

TRANSFERS OF WILDLIFE REFUGE RIGHTS-OF-WAY

JANUARY 21, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 11541]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 11541) a bill to amend the National Wildlife Refuge System Administration Act of 1966 in order to strengthen the standards under which the Secretary of the Interior may permit certain uses to be made of areas within the System and to require payment of the fair market value of rights-of-way or other interests granted in such areas in connection with such uses, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

The amendment is as follows:

On page 3, line 5, strike the period and the close quotation marks at the end of the line and insert the following: "and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.)." "

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to provide for the replacement of lands within the National Wildlife Refuge System that are permitted to be used for roads, canals, pipelines, et cetera.

In accomplishing this purpose, the legislation would require to be paid into the Migratory Bird Conservation Fund the fair market value of any lands within the System used for such purposes.

LEGISLATIVE BACKGROUND

On January 18, 1973, Mr. Dingell (for himself, Mr. Karth, Mr. McCloskey, Mr. Conte, Mr. William D. Ford, Mr. Nedzi, and Mr. Moss) introduced H.R. 2286. On November 15, 1973, H.R. 11541—a bill identical to H.R. 2286 as reported by the Subcommittee on Fisheries and Wildlife Conservation and the Environment—was introduced by Mrs. Sullivan (for herself, Mr. Dingell, Mr. McCloskey, Mr. Karth, Mr.

Biaggi, Mr. Conte, Mr. Forsythe, Mr. William D. Ford, Mr. Kyros, Mr. Breaux, Mr. Studds, Mr. Nedzi, Mr. Moss, and Mr. Bowen).

Briefly explained, H.R. 2286, as introduced, would amend the Refuge Revenue Sharing Act to require any moneys remaining in its separate fund after all payments are made under that Act to be transferred to the Migratory Bird Conservation Fund to be used to carry out the purposes of the Migratory Bird Conservation Act. In addition, the legislation would require to be paid into the Migratory Bird Conservation Fund the fair market value of lands transferred to a State for the rights-of-way of any highway, road, street, etc. (excluding county roads), across lands within the National Wildlife Refuge System.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on the legislation on July 23, 1973.

The Departments of Commerce and Transportation in their reports on the legislation deferred to the views of the Department of the Interior. In its report on the legislation, the Department of the Interior recommended enactment of the legislation if section 1 of the bill—to require the transfer of net revenues from the Refuge Revenue Sharing Act to the Migratory Bird Conservation Fund—was deleted, and section 2 of the bill was amended to delete the reference in the bill that would exclude county roads from the coverage of the Act and to earmark the fair market value receipts from rights-of-way for land acquisition only.

After giving careful consideration to the evidence presented at the hearings and the departmental reports, on November 8, 1973, the Subcommittee ordered reported to the Full Committee, H.R. 2286, with amendments. This was accomplished by striking out all after the enacting clause and substituting new language. The title of the bill also was amended.

On January 22, 1974, your committee unanimously ordered reported to the House by voice vote, H.R. 11541, with a technical amendment, which, in essence, is identical to the bill ordered reported by the Subcommittee, H.R. 2286, with amendments. The bill, as reported, is in essence the bill as suggested for adoption by the Department of the Interior, with two exceptions. First, the bill would appropriately amend the National Wildlife Refuge System Administration Act rather than the Refuge Revenue Sharing Act. Second, the coverage of the bill was broadened to include all right-of-way transfers, such as for pipelines, canals, roads, ditches, etc., not just those for highway purposes only.

THE AMENDMENT

The amendment was technical in nature.

As introduced, the bill would require funds received for the fair market value of transfers to be deposited in the Migratory Bird Conservation Fund and used to carry out the land acquisition provisions of the Migratory Bird Conservation Act. The same fund is also used to carry out the land acquisition provisions of the Migratory Bird Hunting Stamp Act. In view of this, your Committee amended the

bill to provide that the fund would be used to carry out the land acquisition provisions of both Acts.

BACKGROUND AND NEED FOR THE LEGISLATION

Originally in the 48 contiguous States there were some 127 million acres of wetlands. By 1955, this total acreage had been reduced to approximately 74 million acres. Of this amount, only 22.5 million acres were of significant value for migratory waterfowl use. Since it was anticipated that 10 million acres would remain in private ownership, there remained to be acquired for public control 12.5 million acres. Of this amount, available information indicated that about 5 million acres would be secured by the States, leaving 7.5 million acres to be purchased by the Secretary of the Interior from the migratory bird conservation fund. By 1958, purchases and donations consisted of approximately 3.5 million acres. Another 1.5 million acres were added by 1961, leaving 2.5 million acres to be acquired by the Secretary under the original goal. Since 1961, only 1.3 million additional acres have been acquired. At this date, there remains to be acquired approximately 1.2 million acres of land.

The average cost of land in fee today is \$142 per acre as compared to \$31 per acre in 1962 and \$3 per acre in 1934.

The National Wildlife Refuge System is rather a complex organization. It is composed of both public domain and acquired lands. Approximately 85 percent of the lands within the System is reserved from the public domain and about 12 percent is acquired lands. About 3 percent of the System is non-Federal land administered under agreement, easement, or lease. Less than 5 percent of the land in the System was approved by the Migratory Bird Conservation Commission. Almost 4 percent was acquired with duck stamp funds. The price of the duck stamp is \$5 and the anticipated revenues from the sale of such stamps for the next several years is estimated to be approximately \$11 to \$12 million per year.

Units of the National Wildlife Refuge System consist of wildlife refuges, wildlife ranges, game ranges, wildlife management areas, waterfowl production areas, or areas for the conservation and protection of fish and wildlife that are threatened with extinction. The System is administered by the Secretary of the Interior.

The Department of the Interior witness in his testimony at the Subcommittee hearings estimated that had H.R. 2286, as introduced, been in effect for the past five years the fair market value of the land given over to highway rights-of-way would have amounted to \$200,000, an average of approximately \$40,000 per year.

Subsequent to the hearings, representatives of the Department advised your Committee that had H.R. 2286, as amended, been in effect, the legislation would have produced about \$60,000 per year for the past five years.

Following is a tabulation submitted by the Department of the Interior indicating the number of highway rights-of-way, including their acreage, granted over refuge lands from 1967-1972:

H.R. 754

HIGHWAY RIGHTS-OF-WAY GRANTED OVER REFUGE LANDS 1967-72

1. STATE HIGHWAYS

State	Unit	Acres in right-of-way		
		New location	Improve-ment	Material site
Alaska	Wheeler	93.8		
Do	Nunivak	20.8		
Arizona	Havas	7.2	8.0	1.25
Arkansas	White River			4.0
Delaware	Prime Hook		.2	
Idaho	Camas		9.3	
Maine	Moosehorn		.3	
Missouri	Squaw Creek	1.0	19.5	
Minnesota	Becker WPA		1.8	
Do	Otter Tail WPA		5.8	
Do	Upper Mississippi		15.8	
Nevada	Desert		12.0	
New York	Montezuma		5.9	
North Dakota	Logan WPA		1.2	
Oklahoma	Salt Plains		3.8	
Oregon	Cape Mears		2.0	
Pennsylvania	Erie		.1	
South Carolina	Carolina Sandhills WPA		103.7	
Do	Santee		16.3	
South Dakota	Faulk WPA		18.4	
Do	Hand WPA		6.4	
Do	Kingsbury WPA	12.4		
Do	Codington WPA		4.2	
Texas	Aransas		2.6	
Washington	Ridgefield	33.8		
Do	Turnbull		32.5	
Do	Toppenish		.1	
Wyoming	Pathfinder	.9		
Totals		169.9	269.9	5.25

2. COUNTY HIGHWAYS

State	Unit	Acres in right-of-way		
		New location	Improve-ment	Material site
Alabama	Wheeler		11.6	
Arizona	Havas		16.8	
Florida	J. N. "Ding" Darling			10.0
Illinois	Chautauqua		4.2	
Minnesota	Becker WPA		5.4	
Do	Big Stone WPA	1.0		
Do	Cottonwood WPA		1.4	
Do	Douglas WPA	1.4	.5	
Do	Grant WPA		2.1	
Do	Jackson WPA		.4	
Do	Kandiyohi WPA		10.2	2.1
Do	Otter Tail WPA		2.7	
Do	Sherburne		4.9	
Do	Stearns WPA		1.6	
Do	Stevens WPA		.5	
Mississippi	Noxubee			.6
Nebraska	Fort Niobrara		1.0	
Do	Valentine		4.3	
North Dakota	Des Lacs		22.2	
Do	Kidder WPA		19.0	
Do	Lake George		12.6	
Do	Logan WPA		46.7	
Do	Pierce WPA		40.8	
Do	Renville WPA		6.8	
Do	Roletta WPA		3.8	
Do	Upper Souris		4.0	
Do	Ward WPA		.2	
Oregon	Ankeny		4.4	
Do	William L. Finley		.3	
South Carolina	Carolina Sandhills WPA		.2	
South Dakota	Beadle WPA		2.7	
Do	Day WPA		5.1	
Do	Deuel WPA		.2	
Do	Edmunds WPA		2.8	
Do	Hanson WPA		1.8	
Do	Lake WPA		.4	
Tennessee	Tennessee	.5		
Washington	Little Pend Oreille		3.4	
Totals		2.9	245.0	12.7

Your Committee would like to point out that, although it appears that legislation would produce only nominal funds for land acquisition, it is an equitable way to replace wildlife lands taken out of the National Wildlife Refuge System. Also, your Committee would like to point out that our Nation is facing an energy crisis, and will likely continue to face such a crisis for the next decade. In an effort to alleviate this situation, legislation was recently enacted into law (Public Law 93-153) that authorizes the building of the Alaska Pipeline, which will transport oil from Prudhoe Bay, Alaska, to Valdez, Alaska, at which port the oil would be transhipped by ocean-going tankers. That law also authorizes the building of additional oil pipelines, as well as gas pipelines, not only across certain Federal lands in the State of Alaska, but also across lands within the National Wildlife Refuge Systems located in any of the other 49 states.

Although it does not appear that the Alaska Pipeline will cross any lands within the National Wildlife Refuge System, Public Law 93-153 does recognize that other pipelines will need to be built in order to assist in the energy crisis our Nation is facing. Therefore, it is the opinion of your Committee that, as a result of the pressures emanating from the energy crisis and the enactment of Public Law 93-153, H.R. 11541, will produce a considerably larger amount of funds than that previously estimated. In fact, soil samplings are presently underway in the Arctic Game Refuge in the State of Alaska by an Alaskan company relative to the possible building of a natural gas pipeline across that land.

Therefore, should any lands of the System be utilized for such purposes, then it is only right that the fair market value of such lands be placed in the Migratory Bird Conservation Fund so that these lands, which are held in trust, can be replaced at the earliest possible date.

WHAT THE BILL DOES: SECTION-BY-SECTION ANALYSIS

As indicated in the legislative background of this report, your Committee ordered reported to the House, H.R. 11541, a clean bill, with a technical and clarifying amendment, which, in essence, is identical to the bill ordered reported by the Subcommittee, H.R. 2286, with amendments. There follows a section-by-section summary of H.R. 11541, accompanied by discussion, where appropriate.

SECTION 1

Under present law (16 U.S.C. 668dd(d)(1)), the Secretary of the Interior is authorized, under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such purposes are compatible with the major purposes for which such areas were established.

In addition, under 16 U.S.C. 668dd(d)(2), the Secretary is authorized, under such regulations as he may prescribe, to permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as, but not necessarily

limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines such uses are compatible with the purposes for which these areas were established.

Paragraph (1) of section 1 of the bill (other than for technical changes) would amend section 4(d) of the Act (16 U.S.C. 668dd(d)) to require the Secretary to determine, not only that the use to be permitted by present law would be consistent with the purposes for which such area was established, but he must also determine that there is no feasible and prudent alternative to such use of such area.

Your Committee would like to point out that the language in paragraph (1) of section 1 of the bill, which requires the Secretary to find that "there is no feasible and prudent alternative to such use of such area" is in essence the language of the Federal-Aid Highway Act of 1968, which requires the Secretary of Transportation to make such a finding for any program or project to use lands within a wildlife or waterfowl refuge for highway purposes. Since the Secretary of the Interior administers all areas within the National Wildlife Refuge System, of which a wildlife refuge is one, your Committee deemed it advisable to add to the National Wildlife Refuge System Administration Act of 1966, the requirement that he make the same finding that is required to be made by the Secretary of Transportation under the Federal-Aid Highway Act. In this way, the National Wildlife Refuge System Administration Act will be complete within itself, and the Secretary of the Interior would be required to make such a finding regarding areas within the System.

Under present law, there is no requirement that any payment be paid by the permittee for any use of any area within the System that may be authorized by the Secretary of the Interior. Paragraph (2) of section 1 of the bill would require the grantee of any right-of-way, easement, or reservation in, over, across, through, or under any area within the System in connection with any use that may be permitted, such as for pipelines, powerlines, roads, etc., to pay to the Secretary of the Interior the fair market value of such use as determined by the Secretary as of the date of conveyance. In addition, all sums received by the Secretary, after paying necessary administration expenses, would be required to be deposited in the Migratory Bird Conservation Fund and earmarked for land acquisition purposes only.

The earmarking of the funds for land acquisition purposes only was suggested by the Department of the Interior. Your Committee wholeheartedly agrees with this suggestion and so provided in the legislation. The theory behind this provision is that starting with fiscal year 1977, 75 percent of the money accruing to the Migratory Bird Conservation Fund from the sale of duck stamps will have to be utilized to repay advance appropriations under the Wetlands Loan Act of 1961. Consequently, after fiscal year 1977, there will be little money available with which to complete the original land acquisition goal. The moneys to be received from such permittees should go a long way in helping to achieve this goal. Also, in this way lands that are diverted to other uses will be assured of being replaced with other lands of equal value.

SECTION 2

Section 2, subsection (a), of the bill would provide with respect to section 4(d) (2) of existing law (16 U.S.C. 668dd(d) (1)) that any

request for permission to use an area within the System filed with the Secretary under such section, as in effect before the date of enactment of this legislation, and with respect to which the Secretary has not taken final action before such date of enactment, shall be treated as having been filed pursuant to the section, as amended by this legislation. That is to say, any request for permission to use an area which has not been acted on prior to the effective date of this legislation shall be required to meet the new test provided under section 4(d)(1)(B), which requires the Secretary to find that there is no feasible and prudent alternative to such use of such area. Naturally, he will also have to find, as required by existing law, that the use of such area is compatible with the purposes for which such area was established.

Subsection (b) of section 2 of the bill would amend section 4(d)(2) of the Act, as amended by this legislation, to require such section to apply with respect to any right-of-way, easement, or reservation granted by the Secretary on or after the date of enactment of this legislation. It is to be noted that the section would apply even though the Secretary has permitted a certain use to be made of an area but on which a right-of-way, easement, or reservation has not been granted.

For example, evidence was offered at the Subcommittee hearings indicating that the Alaskan Arctic Gas Study Company had been issued a permit by the Secretary of the Interior to take soil samples of certain areas within the Arctic game range, an area of the National Wildlife Refuge System, relative to the possible construction of a natural gas pipeline extending from Prudhoe Bay, Alaska, to the Alaskan-Canadian border. Therefore, if a right-of-way, easement, or reservation is subsequently issued for such purpose after the effective date of this legislation, then the grantee of the right-of-way, easement, or reservation will be required to pay to the Secretary, for deposit in the Migratory Bird Conservation Fund, the fair market value of such right-of-way, easement, or reservation. This will be the case, irrespective of any other law which has authorized or may hereafter authorize the construction of an oil or gas pipeline across any lands within the National Wildlife Refuge System.

COST OF THE LEGISLATION

In the event this legislation is enacted into law, your Committee estimates—based on information supplied by the Department of the Interior—that there would be no additional cost to the Federal Government.

DEPARTMENTAL REPORTS

H.R. 2286 (a similar bill to H.R. 11541) was the subject of three departmental reports. These reports follow herewith:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 20, 1973.

HON. LEONOR K. (MRS. JOHN B.) SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Your Committee has requested the views of this Department on H.R. 2286, a bill "To amend the Act of June 15,

1935, to provide for the disposition of moneys in the migratory bird conservation fund, and for other purposes."

We have no objection to the enactment of H.R. 2286 if amended by deleting Section 1 and revising Section 2 as suggested herein.

Section 1 of H.R. 2286 would amend Section 401(e) of the so-called Refuge Revenue Sharing Act (16 U.S.C. 715s(e)) to provide that moneys remaining at the end of any fiscal year in the National Wildlife Refuge Fund be transferred to the Migratory Bird Conservation Fund for all uses specified by the Migratory Bird Conservation Act, as amended (16 U.S.C. 715 *et seq.*). Annual surplus in the National Wildlife Refuge Fund, comprised of revenues obtained in administration of the National Wildlife Refuge System, may now be used only for management of the Refuge System and for enforcement of the Migratory Bird Treaty Act. It is estimated the surplus will be \$1.3 million in Fiscal Year 1974.

Section 2 of H.R. 2286 would require State Highway Departments to pay to the Secretary of the Interior the fair market value of rights-of-way for highways across lands of the National Wildlife Refuge System. All sums so received by the Secretary would also be deposited into the Migratory Bird Conservation Fund. Existing law (23 U.S.C. 317) does not require payment for rights-of-way sought by States pursuant to their participation in a Federal-aid Highway Construction program.

The purpose of both sections is to increase the amount of funds available for acquisition of waterfowl habitat. Nonetheless, enactment of section 1 could result in a reduction of the additional funds much needed and regularly appropriated to cover the costs of refuge management and enforcement of regulations. We believe that legislation recently passed by Congress, and signed by the President, vesting in the Secretary of the Interior authority to fix the Duck Stamp fee at a level not less than \$3.00 nor more than \$5.00 (Public Law 92-214) will increase significantly the monies available for acquisition of waterfowl production areas. An increase in the individual fee (to \$5) is expected to generate additional revenue for this purpose of over \$11 million over the next five years.

Payment for rights-of-way, as proposed in section 2 of H.R. 2286, is consistent with Public Law 90-404, which required payment into the migratory bird conservation fund of not less than the acquisition costs of lands acquired with migratory bird conservation funds or the fair market value of donated lands in the event of their disposal. This requirement of reimbursement for refuge lands converted to other uses tends to discourage applications for all but essential uses, and facilitates the replacement of refuge lands so acquired.

Section 2 would require payment for rights-of-way, heretofore granted without consideration, in the event of acquisition by a State for highway construction under the Federal-aid system. The requirement would not be applicable, however, to easements acquired for "county roads". We object to this exclusion, not only because it is often difficult to distinguish between "State" and "county" highway projects, but because the exclusion is inconsistent with the obvious purposes of this legislation. The payment provision would be applicable to both acquired and public lands, and to all units of the National Wildlife Refuge System.

Under Sections 1 and 2 of H.R. 2286, all funds deposited into the migratory bird conservation fund "shall be available to carry out the provisions of the Migratory Bird Conservation Act, as amended". Because the so-called Wetlands Loan Act of 1961, as amended (16 U.S.C. 715k-3 *et seq.*) requires that repayment shall be made, starting with FY 1977, in annual amounts comprising 75 percent of the monies accruing annually to the migratory bird conservation fund, most of the monies deposited therein under H.R. 2286 would not be available for new or replacement land acquisition, as intended. We recommended, therefore, that monies so deposited under Section 2 be made available only for the purpose of land acquisition.

Accordingly, we have no objection to enactment of H.R. 2286, if amended (1) to delete section 1; (2) to delete the words "but excluding county roads," as they appear in line 6, page 2; and (3) to insert the words "for land acquisition" between the words "provisions" and "of" in line 16, page 2.

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

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., July 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 2286, a bill

"To amend the Act of June 15, 1935, to provide for the disposition of moneys in the migratory bird conservation fund, and for other purposes."

The bill, in section 1, would amend section 401(e) of the Act of June 15, 1935 (16 USC 715s(e)) to provide that any money covered into the United States Treasury and reserved in the separate fund maintained by revenues received by the Secretary of the Interior from sales of timber and other resources within areas of the National Wildlife Refuge System shall be transferred to the migratory bird conservation fund and shall be available to carry out the provisions of the Migratory Bird Conservation Act (16 USC 715-715d, e, f-k, l-r). Such funds under existing law may be used by the Secretary of the Interior, in his discretion, for management of the System, including construction and alteration of buildings, roads and other facilities and for enforcement of the Migratory Bird Treaty Act (16 USC 703-711).

Section 2 of the bill would require States to pay to the Secretary the fair market value for rights-of-way of roads, etc., acquired within the National Wildlife Refuge System. Moneys so received would be deposited into the migratory bird conservation fund and be available to carry out provisions of the Migratory Bird Conservation Act.

The Department of Commerce defers to the Department of the Interior as to the merits of the bill.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,
Acting General Counsel.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 23, 1973.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in reply to your request for the views of the Department of Transportation on H.R. 2286, a bill:

"To amend the Act of June 15, 1935, to provide for the disposition of moneys in the migratory bird conservation fund, and for other purposes."

The proposed bill would amend 16 U.S.C. 715s(e) to earmark the moneys left in the Wildlife Fund exclusively for carrying out the provisions of the Migratory Bird Conservation Act.

Section 2 of the bill would require that State highway departments, prior to taking land within the Wildlife Refuge System for any highway purpose except a county road, pay the fair market value of such lands into the Migratory Bird Fund. That "fair market value" would be determined by the Secretary of the Interior. These provisions would not apply to Federal intragovernment transfers.

The Department of Transportation defers to the Department of Interior concerning the merits of this legislation.

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

Sincerely,

J. THOMAS TIDD,
Acting General Counsel.

CHANGES IN EXISTING LAW

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

SECTION 4(d) OF THE ACT OF OCTOBER 15, 1966

(80 Stat. 928, 16 U.S.C. 668dd(d))

Sec. 4. ***

(d) (1) The Secretary is authorized, under such regulations as he may prescribe, to—

[(1)] (A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which

such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe; and

[(2) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.]

(B) *subject to paragraph (2) of this subsection, permit the use of any area within the system for purposes such as, but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that (i) such use is compatible with the purposes for which the area is established, and (ii) there is no feasible and prudent alternative to such use of such area.*

(2) *Notwithstanding any other provision of law, the Secretary of the Interior may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1) (B) of this subsection unless the grantee pays to the Secretary the fair market value (determined by the Secretary as of the date of conveyance) of the right-of-way, easement, or reservation. All sums received by the Secretary of the Interior pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).*



