The company has had its day in court on two occasions and the Court of Claims decided adversely to the corporation. In each instance the decision of the Court of Claims alleging that the ice jam and flooding were caused by an accident of the company's employees, and the sum of $190,000, in full settlement of all claims against the United States, has been given the benefit of a retrial by virtue of the fact that the United States Department of Justice has been unable to find an acceptable settlement.

For these reasons I am constrained to withhold my approval from the bill.

On August 28, 1958:

H. R. 10419. I am withholding my approval from H. R. 10419, for the relief of North Counties Hydro-Electric Co.

The bill provides that

notwithstanding any statute of limitation, lapse of time, or any prior court decision of this bill by any court of the United States, the Secretary of the Treasury may, in his discretion, render judgment on the claim of North Counties Hydro-Electric Co., of Illinois, against the United States for damages to its power plant and dam at Dayton, Ill., sustained as the result of a dam built by the United States on the Illinois River, at Starved Rock near Ottawa, Ill.

The North Counties Hydro-Electric Co. owns a hydroelectric power development on the Fox River near Dayton, Ill. On December 21, 1945, and again on September 2, 1952, the company suffered damages to its facilities from ice jams and flooding in the river. It twice brought suit against the United States in the Court of Claims alleging that the ice jams and flooding were caused by the erection by the United States of the Starved Rock Dam, which is located on the Illinois River at a point approximately 14 miles below the company's properties. In each instance the decision of the Court of Claims went against the company.

The matters covered by this bill have been fully considered on their merits and decided adversely to the corporation. The company has had its day in court on three occasions and the Court of Claims should not now be required to consider the same claim a second time.

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The matters covered by this bill have been fully considered on their merits and decided adversely to the corporation. The company has had its day in court on three occasions and the Court of Claims should not now be required to consider the same claim a second time.

On September 2, 1958:

**Southwest Research Institute**

H. R. 1494. I am withholding my approval from H. R. 1494, for the relief of the Southwest Research Institute.

This bill would direct the Secretary of the Treasury to pay to the Southwest Research Institute such sum, not exceeding $3,200.84, as the Housing and Home Finance Administrator may approve. This payment would be for services rendered by the beneficiary in excess of its written contract with the Government.

Approving this legislation could well encourage others to perform unauthorized work and expect payment therefor from the Government. Furthermore, under this bill this organization would be entitled to recover damages which has in the past been denied other research contractors who performed work in excess of their contract obligations.

On September 2, 1958:

**Harry N. Duff**

H. R. 1696. I am withholding my approval from H. R. 1696, for the relief of Harry N. Duff.

This bill would confer jurisdiction on the Court of Claims, notwithstanding the applicable statute of limitations, to determine for Harry N. Duff arising out of the failure of the then War Department to retire him in 1946, for physical disability incurred as an incident of his military service.

The benefits of this bill had a long history of spinal trouble and arthritis while serving as an officer in the Army during World War II. He contends that these disabilities were suffered or aggravated as a result of injuries incurred in the service. Although early medical records do not support this contention, in 1945 an Army retiring board found the beneficiary incapacitated for active duty as an incident of the service and recommended his retirement.

Reviewing the case in accordance with applicable regulations, the Office of the Surgeon General of the Army disagreed with the findings of the retiring board and requested it to reconsider the case. Upon reconsideration, the retiring board reaffirmed its previous findings, whereupon the Surgeon General recommended to the Secretary of War that the findings of the board be disapproved. The recommendation of that office was that the claimant was not entitled to retirement on the ground that a spinal defect and arthritis clearly had existed prior to entry on active duty and had not been aggravated permanently by such service. The findings of the board were disapproved by the Secretary of War, and the beneficiary was therefore released from active duty in 1946, without entitlement to retired pay. In 1949, however, he was awarded disability compensation by the Veterans Administration on account of service-aggavation of a congenital defect. The beneficiary appealed the decision in his case to the statutory Army Disabity Review Board in 1947. This Board affirmed the decision of the Secretary of War and, subsequently, reaffirmed its decision upon a request for reconsideration. In 1955 the Army Board for Correction of Military Records found no error or injustice in the determinations which had been made in the beneficiary's case. He also brought an action in the Court of Claims in 1958, which was dismissed as barred by the statute of limitations.

Traditionally, eligibility for retirement on account of physical disability has been determined by the military services in accordance with general provisions of law. Appellate review of these determinations has been provided within the executive branch by means of statutory boards such as the Disability Review Board and the Board for Correction of Military Records.

In recent years the Court of Claims has been petitioned in various cases to award retirement benefits to individuals who have been found not entitled to such pay by the Secretary of the military department concerned. In consistently denying these petitions, the court has stated, in effect, that, under the statutory procedures for determining and reviewing entitlement to retirement, it has jurisdiction only in cases where it can be shown that the Board of Veterans has acted arbitrarily, capriciously, or plainly contrary to law.

I believe that this rule which the Court of Claims has adopted is a sound one. It conforms to the many hundreds of individuals who have had their claims for disability retirement denied without benefit of judicial review. It would also establish an undesirable precedent leading to other exceptions to the orderly procedure which is now provided for under general law and which currently governs the hundreds of similar cases that are adjudicated each year.

On September 2, 1958:

**Toley's Charter Boats, Inc., Etc.**

H. R. 3193. I am withholding my approval from H. R. 3193, entitled "For the relief of Toley's Charter Boats, Inc., Tole Engebretsen, and Harry Homlar."

The bill would direct the Secretary of the Treasury to pay the sum of $37,65 to Toley's Charter Boats, Inc., of Salerno, Fla., and the sum of $3,227.10 to Toley Engebretsen and Harvey Homlar of Salerno, Fla., in full settlement of all claims of the named persons for a refund of taxes paid pursuant to section 3469 of the Internal Revenue Code of 1939, relating to the claim of the named persons. The records of the Treasury Department show that the amounts which this bill would refund to the claimants were paid under the transportation tax, which is applicable to fees charged for the charter of fishing boats by the claimants at various times between January 1945 and November 1951. On March 31, 1953, the District Court for the Northern District of Florida held that the transportation tax was not applicable to amounts paid for fishing parties in situations similar to the ones involved in this case. By this decision, the claimants could have
filed timely claims for refunds of taxes paid after March 1949. However, the claimants did not file claims for refund until November 15, 1955, which date was more than 2½ years after the district court determined the claims for refund were rejected because they were filed after the expiration of the 4-year period of limitations prescribed by law for filing such claims.

The district court reversed the Internal Revenue Service's interpretation of the statute, refund of taxes paid for a large portion of the period here involved was barred by the statute of limitations. Further, Congress has determined it to be a sound policy to include in the revenue system a statute of limitations which, after a period of time, bars taxpayers from obtaining refunds of tax overpayments and bars the Government from collecting additional taxes. Such a provision is essential to finality in tax administration.

The basic justification for the statute of limitations is to bar claims after a period of reasonable time, witnesses may have died, records may have been destroyed or lost, and problems of proof and administration of tax claims become too burdensome and unfair for both taxpayers and the Government. The basic purposes underlying the statute of limitations continue in force even in cases where a taxpayer, after having paid a tax, discovers that the interpretation of the law has been changed by a judicial decision or by a modification in regulations and rulings. There are no special circumstances in this case to justify singling out the named taxpayers for special relief from the statute of limitations. The bill, therefore, would unfairly discriminate against other taxpayers similarly situated and would create an undesirable precedent.

On September 2, 1958:

**Section 1870 of Title 28, U. S. C.**

H. R. 3368. I am withholding my approval of H. R. 3368, to authorize the district courts to allow additional peremptory challenges in civil cases to multiple plaintiffs as well as multiple defendants, for reasons wholly unrelated to the original title and purpose of the bill.

Section 1 of the bill amends existing law (28 U. S. C. 1870) so as to extend to multiple plaintiffs in civil cases the same three peremptory challenges which are available under the present statute to multiple defendants. I favor this change in the bill because it would make the bill if it were limited to this provision.

Section 2 of the bill amends the Declaration of Taking Act (46 Stat. 1421; 40 U. S. C. 258a). That act provides a procedure under which the Government may acquire immediate possession of property taken prior to a trial before a Federal district court at which a final determination as to just compensation for the property will be made. If, after trial, the court determines that the funds advanced by the Government exceed the amount which the owner receives, the Government is required to pay the balance due plus 6 percent interest.

Section 2 of H. R. 3368 would modify the procedure by providing that the judge of a district court could, upon the application of the taxpayer, determine that the amount of the Government's advance payment was determined fraudulently or in bad faith and require the Government to pay an additional amount as fixed by the court prior to trial. Prior to such additional payment, the Government would not be entitled to the income from the property.

These additional steps appear to be unnecessary and unwarranted since, under the present statute, the rights of property owners to receive just compensation as guaranteed by the fifth amendment to the Constitution when property is taken for public use are fully protected. If, for any reason, the payments advanced by the Government are less than a court judgment of just compensation, the owner is entitled to fair treatment because the Government is required to pay the additional amount plus interest at 6 percent.

In the circumstances, and since neither the responsible executive committees nor the affected executive agencies had their normal opportunity to consider this basic change in procedure, I believe more thorough consideration of section 2 is warranted.

On September 2, 1958:

**PETER JAMES O'BRIEN**

H. R. 4073. I am withholding my approval from H. R. 4073, for the relief of Peter James O'Brien.

This bill would pay to Peter James O'Brien the sum of $10,000 as compensation for the death of his son, who was killed in military service in 1947.

The son of the beneficiary of this bill was being taken on an indoctrination flight in a naval aircraft on the same day on which he entered active duty as a member of the Naval Reserve. As the plane in which he was riding was waiting to take off, another Navy aircraft coming in for a landing crashed into it, injuring the son so seriously that he died several days later.

The beneficiary twice filed applications for death compensation with the Veterans' Administration. Although the death of his son was deemed to be service-connected, the Veterans' Administration has denied awards in both instances because the father was unable to establish dependency as required by the governing statutes. It also appears that, for the beneficiary, the corporation's claim for benefits under the Federal Employees' Compensation Act was denied. He apparently has never filed a claim for 6 months' death gratuity or for regular monthly benefits under the Social Security Act which also conditions entitlement upon a showing of dependency.

A suit was instituted on behalf of the beneficiary to recover damages on account of the death of his son under the provisions of the Federal Tort Claims Act. Both the lower and appellate courts held that the claim was barred because the claimant did not file his claim within the 2-year statute of limitations prescribed by law. The Supreme Court reversed the district court. The decision or possibly the judgment of the appellate court was not altered on certiorari by the Supreme Court.

The basic justification for the statute of limitations is to bar claims after a period of reasonable time, witnesses may have died, records may have been destroyed or lost, and problems of proof and administration of tax claims become too burdensome and unfair for both taxpayers and the Government. The basic purposes underlying the statute of limitations continue in force even in cases where a taxpayer, after having paid a tax, discovers that the interpretation of the law has been changed by a judicial decision or by a modification in regulations and rulings.

There are no special circumstances in this case to justify singling out the named taxpayers for special relief from the statute of limitations. The bill, therefore, would unfairly discriminate against other taxpayers similarly situated and would create an undesirable precedent.

On September 2, 1958:

**COMMANDER COOPER TIRE & RUBBER CO.**

H. R. 7499. I am withholding my approval from H. R. 7499, for the relief of the Cooper Tire & Rubber Co.

This bill would authorize and direct the Secretary of the Treasury to pay to the Cooper Tire & Rubber Co., Findlay, Ohio, the sum of $616,911.88 in full satisfaction of the claim of the corporation against the United States arising out of losses, due to increases in costs, incurred in performing seven contracts with the Department of the Army for the manufacture of rubber tires, tubes, and camels.

The contractor previously made applications for relief under the First War Powers Act. This application was denied by the then Secretary of War, along with the claims of two other rubber manufacturers based on the same grounds.

The record indicates that the company made a net profit of over $64,000 on the 35 Government contracts which were awarded to it during 1950, 1951, and 1952, the years in question, despite the fact that as to 7 of them it sustained losses. From the Government's standpoint, it would be inequitable to grant relief to the company with respect to the 7 contracts on which it sustained losses, without giving consideration to the 28 on which it made profits. The granting of relief in this case would also be discriminatory against many other contractors who sustained losses under fixed price contracts during the early part of the Korean conflict.

On September 2, 1958:

**MR. AND MRS. ROBERT B. HALL**

H. R. 8184. I am withholding my approval from H. R. 8184, for the relief of Mr. and Mrs. Robert B. Hall.

The bill would direct the Secretary of the Treasury to pay the sum of $1,300 to Mr. and Mrs. Robert B. Hall. The claimants are former employees of the Cooper Tire & Rubber Co. in Los Angeles, Calif., in full settlement of their claims against the United States for recovery of earnings lost through discrimination.