed several acts that deal with obstacles to achieving patent under the Desert Land Act. An act of March 28, 1908, for example, provides for extensions up to 3 years if delays outside the control of the applicant occur in the construction of irrigation works. 5/ A law enacted July 30, 1956, permitted any person with a desert-land entry allowed and subsisting on March 1, 1956, or who had filed an application on March 1, 1956, which was allowed thereafter, to suspend until March 1, 1959, further operations looking to cultivation and improvement of the land. 6/ On June 29, 1960, a law was enacted to authorize an extension of time for final proof for certain desert-land entries in California. 7/

The limitation of size to 320 acres must be viewed along with legislation passed in 1890, which limits to 320 acres in the aggregate the amount of land to which a person may acquire title under certain public land laws, not including the mineral laws or the public sale laws. This was modified in 1917 by legislation allowing one who has entered 320 acres under the enlarged homestead laws also to make a desert land entry for not to exceed 160 acres.

The Taylor Grazing Act

Operation and administration of the Desert Land Act are conditioned greatly by the Taylor Grazing Act. This act, passed June 1934, modifies the availability of public land and establishes general standards and procedures for transferring public land to private use for irrigated agriculture. 8/

Section 1 of the Taylor Grazing Act states that its purpose is "to promote the highest use of the public land pending its final disposal." Section 7 authorizes the Secretary of the Interior "to examine and classify any lands withdrawn or reserved by executive order..., or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants...and to open such lands to entry...."

Thus public lands may not be entered under the Desert Land Act until they are classified and opened to entry. The Taylor Grazing Act introduced the concept of evaluation of land uses and transition to higher uses and made land classification a part of the program of the Bureau of Land Management.

The Pittman Act

The Pittman Act, passed in October 1919, applies only in Nevada. 9/ It was designed to encourage the discovery and utilization of subterranean water

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5/ 43 CFR 232.39 (1954).

6/ 70 Stat. 715 (1956), 43 U.S.C. See 237 f (1958).

7/ 74 Stat. 257 (1960).

8/ 48 Stat. 1269; 43 U.S.C. 315 et. seq.

9/ Stat. 293.

for irrigation purposes, and is restricted to underground water. It is similar to the Desert Land Act, but permits an applicant to explore for water on 2,560 acres and attain patent on a fourth of the land in the application if water is developed.

The Pittman Act applies only to public lands "not known to be susceptible of successful irrigation at a reasonable cost from any known source of supply." Under the Desert Land Act, on the other hand, the applicant is required to present reasonable presumptive evidence of adequate water within economic cost limits.

ADMINISTRATIVE POLICIES OF THE DEPARTMENT OF THE INTERIOR

The Bureau of Land Management of the U. S. Department of the Interior is charged with administering the Desert Land Act, the Taylor Grazing Act, and the Pittman Act.

Agencies charged with administration of legislation frequently have much influence in shaping the programs they administer. It is essential, then, in reviewing and appraising the desert land program to get some insight into the administrative policies of the Department of the Interior as carried out through the Bureau of Land Management. Some of these policies are expressed in the following quotations from publications and news releases of the Bureau.

"Land disposals are approved by the Bureau when they permit the highest use of the land concerned.... All public lands are classified for the uses for which they appear best suited.... As a general policy, lands suitable for agriculture or needed for home or business sites are made available for those uses (12)."

"Development must be based upon a determination as to the highest use of the land and land classified for disposal under the Desert Land Act must be, among other things, more valuable or suitable for the production of agricultural crops under irrigation than for the production of native grasses and forage plants.

"Use of public land and water (particularly water from underground basins) for agriculture under the Desert Land Act must not destroy public or private values greater than those which are created. The goal is wise use, avoiding the extreme position which leads to a lockup of resources on the one hand, or their thoughtless exploitation on the other (11)."

The Bureau of Land Management operates under some general guides of "economic feasibility." Attempts at precise evaluations are not made, but public and private benefits and costs are compared in a general sense. Applications for desert land entries in areas clearly unsuited for irrigation are rejected. Existing and potential uses of the land are balanced against uses with irrigation. The effects of additional and new irrigation on present farm and ranch operations are examined.

The applicant must present reasonable evidence that there is an adequate water supply that is not fully appropriated by existing developments. For instance, in several areas of Utah the Bureau of Land Management has ruled that 1 cubic foot per second of water for each 70 irrigable acres was adequate. This amounts to about 3 acre feet per acre on the basis of a 110-day irrigation season. But the water supply might meet this requirement and the land still be poorly suited for irrigation.

A recent development of significance is establishment of a public land conservation policy by the Department of the Interior. 10/ This policy establishes conservation of water resources as a paramount objective of resource management. It is aimed also at protecting the interests of existing water users on or near public land. The policy is designed to encourage the management of water as a renewable natural resource. Under the new policy agricultural land entries in areas with declining water tables will not be allowed.

ACTIVITY UNDER THE DESERT LAND ACT

About 370 million acres in the desert land States are owned by the Federal Government (table 1). This is nearly 45 percent of the land area. Nearly 90 percent of the land in Nevada is federally owned.

The Bureau of Land Management administers about 178 million acres, 48 percent of the federally owned land (table 2). The largest acreages are in Nevada, Utah, Wyoming, California, Oregon, New Mexico, Arizona, and Idaho. Most of this land is eligible for the filing of applications for entry under the Desert Land Act. The first step in obtaining land under the Desert Land Act is to file a "petition-application" for permission to develop land and water. If approved, the application becomes an "allowed entry" (sometimes called "original entry") and the applicant may proceed with development. An "unperfected entry" is one in which the application has been approved but requirements for development have not been met. "Final entries approved" are those for which requirements have been met; the land is eligible for "patent," or transfer to private ownership. A "closed entry" is one on which final action by the Bureau of Land Management has been taken. The term can refer to entries which have been rejected, abandoned, canceled, or closed by patent.

Desert Land Applications and Investigations

In the period beginning in 1950 and ending in late 1962, about 20,000 applications were made under the Desert Land Act (17). In the 12 years 1950-61, field examinations were made for 15,857 new cases (table 3). In the same years, adjudication operations covered 22,086 new cases and 9,226 reactivated cases, a total of 31,312. Of these cases, 29,949 were closed by one action or another (table 4). These numbers suggest the vast volume of work involved for limited staffs in a few offices, since the activity occurred mostly in a few States.

10/ U. S. Department of the Interior. Secretary Udall Announces Land Conservation Policy. News release Sept. 24, 1961.

Table 1.--Federally owned lands in 13 desert land States, June 30, 1960

State	Total land area	Acreage owned by Federal Government			Percentage owned by Federal Government
		Public domain	Acquired land	Total	
	Acres	Acres	Acres	Acres	Percent
Arizona	72,688,000	32,099,798	295,814	32,395,612	44.6
California	100,313,600	42,967,539	2,103,360	45,070,899	44.9
Colorado	66,510,080	23,212,366	943,658	24,156,024	36.3
Idaho	52,972,160	33,323,789	726,179	34,049,968	64.3
Montana	93,361,920	25,359,214	2,455,533	27,814,747	29.8
Nevada	70,264,960	60,507,675	218,661	60,726,336	86.4
New Mexico	77,767,040	26,032,112	1,267,777	27,299,889	35.1
North Dakota	44,836,480	211,546	1,728,249	1,939,795	4.3
Oregon	61,641,600	30,614,410	965,587	31,579,997	51.2
South Dakota	48,983,040	1,597,648	1,719,846	3,317,494	6.8
Utah	52,701,440	36,044,316	421,360	36,465,676	69.2
Washington	42,743,040	11,236,018	1,430,016	12,666,034	29.6
Wyoming	62,403,840	29,536,836	682,080	30,218,916	48.4
Total	847,187,200	352,743,267	14,958,120	367,701,387	43.4
United States 1/	2,271,555,709	720,891,628	49,997,992	770,889,620	33.9

1/ Includes Alaska.

Statistical Appendix to the Annual Report of the Director, Bureau of Land Management, fiscal year ended June 30, 1960 (9).

Table 2.--Public lands under exclusive jurisdiction of the Bureau of Land Management, 13 desert land States, June 30, 1960

State	Vacant public lands			Reserved lands		Unperfected entries 2/	Grand total
	Outside grazing districts	Within grazing districts	Total	LU 1/	Other		
	Acres	Acres	Acres	Acres	Acres	Acres	Acres
Arizona	1,913,092	10,528,962	12,442,054	39,127	563,010	16,614	13,060,805
California	13,064,690	2,608,520	15,673,210	---	156,592	150,362	15,980,164
Colorado	599,822	7,490,345	8,090,167	37,536	249,442	6,171	8,383,316
Idaho	576,977	11,075,085	11,652,062	73,316	287,493	172,547	12,185,418
Montana	1,178,861	5,205,969	6,384,830	1,902,041	21,825	34,933	8,343,629
Nevada	3,583,785	42,442,668	46,026,453	3,383	1,249,486	81,403	47,360,725
New Mexico	390,572	12,738,435	13,129,007	270,884	759,011	18,625	14,177,527
North Dakota	78,908	---	78,908	---	5,029	---	83,937
Oregon	781,591	12,371,616	13,153,207	94,923	2,211,812	11,803	15,471,745
South Dakota	271,805	---	271,805	---	13,680	---	285,485
Utah	98,757	23,998,434	24,097,191	18,749	175,375	22,952	24,314,267
Washington	364,997	---	364,997	---	---	3,735	368,732
Wyoming	3,012,916	13,184,816	16,197,732	9,715	1,377,904	26,884	17,612,235
Total	25,916,773	141,644,850	167,561,623	2,449,674	7,070,659	546,029	177,627,985

1/ Land Utilization Project lands purchased by Federal Government under Title III of the Bankhead-Jones Farm Tenant Act, and subsequently transferred from jurisdiction of U.S. Department of Agriculture to U.S. Department of the Interior. Now administered by the Bureau of Land Management.

2/ Excludes reclamation and forest homesteads.

Statistical Appendix to the Annual Report of the Director, Bureau of Land Management, fiscal year ended June 30, 1960 (9).

Table 3.--Field investigations under the Desert Land Act, 1950-1961

Year ending June 30	Pending at beginning of year	New cases	Cases closed	Pending at end of year
	Number	Number	Number	Number
1950-----	507	524	362	669
1951-----	669	910	686	893
1952-----	893	1,408	597	1,704
1953-----	1,665	2,451	1,030	3,086
1954-----	3,086	1,313	2,499	1,900
1955-----	1,900	1,806	2,007	1,699
1956-----	1,699	1,621	1,914	1,406
1957-----	1,406	469	1,282	593
1958-----	593	1,415	1,283	725
1959-----	807	1,645	1,663	789
1960-----	789	1,486	1,595	680
1961-----	680	809	1,367	122
Total--	---	15,857	16,285	---

Statistical Appendixes to the Annual Report of the Director, Bureau of Land Management (9). In some instances, the figures in published reports differ between the end of one fiscal year and the beginning of the next.

Table 4.--Adjudications operations under the Desert Land Act, 1950-1961

Year ending June 30	In process at beginning of year	New cases	Reactivated cases	Closed cases	In process at end of year
	Number	Number	Number	Number	Number
1950-----	1,892	525	250	667	2,000
1951-----	2,000	994	264	911	2,347
1952-----	2,346	1,671	90	922	3,185
1953-----	2,260	3,280	213	1,190	4,563
1954-----	4,563	1,231	252	1,998	4,048
1955-----	4,048	1,917	1,088	2,270	4,783
1956-----	4,783	1,266	1,307	2,972	4,384
1957-----	4,384	1,281	1,532	3,036	4,161
1958-----	4,161	3,818	1,154	2,303	6,830
1959-----	6,830	3,575	1,056	4,705	6,756
1960-----	6,756	1,629	862	5,427	3,820
1961-----	3,820	899	1,158	3,548	2,329
Total--	---	22,086	9,226	29,949	---

Statistical Appendixes to the Annual Report of the Director, Bureau of Land Management (9). In some instances, the figures in published reports differ between the end of one fiscal year and the beginning of the next.

Land classifications were made for 11,886 tracts during 1950-61; 4,346 were classed as suitable and 7,540 as unsuitable (table 5). In the 16 years 1946-61, more than 3,000,000 acres were classified; about a third of this acreage was classed as suitable for irrigation development (table 6). Of course, many applications are rejected and closed without reaching the classification stage.

Original and Final Desert Land Entries

Since passage of the Desert Land Act in 1877, about 164,000 applications have been approved for development, covering nearly 34,000,000 acres (tables 7 and 8). About 56,000 of these applications, involving 10,350,000 acres, reached the final entry stage. Substantially all of this land went to patent, and its title passed to private ownership.

In the period 1946-61, about 3,700 entries covering 850,518 acres were allowed. Final entries were approved on about 1,500 of these, covering 285,000 acres. The years of greatest activity in terms of applications filed and entries allowed were 1954 and 1955. The largest acreages were patented in 1959 and 1960--more than 40,000 acres in each year.

The leading States in number of entries allowed since 1945 were Idaho, California, Nevada, Arizona, Wyoming, and Utah (table 9). Nearly half of the 3,726 original entries allowed during that period were in Idaho. This State also accounted for nearly half of the land patented.

Entries allowed and approved are only a partial indication of the active demand for public land under the Desert Land Act. Thousands of applications never reach the "allowed" stage, as indicated by the fact that the number of field examinations and adjudications operations was several times the number of entries allowed.

In summary, of over 3,000,000 acres classified during the period 1946-61 by the Bureau of Land Management under the Desert Land Act, about 1,000,000 acres were declared suitable for the program. About 850,000 acres of the land classified as suitable were included in allowed entries, of which about 284,000 acres, or 9 percent of the land classified, went to patent.

SUCCESS UNDER THE DESERT LAND ACT IN IDAHO

Although the usual problems have been encountered in Idaho, the program there has met with greater success than in most areas of the West. This is primarily because of the supply and quality of land and water. Two situations in Idaho are especially noteworthy.

The Hazelton area in the Snake River Valley probably represents the most successful development from the standpoint of crop production that has taken place under the Desert Land Act in recent years. In 1949, most of the applications were being rejected because evidence indicated that ground water was not present in an adequate amount. However, a few applications were allowed,

Table 5.--Transactions under the Desert Land Act, 1950-1961

Year ending June 30	Original entries allowed	Final entries approved	Patents issued	Land classifications	
				Suitable	Not suitable
	Number	Number	Number	Number	Number
1950-----	146	60	42	127	68
1951-----	224	75	79	281	318
1952-----	165	47	53	131	118
1953-----	256	76	83	245	631
1954-----	731	84	76	1,224	926
1955-----	486	100	106	820	553
1956-----	315	148	125	327	812
1957-----	330	140	159	202	732
1958-----	156	191	188	200	1,042
1959-----	180	186	199	255	740
1960-----	213	179	182	315	1,049
1961-----	360	196	195	219	551
Total--	3,562	1,482	1,487	4,346	7,540

Statistical Appendixes to the Annual Report of the Director, Bureau of Land Management (9).

Table 6.--Acreages in transactions under the Desert Land Act, 1946-1961

Year ending June 30	Unperfected entries pending 1/	Original entries allowed	Final entries approved	Patents issued	Land classified	
					Suitable	Not suitable
	Acres	Acres	Acres	Acres	Acres	Acres
1946-----	284,425	428	1,304	1,855	---	---
1947-----	284,250	3,184	3,171	1,247	3,803	2,183
1948-----	257,711	7,159	1,733	2,652	21,332	15,202
1949-----	259,459	12,250	3,153	3,314	36,641	30,438
1950-----	202,582	26,834	9,888	6,820	26,081	14,872
1951-----	156,368	44,686	10,592	11,768	54,017	88,864
1952-----	172,114	29,255	6,579	6,990	23,315	26,674
1953-----	191,093	49,982	13,451	14,533	49,815	179,976
1954-----	354,603	182,200	11,095	9,282	302,295	270,802
1955-----	446,055	119,233	15,667	17,180	204,688	162,637
1956-----	493,995	75,902	26,435	21,278	86,976	303,613
1957-----	490,029	77,430	25,949	29,159	37,808	198,184
1958-----	472,995	32,692	36,903	35,195	45,083	323,782
1959-----	444,601	41,707	38,603	42,641	64,342	114,260
1960-----	378,972	53,868	39,631	40,215	73,156	296,952
1961-----	434,598	93,708	41,071	39,721	61,374	154,300
Total--	---	850,518	285,225	283,850	1,090,726	2,182,739

1/ At end of year.

Statistical Appendixes to the Annual Reports of the Director, Bureau of Land Management (9).

Table 7.--Total original and final entries under the Desert Land Act, cumulative for years 1946-1961

Year ending: June 30	Original entries		Final entries	
	Number	Acres	Number	Acres
1961------	163,790	33,695,625	56,212	10,350,140
1960------	163,430	33,601,917	56,016	10,309,069
1959------	163,217	33,548,049	55,837	10,269,437
1958------	163,037	33,506,342	55,651	10,230,835
1957------	162,881	33,473,649	55,460	10,121,932
1956------	162,551	33,396,218	55,320	10,095,983
1955------	162,236	33,320,316	55,172	10,069,548
1954------	161,750	33,201,083	55,072	10,053,881
1953------	161,019	33,018,883	54,988	10,042,787
1952------	160,763	32,968,901	54,912	10,029,336
1951------	160,598	32,939,646	54,865	10,022,757
1950------	160,374	32,894,959	54,790	10,012,165
1949------	160,228	32,868,125	54,730	10,002,277
1948------	160,150	32,855,875	54,705	9,999,123
1947------	160,094	32,848,716	54,691	9,997,390
1946------	160,068	32,845,532	54,667	9,994,220

Statistical Appendixes to the Annual Reports of the Director, Bureau of Land Management (9).

Table 8.--Original and final entries under the Desert Land Act, by States, March 3, 1877, to June 30, 1961

State	Original entries		Final entries	
	Number	Acres	Number	Acres
Arizona---------	10,328	2,645,769	2,335	505,568
California------	24,821	5,335,391	6,216	1,193,946
Colorado--------	17,502	3,231,289	5,651	1,015,403
Dakota Territory	35	20,021	1	300
Idaho-----------	19,953	3,465,039	6,706	1,267,066
Montana---------	32,075	5,984,483	16,405	3,051,691
Nevada----------	3,993	871,873	1,030	197,546
New Mexico------	11,341	2,176,949	1,899	283,861
North Dakota----	517	85,278	118	20,254
Oregon----------	6,789	1,145,986	2,347	361,466
South Dakota----	4,070	609,290	1,118	180,759
Utah------------	8,798	1,543,822	3,255	503,837
Washington------	6,085	998,708	1,120	137,960
Wyoming---------	17,483	5,581,727	8,011	1,630,483
Total---------	163,790	33,695,625	56,212	10,350,140

Statistical Appendix to the Annual Report of the Director, Bureau of Land Management, fiscal year ended June 30, 1961 (9).

Table 9.--Activity under the Desert Land Act, selected States, fiscal years 1946-1961 1/

State	Original entries allowed		Final entries approved		Patents issued	
	No.	Acres	No.	Acres	No.	Acres
Arizona	2/ 193	49,852	158	36,026	162	37,385
California	635	131,921	283	43,634	281	42,961
Colorado	20	3,544	22	4,591	16	2,792
Idaho	1,502	343,370	731	140,805	737	140,313
Montana	6	1,357	7	1,150	9	1,390
Nevada	851	216,235	98	22,107	100	22,150
New Mexico	69	16,250	21	3,556	27	4,412
Oregon	113	25,354	51	5,108	50	5,352
Utah	152	29,961	63	10,099	64	10,686
Washington	1	130	13	1,129	4	323
Wyoming	184	32,541	108	17,014	106	15,817
Total	3,726	850,515	1,555	285,219	1,556	283,581

1/ Number of patents and acreage may exceed State data on original entries, due to the carry-over into the 1946-61 period of cases initiated prior to 1946.
2/ None since 1955 because of problems relating to water rights.

Statistical Appendixes to the Annual Reports of the Director, Bureau of Land Management (9).

and within several years high crop yields were being obtained on the areas under irrigation. The water supply was deeper than in many areas--around 350 feet--and initial investment costs were high. This experience points up the uncertainties associated with ground water supplies until some person or some agency develops the first well.

The Raft River area in Idaho is characterized by a mixture of private and public land and a diversity of soils and climate. Here the problem is that the ground water supply, though extensive, is not adequate to irrigate all of the arable soils. Successful farms were developed in this area under the Desert Land Act. But the Bureau of Land Management was confronted with a problem of maintaining balance between development and water supply.

To summarize the desert land program in Idaho, we can say that of 897 applications filed during the 1950-59 period and processed to completion as of the end of 1961, 533 went to patent while 364 were canceled (4). Thus, 40 percent of the applicants failed to secure patent. The long-run effects of the program are still to be determined both in terms of individuals and total agriculture in affected areas.

ADMINISTRATIVE PROCESSES AND PROBLEMS IN UTAH

Recent activities and developments under the Desert Land Act in Utah illustrate many of the problems which the Bureau of Land Management encounters in administering the Act. A 1957 study of administration of the program in Utah in the years 1948-57 is the basis of the following discussion (8).

Applications were made during the 10 years from 1948 to 1957 on 399 tracts in 20 areas of the State. Of these, only 82 were allowed. Twenty-five applicants had proved up on the land and acquired title by 1957. Failures were numerous. Many applicants made no effort to develop a water supply.

These applications were almost entirely for land in dry, sparsely vegetated rangeland areas, where the ground water supply is uncertain and annual replenishment is small. A significant amount of information about quantity and quality of ground water has been obtained in the course of explorations under these applications. In some instances, entirely new areas were explored.

Time Interval Between Actions

The Utah study provided considerable information on the problem of long lags between the various steps in processing desert land applications. The study revealed that applicants had often been slow to complete their investigations because of lack of capital, distance between their residence and the land applied for, and numerous other factors. The Bureau of Land Management had been slowed down, especially in periods of high activity, by lack of sufficient personnel to process actions promptly.

Delays in the investigative reports from the Geological Survey on the value of the land for minerals slowed down action on applications in some

instances. This situation was improved considerably with adoption of the practice of processing the application without waiting for the minerals report.

Another cause of delay in closing desert land cases was the large number of actions that might be required in a single case. The following chronology of an actual case illustrates this problem:

May 10, 1955: application filed for classification of land.
May 12, 1955: suspended--failure to show evidence of water right.
May 18, 1955: rejected--failure to show evidence of water right.
Aug. 19, 1955: evidence of water right filed by applicant.
Feb. 27, 1956: classified unsuitable for entry--rejected.
April 11, 1956: closed.
Sept. 28, 1956: application filed for reinstatement.
Oct. 1, 1956: reinstatement allowed.
May 1, 1957: document received from applicant showing sufficient water.
May 6, 1957: additional showing made.
Aug. 5, 1957: application allowed.

This case was not unusual. Even the cases closed without entry being allowed frequently involved numerous actions. Failure of the applicant to supply the necessary information, lack of data about the land and water resources, exercise of the right of appeal, and filing by more than one applicant for the same tract are all factors that may contribute to long delays.

Good progress apparently had been made by administrators and applicants in meeting requirements with reference to allowed entries.

Records on 344 applications made between 1948 and 1957 show that about 110, or one-fourth, had been allowed by the end of 1957. Average time between filing and allowance of application was 15 months. Average time between the date entry was allowed and the filing of the first annual proof was 17 months.

The applications reaching the stage of final proof or for which patents were issued during the 1948-57 period reached these categories in an average of 4 years from date of filing. The law requires only that final proof be made within 4 years of the date application is allowed.

Final action on cases closed without reaching the stage of being allowed may be delayed for many months. There is no particular urgency about closing such a case, since it may only mean another application and repetition of the same costly process.

An average of 30 months had elapsed between filing and final action on all closed applications in the State. By area, the average time varied from 21 to 36 months.

The longtime practice of "first in time, first in right to consideration," coupled with long lapses of time between filing and final action, removes tracts of land from consideration for many months. In some instances, persons

with little capital, no farming experience, inadequate managerial ability, and perhaps motives other than those envisioned by the Act, by filing first may prevent others from securing land they might be able successfully to develop into irrigated farms. In the meantime, the effective demand for land may have altered completely. Such a change has apparently occurred during the last several years.

Residence of Applicants

The extent to which an area becomes settled as a result of the desert land program depends in part on whether or not the applicants are already established outside the area. Public land is usually distant from settled areas. Most desert land applications have been made by individuals residing outside the areas where the land is located. The tendency has been to develop from already established headquarters rather than to settle on the new land.

Of 274 persons who filed applications in 6 leading areas of desert land activity in Utah during the years 1948 to 1957, nearly a fourth lived in Salt Lake City, as indicated in the following tabulation:

Residence	Number of applicants
Local	75
Same county	93
Salt Lake City	60
Other:	
100 miles or less from area	25
101-200 miles	19
300 miles or more	2

Special Land Use Permits

Applicants for land under the Desert Land Act spend considerable sums to "find water" and "prove up," which they lose if no water is found. This is a risk some people think Government should share. This could be done by test-drilling for water or by financing ground water development. The Federal Government has engaged in both of these activities on Federal reclamation projects.

Another way of minimizing the individual's risk is for the Bureau of Land Management to issue a special land use permit allowing the applicant to drill a well on a small tract (2 to 5 acres) within the area applied for. If the well is successful, the regular application is approved. The special permit program has been used extensively in Utah. Information is available from the 1957 study on 51 special land use permits issued in 5 areas during the years 1952 to 1955. The permits were intended to be of 6-month duration, and were issued on the understanding that a well would be drilled soon after issuance. Forty-one of the 51 permits had been terminated by the end of 1957.

Apparently only fair success was associated with the permits issued in these areas. Applications were filed in connection with all 51 permits issued.

Only 13 wells were drilled, and some of the applications associated with the 13 wells were rejected. Of the 51 applications, only 9 were allowed, and only 3 of these had gone to final proof or patent by 1957.

In addition to the 13 wells drilled under special land use permits, at least 20 other wells were drilled in the 5 areas during the years from 1948 to 1957. Thirty-five applications were allowed during this period without the issuance of special land use permits.

Success in Proving Up

The Bureau of Land Management allowed 110 entries in Utah during the period 1948-57. Once an application is allowed, the program is basically the responsibility of the individual applicant. The Bureau has only to determine whether he develops the land as required by the Act.

An individual exhausts his desert land privileges when his entry is allowed or when it has been determined that it is allowable, even if he cancels his application before it is actually allowed. This situation holds regardless of the acreage covered by the application.

Only 18 tracts were patented in Utah in the years 1948 to 1957. Forty-seven other tracts were in final proof status or in process of proof at the end of 1957.

The status of all cases allowed in Utah from 1948 to 1957 is summarized below:

Status	Cases
	Number
Allowed, no annual proof	17
Annual proofs made	40
Final proof made	7
Patent issued	18
Total	82
Closed, other than patent:	
Annual proof made	12
Rejected	8
Withdrawn	8
Total	28
Total allowed cases	110

This rate of proving up is about the same as for the desert land program as a whole. Less than a third of the acreage in allowed entries in the United States from 1877 to 1957 achieved final entry status.

SPECIAL LAND AND WATER SUPPLY PROBLEMS IN CALIFORNIA

Activity under the Desert Land Act has been especially heavy in California during the last two decades. During the period 1950-59, 8,746 applications were filed in that State. Of these, only about 450 were allowed.

Applications were made in about 55 valleys in southern California, mainly in San Bernardino, Riverside, and Imperial Counties, but also in Kern and San Diego Counties (fig. 1).

Problems associated with the large number of applications seemed to come to a focus in about 1958. In a press release issued September 19, 1958, the Bureau of Land Management noted that the Los Angeles Land Office had 4,500 applications pending, involving more than 1,400,000 acres. More than 1,500 of these applications had been made since January 1 of that year. The Bureau indicated that most of the 4,500 applications would have to be rejected because of poor soil and insufficient water.

In April 1959, the Bureau of Land Management reported that "1,100 applications for a total of about one-third of a million acres of California desert

AREAS CLOSED TO AGRICULTURE ENTRY AS OF
SEPT. 28, 1959, CALIFORNIA

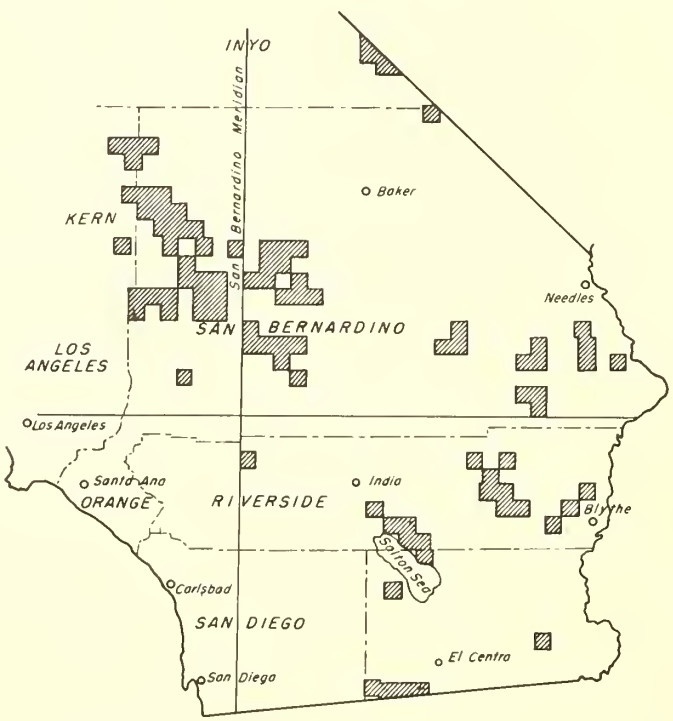

Figure 1

lands have been rejected by the Los Angeles Office of the Bureau of Land Management (13, pp. 10-11)." The applications were rejected because the tracts were "unsuitable for desert land entry because of lack of water, poor soils, unfavorable topography, or a combination of these drawbacks."

Shortly afterward, 740 of these applications rejected by the Los Angeles office, involving a quarter million acres in seven southern California valleys--Mojave River, Fremont, Indian Wells, Ward, Rice, Chuckawalla, and Upper Kingston--were rejected on appeal by the Bureau of Land Management in Washington, D. C. (14). Surveys showed that water supplies were insufficient to permit applicants to irrigate to the extent necessary to comply with the desert land law.

On October 2, 1959, a press release of the Bureau of Land Management indicated that a million acres in southern California had been determined to be inappropriate for agricultural entry because of lack of an assured water supply. This classification was accomplished in decisions rejecting appeals on 589 homestead and desert land applications covering 180,000 acres. Note was made that this determination did not prevent the land from being classified and opened to entry or sale for purposes other than agriculture, such as for recreation or urban and industrial uses.

The areas found unsuitable for agricultural entry were:

County	Total acres in townships involved	Acres classed as unsuitable
Inyo	80,640	40,320
Kern	115,200	57,600
San Bernardino	1,313,280	656,640
Riverside	368,640	184,320
Imperial	161,280	80,640
Total	2,039,040	1,019,520

Under a crash program initiated by the Bureau of Land Management in late 1958, about 2,500 applications for tracts in southern California were closed without appeal and 1,760 applications were closed under appeal, making a total of 4,260 cases closed within less than a year. On October 23, 1959, there were pending in the Los Angeles Land Office 1,251 desert land applications in filed status and 294 applications in appeal status. These data were obtained from unpublished records in the Los Angeles office.

As of November 13, 1959, records in the Los Angeles office showed that this office had rejected 4,335 cases in 55 valleys since the first of the year. Of this total, appeals had been received on 1,729 cases, and 2,195 cases had been closed.

Early in 1960, an additional 100,000 acres in southern California were classified as inappropriate for entry for agricultural use because of a lack of adequate water supply. In total, the crash program resulted in classification of more than 1,100,000 acres as unsuitable for entry under the Desert Land Act (16).

RIGHTS IN GROUND WATER

The issue of rights in ground water as related to the Desert Land Act has been prominent in some States during the last decade or so. Important decisions, especially with reference to Arizona and California, have been made by the Department of the Interior. Doctrines of prior appropriation and correlative rights have both entered these decisions. Thus, laws about ground water, as well as uncertainties and inadequacies of supply, have plagued the operation of the Desert Land Act.

Arizona

The Arizona Supreme Court has ruled that percolating waters in that State are subject to the doctrine of reasonable use and not to the doctrine of prior appropriation. 11/ Percolating water is defined as underground water that does not flow in defined channels.

The Solicitor of the U. S. Department of the Interior decided in 1955 that desert land applicants in Arizona cannot establish an assured water supply from wells if the doctrine of reasonable use entitles subsequent users to as much of the percolating water as they can reasonably put to beneficial use on their land even though it exceeds their proportionate share of the water (correlative rights doctrine). He concluded that an application for a desert land entry in Arizona cannot be allowed, and that a patent cannot be issued for an entry which has already been allowed, if reclamation of the land is dependent upon percolating water. 12/

The Department of the Interior therefore took the position that "unless the State of Arizona enacts legislation making percolating waters subject to the doctrine of prior appropriation, the effect of the Solicitor's opinion

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11/ Bristor v. Cheatham 75 Ariz. 227, 255 p. 2d 173, 1953.

12/ 62 Decs. Dept. Int. 49, 53, 54 (1955).

will be to halt further desert-land entry in Arizona since practically all such reclamation is dependent on pumping...." 13/ No desert land entries based on percolating ground water have been allowed in Arizona since that time.

Discontinuance of desert land allowances in early 1955 was preceded by a declaration by the State of Arizona on October 15, 1954, of critical ground water areas extending south from the vicinity of Phoenix nearly to the Mexican border. This declaration prohibited expansion of irrigation on new lands within these critical areas.

At the time of the ruling by the Solicitor of the Department of the Interior, 183 Arizona desert land entries were in an allowed status. Soon thereafter, Congress enacted legislation "for the relief of desert land entrymen whose entries are dependent upon percolating waters for reclamation." Public Law 226, approved September 4, 1955, provides that the requirement for bona fide prior appropriation be waived on desert land entries allowed and subsisting in Arizona on the effective date of the act, which were dependent upon percolating waters for their reclamation.

California

On January 19, 1956, the Solicitor of the Department of the Interior in opinion M-36378 reaffirmed his earlier opinion M-36263 of February 23, 1955, which held that an application for desert land entry may not be allowed if based on waters which cannot be appropriated under the law of the State involved. This 1956 opinion dealt with "whether desert land entries based on the use of certain classes of percolating water may be allowed in California, Colorado, Montana, and Oregon."

Opinion M-36378 stated that "it would be proper to allow a desert land entry (in Colorado) based on a prior, valid appropriation of underground water in the absence of evidence overcoming the presumption." Likewise, "Desert land entries for public lands in Oregon may be allowed based on appropriation of percolating waters for beneficial use." No direct decision about Montana was included in the opinion, but an applicant for a desert land entry in Montana probably could not show a right to percolating waters which meets the requirements of the desert land statute and applicable regulations.

In California, the rule of correlative rights has been applied to percolating waters. A basic element is that the right to percolating water is acquired by ownership of overlying land and that water is distributed among owners on a proportional basis up to a point of reasonable beneficial use. The right is not to a definite quantity of water, but is only a correlative right. 14/

13/ U.S. Dept. Int. Inform. Serv., Legal Conflict Bars Certain Desert Land Entries in Arizona. For release March 2, 1955. 2 pp. mimeo.

14/ See City of San Bernardino v. City of Riverside, 156 Cal. 7, 198 Pac. 784, 788 (1921).

With reference to California, the Solicitor in his opinion M-36378 of January 19, 1956, stated that a cardinal aspect of the correlative rights doctrine is the superior position of reasonable use of percolating water put to beneficial purposes. Since owners of overlying land are among themselves subject to proportionate reduction of water use, it is questionable that even the landowners' rights will meet the statutory and regulatory requirements. Rights based on use (presumptive rights) may be superior to both correlative rights and appropriation of waters surplus to needs of the overlying land. Correlative rights differ basically from the established water law doctrine of "prior appropriation," the opinion continued, and cannot qualify as a water right within the meaning of the Desert Land Act.

A decision by the Bureau of Land Management on April 2, 1956, involving 25 desert land applications, focused attention on ground water law in California. In California, water not needed for reasonable beneficial uses of those having prior rights is excess or surplus and can be appropriated. 15/ But the Bureau ruled that this right could not qualify since it is subordinate to the correlative right.

However, in March 1957, the April 2, 1956 decision of the Bureau was reversed on appeal by the applicants and Solicitor's opinion M-36378 (January 19, 1956) was overruled to the extent inconsistent. 16/ The opinion is a comprehensive review of water law related to the Desert Land Act.

Review of California law indicates that both the doctrine of riparian rights and the doctrine of appropriation have been applied. In order to clarify water law, California adopted in 1928 an amendment to Art. XIV, Sec. 3 of its Constitution. This amendment "now constitutes California's basic water law." The amendment declares that the right to water is limited to the amount that shall be reasonably required for the beneficial use to be served. 17/

However, no statutory method has been provided under which percolating water may be appropriated. The rights of the owners of overlying land are paramount. Disputes between overlying landowners are to be settled by giving each claimant a fair and just proportion. 18/

The 1957 decision of the Solicitor apparently concluded that the main question was whether desert land applicants had an appropriative or only a

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15/ City of Pasadena v. City of Alhambra, 33 Cal. (2d) 908, 207 Pac. (2d) 17, 28, 29 (1949).

16/ 64 Decs. Dept. Int. 57 (1957).

17/ United States v. Gerlock Livestock Co. 339 U.S. 725, 743, 751 (1950).

18/ Katz, et al. v. Walkinshaw, 74 Pac. 766, 772 (1903). Reaffirmed in City of Pasadena v. City of Alhambra 33 Cal. 2d 908, 207 Pac. 2d 17 (1949).

correlative right and not whether the appropriative right is superior to the riparian or correlative right of neighbors on private lands. Although the answers to these questions are far from clear, the opinion was in support of the applicants to the effect that they do have appropriative rights that satisfy the requirements of the Desert Land Act.

PROBLEMS OF SPECULATION

On March 11, 1959, the Reno Evening Gazette contained the following statements:

"There's a big land rush to Nevada these days, but the would-be farmers probably could do better on Reno's legal dice and card tables."

"Nevada's vast open spaces have drawn land gambles from some 1600 Texans, Oklahomans, Idahoans, and Californians in the last two years."

"The current session of the state legislature has called on Congress to repeal the Pittman Act and to amend the desert entry law so only Nevada residents can use it for land filings."

"The legislature's position is supported by comparing the land gamble with that in Nevada's 24-hour casinos."

"Your chances of winning your money back on the dice and card tables, for instance, are less than 5 to 4 against you. But your chances of ever acquiring ownership of land through a Pittman or desert entry application are more than 200 to 1 against you."

From its original passage in 1877, the Desert Land Act has had a reputation of encouraging speculation. In recent years, it has been evident that many people view desert land entry as an easy means of obtaining some public land, and know little about the difficulties that might be involved. Land locators have used this "easy ownership" approach to extract unreasonable fees from applicants who had no more than a remote chance of acquiring title to the land they applied for. The prevalence of speculative activity has been an important argument of the Bureau of Land Management for closing to application areas without prospects for adequate water supplies.

Nevada is one of the States in which land promoters have flourished in conjunction with the Desert Land Act. Nevada is unique under the Act in that applicants do not have to be residents of the State. This feature has made it especially easy to sell the unwary on great opportunities under the program. A survey by the Bureau in 1959 revealed that 2,899 applications were filed in Nevada under the Desert Land Act from April 1, 1954, to March 25, 1959. Ninety percent of these applications were by nonresidents of the State.

Some promotional schemes in Nevada have resulted in productive irrigation development. In some instances the promoter has supplied the initial capital

to get the development under way. But it is evident that much promotion has been carried on with the sole purpose of profitmaking, whatever the potential loss to the applicant.

In order to meet the regulatory requirement that desert land applicants examine the tract of land, some promoters have flown applicants from Texas and elsewhere "over" the land. These people then certify that they have inspected the land, although obviously they may not know the specific location or quality of the tracts covered by their applications.

Another promotional device is locating land for a fee. A customary fee for land locators in Nevada in recent years was $10 per acre or $3,200 for a desert land tract. In Lake Valley, situated 50 or 60 miles south of Ely, Nevada, reportedly 30,000 acres were "located" at $10 per acre, although surveys indicated a ground water supply in the valley sufficient for only 1,500 acres. In some valleys of Nevada, promoters were apparently on the third round of clients by 1959.

While considerable support has arisen in Nevada for repeal of the Pittman Act and of the nonresidence feature of the Desert Land Act, the support is not unanimous. Some people continue to believe that outside capital is needed to develop the land and water resources of the State.

Nevertheless, in 1959 the Nevada State Senate petitioned the Congress of the United States to repeal both the Pittman Act and the Desert Land Act. 19/ Among other points the resolution stated that the two acts "...are now being used by unscrupulous speculators and nonresident promoters to take advantage of unsuspecting residents of Nevada and other states of the Nation...." Neither act has been repealed, but in 1961 the House of Representatives passed a bill to repeal the Pittman Act.

The Nevada Real Estate Commission has also taken a considerable interest in desert land activity. Many promoters have been successfully prosecuted in the courts on the basis that they were not licensed real estate brokers. "But, we cannot stop the operations of those who work from outside the boundaries of Nevada. Only an act of Congress will protect our citizens from being defrauded." 20/

The Bureau of Land Management also recognizes "several serious problems" from the administrative standpoint, as indicated by the following items listed in an attachment to a letter dated December 29, 1958, from the Nevada State Supervisor, Bureau of Land Management:

1. Large numbers of speculative entries under the Desert Land Act by nonresident entrymen were being promoted by professional land locators. These entries greatly exceeded the capacity of BLM personnel in Nevada to examine, classify and adjudicate in timely fashion.

19/ Nev. Stats., 933 (1959).

20/ Reno Evening Gazette, March 11, 1959.

2. A majority of these entries were ill-advised with respect to quality of soils, available ground water, economic location, and other factors basic to success.

3. Clearing and cultivation activities on these entries destroyed the native vegetation, opened the land surface to wind and water erosion, and invited invasion by the poisonous weed halogeton, for control of which several hundred thousand dollars annually are being spent in Nevada.

4. The Bureau had been unable effectively to prevent Desert Land Act entries on areas reseeded for soil stabilization and augmentation of range forage resources.

5. Many of the speculative land entry schemes then being promoted in Nevada were fleecing the entrymen (individuals) of large sums of money. In one scheme alone, for example, the promoter charged $10.00 an acre for locating Desert Land Act entries, of which he obtained over 100 filings in one block. Subsequent examination of soils and water resources in this area by BLM showed that less than 20 entries of this entire group could be approved. Under existing laws the Bureau cannot prevent such schemes.

6. As administrator of the majority of lands in Nevada, BLM is concerned for proper resource management and development to assure long-term economic good. This is not possible under existing laws.

Apparently the nonresidence features have not been especially conducive to irrigated farm development in Nevada. In the 20 years preceding 1960, 3,136 desert land filings and 1,456 Pittman filings were recorded. In this period, only 17 persons met requirements and received title to land under the Desert Land Act and only four of the 1,456 Pittman Act filings resulted in private ownership.

Promoters, land locators, and speculators have been active in other States than Nevada. The heavily populated Los Angeles area supplies a particularly good base for these operations. On many occasions, especially with reference to its crash program of 1958-59 for closing desert land applications in southern California, the Bureau of Land Management has called attention to this problem.

There have been reports of development companies in California that advertised land, collected fees, and had the individuals sign desert land applications when no land was available at the location described on the application. In November 1959, a resident of Los Angeles reported that he and his partner had given a land locator their motel business, valued at $28,000, for locating 3 desert land tracts totaling 960 acres. However, these tracts were found to be on a mountain side and the applications were rejected. The obvious question--how can they get back the motel?

The U.S. Department of Justice and the California Division of Real Estate investigated the promotion problem near the end of 1958 for possible use of the mails to defraud, or violations of other Federal statutes. Agents of the Federal Bureau of Investigation were assigned to investigate, but apparently they could not find specific evidence of illegal use of the mails.

The California legislature in 1959 passed Assembly Bill No. 1179 to provide controls for land locators (1). The bill provided for a revised definition of a real estate broker and salesman to include "a person who assists or offers to assist another or others in filing an application for the purchase or lease of, or in locating or entering upon lands owned by the State or Federal government." The land locator must file with the Commissioner the names and addresses of all persons assisted, and the compensation received.

This California law states that "The facts constituting such necessity are: Various persons now engaged in the business of assisting others to file application for lands owned by the State or Federal Government appear to be misrepresenting and grossly overcharging for services which they perform and to be misrepresenting the availability of such lands. To eliminate these practices it is imperative that this act take effect immediately." 21/

Obviously, some land locators are competent, dependable businessmen who perform services for the public. This point has been emphasized repeatedly by the Bureau of Land Management. Unfortunately, many others have engaged in land promotion schemes that, even though "within the letter of the law, border on unethical or fraudulent practices." 22/

In announcing a rejection of 1,100 applications by the Los Angeles Land Office, Director Edward Woozley of the Bureau of Land Management in 1959 stated that "...the mass rejections should place the public on notice that the Department refuses to be a part to land speculation schemes by some persons attempting to obtain public lands through tactics that border on the fraudulent." The announcement further stated that "The Bureau said hundreds of people in southern California paid land locators from $2 to $10 per acre--or from $650 to $3,200--to prepare and file a desert land application (13, p. 11)."

The Bureau of Land Management has further said that "in many documented cases the speculators have been shown to have filed one application after another on behalf of different applicants for the same parcel of land (15, p. 11)."

21/ Cal. Assembly Bill. No. 1179 Sec. 17. (1959).

22/ Bureau of Land Management release, Sept. 19, 1958, p. 2.

CONCLUSIONS

From the national viewpoint, we need to look seriously at the Desert Land Act in terms of natural resources policy. A policy appraisal of the Desert Land Act must consider its fundamental objectives in the light of the philosophy of public ownership and resources development that has evolved over the years. What lessons may we learn from the activities and events under this Act since World War II? How successful has the Act been during the last two decades? Is the Act still operational for the future? Has the Act served its usefulness or does significant opportunity exist for future development of this kind within the framework of its objectives?

Other basic questions are: Who should own and manage the present public lands? What is the best use to make of these lands? What is the most adequate means of changing from public to private ownership where this policy is adopted? In a relative and possibly absolute sense, livestock grazing on public land will become increasingly less important. What are the most adequate means, including changes in ownership, of achieving a transition to higher uses of the land?

Public land problems in some aspects are the same now as they were in the colonial period. A paramount question is: What to do with the public lands? But the emphasis has shifted. The role of the Government has changed from one of guardian-custodian to one of development. From a single use orientation, public lands are now in demand for irrigation farming, recreation, mineral and oil development, and home sites. New needs and responsibilities are posed for government agencies and individuals.

The issue of revenue vs. free land has always been present. The question of States rights arose early in connection with the original 13 States. Over the years revenue has become less important. The proponents of free land more or less prevailed with passage of the Homestead Act. The fees required under the Desert Land Act are the same now as they were in 1877.

A conflict has always prevailed between proponents of outright sale and proponents of settlement under some homestead control arrangement. Problems in recent years have led to proposals for legislation that would modify the homestead features of public land laws and substitute sale to public bodies and private individuals.

The existing laws are called outmoded by some observers. But this characterization may depend largely on the point of view. The problems may stem from inadequate budgetary resources for setting up fully efficient administrative processes rather than from shortcomings in the basic features of the legislation.

The Desert Land Act has not been as successful as anticipated in meeting its objective "...to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have been rendered more productive and habitable."

A large acreage of land has passed from Federal to private ownership, and a substantial amount of it has been developed into successful irrigated farms. The program has not led to extensive land settlement, but this goal may no longer be highly relevant. The Act was designed and passed in terms of irrigation development from surface water; it has lacked full adaptability from the standpoint of ground water supplies and State laws governing control and use of ground water.

An area approach, such as that followed in appraising resource development in the Missouri Basin (6), would merit consideration if the Desert Land Act were to be modified. Land and water resources could be investigated and a decision made as to the apparent best use of all land in the areas subject to desert land activity. Where the prospects are good for pump irrigation, the Federal Government might finance exploratory wells to establish the quantity and quality of ground water. This procedure would help avoid two excessive costs associated with the present program: (1) administrative and individual costs associated with transfer or attempted transfer to private ownership of tracts not suitable for development, and (2) economically irreversible development of unsuitable land. The problem of multiple use--the most effective combination of uses--could also be considered more explicitly.

The General Land Office in 1875 recommended sale of desert lands instead of the program that was set up by the Desert Land Act in 1877. The Department of the Interior in 1962 recommended higher sale prices, but under a drastically different economic environment.

Outright sale of public land does not assure optimum use of land and water nor does it avoid the problems of speculation and land promotion that have plagued the Desert Land Act in the postwar years. Without a substantial amount of public control, sale might increase these problems. Sale without control might encourage speculation because speculators may be people who can outbid bona fide settlers for the land.

The emergence of many nonagricultural uses of public land and water has led to difficult problems of administration of the Desert Land Act, which is oriented to an agricultural use. Even in the early years of the Act, conflicts arose because of conflicting demands for range and cultivated land uses; these conflicts are now aggravated because of demand for still other uses.

Pressures continue for modification of the Desert Land Act. In this report, we have attempted to set forth some recent events and conditions that need to be considered in revising the Act and the present machinery for administering it. Not the least among these conditions are State and Federal laws and interpretations relating to percolating water, water supply and water rights.

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