

event the Secretary and the owner are unable to agree upon the purchase price, and the Secretary declines to complete the purchase, the owner may file a complaint setting out these facts, together with a good and sufficient deed to the property, in the United States District Court for the District of Idaho. After the filing of an answer by the United States, the case shall be treated to the extent possible, in the same manner as an action for the condemnation of property brought by the United States.

(e) The limitations hereinabove set forth on the authority to condemn an interest in lands shall not apply to property which the Secretary determines to be needed for access to and utilization of public property: provided, that if the acquisition for such purposes shall not exceed five per centum of the total acreage of all privately owned property in the recreation area as of the date of this Act.

SEC. 5. (a) The authority of the Secretary to acquire an interest in private property by condemnation shall be limited to the acquisition of scenic easements and easements for access to and utilization of public property, as hereinafter described.

(b) The Secretary shall make and publish regulations setting standards for the use, subdivision and development of privately owned property within the boundaries of the recreation area. Such regulations shall be generally in furtherance of the purposes of this Act and shall have the object of assuring that the highest and best private use, subdivision and development of such privately owned property is consistent with the purposes of this Act and with the overall general plan of the Sawtooth National Recreation Area. Such regulations shall be as detailed and specific as is reasonably required to accomplish such objective and purpose. Such regulations may differ amongst the several parcels of private land in the boundaries and may from time to time be amended by the Secretary. All regulations adopted under this Act shall be promulgated in conformity with the provisions of the Administrative Procedure Act. The United States District Court for the District of Idaho shall have jurisdiction to review such regulations after their effective date, upon a complaint filed by any affected landowner, in an action for a declaratory judgment.

(c) Whenever the Secretary determines that the highest and best private use of privately owned property within the boundaries of the recreation area, as regulated by the regulations authorized under subsection (b), will not be consistent with the purposes of this Act and with the overall general plan of the Sawtooth National Recreation Area, the Secretary is authorized to procure scenic easements within the boundaries of the recreation area. Such scenic easements may be procured by gift, purchase with donated or appropriated funds or otherwise, or by the exercise of the power of eminent domain.

Senator BIBLE. We will ask the two cosponsors of the bill, together with their very able staffs, and the staff of this committee, to take a look at your suggested language.

Mr. BRECKENRIDGE. Thank you, sir.

It may be that some of these assumptions are unwarranted. I hope not, for they contemplate no more than compensation for all that is taken. Furthermore, it contemplates compensation at the time of the taking rather than at some later date. The bill as presently drawn appears to defer compensation for property taken by the enactment of regulations until the landowner sells the remainder of his property to the Federal Government. In view of the fact that in such a case the Secretary does not need the rest of the property, that is, the fee interest, this solution may pose serious constitutional problems. In order to obtain compensation for a partial taking of his property—restrictions on use—the landowner must sell to the Secretary property which the Secretary does not need—for which there is no public purpose, and which he would not have authority to condemn. Furthermore, deferral of compensation may also pose constitutional problems, all of which can be avoided by restricting the use of zoning regulations to their customary function, and authorizing the Secretary to acquire scenic easements when he desires any further protection of scenic values.