

PRIVATE USE OF PUBLIC LANDS:

CANYON FERRY LAKE

CABIN LEASE SITES

by

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ABSTRACT

The practice of leasing public lands for private use has been performed by the Federal Government since the early 1900's. The practice of leasing public lands for recreational homesites continues today. This paper examines a case study of the Canyon Ferry Reservoir near Helena, Montana in regard to the recreational homesite leases which are issued adjacent to portions of the shoreline.

The history of the leases is followed from inception in 1958 until the present day. The efforts to phase out the leases by the Federal Government and the efforts of lessees to buy or gain title to the land are related. An effort is made to analyze both the current and the long term effects of a continuation of the leasing practice.

A conclusion is drawn that an expanding recreational use rate will inevitably bring pressure to bear to phase out the lease sites. In order for an equitable process to take place, it will be necessary to allow for relatively long term amortization. The current practice of leasing for terms of ten years does not allow an amortization period long enough to adequately recognize the investment of the lessee. Ten year lease periods also are short enough to significantly hinder the willingness of administrators to trigger a phaseout of leases.

A recommendation that one long term lease be entered into with no option to renew will recognize the need for the lessee to amortize his investment. It will also trigger the process and will set a time table for return of the lands for public use.

CHAPTER 1

INTRODUCTION

Exclusive use of public lands has occurred since the West was first opened. This use was evident with the early settlers and frontiersmen when they began to use the lands without a claim to ownership. In fact, the government promoted the use of the public lands by private individuals in order to develop the western portion of the country more rapidly. The Homestead Act of 1862 granted free title for 160 acres to any citizen who settled the land and cultivated it for five years. This legitimized much of the exclusive use practice that had taken place up to that point in time. The Homestead Act served two functions: one, to allow people to develop and lay claim to the public lands, and the other, to develop the western part of the country and create markets for products built and produced in the eastern part of the United States. This transfer of the public lands into private hands continued into the early part of the twentieth century, until 1920 when Congress broke with past resource disposal laws to set up a system for leasing instead of selling or granting increasingly valuable federal minerals. Under the Mineral Leasing Act enacted that year, the government leased to private

individuals and companies the right to develop coal, oil and gas, potash, and other sedimentary deposits.¹

The most common exclusive use of the public lands today is probably the grazing lease that occurs on many of the lands in the West. Another exclusive use that continues is that of leasing of public lands for use as recreation homesites. This practice of leasing for recreation homesites began with the Forest Service to promote recreation use on the National Forest lands.

The Act of March 4, 1915 (16 U.S.C. 497) authorized the Secretary of Agriculture: to permit the use and occupancy of suitable areas of land within the national forests, not exceeding five acres for periods not exceeding thirty years for the purpose of constructing and maintaining summer homes. . . .²

The practice of leasing recreation homesites has continued to the present day. A dilemma associated with continued leasing of recreation homesites can occur when public recreation use grows to the point where conflicts are created. Later in this paper it will be shown where conflicts are identified at the location cited as a case study for this paper. Recreation at the site is projected to increase by approximately 1,000,000 visitors per year in the next 40 years. The conflicts created by this increase will demand a resolution to the continued leasing of public lands for private purposes. The issue is further compounded by the fact that the sites in question are associated with water based recreation, which by its very

nature is in limited supply. With a limited resource and expanding use, the continuation of private use by a few in lieu of public use by the many does not seem to be in the public interest.

Purpose

This paper will address the issues associated with the exclusive use of the public lands for recreation homesites, and will address in particular a case study of Canyon Ferry Lake, near Helena, Montana. This paper intends to demonstrate that the retention of those Canyon Ferry lands in exclusive private status in the face of expanding public use is not in the public interest. Exclusive use by lessees of some of the most aesthetically valuable portions of the Canyon Ferry shoreline deprives the public of access to and effective use of those public lands. Retention of those lands in exclusive status forces the general public to use less desirable areas of the lake or use other recreational areas. As recreational use of the lake increases, the problem will become even more pronounced.

Further chapters in the paper will describe some of the reasons for leasing areas for homesites, and the problems that have been created by the circumstances surrounding the continued renewal of those leases. An analysis of the leased recreational cabin sites at Canyon Ferry Lake will be made, covering the period from the

beginning of the leases in 1958 to the present time. The history of the Canyon Ferry sites will be described to show the events that have created the situation as it exists today. Perspectives of various participants involved will be related and possible solutions, which have been proposed in the past, will be discussed. In the chapter dealing with the conclusion and summary, a solution is described which may be, in the author's opinion, the only one that will meet the needs of all involved.

Endnotes

¹Tom Arrandale, The Battle for Natural Resources (Washington, D.C.: Congressional Quarterly, Inc., 1983), 33.

²Kenneth B. Pomeroy, "A \$1 Billion Mistake," American Forests 23 (April 1967): 44.

CHAPTER 2

LEASING POLICY: BACKGROUND/ISSUES

Reason for Leasing Policy

In any public policy, the questions of what prompted its promulgation, and what function it serves, are germane to understanding the history of events that followed. In the case of leasing of recreation homesites in the National Forests, the reason given for implementing the policy was that access to the forests at the time was difficult, and there were few private or public recreation facilities available to the general public.¹ Since the policy of issuing recreation homesite leases was implemented, the Forest Service has continued to issue leases and has approximately 15,800 special use permits for recreation residences currently in effect.² Many of the recreation homesite leases issued were relatively short term. The short term of the lease was based on the premise that when the public need for the lands became great enough, the land could revert back to public use by nonrenewal of the lease. This appears to be the basic philosophy of nearly all the agencies involved in the issuance of recreation permits. To promote the recreational use of the lands, individuals were allowed the exclusive use of portions of it. When

conditions changed sufficiently, the exclusive use of the land by a few would not be renewed, to allow use by the many.

Nonrenewal Considerations

Although this policy appears reasonable, and the terms of many of the leases were short enough to allow implementation, there have been few leases that have not been renewed. An illustration of how few leases have not been renewed is the fact that through 1967, out of approximately 19,000 permits that were issued by the Forest Service since 1916, only 395 were not renewed.³ Why have so many of the leases been routinely renewed? In the past the recreation use of the public lands in the West developed slowly, and since the public need had not grown significantly, a great number of recreation residence permits or leases were renewed routinely for years and perhaps decades. This resulted in lessees developing a strong financial interest in capital improvements on the sites. As this financial interest developed, it became more difficult for administering agencies to declare the sites as required for a higher public need. The difficulty is both one of equity and of politics. Residential lessees can become politically active and represent a strong constituent interest group. These groups can exert a great deal of political pressure on a managing agency to maintain the status quo

or, if changes are made, to make those changes with the least effect on the status of the leaseholders. This is not only true in the land use determinations, but in the assessments of appropriate fees.

Negotiation of New Fee Schedule

Recently, the Forest Service has been attempting to negotiate a new fee schedule for recreation homesites, but has met with only partial success, as can be seen from the following quote:

This last delay is frustrating for the Forest Service. It has been negotiating a new fee policy with residents for the last four years. Congress had been protecting residents against astronomical increases through an appropriations bill provision that limited increases to 50 percent of old appraisals. But in fiscal 1987 Congress tired of the lack of progress in negotiations and forced the parties to hammer out an agreement this past summer.⁴

*high cost
negotiating
new rules*

This support of reduced fees by Congress seems in direct opposition to the Congressional declaration of policy as stated in the Federal Land Policy and Management Act of 1976, which states:

The Congress declares that it is the policy of the United States that. . . . (9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute. . . .⁵

A similar concern for the amount of lease fees has occurred at Canyon Ferry. The Montana Department of Fish, Wildlife and Parks manages the Federal lands around Canyon Ferry through a Memorandum of Understanding with the Bureau

of Reclamation. Table 1 shows the Department's annual Canyon Ferry budgets for the fiscal years of 1981 through 1986. As can be seen from the table and the graph of Figure 1, the amount of revenue exceeded the spending associated with the lease sites by over \$20,000. This has led to complaints by lessees that they should not be financing more than their share of the recreation expenses of the area. Many felt that the lease fees were high enough already and that any increase would unfairly burden lessees. The response to such criticism was to cite the above policy concerning fair market value, and to cite a Bureau of the Budget circular addressing user charges, which is still in effect. It states in part:

Lease or Sale. Where federally owned resources or property are leased or sold, a fair market value should be obtained. . . . Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.⁶

The Problem of Lessee Investment

The financial interests of the lessees present problems to land management agencies. Leases or permits are usually for short terms, such as 10 to 20 years; however, many times lessees have tens of thousands of dollars invested in capital improvements. For an agency to determine that a lease will not be renewed, when only a short period remains on the lease, does not recognize the financial interests of the lessee; yet, if assurances are

Table 1. Department of Fish, Wildlife and Parks Budget--
Canyon Ferry (Montana).

	Fiscal Year					
	1981	1982	1983	1984	1985	1986
<u>Revenues</u>						
Camping Fees	16,854	14,049	27,925	24,955	28,243	17,599
Concession Fees	5,650	6,196	3,317	3,521	4,930	5,268
Cabin Site Lease Fees	27,820	30,865	34,275	38,745	42,945	47,970
Miscellaneous	4,740	3,880	4,850	3,430	4,559	4,898
Total Revenues	55,064	54,990	70,367	70,651	80,677	75,735
<u>O&M Expenditures</u>						
Operat. & Maint.	81,898	89,887	100,997	110,886	131,545	177,753
Cabin Sites	17,953	9,550	13,784	20,496	20,174	22,909
Concessions	3,012	1,713	3,324	1,341	6,344	2,013
Total O&M Expenditures	102,863	101,150	118,105	132,723	158,063	202,675
<u>Cap. Expenditures</u>	0	0	14,767	117,059	31,085	2,500
Total Expenditures	102,863	101,150	132,872	249,782	189,148	205,175
Revenues less Expenditures	-47,799	-46,160	-62,505	-179,131	-108,471	-129,440

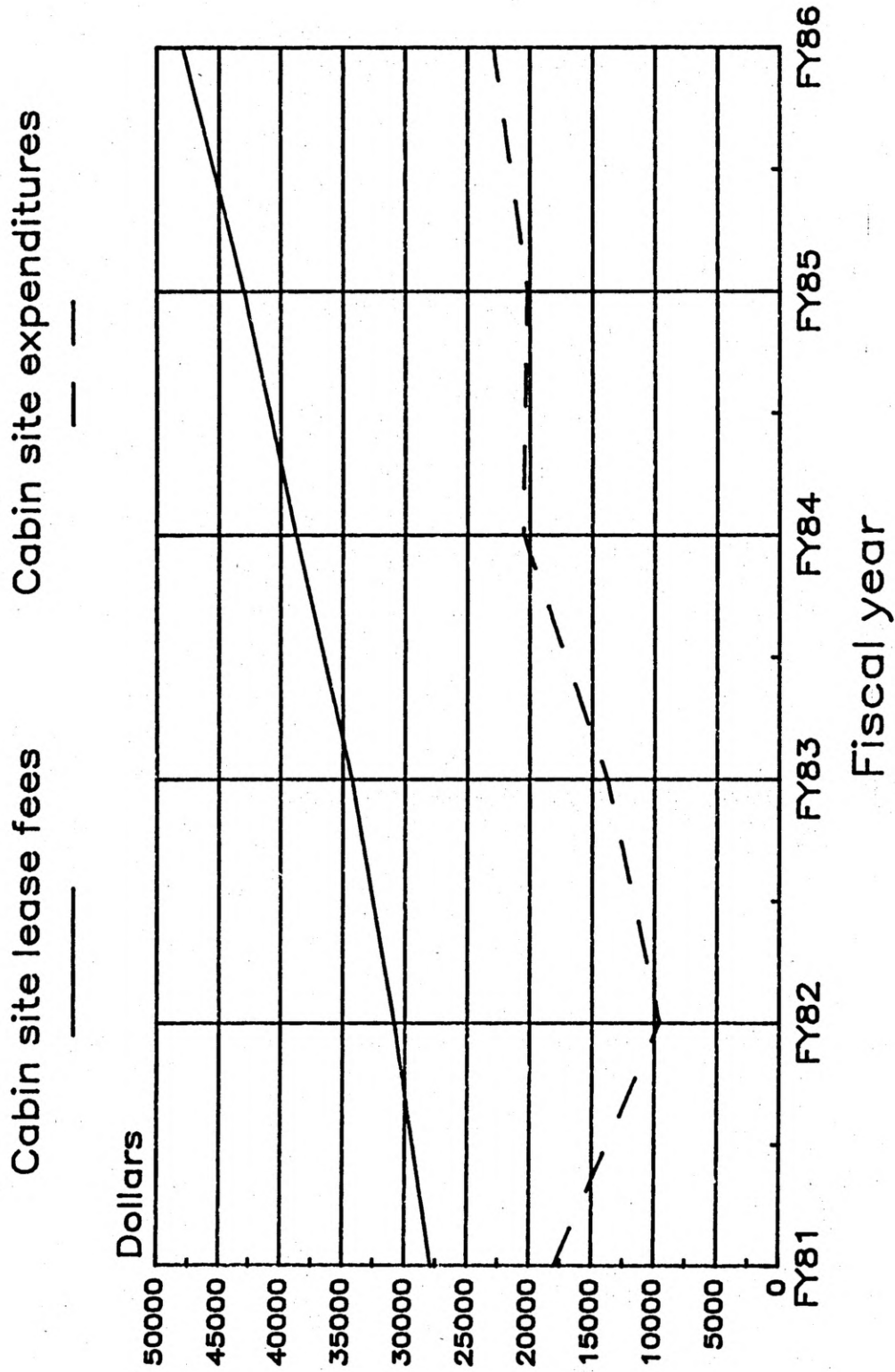


Figure 1. FWP Canyon Ferry budget, cabin site lease fees and cabin site expenditures.

given to lessees, or if long term leases are offered, it encourages further capital investment, which further compounds the problem. An unsuccessful attempt by lessees in the late 1960's at protecting their financial interests was undertaken when a bill was introduced in Congress that proposed:

That any person who . . . acquires or constructs . . . any structure, fixture or improvement on any national forest lands shall have a possessory interest therein. . . . Such possessory interest shall not be extinguished by the expiration or other termination of the permit (including failure to renew or extend) and may not be taken for public use without just compensation . . . compensation shall be the amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States.⁷

Reagan Policy of Privatization

With the assumption of power by the Reagan Administration, a renewed interest arose among many lessees of public land in protecting their financial investments. This was manifested in recent negotiations between an ad hoc committee of recreation residents and the Forest Service. The residents were not successful in persuading the Forest Service to offer compensation for improvements at the time of termination of a permit. The Forest Service said it had no authority to provide compensation, and Congress would have to provide it in new legislation.⁸ With the coming of the Reagan Administration, there was an increasing interest in "privatizing" much of the lands of the West, leading in

turn to the so-called Sagebrush Rebellion. The recreation lessees at Canyon Ferry also became interested in purchasing the lands associated with their lease. This culminated in a proposal for purchase which was presented to the Bureau of Reclamation and the Department of Fish, Wildlife and Parks in May 1985.⁹ This proposal was rejected by the managing agencies. Hence, the issue of exclusive use at Canyon Ferry remains unresolved.

The issue of private use of public lands, specifically as it applies to Canyon Ferry, will be examined in Chapter 3.

Endnotes

¹Forest Service, USDA, Notice of Proposed Policy, "Recreation Residence Authorizations: Proposed Fee Policy Changes," Federal Register, 49, no. 101, 23 May 1984: 21775.

²Ibid., p. 21776.

³Kenneth B. Pomeroy, "Ending a Fiefdom," American Forests 5 (August 1967): 43.

⁴James B. Coffin, ed., "Recreation Residence Policy Delayed Again," Federal Parks and Recreation 4, no. 21, 6 November 1986: 8.

⁵Federal Land Management and Policy, U.S. Code, Title 43, Chap. 35, sec. 1701 (1982).

⁶U.S. Bureau of the Budget, Circular No. A-25, 23 September 1959, p. 2.

⁷Kenneth B. Pomeroy, "A \$1 Billion Mistake," American Forests 23 (April 1967): 44.

⁸James B. Coffin, ed., "Recreation Residence Policy Finally Proposed," Federal Parks and Recreation 5, no. 1, 15 January 1987: 8.

⁹American Public Land Exchange Co., Inc., "Canyon Ferry Lake--Recreation and Management Reserve: A Proposal Presented to the United States Bureau of Reclamation and Montana Department of Fish, Wildlife and Parks," May 1985.

CHAPTER 3

CANYON FERRY CASE HISTORY

History of Canyon Ferry

Canyon Ferry Lake was formed when the Canyon Ferry Dam was completed in 1954. The Canyon Ferry Unit was authorized and constructed by the Bureau of Reclamation as a part of the Pick-Sloan Missouri Basin Program and is located approximately 20 miles east of Helena, Montana. The Canyon Ferry Unit is a multipurpose project that provides hydroelectric power, flood control, irrigation, municipal and industrial water, recreation, and wildlife benefits. The lake has a surface area of slightly over 35,000 acres, with a storage capacity of 2,051,000 acre-feet, and a shoreline of approximately 76 miles (see Figure 2). All of the shoreline area was either previously owned by the Federal Government before construction of the dam or was purchased in fee from private landowners. The majority of the shoreline was in private ownership.

Recreation homesite leases at Canyon Ferry were first issued in the late 1950's. Although the Federal Government, through the Bureau of Reclamation, owns the lands, the dam, and the powerplant, the Bureau has limited statutory authority in regard to recreation management. In

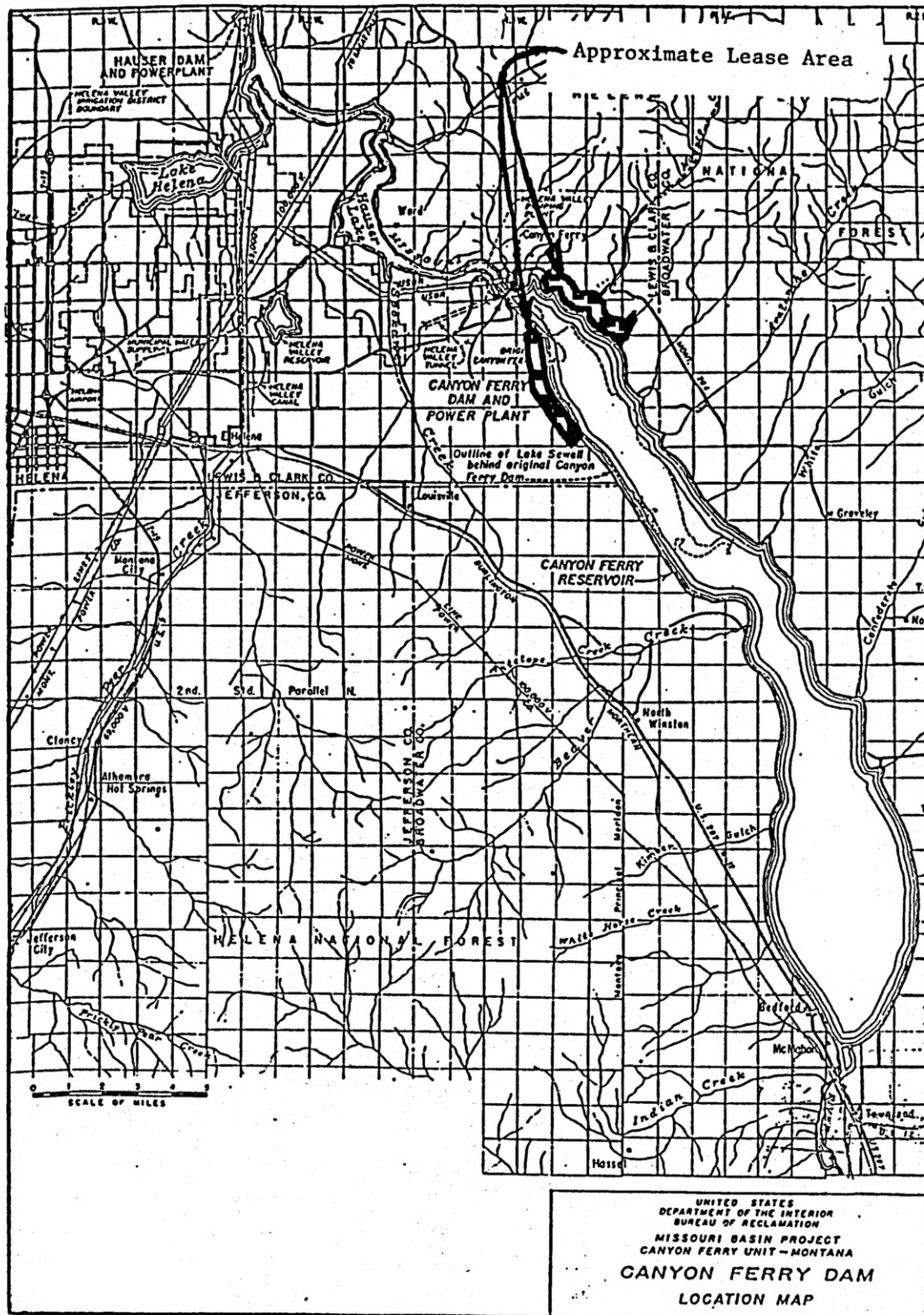


Figure 2. Canyon Ferry Dam location map.

the first years of project operation, negotiations with the State of Montana took place, which culminated in a Memorandum of Understanding between the Bureau and the Montana Fish and Game Commission and the Montana Highway Commission. Two separate memoranda were written. The Fish and Game Commission agreement was for wildlife management, and the Highway Commission agreement for parks and recreation management. A subsequent transfer of function within the State administration moved the park's function from the Highway Commission to the Department of Fish and Game, which was later called the Department of Fish, Wildlife and Parks. This resulted in the administration of all the reservoir lands by one State agency.

The Memorandum of Understanding gives the State permission to issue leases and licenses as follows:

The Commission may issue and administer licenses, permits, and contracts to persons or associations for the purpose of regulating the privileges to be exercised and concession contracts under which services are made available to the public in the area.¹

Under this authority the Highway Commission began issuing leases for cabin sites in early 1958. This action was actively promoted by the Bureau of Reclamation, which supplied drafts of recommended lease agreements, boat permits, and licenses for docks to the Highway Commission for their use. Cabin sites, or summer homes, as they were referred to then, were considered important recreational

uses at the time, as can be seen by the following excerpt of a letter from the Bureau to the Highway Commission:

One of the important recreation phases of Canyon Ferry Reservoir is, of course, the many various clubs, groups, and similar organizations which have selected sites, constructed buildings, and other improvements as well as the summer homes that have been constructed.²

These actions resulted in the ultimate leasing of 265 sites.

This issuance of recreation homesite leases was apparently the policy at the time; however, one wonders why the public agencies were advocating the kind of exclusive use that would soon after be discouraged. Perhaps some insight can be gained from a 1955 letter from the Acting Regional Director to the Project Managers in the Region which stated in part:

During the past several years we have had several instances where individuals have gone into new reservoir areas and built private homes and other structures without permission. Upon completion of the dam and development of a firm Management Plan for the area, we have been embarrassed to find these structures situated in areas designated for some other use. Understandably, the owners have been reluctant to remove their structures.

We ask all Bureau personnel, particularly field personnel, to watch for such trespassing and to prevent it before any construction takes place without a permit. The matter should be handled in a tactful manner. Persons desiring cabin sites or sites for boat docks should be discouraged from starting any construction until management of the reservoir is firmly established. In most cases that management will be with a local government agency such as a state, county, or city. All applicants should be advised of our general policy on managing

reservoirs and should be encouraged right from the beginning to direct their inquiries and requests to the potential administering agency.³

Although it is unknown what resolution was finally implemented to resolve the claim of the "squatters," it is suspected that issuance of after-the-fact leases may have taken place. This is an opinion, as no substantiating data could be found to support this premise. From the tone of the above quote, it appears the Bureau was not opposed to the development of summer homes, but rather was concerned that their development take place in an orderly fashion under a managing agency. Whether the trespasses precipitated a policy of leasing sites for summer homes, or whether a policy of leasing sites lead to premature trespasses is unknown.

However, another more important reason for leasing summer homesites may have had more influence on the development of the policy; that being, the multipurpose authorization of the Canyon Ferry Project and other Bureau projects which were being built around the same time period. The "selling" of a project to the Congress was much easier to accomplish on the multipurpose principle than on irrigation or hydropower alone. What better way to demonstrate the multipurpose implementation and development than to lease 265 cabin or summer homesites and rapidly develop the recreational aspect of the multipurpose authorization? This very rapidly commits 265 individuals

and their families and, more than likely, many of their friends, to recreating almost exclusively at the Canyon Ferry Project. With a rapid recreational development at newly built projects, it becomes much easier to "sell" other proposed projects to the Congress. It seems very plausible that the early leasing of summer homesites may have been a self-serving policy on behalf of the Bureau of Reclamation to help convince the Congress of the value of recreational aspects of projects. If accomplished, this could only aid in future authorizations of funding. This would be especially helpful if benefit/cost ratios were suspect, or if other values of project construction were marginal.

Policy to Encourage Development

By May 1, 1958, 52 summer homesites had been leased, and 29 sites had construction of cabins completed or begun.⁴ Rapid development of improvements was a requirement for retention of a lease site. The conditions of the first leases called for the following: "The Lessee should complete his cabin within 2 years of initial date of leasing, or forfeit lease."⁵ This forced rapid development. Conditions and covenants specified by the Management Plan of the Reservoir were very specific as to the type of construction to be accomplished and specified concrete foundations, compliance with building codes, etc., which

required significant effort and investment on behalf of the lessees.⁶ It can only be assumed that these requirements were implemented to assure the long term presentability and durability of the structures.

Initial leases were for a period of 10 years, with an option to extend for an additional 10-year period. This appeared to limit the total occupancy period to no more than 20 years. The actual practice has been to renew leases with the 10-year option each time renewal came up. When sites were transferred (sold) by lessees to different persons, new leases were drawn up to begin a new 10-year term.

Recently, shifts in policy have taken place where automatic renewal of leases has been questioned. Reclamation Instructions, which are used to provide policy guidance to the Bureau, state the following in regard to private uses of public land:

Private/Semiprivate Uses. New outgrants for long- or short-term exclusive private or semi-private uses of Reclamation lands for purposes such as cabins, homes, condominiums, townhouses, clubs, organized camps, material storage, miscellaneous buildings, commercial businesses not associated with public or authorized project uses, boat docks, waterfront recreation facilities, landscaping, patios, decks, porches, and other nonessential private facilities shall not be issued. Where outgrants for such purposes already exist, they shall be phased out as soon as possible within contractual constrictions imposed by the grant. . . .⁷

Why, then, have the leases at Canyon Ferry not been phased out, or at least the process begun, if this is the

policy of the Bureau of Reclamation? Part of the reason has been the considerations that have been mentioned previously, and the other reason is that the Department of Fish, Wildlife and Parks is not bound to Federal policy in their administration of the area. However, the governing Memorandum of Understanding between the agencies is due for renewal in 1988, and the resolution of the differences in policy may be resolved at that time.

Endnotes

¹U.S. Bureau of Reclamation, Memorandum of Understanding, Contract No. 14-06-600-2186, 21 February 1957, p. 3.

²F.M. Clinton, Regional Director, Bureau of Reclamation, letter to Ashley Roberts, Director, Parks Division, Montana Highway Commission, 24 June 1955.

³L.W. Bartock, Acting Regional Director, Bureau of Reclamation, letter to Project Managers, 24 June 1955.

⁴Ashley C. Roberts, Director, State Parks Division, Montana Highway Commission, letter to F.M. Clinton, Regional Director, Bureau of Reclamation, 1 May 1958.

⁵U.S. Bureau of Reclamation, Reservoir Management Plan, Canyon Ferry Reservoir, Montana, April 1958, p. 84. ✱ ✱

⁶Ibid., pp. 84-85.

⁷U.S. Bureau of Reclamation, Reclamation Instruction, Part 215, Land Management, sec. 215.4.4D. ✱

CHAPTER 4

ISSUES AND PROPOSALS

Leasing Policy

The leasing policy in the Department of the Interior for private use of recreation lands has vacillated during the past 30 years. The policy has gone from one of open encouragement, to open discouragement, to status quo, to support of a phaseout. During the early 1980's, the rhetoric associated with the Reagan Administration was to sell the unneeded public lands. Although this seemed to be the desire of the Administration, little was done to change the formal policy of phaseout. However, the implementation of the policy has not been enforced actively.

Early Phaseout Attempts

In 1965, seven years after leases were first issued, the Department of Interior, under then Secretary Stewart Udall, initiated a Federal Register release which called for a cabin site phaseout of all Interior lands.¹ This action raised vigorous protests by cabin site lessees, including those from Canyon Ferry. The initial release was subsequently modified and eventually led to Title 43, Section 21.4 of the Code of Federal Regulations, which

deals with occupancy under permit of privately owned cabins on recreation and conservation areas. Prior to development of Section 21.4, the Interior Solicitor had released an opinion which stated that those cabin sites that were administered by managing agencies, such as the Canyon Ferry Project, were exempt from the Federal Register proposals. This opinion may have been issued to calm the storm of protest which the Federal Register release had generated. A delegation of cabin site lessees from Canyon Ferry made a trip from Montana to Washington, D.C., to lobby for rescission of the proposed phaseout.

This move on the part of the Department of the Interior to phase out cabin sites came during a period of time when increased environmental awareness was prevalent. Although environmental concern for Canyon Ferry sites does not appear to have ever been an issue, the attempt at phaseout may have been a spinoff of the national awareness and Secretary Udall's policies. The concept of preserving the lands for future generations was a determining factor during much of Udall's tenure, and it is suspected that cabin sites were viewed as exclusive use by those few that held leases.

Policy to Serve the Public First

The attempt at phaseout of the cabin sites had apparently made many of the lessees very aware of the

possibility of losing their leases, and this awareness precipitated interest in purchasing the sites in lieu of continued leasing. In 1968, the Canyon Ferry Recreation Association, a group of lessees and others organized to promote recreational and other uses and activities at Canyon Ferry, asked the Montana Congressional delegation to intercede on their behalf to attempt to purchase the sites.² Inquiries by the delegation to the Interior Department resulted in replies which in essence stated that the lands were purchased for project purposes and that where conflicts arise between cabin site use and public recreation use, the latter shall be given precedence. The concern for purchase was again raised in 1971, as shown by letters from the Congressional delegation to the Commissioner of the Bureau of Reclamation.³ The answer was much the same, with the Bureau stating again that public recreation will be given preference. In a letter to Senator Mike Mansfield, Bureau Commissioner Ellis L. Armstrong stated the following:

The Bureau's policy relative to existing cabin-site leases at Canyon Ferry Reservoir is consistent with the policy of the Department of the Interior, which provides that where competition for specific land areas develops between cabin-site use and general public recreation use, the latter will take precedence. This policy is supported by the need to assign a higher priority to public use for Federal lands as opposed to cabin-site use which is essentially a private use. However, informal advice from our Regional Director's office at Billings, Montana, indicates no immediate prospect that lands presently leased

for cabinsite purposes at Canyon Ferry Reservoir will be needed for public use in the foreseeable future. Thus, it is not likely that any of the presently held leases will need to be terminated soon.⁴

Local Government Interest

In July of 1973, the Lewis and Clark County Commissioners joined in the appeal for sale of the cabin sites on the premise that private ownership would increase the tax base and allow the County to provide services which residents of cabin sites were demanding, such as road maintenance, law enforcement, garbage collection, etc.⁵ This argument was somewhat flawed in that the land being occupied was not taxed; however, the improvements were on tax assessment rolls under a "no-title" classification and, as a result, all real property except the land was subject to taxation. The County Commissioners' appeal was rejected for the same reasons given previously to the lessees.

Reagan Administration and Privatization

There seems to have been little formal interest in pursuing the purchase of cabin sites in the late 1970's. However, with the election of Ronald Reagan as President and the subsequent appointment of James Watt as Secretary of the Interior, interest in purchasing was again renewed. The Asset Management Program and the proposals to sell public lands to reduce the Federal deficit gave the

perception that the Federal government may be willing to divest itself of lands that heretofore had been declared necessary.

In fact, the Asset Management Program and other efforts to assess the need for retention of public lands precipitated a review of all the lands involved with the Canyon Ferry Project. Inquiries to the Department of Fish, Wildlife and Parks as to the need for lands resulted in a recommendation to retain all the lands under their administration in the same status.⁶ The Bureau of Reclamation concurred, and no lands were recommended for sale. It is suspected that the review of Asset Management, the Sagebrush Rebellion, the Privatization arguments, and what may have been perceived to be a willingness to sell government lands may have appeared to be a "window of opportunity" for cabin site owners to once again make an attempt at purchase.

Threat of Higher Fees

Another factor in 1985 which went far to raise interest in the purchase of the cabin sites by the lessees was a proposal by the Department of Fish, Wildlife and Parks to raise the annual lease fees to five percent of the "fair market value." At this point, lessees were paying approximately \$200 to \$250 per year for the right to use the sites. The proposal to raise fees involved an

appraisal process to establish the land value, with lease fees to be assessed at five percent of that value. It was anticipated by many that cabin site appraisals may be between \$15,000 and \$20,000. If this were an accurate estimate of value, the lease fees would rise to \$750 to \$1,000 per year, a substantial increase.

Prior to this time, with low lease fees, there may have been lessees who did not want to "rock the boat." Many had seen the attempt to phase out the sites in the mid-1960's, and its apparent failure, and may have felt somewhat secure in the status quo, considering the fact that existing lease fees were minor.

With the proposal to raise lease fees, the financial advantages of leasing disappear. If the costs of leasing are comparable to, or more than, ownership it becomes financially advantageous to own, rather than lease. This seems to have caused many more lessees to join the effort to purchase sites.

Proposal of a Land Swap

The attempt to acquire cabin sites in private ownership manifested itself again when the Canyon Ferry Recreation Association established a Cabin Site Purchase Committee made up of some of its directors and interested members. The Committee contacted the American Public Land Exchange (APLE) Company of Missoula, Montana, in an attempt

Chronology?

to determine the feasibility of trading lands which the cabin sites occupied for other lands in which the Bureau of Reclamation or Interior Department may be interested. Bruce Bugbee, of the land exchange company, contacted the Bureau of Reclamation and met with regional officials of the Bureau in November of 1983. At that meeting, Mr. Bugbee inquired as to any interest the Bureau may have in trading lands for that which the cabin sites occupy. The Bureau expressed no interest in trading for other lands, and explained the relationship with the State of Montana and their role as managing agency. Even if the Bureau had been interested in a land trade, the interests of the local managing agency would have been critical to any decision that was made.

Sale with Proceeds to Purchase
Environmental Easements

At approximately the same time, the firms of Lisa Bay Consulting and Bruce A. Bugbee and Associates were developing a "Lewis and Clark County Voluntary Agricultural Land Conservation Program, 1984."⁷ This report was generated to study the effects that an expanding population and the resultant subdivision of agricultural lands was having on the County. The report stated that almost 20,000 acres of land in Lewis and Clark County were subdivided between 1973 and 1976 and that the County experienced a 29 percent growth in population between 1970 and 1980. The report

addressed a concern that continued encroachment of subdivisions onto agricultural land will have detrimental effects, not only to agriculture needs, but to the environmental contributions and ecological considerations of undeveloped lands. A great deal of emphasis was placed on lands adjacent to streams, rivers, and lakes. The wildlife, ecologic, and aesthetic values assigned by the report were given high importance. The report advocated programs to preserve the areas adjacent to streams and waterways and suggested methods for land pooling in order to exchange lands of lower value for lands along waterways. In addition, the report suggested programs to purchase agricultural easements with public resources in order to preserve the wildlife, aesthetic, and environmental aspects the public values.

The report addressed the cabin sites at Canyon Ferry and suggested that these sites could be sold, with the proceeds to go to purchase agricultural, aesthetic, conservation, and other easements in the Helena Valley to protect the values that would remain with unsubdivided land. The Canyon Ferry Recreation Association invited the Bureau of Reclamation, Department of Fish, Wildlife and Parks, the Lewis and Clark County Commissioners, the Helena Valley Irrigation District, the Area-Wide Planning Office, and Bruce Bugbee to a meeting in the County Courthouse to discuss the proposal of selling the cabin sites and

acquiring conservation easements. No definite conclusions were reached and the Bureau of Reclamation and the Department of Fish, Wildlife and Parks were unwilling to comment on a plan that had no specifics delineated. Mr. Bugbee stated that a proposal would be put together in the near future for review.

In February of 1985, although no formal proposal had yet been submitted, the Bureau and the Department of Fish, Wildlife and Parks released a joint position paper addressing the concepts that had been presented in the County Courthouse. This position paper in summary stated that it was not considered to be in the long term public interest for the Federal government to divest itself of the cabin site areas to purchase easements in the Helena Valley.

Sales and the Establishment of a Recreation Trust Fund

The response by the Canyon Ferry Recreation Association to the joint position paper was an alternate proposal which would result in the sale of the cabin sites with the proceeds to be put into a perpetual trust fund.⁸ If cabin sites were sold to lessees, or sold in some other fashion, and the average sale price was \$18,000, the 265 sites which were occupied would generate a total of \$4,700,000. If a trust was established, and the funds invested in Treasury Notes or some other interest bearing account, the money earned would have been about \$329,000 per year at an

interest rate of seven percent. The American Public Land Exchange Company suggested the total sale figure would be reduced from \$2.65 million to more than \$3 million because of expenses and other factors. The annual yield on this amount would have been from \$185,000 to more than \$210,000. The proposal suggested that the interest income from the trust be used by the Department of Fish, Wildlife and Parks to operate, maintain, and to improve the Canyon Ferry area with capital investments. The money not used would have remained in the trust fund to generate additional income in later years. Budget expenditures and income by Fish, Wildlife and Parks for the Canyon Ferry Project are shown in Figure 3. The 1986 income from cabin site leases was \$47,970. If the sites had been sold and a trust fund established, the \$185,000 interest income generated would have resulted in an increase in revenues from the area of approximately \$137,000 for 1986. If other revenues remained the same, the total revenues would be approximately \$212,000. This is \$7,000 more than 1986 expenditures. It is conceivable that with trust fund income, the State legislature may reduce significantly the money available from the State general fund or other sources. Even with the establishment of a trust fund, there would have been no assurance of additional funding levels to operate with. As stated previously, this concept was not endorsed by the managing agencies. Implementation

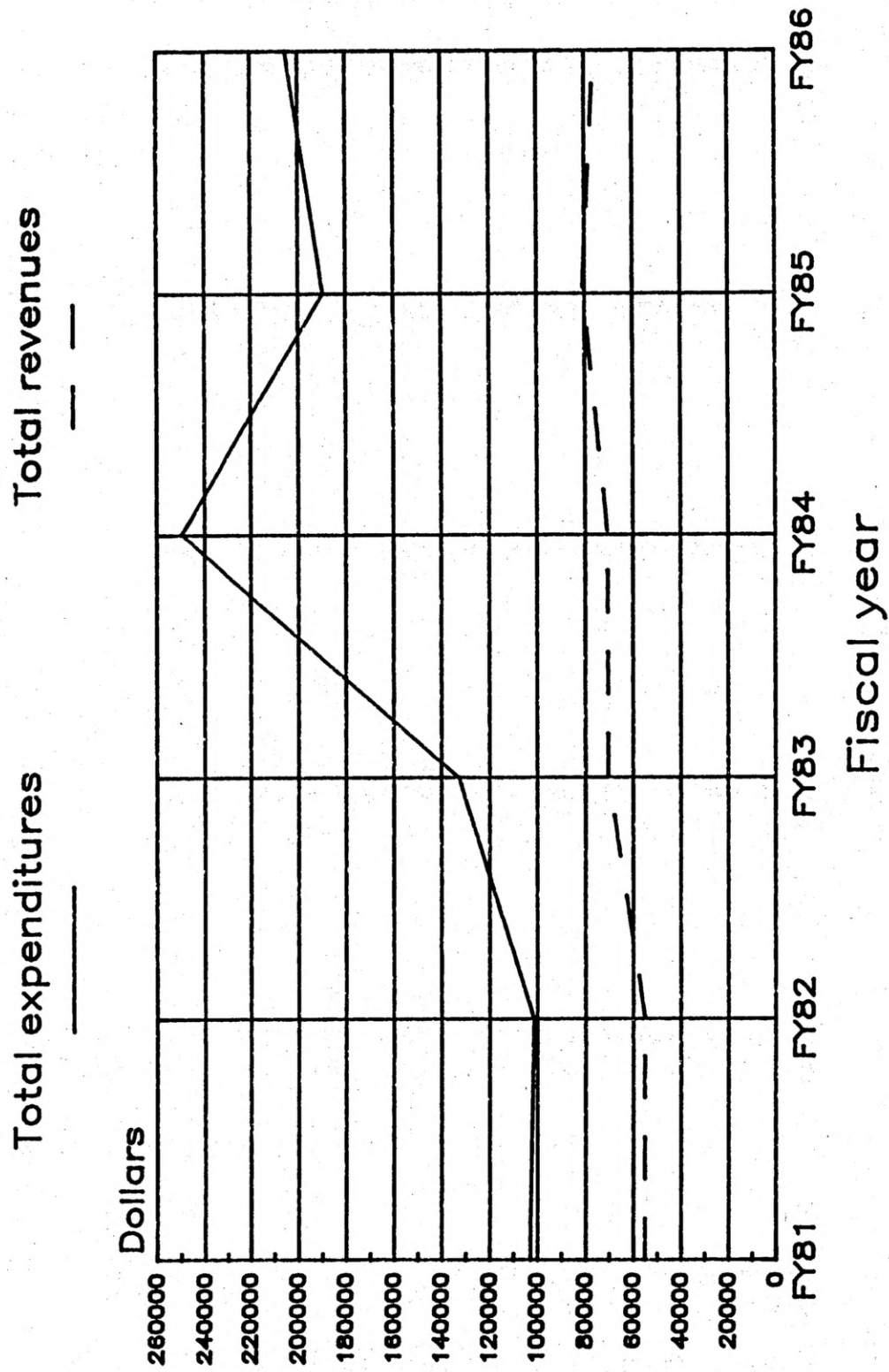


Figure 3. FWP Canyon Ferry budget, total expenditures and total revenues.

of a concept such as was proposed would have required Congressional authorization, which may have been difficult to get.

Sale of the cabin site lands would add to the county tax base, and it could be argued that the county would assume a stronger role in the maintenance of roads, law enforcement, snow removal, and many of the services which are problems and expenses for Fish, Wildlife and Parks. The argument that the County would assume more services would have to be examined closely before assumptions could be made. In the past, even though the improvements on the cabin site lands have been taxed on a nontitle basis, the County has been reluctant to provide services. The additional value of the land may not be sufficient incentive for the County to assume the desired services.

There are many factors which must be addressed in evaluating a proposal for sale of the sites. The parties involved all have different perspectives as to the benefits and drawbacks of a sale. Chapter 5 will attempt to evaluate the effects of the proposed sale of the cabin site areas from the viewpoints of the various factions involved.

Endnotes

- ¹Federal Register (30 FR 8912), 15 July 1965.
- ²Senator Mike Mansfield, letter to N.B. Bennett, Jr., Acting Commissioner, Bureau of Reclamation, 14 May 1968.
- ³Representative Dick Shoup, letter to Commissioner, Bureau of Reclamation, 21 May 1971.
- ⁴Ellis Armstrong, Commissioner, Bureau of Reclamation, letter to Senator Mike Mansfield, 17 September 1971.
- ⁵Lewis and Clark County Commissioners, letter to Jack Horton, Assistant Secretary of the Interior, 23 July 1973.
- ⁶James W. Flynn, Director, Department of Fish, Wildlife and Parks, letter to Don Dekker, Project Superintendent, Canyon Ferry Project, 9 April 1982.
- ⁷Lisa Bay Consulting and Bruce A. Bugbee and Associates, "Lewis and Clark County Voluntary Agricultural Land Conservation Program, 1984," prepared for Lewis and Clark County Board of Commissioners, 1984.
- ⁸American Public Land Exchange Co., Inc., "Canyon Ferry Lake--Recreation and Conservation Management Reserve: A Proposal Presented to the United States Bureau of Reclamation and Montana Department of Fish, Wildlife and Parks," May 1985.

CHAPTER 5

PRIVATIZATION: COSTS AND BENEFITS

Arguments of Lease Holders

Many of the lessees' concerns and interests have already been stated, such as increased lease fees, lack of services, etc. Other arguments may also be:

Capitalization

An argument is made that if the public agencies involved ever intended to phase out the sites, they should have never let the level of improvements take place that have occurred over the years. The Canyon Ferry Recreation Association estimates the value of improvements on cabin sites at between \$9 million and \$12 million.¹ This is an average price of between \$34,000 and \$45,000 per site. This appears to be a reasonable estimate as some recent sales have been reported to be in the \$80,000 to \$85,000 range. Although the leases are very specific as to their duration, the option for renewal appears to have been reason enough for lessees to make substantial investments.

Is this a valid argument? Should the managing agencies have restricted the investment that could be made in improvements? With leases of 10 years and an option to

renew for another 10 years specifically defined in the lease, along with definitive language stating the leases may be terminated at any time with the provisions of Section 21.4 of Title 43 of the Code of Federal Regulations governing amortization of investment, it appears that these investments were made with full knowledge that the leases could someday not be renewed.

Special Improvement Districts

An argument can be made that if the land is in private ownership, Special Improvement Districts can be formed to provide a mechanism to make improvements to roads, provide fire protection, and other services which are needed in any community. These improvements would not then be made at public expense.

Exclusive Sale

The cabin site lessees are concerned about the ability to make an exclusive sale. Many would like to purchase the property, but are reluctant to agree with selling the lots at auction to the highest bidder. If sold in that manner, there is no assurance that they would be compensated for their improvements. In order for a sale to occur, the Bureau of Reclamation would have to declare the lands occupied by the recreation homesites as excess to their needs. The lands would be then turned over to the General Services Administration for disposal. If no other

government agency expressed an interest in acquiring the land, the lands would then normally be sold to the highest bidder. This poses great risk to those who have invested significantly in improvements on the property. Exclusive sales to occupants of lands of this type have taken place in the past, but Congressional authorization was necessary in order to accomplish it. The process is one in which the lessees may be very reluctant to enter because of the unknowns and the risk of not being assured of an exclusive sale. In any sale, the successful purchaser would either pay the highest bid or pay a negotiated price which would reflect fair market value if the sale were an exclusive one.

Beach Ownership

The boundaries of cabin sites do not include beaches. All lots are laid out so that at least a small section of land open to the public is between the lot and the water. Although this beach is not included in the cabin lot, and is usable by the public, access by other than lessees is often difficult unless by boat. On many sites beaches are used almost exclusively by the cabin site lessees, and there have been occurrences where use by the general public has been "discouraged" by the adjacent lessees. The public ownership of all the beaches is not known by all users and many are reluctant to face possible confrontation by adjacent lessees. Therefore, many of the beaches in front

of cabin sites are, for practical purposes, "owned" by cabin site lessees. The lessees may be concerned as to the future status of the beach. Questions, such as, will the beach be fenced to define private and public ownership, will they continue to issue licenses for boat docks, etc., may be asked.

Arguments of Fish, Wildlife and Parks

Establishment of a Trust Fund

A sale and establishment of a trust fund would probably be a monetary gain to the Department of Fish, Wildlife and Parks. If the sites were sold and a trust set up to finance remaining operation and maintenance efforts in accordance with the scenario that was described previously, the Department would have additional money with which to operate yearly. In addition, a portion of the Departmental funds that are currently being expended at Canyon Ferry could be reallocated to other areas within the Department. If, however, the sites were sold and the funds were to go to the United States Treasury, the Department's revenues at Canyon Ferry would drop drastically. Income from the new lease fees currently being proposed may be around \$125,000. Loss of this amount of revenue would require offsetting funding from the State's general fund or some other source. A cut in revenue of that magnitude may cause the Department to reevaluate their role as managing

agency for the Bureau. This is especially true in times of austere budgets. Figure 3, which was presented earlier, shows the widening gap between revenues and expenditures. Any change that would further widen this gap would most certainly be opposed by the Department.

Creation of Inholdings

With a sale, the management of the cabin sites would no longer be at issue. This is an argument that may bear scrutiny as inholdings would be created that may create significant trespass or other problems. The proposal by the Canyon Ferry Recreation Association called for reserved easements similar to the building and other restrictions which presently prevail.² If the land were to become private, the easements would be extremely difficult to enforce. With the land in private ownership, there may be a great deal more hesitancy in the active enforcement of restrictions. It is suspected that increased building would take place without permission and the monitoring of activity would be a time consuming and extremely confrontational task. The governing agency may also be subjected to pressure to allow development that may be special interest oriented and not in the interest of the area.

The management situation may merely change from a public agency managing public land to one of a public agency managing private land. The latter is suspected to cause many more problems than the former.

Boat Docks

Licenses for boat docks are currently issued to cabin site lessees, but are not issued to private landholders on other areas of the lake. If the cabin sites were sold, the question of whether to issue licenses would have to be addressed. It is suspected that the private ownership of cabin sites would negate the owners' opportunity to have a boat dock. It is difficult to conceive of a situation where the 265 former cabin site lessees would be allowed to build boat docks and other adjacent landowners would not. It is even more difficult to see a situation where all adjacent private holdings around the lake would be allowed to build docks. This may seem a minor issue; however, it is suspected this would be a major point if a sale were to proceed.

Full Time Occupancy

Increased full time occupancy may be likely if the sites were private. Currently about 30 sites are occupied year round. An increase in full time occupancy would put further demands on community services. It also has the potential of causing problems with sewage disposal systems, many of which will support the seasonal use now incurred but may not support year-round use. A possibility exists that increased cabin site use may contribute to water

quality problems in the lake. This issue of water quality is addressed further on in the paper.

Wildlife Habitat

Increased occupancy may affect wildlife habitat or wildlife use of the area adjacent to the cabin sites. This would depend on the level of occupancy. It is suspected that full year-round occupancy of all sites would have an effect on wildlife from the nearby hills using the reservoir. In addition, if other areas must be developed for recreation use, it will affect the current wildlife use of those areas. Many of the areas which would be most desirable for recreation development now have access only by boat. These riparian areas are used extensively by wildlife and waterfowl due to the isolation now present. If these areas were to be developed as alternate recreation areas, there may be significant effects on the wildlife habitat and their use of the area. Hunting pressure would undoubtedly increase and the number of resting or "safe" areas for wildlife and water fowl would be reduced.

Future Recreation Use

The Lewis and Clark County Voluntary Agricultural Land Conservation Program, 1984, cites the Lewis and Clark National Forest Plan (draft) as projecting that recreational visitor days for dispersed recreation on its lands will rise from 600,000 to 1,400,000 by the year 2030.³

This is 2.3 times the present level. The Conservation Program goes on to say that water based recreation is critical and states:

The major recreation demand in this region is for access to and use of water and riparian areas. Agency personnel and recreation groups consistently stress the need for greater access to the Missouri River corridor (including Canyon Ferry, Hauser, Upper Holter, and Holter Lakes), Devils Elbow on Hauser Lake, Lake Helena, and Tenmile and Prickly Pear Creeks.⁴

Recreation use at Canyon Ferry on summer weekends can be very high.

The number of people who visit the state recreation facilities around Canyon Ferry Reservoir, 22 miles east of Helena, each year attests to the area's attractiveness. During the summer holidays, as many as 16,000 people per weekend pack the shores of the reservoir to boat, fish, swim and enjoy the sun.⁵

Table 2 was developed with information provided by the Department of Fish, Wildlife and Parks in 1986.⁶ Figure 4, which graphically shows the data of Table 2, indicates the steady rise in visitation since 1980. If this rise continues and the Forest Service projections were to hold true for Canyon Ferry, recreation user days would rise to nearly 1,500,000 by the year 2030. This increase would put tremendous pressure on existing recreation facilities. Undoubtedly, new facilities would have to be built.

The proposal for purchase by the APLE Company stated there are 80 miles of shoreline that are undeveloped, and future development could take place along that area. A closer look at the shoreline shows 76 miles, and much of it

Table 2. Canyon Ferry Visitation Statistics.

Year	Summer	Annual
1980	215,600	247,940
1981	233,100	268,065
1982	413,000	474,950
1983	465,200	534,980
1984	461,400	530,610
1985	486,800	559,820
1986	569,400	654,810

inaccessible or already being put to other uses. For example, approximately 12 miles of shoreline are devoted to wildlife purposes at the south end of the lake in the Conservation and Wildlife Enhancement Area. This area is enclosed by dikes, and would not be available for water access recreation development. Long stretches along the west shore from where cabin sites end to the White Earth Campground are currently devoted to wildlife use. Much of this area is too steep to provide water based recreation, and access for those areas which would be developed would be difficult and expensive to provide. Access would most likely require purchase or condemnation of private land. Other areas on the east shore have many of the same problems. The "take-line" which defines the width of Bureau of Reclamation ownership is very narrow in many places. In these areas there would be little room for development to

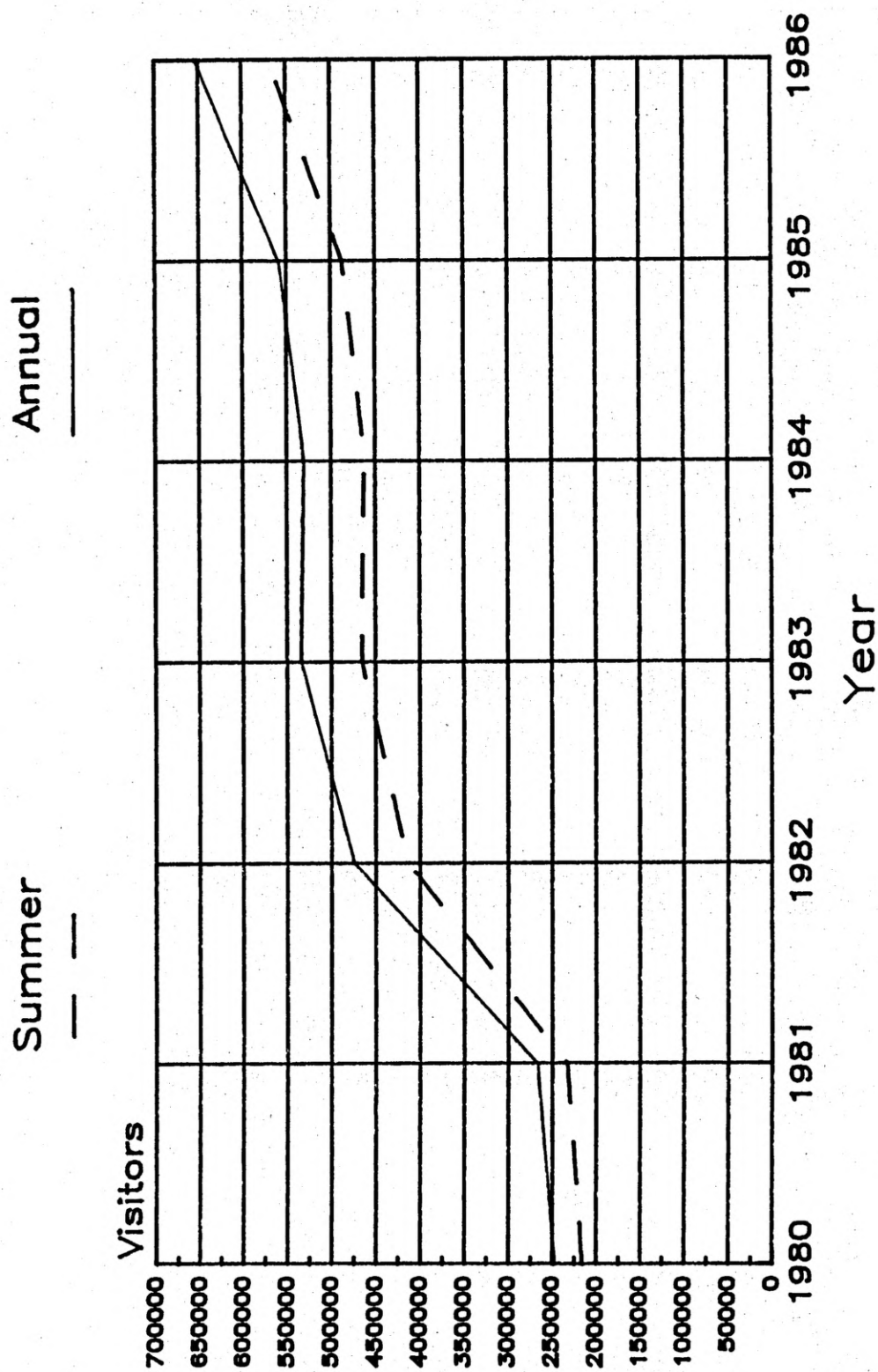


Figure 4. Canyon Ferry visitation, summer and annual.

take place. In other areas there is no access unless major expense were to be incurred. That is not to say that there are no other suitable areas for public recreation use; however, those areas are nearly all in places that may require significant expense to provide access to, and to develop.

An argument from the public standpoint is that the public already incurred the major expense for constructing roads in the area of the cabin sites. Why should it again have to be burdened with the expense of new road construction when additional public recreation areas are required?

The area where the cabin sites were built is the most aesthetically attractive part of the lake with many trees along the west shore and easy access from the Helena area. The question of whether future generations should be required to use "secondary" areas and cabin site lessees permitted to continue almost exclusive use of much of the most scenic land around the lake should be answered. Should 265 cabin site lessees be sold eight percent of the shoreline when projections indicate public use will almost triple in the next 45 years? Cost of new recreation areas will be significantly less if built in the area where the present cabin sites are located because of existing access roads. It may be argued that if the sites are sold, the purchasers should also pay for their portion of the sunk costs in providing access roads. This is especially true

along the east shore where no developed recreation areas are served by roads leading to cabin sites. If it is necessary to develop recreation areas on other areas of the lake because of the sale of the cabin sites, then it would seem logical that the sale price should include the extra expense it will take to provide access to those areas.

Arguments of the Bureau
of Reclamation

Federal Law

The Bureau of Reclamation is guided by the provisions of Title 43, Section 21 of the Code of Federal Regulations in administering cabin sites. If the managing agencies should decide that the cabin site leases should not be renewed, Paragraph 3b of Section 21.4 of the Code states the following:

(b) Whenever the Authorized Officer determines, pursuant to paragraph (a)(2) of this section, that the needs of the general public for a particular public recreation or conservation area are sufficient to be inconsistent with further use of that area for private cabin sites, no further extension or renewals of permits for any individual site shall, except as otherwise required by law, be granted for any period extending more than 5 years after the effective date of that determination: Provided, however, that, except as otherwise required by law, if an investment was made in a substantial improvement upon a site before the effective date of this part, the extension or renewal of the permit for such site shall be made for a period sufficient to permit 20 years amortization of the investment from the date of the investment to the improvement upon the site, unless the Authorized Officer finds that the needs of the general public for that site require that the extension of renewal

be for a lesser period. Thus, for example, if a permit for the site is purchased before the effective date of the regulations in this part with the substantial improvement then in place, for a consideration of \$1,000 or more, such amortization period runs from the purchase date, and is not affected, in any event, by the date of the determination under paragraph (a) of this section. The amortization period for any investment in a substantial improvement on or after the effective date of the regulations in this part is covered by paragraph (a)(3) of this section, this paragraph (b) and subparagraph (5) of this paragraph.⁷

This says that the amortization period of 20 years begins on the date the regulations became effective, which was June 10, 1967. Paragraph (a)(3) of the same regulations states that improvements made after the effective date of the regulations may be amortized for only the period of the remaining lease. The 20-year amortization period expires in 1987. After 1987, the amortization period would be only the remaining term of the lease, which at maximum would be 10 years. This short amortization period of from 0 to 10 years puts the Bureau of Reclamation and the Department of Fish, Wildlife and Parks under great pressure to continue the leases to protect the investment of the lessees. It becomes nearly impossible politically to not renew leases if the amortization period is so short.

Another caveat that bears on the duration of leases is the following excerpt from the Federal Register:

429.8 Reclamation Land Use Stipulation: There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain

public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantees' work; provided, however, that if such reserved rights are not identified in at least general terms in this grant and exercised for works authorized by the Congress within 10 years following the date of this grant, they will not be exercised unless the grantee, or grantee's successor in interest is notified of the need and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of grantee's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation, compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.⁸

In summary, this states that if the Bureau of Reclamation were to declare that the public need for recreation areas was determined to be paramount to that of the cabin site lessees, and the leases were of a duration for more than 10 years, at the lessee's option the Government would have to compensate the lessee for his improvements. This is contrary to the previously cited example of the Forest Service where specific Congressional action would have been required to provide compensation. This provision, as cited above, is probably the reason the lease length at Canyon Ferry is no more than 10 years. If the term were extended beyond the 10-year length and other uses for the land were found to be necessary or desirable, it appears compensation

would be required if the lessees' improvements were removed.

Under the current lease lengths and the limited amortization period provided by the Code of Federal Regulations, it is suspected that the current method and practice of lease renewals upon expiration will continue for the foreseeable future. It would be politically very difficult to "trigger" a phaseout of cabin sites. When Secretary of the Interior Stewart Udall tried in 1965, he was unsuccessful. Specific needs would have to be shown and if a need could be shown, in order for a phaseout to occur, an adequate amortization period would be necessary to make the phaseout politically acceptable. This leads to a situation where unless there is an identifiable need, a phaseout is politically unfeasible, and if a need does arise an amortization period which will protect the lessees' financial interests precludes use for a long period of time. The only rational way out of this "Catch-22" would be to make long term forecasts as to needs and begin phaseouts based on these projections. This would also be subject to criticism and would have to be based on the best available information.

Multipurpose Functions

The Canyon Ferry Project is a multipurpose project with various functions. These functions and the perceived impacts of cabin site sale are as follows:

Hydroelectric Generation. The reservoir is currently operated with a conservation pool maximum level of 3797.0 feet above mean sea level (MSL). This means that normal power and storage operations are conducted at or below that level. The range of elevation from 3797.0 to 3800.0 MSL is set aside as flood control storage. This allows storage when water runoff peaks in the spring. It is conceivable that at some point in the future, power use or irrigation demands may force a reevaluation of the exclusive use of the top three feet of reservoir storage for flood control. If a change should occur, the top three feet would then be part of the normal operating range. This may significantly impact on shoreline erosion in the cabin site area. With lake elevations higher for longer periods of time, erosion may cause damage to areas within the cabin site boundaries.

Currently, if this should occur, the option is available to the Government to rescind the lease or reduce the lease site boundary. If the property were in private ownership, the prospect of legal action would be extremely high. It has been the author's experience that at Lake Pend Oreille in Idaho, where the Corps of Engineers had flowage easements, they were difficult to administer. Encroachments on the easement were numerous and significant public pressure could be applied to the agency to not exercise its easement.

If at some point in the future the Government should decide to redesignate the flood control range to be included in the conservation pool, significant monetary benefits would be gained from hydrogeneration. An additional 99,000 acre-feet of storage would be available and generators would run throughout most of the year with an additional three feet of hydraulic head.

At an average generation rate of 125 kwh per acre-foot, the additional power available from the increased storage would be approximately 12,000,000 kwh. The power available from the additional three feet of hydraulic head would be approximately 10,000,000 kwh, assuming a year-round turbine flow of 5,600 cfs. At a revenue rate of \$0.025/kwh, this 22,000,000 kwh would generate approximately \$550,000 per year. At rates of \$0.06/kwh, the cost associated with the construction of new facilities, the revenue would rise to \$1,320,000 per year.

Flood Control. Some of the same arguments made for hydropower generation above can be made for flood control. The top three feet of the reservoir is currently allocated to flood control. Long periods of time in this range cause increased erosion and may impact on cabin site boundaries. Disposition of cabin sites to private ownership would increase the difficulties in resolution of these problems. Even if the flood control range were not redesignated,

continued use of the flood control pool will have long term erosion effects on the shoreline.

Recreation. All of the problems addressed under the Department of Fish, Wildlife and Parks section concerning recreation are also concerns of the Bureau of Reclamation as the Department is acting as the managing agency of the Bureau. The long range public use for recreation should be one of the primary factors in any decision on cabin sites.

Municipal and Industrial Water. The Bureau of Reclamation has a contract with the City of Helena to provide up to 5,000 acre-feet per year of municipal and industrial water.⁹ Water is pumped from the reservoir to the City water treatment plant which filters and treats the water to provide for adequate quality for domestic purposes. During the summer of 1984, a toxic algae bloom occurred in Canyon Ferry Lake which resulted in the death of 10 head of cattle. This event seriously impacted recreation use throughout the remainder of the summer and also raised concerns about the effect of the algae on the major source of drinking water for the City of Helena.

Although use of cabin sites was not thought to be a contributory factor to the algae bloom, it does raise concern as to the effects cabin site sewage septic systems may have on water quality. If the lease sites were sold and year-round occupancy were to increase, it is suspected that the potential for water quality degradation would rise

due to the close proximity to the lake of the sewage drain fields. If water quality were to deteriorate, it may have effects on or add expense to the treatment costs of water users. Nearly all lease sites are in violation of current State standards for septic systems and drain fields. Those standards which were adopted for subdivisions platted after March 1961 in part call for the following:

These, in part, require a minimum lot area for onsite sewage disposal. Where both water supply (well) and sewage treatment (septic system) are to be onsite, the minimum lot area is generally one acre. Where a public water supply or public sewer is available, and the other service is an individual system, 20,000 square feet is generally the minimum size.¹⁰

In addition to the above requirement, State regulations require septic drain fields to be no closer than 100 feet from any well, stream, lake or pond.¹¹ Most lease lot sizes are approximately one-half acre in size and some improvements are very close to the water. Currently the State Water Quality Bureau does not actively enforce the regulations for sites which were constructed before promulgation of the regulations in 1961. However, if the use of sites of this type cause detectable water quality problems, the regulations can be enforced. This leads to another dilemma faced by the managing agencies. Nearly all the sites are in violation of State regulations, but no identifiable water quality problems have been attributed to the lease site drain fields. If the Water Quality Bureau chooses to ignore the violation, should the managing

agencies do so also? To do so may result in a crisis at some future date which will be unacceptable to all. It is conceivable that if at some future date the lease sites were found to be a major contributor to water quality degradation, pressure may be brought to bear on the agencies to eliminate leases in a very short period of time. A scenario such as this would undoubtedly create a storm of controversy.

This is an issue which would have to be studied closely. The contribution that the lease site drain fields make to water quality degradation would have to be definitively established. Alternatives may be available which would tend to minimize the problem, such as restricting year-round occupancy of the sites. If the sites were sold, the options available for rectification of the problem would then lie with the lessee and may be very costly or unfeasible. The small lot size seems to preclude installation of an acceptable septic system and drain field.

Irrigation. There appears to be little effect on irrigation interests with sale of the cabin sites. If water quality were to degrade, there may be some problems incurred by the Helena Valley Irrigation District; however, these are considered to be minor for irrigation purposes. A potential concern for Irrigation Districts may lie in the creation of a trust fund with the proceeds of any sale of the lands. This concern would center around repayment of

construction costs of the Canyon Ferry Project. Beneficiaries of the project, including Irrigation Districts served or benefiting, are charged a portion of the costs. Since a portion of the costs of the project were to purchase the lands which are now leased, the Irrigation Districts and other beneficiaries of the project may now object if the proceeds of the sale of that land were put to any other use except to retire the debt that was first incurred.

Wildlife. The Bureau of Reclamation's concerns in regard to wildlife would appear to mirror those of Fish, Wildlife and Parks.

Precedent. The Bureau of Reclamation may have concerns as to the precedent that would be set by sale of the cabin sites. If the cabin sites at Canyon Ferry could be sold, why not lands adjacent to the lake in other areas which had been purchased from area farmers and ranchers? If the trust fund concept were to be established at Canyon Ferry, would it have spillover effects to other recreation areas in the Department of Interior? If budgets were to become short in the National Park Service or the Bureau of Land Management, would there be pressure to sell a portion of their lands to establish a trust fund to acquire operating money? If this were to happen, the Congress would also have to be concerned as to the spending of Federal trust fund income which had not been specifically appropriated.

Authority to Sell. The Bureau of Reclamation does not currently have the legal authority to sell the lands. If the lands were to be sold under existing authorities, they would have to be declared excess and turned over to the General Services Administration for disposal. The revenue from the sale of the land would then go to the Reclamation Fund. If a sale as proposed by the APLE Company were to occur, it would have to be under authority enacted by the Congress. The Congress may be very reluctant to enact legislation that would provide for an exclusive sale as desired by lessees. In addition, the Congress may be unwilling to establish a trust fund, but might rather reduce the Federal deficit with funds raised.

Retention or Sale?

The question of whether the lands should be sold or retained is subjective, and depends on the perspective with which one looks at the problem. If the lands were originally purchased for public use and leasing was considered only a short term use, then it appears that a compelling argument can be made for retention of the lands. Recreation use is increasing dramatically and is expected to continue to do so. The private use of the land is depriving the public of the use of some of its best recreational areas. It would seem that retention of the lands and phaseout of the cabins would be in the public interest.

Endnotes

¹American Public Land Exchange Co., Inc., "Canyon Ferry Lake--Recreation and Conservation Management Reserve: A Proposal Presented to the United States Bureau of Reclamation and Montana Department of Fish, Wildlife and Parks," May 1985, p. 4.

²Ibid., p. 15.

³Lisa Bay Consulting and Bruce Bugbee and Associates, "Lewis and Clark County Voluntary Agricultural Land Conservation Program, 1984," p. 22.

⁴Ibid., p. 26.

⁵Montana Department of Fish, Wildlife and Parks, Outdoors in Montana: 1983 Montana Statewide Comprehensive Outdoor Recreation Plan, p. 41.

⁶Montana Department of Fish, Wildlife and Parks, letter to Canyon Ferry Project, Bureau of Reclamation, 3 April 1987.

⁷Code of Federal Regulations, Title 43, Public Lands: Interior, Subtitle A--Office of the Secretary of the Interior, Part 21--Occupancy of Cabin Sites on Public Conservation and Recreation Areas (Washington, D.C.: Government Printing Office).

⁸Department of the Interior, Bureau of Reclamation, 43CFR, Part 429, "Procedure to Process and Recover the Value of Rights-of-Use and Administration Costs Incurred in Permitting Such Use," Federal Register 48, no. 245, 10 December 1983: 56225.

⁹U.S. Bureau of Reclamation, Pick-Sloan Missouri Basin Contract between the Bureau of Reclamation and the City of Helena, Montana, Contract No. 14-06-600-2078.

¹⁰Montana State Department of Health and Environmental Sciences, Bulletin 332, March 1984, p. 1.

¹¹Ibid., p. 2.

CHAPTER 6

SUMMARY AND CONCLUSIONS

Summary of the Issues

The fundamental question involved with the sale of Canyon Ferry cabin sites is whether eight percent of the shoreline should be sold to 265 individuals, or whether it should be retained in public ownership and the cabin sites eventually phased out to allow for expected rises in water based recreation. Although the central issue seems to revolve around the recreational aspects of the question, there are other considerations that must be weighed, such as water quality, future power production, and increased water storage, irrigators' interests, and wildlife habitat. A sale of the property would transfer ownership of prime lake shoreline into private hands and exclude forevermore the public right to use the property. The era of large water development projects appears to be gone. Is it wise to now divest ourselves of public lands, which can serve the recreating public for perhaps the next two to three hundred years, when it is realized we are dealing with a limited resource? New large dams will not be built. Development of natural lakes for recreational purposes can be further developed if so desired, but does that mean that

all lakes should be developed for recreational purposes? Probably not, for there may always be a desire for the pristine atmosphere of a mountain lake. If lakes or other water based recreation areas are set aside as undeveloped, or with only limited development, then it only increases the recreation pressure on the remaining water bodies. To sell the lands surrounding Canyon Ferry would only seem to exacerbate the situation for use by future generations. We would be taking a limited quantity and further limiting it, much to the detriment of future users.

Conclusions

It is the author's opinion that the lands should remain in public ownership. Needs now are just beginning to show the effects of increased usage, and expanded future use and options will be restricted if the lands are sold. With the lease sites in private ownership, it is expected that the land values will rise significantly as capital improvements are expanded by owners. More full time occupancy will probably occur, with occupancy by a higher income level group than now occupies the sites. Flathead Lake may be cited as an example of what may happen. There land values may run as much as \$200 per front foot for beachfront property. This will inevitably lead to further conflicts between the public and private interests.

Recommendations

It is recommended the lands be retained in public ownership, and that a phaseout process be initiated. The current method of leasing in 10-year increments makes it extremely difficult to implement a phaseout process. Administrators are reluctant to trigger the process without concrete evidence of need. On the other hand, cabin site lessees are aware that the improvements and their investment in their lots are the one factor that keeps the agencies from exercising the option of phaseout. This leads to further development by lessees, and the problem merely compounds itself.

A phaseout must recognize the investment of the cabin site lessees, and allow a long enough period for adequate amortization. To not do so ignores the political realities of the situation. One way to accomplish this may be to issue one more lease, for say 40 years, with no option to renew. At the end of 40 years the lessee would be required to remove the improvements and restore the lands. This will allow options to those lessees who are currently involved. If they are concerned about the protection of their investment, they may elect to sell their improvements now and maximize their sale price. (It is assumed the sale price of the improvements would be most when the lease has the longest remaining life.) If they feel the recreation

aspects are more valuable, they may elect to amortize their investment over the entire portion, or some part thereof, of the remaining lease. For prospective buyers, they will have a definite period of time remaining on the nonrenewable lease. This will allow them to determine what price they are willing to pay for the use of the improvements for the remaining life of the lease.

Any improvements during the lease term will be made with the full knowledge that disposal must take place at the end of the lease. This should defray much of the argument that says if the cabin sites were to be phased out, then the level of improvements that occurred should never have been allowed. In addition, a policy that limits expansion can be implemented.

The risk involved with a policy that will allow long term leases is that if a need should develop prior to the end of the term, the possibility exists that the Government will be forced to purchase the improvements because of the Federal Regulation cited earlier. If the lease periods are kept within the 10-year time period, the Government does not face the possibility of having to compensate lessees for improvements if leases are phased out. The costs associated with compensation could be significant, perhaps as much as five to seven million dollars, as was referenced earlier. However, using short term leases, the problems described earlier with triggering a phaseout are still

present, and for all practical purposes will not allow initiation of a phaseout unless some other input is received such as public demands or health or water quality problems. On the other hand, with a long term lease the benefits of long term amortization are available for lessees, but financial risks are faced by the managing agencies.

The decision to sell or retain the cabin sites must be approached rationally and in a comprehensive fashion. If the sites are retained, it will be because they are projected to be needed for public project purposes. If they are needed, the time frame in which those needs will materialize should be comprehensively established. Once established, a phaseout should be triggered that will protect the investment of lessees by allowing an adequate amortization period. The continued leasing in 10-year increments will allow little possibility of a phaseout and will result in continued controversy.

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