

k. Articles 74-75 limit the number of leases in one mining area, but is not clear on the nature of the limitation. In mining operations, it may be important to issue several mining leases within the same area; whether on the same or different mineral deposits, and Article 75 would seem to unduly restrict a mining right owner in the development of his right.

l. Article 81 places the government in between the lessor and lessee to secure payment of rental agreed upon, and makes it a party to what would otherwise be a private contract, within the limitations laid down in the law. This appears to be undue interference with private contract and development of mineral lands.

m. Article 83 is subject to the same objections as Article 55 above, as being an undue interference with private enterprise, and providing penalties for violation of other laws.

n. Article 88, para 2, provides for voluntary conference between neighboring mining right owners, but only with the permission of the Bureau Chief. No reason for discouragement of voluntary settlement of differences appears in the text.

o. Article 101 is subject to the same objection as Article 55, since the Bureau Chief is given authority to order changes in the operation plan.

p. Article 105 to 111 confer on the Bureau Chief on application of a mining right owner the right to expropriate lands for mining purposes without setting up any due process, and is contrary to the recommendations of Mr Duncan, para 6a (6).

q. Article 191-200 creates a Local Mining Council within the Ministry of International Trade and Industry, which is purely advisory in character, a majority of its members being appointed from "learned and experienced" persons. It is felt that such a council adds cost and complication to adjudication of differences arising under the Mining Law; that by retaining control of the majority of its members in the Ministry of International Trade and Industry, any decisions of such a council would be received with skepticism by land owners contesting with mining right owners, and would not avoid appeals to the Land Coordination Commission. The solution of disputes in the first instance is otherwise possible either through voluntary conciliation or through the courts (Duncan's Report, para 8c (5)).

r. Article 222 (1) and (3) providing penalties for violation of Articles 63 (4) and 101 (2) is objectionable for the reasons indicated above in discussing Article 55 (2). Para (4) of this article is objectionable insofar as it may refer to orders by the Bureau Chief for payment of rental by a leaseholder to a mining right owner, as it tends to unnecessarily interfere in private contracts.



NR 615 (1 Mar 50)MG

s. Article 223 provides further penalties for violation of articles, all of which could be included in Article 55 as basis for cancellation of rights, after due notice and an opportunity to be heard.

t. The fees provided in the table attached to the Bill may appear equitable in view of present inflationary value of the yen, but it is believed that some provision in the law should be made to adjust and revise these as conditions may vary in the future.

2. Several numerical errors in the final draft have been called to the attention of NR by personnel who prepared the same, and are obvious on a reading of the Bill. These are found in Articles 21, 55, 56, 63, 90, 91, 180, 222 and 225. Further errors are found in the Japanese version, in Articles 92, 139 (2) and 192. These make it imperative to refer the Bill back through the Foreign Ministry for correction and finalization of the draft.

3. In fairness, it must be stated that the Mining Bill does embody some important recommendations made by Mr Duncan to the Japanese, to improve, liberalize and make more effective the development of the country's mineral resources. These include restrictions on the period for prospecting minerals, and requirement for showing diligence in order to obtain renewal; inclusion of additional minerals of commercial value under the protection of the law; reference to the Land Coordination Commission to be established by a sister Bill, to settle problems of land use and expropriation in the light of national interest.

4. In summary, the substance of objections made are directed against the following:

a. Control of the mining industry by government. This is a return to the wartime philosophy and hamstrings mining enterprise by giving wide, discretionary powers to government officials to officiously saddle in the affairs of every mine, smelter and refinery in Japan. Technical differences in judgment between government officials and mining engineers and metallurgists would invariably be resolved in favor of the government official. Such interference could negate the work of SCAP technical personnel in giving guidance and advice to the mining industry, in addition to increasing costs of operators. Similar in trend is the recent Precious Metals Control Bill which, not satisfied with control over purchase, sale and distribution of precious metals, went further to give government control over the mining, smelting and refining industry in general. The express object of the Mining Bill is indicated in a statement headed "REASON" attached to the same, as being "to secure a democratic operation of the (mining) system". The passage of the Bill in its present form would irreparably prevent any democratic operation of the mining industry under the principles of free enterprise.

11



NR 615 (1 Mar 50)HQ

b. Discrimination against foreigners is indicated in the limiting of mining rights to Japanese, without any statement of reciprocity. The passage of Article 17 in its present form would in fact lay down a policy which might be difficult to override even by treaty. It is in line with the isolationist policy prior to the arrival of Perry in Japan.

c. The advisory Local Mining Council set up as an instrument of the Ministry of International Trade and Industry leaves open the door for the return of control groups similar to those barred by SCAP directives as being in restraint of normal democratic processes in business and government. By appointment of a majority from one or another economic group, the Minister has in effect turned over his responsibility to a private council, which would not be inclined to consider public weal a test for its decisions.

*Albert H. Solomon*

ALBERT H. SOLOMON

Deputy Chief, Mining and Geology Division

Copies furnished:

LS

NR/A

NR/P (3)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS  
Natural Resources Section

HGS/MBW/JLG/BMJ/mhk  
28 February 1950

NR 313 (28 Feb 50)A

MEMORANDUM FOR: Record

SUBJECT: Draft Legislation Mining Bill

1. The proposed Mining Bill is deficient in two major aspects with respect to protection of the interests of the Japanese farmers:
  - a. Granting of protection and mining rights on or effecting the use of farm land and expropriation of farm land (see pars 2 - 7).
  - b. Compensation for damages to farm land (see pars 8 - 10).
2. Art 24 of the proposed Bill provides that prior to granting prospecting or digging permits that where it is recognized that in the digging of "... minerals the utilization of land will be damaged the Chief of the Bureau of International Trade and Industry shall consult with the governor of To-do-fu or prefecture concerned..." Sole protection of the farmer is the persuasive power of the governor if he deigns to act in the farmers' behalf. This is a somewhat illusory protection of farm interests since in prefectures where mining is concentrated, it is at least possible that the governor may be more sympathetic to mining interests than to the farmers.
3. Composition of a local mining council established to advise the Chief of the Bureau of International Trade and Industry is set forth in Art 193. The committee would consist of a chairman and the following members all appointed by the Chief of the Bureau of International Trade and Industry: "(1) The experienced in mining, 2 persons; (2) The experienced in agriculture and forestry, 2 persons; (3) The experienced in other industries, 1 person; (4) The learned and the experienced, 5 persons." Since all 11 members are to be appointed by the Chief of the Bureau of International Trade and Industry, the possibility of sympathetic treatment of farmer grievances is subject to question. It is suggested by NR/A that the provision of Art 195 which provides for temporary additional committeemen on any specific case be amended so that the Chief of the Prefectural Land Department be ex-officio a temporary committeeman on each case involving farm land in his prefecture. This change would provide the minimum protection necessary for local farmer interests.

NR/P

Incl #3

(11)



NR 313 (28 Feb 50)A

4. Art 102 concerning entrance onto another person's land should be strengthened at least to the extent of deleting the balance of par 1 following "which constitute obstacles" and by substituting the following: "be only after obtaining the written permission of the Chief of the Bureau of International Trade and Industry, which permission may not be granted until after the owner of the land concerned has received written notice of the pending issuance of such permit." To par 2 should be added the phrase "of the proposed entrance." A third par imposing a heavy penalty for trespassing without the written permit should be added. Farmers now complain bitterly that survey crews of mining companies enter farm land at will, cut bamboo or do other damage without regard to the farmers' protests since in practice illegal trespass is rarely punished.

5. The provisions of Art 105 and 106 (use and appropriation of another's land) are too broad. To protect misuse of cultivated land, the following deletions and additions are suggested:

a. Deletions. Art 105; 1, 3, 8, 9. Art 106; 2.

b. Addition. (new par Art 105) Provided however that the case where the land shall be used for the purposes specified in item 2 and 3 shall be the one where the available period of the use concerned shall not extend beyond a full year and where moreover neither the nature nor the shape of the lands concerned shall be subject to any alteration. (Items in Art 105, 106 would require renumbering).

6. Art 107, par 2, should be strengthened by addition of the following: "Provided however, as regards agricultural lands, that prior to giving the permission prescribed in the preceding paragraph, the director consult thereon with the director of the district agricultural land bureau concerned."

7. Art 123 should be strengthened by the addition of a new par 3, as follows: "The proviso of the preceding two paragraphs shall apply mutatis mutandis to the case where either the person who holds the mining right or the person who holds the lease in the mine, acts against the conditions binding the use on the usufruct prescribed in Art 111."

8. Farmers are less interested in money compensation for land damage than in restoration of the land to cultivatable status. Frequently, the cost of restoration will exceed the original farm land price of the land. In some cases restoration may be completely impracticable. The provisions covering this compensation matter are



NR 313 (28 Feb 50)A

vague and impractical and would give rise to untold arguments. As examples of these provisions note the following:

a. Art 130, par 2. "The compensations for damages shall be made in money; provided that the sufferer may request the recovery to the status quo ante, when the status quo ante can be recovered without expending extremely great amount of money in comparison with the amount of compensations."

b. Art 131. "When there has been a cases attributable to the sufferer in the occurrence of the damage, the court may take it into consideration in determining the responsibility and the extent of compensation of damages. The same shall apply when natural disaster and other force beyond human control has concurred."

c. Art 132. "In case the amount of compensation for damage has been arranged and the amount is extremely unreasonable, the persons concerned may request its increase or decrease."

9. Art 124 would be improved by shifting the approach by substituting the phrase: "the expenditure sufficient to bring about the recovery of the status quo," for the phrase now used, "the losses accruing from the unredeemed status quo."

10. A serious difficulty in the proposed bill is that the matter of responsibility for damages is inadequately covered. Arts 135 through 139, provide for the deposit of funds to cover possible damages; but these may be too small to cover legitimate claims especially in the early years of a company's life. A simple answer would be to refuse mining or prospecting permits to persons who cannot deposit an adequate bond to cover possible damage suits. Mining interests oppose this on the grounds that: (1) no professional bonding service is available in Japan, (2) such requirements would discourage both prospecting and the start of new mining ventures. If these contentions be true, then the alternative is that if the government feels such mining should be encouraged the government itself should furnish the bond or should stand ready as a guarantor in the event the financial resources of the mining company is inadequate to cover damages. Such a guarantee by the government will also make possible restoration of the land to its original state in those cases where this action is considered desirable despite heavy expense.

11. Summary: The foregoing indicates that many details of the proposed bill have not been satisfactorily worked out.



NR 313 (28 Feb 50)A

12. Conclusion: NR should not approve the proposed bill in its present form.

*Bernhardt M. Jensen*  
BERNHART M. JENSEN  
Scientific Consultant  
Agriculture Division

(11)



MINING BILL FOM 135

1. Article 3, Para 2 is not clear. It leaves open to question the physical conditions necessary to constitute such ores and tailings as minerals and does not sufficiently define the same as mineral material abandoned by the operator.

2. Article 17 limits applications for mining rights to Japanese which is in contravention to the conclusions of the Mining Law Revision Committee. Reciprocal rights should be included in treaties of commerce and navigation.

3. Article 18, Para 1: Four years is too long a time for holding prospecting leases on which only a limited amount of exploratory work could be undertaken in any case. Such a long term could easily lead to speculative "lease-grabbing" without intention of conducting exploratory work, since Article 21, Para 2, requires a relatively simple showing by the applicant to qualify. The following wording is recommended for Para 1 of Article 18:

"The period of duration of prospecting right shall be two years from the date of application, except in the case of the prospecting right for petroleum, asphalt or inflammable natural gas which may be granted at the discretion of the Chief of the Bureau of International Trade and Industry for a period not exceeding four years where special circumstances justify the longer term".

4. Article 18, Para 5 does not state with sufficient clarity that the test for renewal is diligence and good faith on the part of the applicant.

5. Article 27 gives priority to the mining right applicant who "tops others in the date of mailing of application". No reason appears why the date of filing the application should not serve the purpose, regardless of the date of filing.

6. Articles 35, 37, and 38 give broad powers to the Chief of the Bureau of International Trade and Industry to reject applications for increase or decrease of the mining area etc., on grounds which are indicated by such expressions as "not proper in comparison with public interest in general", or "the position or shape of the land is not proper for the rational development of a mineral", etc. Such language does not lay down standards, does not define rights or obligations, and confers on the government official broad, bureaucratic powers.

7. Articles 46, 48 and 90-96 again grant authority to the Bureau Chief on a vague and undefined basis that "it is necessary for rational exploitation of mineral" or "is not proper for the rational exploitation of mineral" to interfere in the case of owners of mining rights which are contiguous, and to arbitrarily order increase

(11)



- or decrease in the areas involved.
8. Article 53, granting authority to the Bureau Chief to reduce or cancel a mining right where "the digging of mineral has become remarkably improper in comparison with public interest in general" again vests too broad powers in such an official.
  9. Article 55, Para 2 permits the Bureau Chief to cancel mining rights under certain conditions - a clear interference of a bureaucratic nature in the operations of the mining right owner.
  10. Article 55, Paras 3 and 6 invoke the penalty of cancellation for violations of the Mine Safety Law. This is improper because the penal provisions are already provided in the Mine Safety Law.
  11. Article 55, Para 7 penalty is provided for failure to pay the mine tax. Tax enforcement is covered in the tax law itself.
  12. Articles 74 and 75 limit the number of leases in one mining area, but it is not clear on the nature of the limitation. In mining operations, it may be important to issue several mining leases within the same area; whether on the same or different mineral deposits, and Article 75 would seem to unduly restrict a mining right owner in the development of his right.
  13. Article 81 places the government between the lessor and lessee to secure payment of rental agreed upon, and makes it a party to what would otherwise be a private contract, within the limitations laid down in the law. This appears to be undue interference with private contract and development of mineral lands.
  14. Article 83 is subject to the same objections as Article 55 as being an undue interference with private enterprise and providing penalties for violations of other laws.
  15. Article 88, Para 2 provides for voluntary conference between neighboring mining right owners, but only with the permission of the Bureau Chief. No reason for discouragement of voluntary settlement of differences appears in the text.
  16. Article 101 is subject to the same objection as Article 55, since the Bureau Chief is given the authority to order changes in the operation plan.

(11)



17. Article 102 concerning entrance onto another person's land should be strengthened at least to the extent of deleting the balance of Para 1 following "which constitute obstacles" and substituting therefore: "be only after obtaining the written permission of the Chief of the Bureau of International Trade and Industry, which permission may not be granted until after the owner of the land concerned has received written notice of the pending issuance of ~~such~~ such permit." To Para 2 should be added the phrase "of the proposed entrance". A third paragraph imposing a heavy penalty for trespassing without the written permit should be added. Farmers now complain bitterly that survey crews of mining companies enter farm land at will, cut bamboo, or do other damage since illegal trespass is rarely punished.
18. Articles 105 and 106 are too broad. To protect misuse of cultivated land, the following deletions and additions are suggested:
- a. Deletions: Art 105, Paras 1,3,8,9  
Art 106, Para 2
  - b. Addition: (new par Art 105) "Provided however that the case where the land shall be used for the purposes specified in item 2 and 3 shall be the one where the available period of the use concerned shall not extend beyond one full year and where moreover neither the nature nor the shape of the lands concerned shall be subject to any alteration." (items in Art 105 and 105 will require renumbering).
19. Articles 105 through 111 confer on the Bureau Chief on application of a mining right owner the right to expropriate lands for mining purposes without setting up any due process.
20. Article 107 Para 1 should include reference to Article 102 as well as "...the preceding two ~~paragraphs~~ articles..." or in some other way provision should be made for appeals from land owners prior to use of permits under Article 102.
21. Article 107, Para 2 should be strengthened by addition of the following: "Provided however, as regards agricultural lands, that prior to giving permission prescribed in the preceding paragraph, the director consult thereon with the director of the district agricultural land bureau concerned."
22. Article 123 should be strengthened by the addition of a new Para 3 as follows: "The proviso of the preceding two paragraphs shall apply mutatis mutandis to the case where either the person who holds the mining right or the person who holds the lease in the mine, ~~acts~~ acts against the conditions binding the use on the usufruct prescribed in Article 111

(11)



22. Article 124 would be improved by shifting the approach by substituting the phrase: "the expenditure sufficient to bring about the recovery of the status quo" for the phrase now used, "the losses accruing from the unredeemed status quo".

23. Farmers are less interested in money compensation for land damage than in restoration of the land to cultivatable status. Frequently the cost of restoration will exceed the original farm land price of the land. In some cases restoration may be completely impracticable. The provisions covering this compensation matter are vague and impractical and would give rise to untold arguments. See Article 130 Para 2, Article 131, and Article 132.

24. A serious difficulty in the proposed bill is that the matter of responsibility for damages is inadequately covered. Articles 135 through 139, provide for the deposit of funds to cover possible damages; but these may be too small to cover legitimate claims, especially in the early years of a company's life. A simple answer would be to refuse mining or prospecting permits to persons who cannot deposit an adequate bond to cover possible damage suits. Mining interests oppose this on the grounds that (1) no professional bonding service is available in Japan (2) such requirements would discourage both prospecting and new mining ventures. If these contentions be true, then the alternative is that if the government feels such mining should be encouraged, the government itself should furnish the bond or stand ready as guarantor in the event the financial resources of the mining company are inadequate to cover damages. Such a guarantee by the government will also make possible restoration of the land to its original state in these cases where this action is considered desirable despite heavy expense.

25. Articles 191-200 creates a Mining Council within the Ministry of International Trade and Industry, which is purely advisory in character. It is felt that such a council adds cost and complication to adjudication of differences arising under the Mining Law; that by retaining control of the majority of members in the International Trade and Industry Ministry, any decisions of such a council would be received with skepticism by land owners contesting with mining right owners, and would not avoid appeals to the Land Coordination Commission. The solution of disputes in the first instance is otherwise possible either through voluntary conciliation or through the courts.

26. Article 193, Para 3 should provide for one or more forestry representatives on each Local Mining Council because most mining affects forest land which comprises 68 percent of Japan's land surface.

27. Article 195 which provides for temporary additional committeemen on any specific case be amended so that the Chief of the Prefectural



Land Department be ex-officio a temporary committeeman on each case involving farm land in his prefecture. This change would provide the minimum protection necessary for local farm interests.

28. Article 222, Paras 1 and 3 provide penalties for violation of Articles 63, Para 4, and 101, Para 2, and are objectionable for the same reasons indicated in discussing Article 55. (See para 10 of this check-sheet)

29. Article 222, Para 4 is objectionable insofar as it may refer to orders by the Bureau Chief for payment of rental by a leaseholder to a mining right owner, as it tends to unnecessarily interfere in private interests.

30. Article 223 provides further penalties for violation of articles, all of which could be included in Article 55 as basis for cancellation of rights, after due notice and an opportunity to be heard.

31. Articles 40, 56, 93-2, 101-3, and 111-2 appear to give Local Mining Councils power to make "decisions". Such councils are to be advisory in nature.

32. Provisions should be made for reference of all applications for Mining right permits to the prefectural governors. At the present only surface mineral cases have to be referred.

33. The fees provided in the table attached to the bill may appear equitable in view of present inflationary value of the yen, but some provision should be made to adjust and revise such fees as conditions may vary in the future.

34. Several numerical errors are found in Articles 21, 55, 56, 63, 90, 91, 190, 222, and 225. Further errors are found in the Japanese text in Articles 92, 139 (2) and 192.

-----



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CFG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

Note to:

From: Govt Sec

To: LS/LAJ

Date: 17 April 1950

revised

1. Immediate introduction of the attached/draft bill in  
the Diet is proposed by the International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl  
Mining Bill

Cy to NRS, ESS

C. W.

P & P DIV

(11)



Mining Bill

From: LS

To: GS

R H Neptune - 2635-479  
Date: 15 June 1950

2

1. Reference Note 2, LS to GS, subject Draft Legislation re: Mining Law bill, 31 March '50, in which the Mining Law bill was reviewed. Objections were made principally upon the ground that Article 29 of the Constitution (relating to property rights) was violated. LS recommended that the clearance of the bill be delayed until its provisions could be amended to conform to the Constitution.

2. The revised draft of the bill for Mining herewith essentially eliminates the major objections. The revision includes the following:

- a. The nature of the right granted is defined so that it is a limited right. (Article 11)
- b. Public hearings are provided for in those cases where the Mining Bureau Chief exercises his powers of reducing or cancelling mining rights. (Articles 47, 48, 53, 54, 83)
- c. Chapter V providing for expropriation of private property by the Bureau Chief has been deleted. The Land Expropriation Law is made applicable, with some exceptions. The Bureau Chief may, after notice and public hearing, determine the mining enterprises for which land may be expropriated. (Article 101-110).

Recd GS  
6/17/50

(11)



Draft Legislation (cont'd) re Mining Bill

2  
(cont'd) While it is doubtful that a taking of private property for mining purposes can always be deemed a taking for a public use, if a question arises, the Japanese Courts would have to determine the nature of the use, public or private, since that is ultimately a judicial question. LS, therefore, resolves the doubt in favor of avoiding objections on this ground.

4. The objection to Article 206 (formerly Art. 224) made in reference check note par 3d concerning punishment of persons for the acts of their employees is reiterated. It may be noted that to meet this objection, other laws have contained the following language:

"In case where any representative of a juridical person, proxy, employee, or the other worker of a juridical person or of a natural person commits the violation under the provision of Article \_\_\_\_ to \_\_\_\_ for the business of the juridical person or the natural person, not only the offender be punished, but the juridical person or the natural person concerned shall be liable to a fine under each Article in the Penal Provisions, unless it is proved that officer of a juridical person (director, administrator or any other persons similar thereto,) or the natural person (in case he is under disability his legal representative) has exercised due care and supervision over the business in order to prevent the aforesaid violation committed by his proxy, employee or the other worker."

1 Incl:  
w/d

-----C R L-----

11



Draft Legislation (cont'd) re Mining Bill

2  
(cont'd) While it is doubtful that a taking of private property for mining purposes can always be deemed a taking for a public use, if a question arises, the Japanese Courts would have to determine the nature of the use, public or private, since that is ultimately a judicial question. LS, therefore, resolves the doubt in favor of avoiding objections on this ground.

4. The objection to Article 206 (formerly Art. 224) made in reference check note par 3d concerning punishment of persons for the acts of their employees is reiterated. It may be noted that to meet this objection, other laws have contained the following language:

"In case where any representative of a juridical person, proxy, employee, or the other worker of a juridical person or of a natural person commits the violation under the provision of Article \_\_\_\_ to \_\_\_\_ for the business of the juridical person or the natural person, not only the offender be punished, but the juridical person or the natural person concerned shall be liable to a fine under each Article in the Penal Provisions, unless it is proved that officer of a juridical person (director, administrator or any other persons similar thereto,) or the natural person (in case he is under disability his legal representative) has exercised due care and supervision over the business in order to prevent the aforesaid violation committed by his proxy, employee or the other worker."

1 Incl:  
w/d

-----C R L-----

(11)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet)

CH/JW/JW/CPO/vs

Subject: Draft Legislation

From: Govt Sec

To: ESS

Date: 17 April 1950

~~Capt. Guida~~  
26-6076

1. Immediate introduction of the attached <sup>revised</sup> draft bill in the Diet is proposed by the International Trade & Industry Ministry.
2. Your prompt comment is requested.

1 Incl

Mining Bill

Cy to MRS, LS/LAJ

C. W.

P & P DIV

(11)



Subj: Draft Legislation

1

From: Govt Sec

To: ESS

17 April 1950

*mining bill*  
(MITI)

2

MSC/HBO/EFC/oc  
Capt. J.F. Hamilton, 26-8951  
Date: 15 MAY 1950

From: ESS

To: Govt Sec

1. Reference revised draft bill provides for regional Local Mining Damage Councils to be formed to serve as mediators in connection with disputes arising concerning mining damages and to "draft and make public the pertinent standards on means, extent, etc., of compensation of mining damages".

2. ESS is of the opinion that occupation policy with regard to advisory councils would require that such bodies refrain from participation in the administration of laws, particularly with respect to individual situations. Furthermore, advisory councils should have no authority to establish standards binding upon the administration. A council's advice in connection with pertinent standards should be for consideration of the administration, to be accepted or rejected by turn, with ultimate decision purely the responsibility of the administrator.

3. The provisions of reference revised draft legislation are considered objectionable as being in conflict with SCAP policy and particularly the intent of SCAPINS 1108, 1394 and 1860.

*Rec'd GS 6/16*

1

11



410.2(17 APR 1950)ESS/IND

Draft Legislation

ESS

Govt Sec

15 MAY 1950

2        4. It is understood that NRS, responsible section for mining supervision, is working with the Japanese Government in preparing an acceptable draft for presentation at the next session of the Diet.

5. Recommendation is made that the Japanese Government be advised of the respects indicated above.

1 Incl  
n/c

-----W.F.M.-----



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet)

*J*  
CW/JN/JW/CFG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

No.

From: Govt Sec

To: NRS

Date: 17 April 1950

revised

1. Immediate introduction of the attached/draft bill in the Diet is proposed by the International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl

Bill for Mining

Cy to ESS, LS/L&J

*for* C. W.

A.H. Solomon, 26-6291

HGS/RYG/AHS/de

Date: 25 APR 1950

2

From: NR

To: GS

1. Reference Note 2 NR to GS, subject, Draft Legislation (Mining Bill), 3 Mar 50, and attached memoranda.

2. An examination of the revised draft of the Mining Bill discloses certain improvements over the original draft voluntarily made by those preparing the legislation on the basis of advice and suggestions made by NR. These include the following:

a. Article 17 leaves open through treaty the possible extension of mining rights to foreigners.

b. Article 18 limits prospecting rights to two years, with renewal for another two years on condition the applicant "has faithfully prospected".

c. Article 40 and similar provisions in the revision set up a more democratic procedure for giving notice, holding public hearing, and an opportunity for presenting evidence by interested parties prior

*Rec'd GS  
4/25/50*

*(11)*



C/S, NR to GS, Subject: Draft Legislation (Bill for Mining) 17 Apr 50

CN #2  
Con't

to a decision by the Chief of the Bureau of International Trade and Industry.

d. Article 62 requires mining right owners to start operations within 6 months from establishment or transfer of the mining right.

e. Article 89 illustrates the adoption of the principle that mining rights should be more clearly defined, although limited, and the discard of vague expressions which permit arbitrary action by the Chief of the Bureau.

f. Article 106 introduces the application of the Land Expropriation Law, now itself under revision, to instances of expropriation of land for mining purposes.

g. Article 118 sets up a damage fund to compensate against damage to land and buildings by coal and lignite operations, which has been the source of the greatest damage in the past, as well as a less adequate method of compensating for damage by other mineral operations.

h. Article 199 gives the protesting party the right to invoke the jurisdiction of the Land Coordination Commission to determine questions of land use.

i. Article 35 and similar provisions establishes further the principle that mining applications shall not be allowed where injurious to the interests of agriculture, forestry or other industries.

j. The functions of the Local Mining Council (changed in the revision to Local Mining Damage Council) have been greatly diminished, leaving only intermediation in cases where the parties desire a compromise or conciliation of their differences, and the making of standards for compensation of mining damage cases.

3. In view of Occupation Instructions Number 5, 1 April 1950, paragraph 3x, the spirit of which requires the return to the Japanese of control over matters affecting their domestic administration, it is the view of NR that GS should clear this Bill for action by the Diet, provided that clearance is also obtained from Legal Section as to the provisions of the revised draft pertaining to expropriation of land and compensation for damages incurred in mining and prospecting operations as they affect rights guaranteed owners of land and surface rights under the Japanese constitution.

1 Incl  
w/d. for Mining

Copies furnished:

NR/A      LS  
NR/Fo     ESS



Bill

to be submitted for GS approval  
Legislative Affairs Section, FOM  
(TEL. 87-6010)

March 3, 1950

1. FOM Number: 162
2. Name of Bill: Bill for the Stone Quarrying

Ministry of International Trade  
& Industry

3. Competent Ministry: ( Resources Agency )
4. Date of Cabinet Approval: February 21, 1950
5. SCAP Section concerned:  
Mr. Solomon, Mining and Geology Div. NRS  
Mr. Neptune, Legislation Div. LS

6. Remarks: (reference:)  
Reference Copies are attached herewith.  
.....  
.....  
.....  
.....

7. G.S. Reviewers:

CS: NRS  
LS/LJ  
ESS

Received by GS  
Date 3/9/50

12



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) **CG/JR/JS/CHR/70**

Subject: Draft Legislation

**Capt. Norris**

Note No.

From: Govt Sec

To: **LS/LAJ**

Date: **4 March 1950**

26-6076

1. Immediate introduction of the attached draft bill in the Diet is proposed by **International Trade & Industry Ministry.**

2. Your prompt comment is requested.

1 Incl  
**Bill for Stone Quarrying**

C. W.

P & P DIV

12



# Stone Quarrying

From: LS

To: GS

R H Neptune - 2635-479  
Date: 24 March 1950

2

1. This bill:
  - a. Describes stone quarrying right as a real right;
  - b. Limits by law the contracts establishing stone quarrying rights ;
  - c. Authorizes the Chief of Bureau of International Trade and Industry (1) to restrict a landowner's disposition of his own property when someone applies for a stone quarrying right on the land, and (2) to give decision establishing a stone quarrying right or ordering purchase of the land and deciding all necessary matters;
  - d. Sets out in detail strict controls by the government over quarrying;
  - e. Authorizes a quarrying enterpriser to use another person's land and permits expropriation by the Chief of Bureau;
  - f. Provides for appeal to the Land Coordination Commission (proposed in another law of establishment which has adequate provision for public hearings and appeal to the courts).

2. The following objections are made:
  - a. Article 5, par 2, Article 8 and 10 unreasonably restrict the right of private contract and freedom of action in business. Article 8 makes the contract enforceable for the contractual or statutory period against the landowner, but against the stone quarrying right owner only for one

Rec'd GS 3/28

(12)



Bill for Stone Quarrying (cont'd)

year. These provisions appear to be designed to establish real rights in quarrying right owners as against landowners by operation of law rather than by mutual agreement.

2  
(cont'd)

b. Articles 13 through 17, as well as Chapter IV (Articles 36-57) are contrary to the Constitutional concepts of the inviolability of property rights, of the requirement that property rights be defined by law and that property may be taken for public use upon just compensation. (Const. Art 29). For example, Art 13 provides that, when agreement cannot be reached between the quarrying right applicant and the landowner, the Chief of Bureau can make decision regarding the establishing of the quarrying right. Art 15 provides that, when application for quarrying right is made, a landowner shall not establish a new right upon the land without permission of the Chief of Bureau. Art 16 provides that "when a landowner will be unable to use the land for the purpose for which it has been used, due to the establishment of a stone quarrying right, he may ask the Chief of Bureau to make decision requiring the purchase of the land." In other words, the Chief of Bureau may expropriate the land for the use of a quarrying right, without regard to public use. This violates the last part of Art 29 of the Constitution which reads "Private Property may be taken for public use upon just compensation therefor." The provision for appeal to the Land Coordination Commission (Art 57) may diminish the arbitrary exercise of the Bureau Chief's powers. Even so, the law places on the landowner the burden of appealing in order to get the benefit of due process of law.

c. Article 63 makes punishable juridical or natural persons as employers of a person who commits a violation of this law. It is recommended that this article be changed to read as follows:-

"In case where any representative of a juridical person, proxy, employee, or the other worker of a juridical person or of a natural person commits the violation under the provision of Articles 61 and 62 for the business of the juridical person or the natural person, not only the offender be punished, but the juridical person or the natural person concerned shall be liable to a fine under each Article in the Penal Provisions, unless it is proved that due care and supervision has been exercised over the business in order to prevent the aforesaid violation committed by his proxy, employee or the other worker."

3. It is recommended that this bill be specifically withheld from clearance by Government Section, along with the proposed Mining Law and the Land Coordination Commission Establishment Law. This would allow interested SCAP Sections to take the necessary action



Bill for Stone Quarrying (cont'd)

2  
(cont'd) to bring the proposed legislation within the Constitutional principles relating to property rights, and to coordinate and make uniform the procedures for Land Expropriation under a general Land Expropriation Law.

1 Incl:  
w/d

----- A.C.C. -----

12



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CHN/vs

Subject: Draft Legislation

Capt. Norris

26-6076

Note No. From: Govt Sec To: NRS Date: 4 March 1950

1. Immediate introduction of the attached draft bill in the Diet is proposed by the International Trade & Industry Ministry.
2. Your prompt comment is requested.

1 Incl  
Bill for Stone Quarrying

Mr Solomon 26-6291

HGS/RYG/AHS/jm

Date: 20 MAR 1950

Note No. 2 From: NR To: Govt Sec

1. Reference Note No 2, NR to GS, subject: Draft Legislation, Mining Bill, 3 March 1950, and attached memoranda for record giving views of the Agriculture, Forestry and Mining personnel of Natural Resources Section on the Mining Bill.

2. The same objections, generally, which were made to provisions of the Mining Bill, are applicable to the Bill for Stone Quarrying.

3. The following additional specific comments are offered:

a. Articles 10, 18, 34, 37 and 41 provide for reference of matters by the Bureau Chief to the local Mining Council. Objections to the creation of this council, under the terms of the Mining Bill, as being costly, time-consuming, non-representative of agriculture and forest interests, purely advisory and subject to political abuse, were heretofore made in comments submitted to GS in Note No 2, NR to GS, subject: Draft Legislation, Mining Bill, 3 March 1950, and attached memoranda for record.

b. Articles 11 (2) and 17 (1) flatly require denial of permission to quarry when the land is arable or a forest reserve. Since a quarry may involve only a small percentage of the arable land or forest reserve, denial of such a right might be unjust, particularly if the land is more valuable for quarrying stone than for forest or agriculture use. The language precludes determination of this question of fact.

Recd GS  
3/20

12



C/S, Govt Sec to NR, Subj; Draft Legislation, Bill for Stone Quarrying,  
4 March 1950

Note No  
2 (contd)

✓ c. Articles 17 (4) and (5), and 29 (3) and (4), set up very loose standards which do not clearly define rights or obligations for the quarrying stone right owner, by such language as "extremely interferes" and "not proper".

✓ d. Articles 19 and 30 vest in the Bureau Chief a dictatorial power to fix the amount, time and means of payment of the quarrying fee, as well as the price in case of purchase of surface rights or renewal of the quarrying right. The danger of abuse is obvious.

e. Articles 26, 29 (1), 30, 32, 35 and 60 permit the Bureau Chief to interfere with quarrying stone operations by requiring periodic operational plans and reports, compelling the operator to pay fees to the land owner based on agreement reached, and deciding when there is interference due to overlapping with mining rights of others. Such meddling of government in the mining industry is deemed by NR to be unnecessary and destructive of free enterprise.

f. Article 61 provides penalty for violation of Article 34, which sets up no standards other than "public interest" and "possibility of damage", and is therefore subject to bureaucratic abuse. Article 62 provides penalties in those cases, where as indicated in para e above, undue interference of government industry is indicated, and is therefore objectionable.

1 Incl  
n/c

  
-----  
-H.G.S.-  
-----

(12)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) **CE/JN/JK/CHH/vs**

Subject: Draft Legislation

Capt. Morris

26-6076

Note No.

From: Govt Sec

To: **ESS**

Date: **4 March 1950**

1. Immediate introduction of the attached draft bill in the Diet is proposed by **International Trade & Industry Ministry.**

2. Your prompt comment is requested.

1 Incl

**Bill for Stone Quarrying**

C. W.

P & P DIV

12



3/4

Stone Quarrying  
(IT+I)

From: ESS

To: GS

WPM/HR/EE  
H. 26-6642  
20 March 1950

2.

1. Reference is C/N 1, above, requesting comment concerning the draft "Bill for Stone Quarrying" proposed for introduction into the Diet by the Ministry of International Trade and Industry.

2. ESS finds the reference draft bill objectionable in the following respects:

a. Articles 19, 26, 29, 30, 32, 35 and 60 would grant wide bureaucratic powers to the Chief of the Bureau of International Trade and Industry to interfere with every phase of the stone quarrying industry with power to grant or deny stone quarrying rights; fix the amount, time, and means of payment of quarrying fees; fix prices where disputes arise in connection with the purchase, transfer, or renewal of rights; and to expropriate land and determine the compensation therefor. The granting of such wide bureaucratic powers for control of all phases of the stone quarrying industry would constitute the enactment of undesirable control legislation with undue interference with freedom of private enterprise.

b. Articles 10, 18, 34, 37, and 41 would require that the Chief of the Bureau of International Trade and Industry refer to local mining councils for advice on all manner of individual

Rec'd GS 3/20

12



(4 Mar 50) ESS/FTP(AC), 20 Mar 1950  
Subj: Draft Legislation

administrative decisions relating to establishment or transfer of quarrying rights, expropriation of land and compensation therefor, determination of damage payments, etc. It is clearly inconsistent with established and often re-emphasized Occupation policy for advisory councils or other substitutes for control associations to be given authority or responsibility in administration or enforcement of laws.

3. In view of the above identified features of the reference draft bill, it is requested that the Japanese be advised that the action in its present form is objectionable.

1 Incl

- W/S -

----- W. F. M. -----



BILL FOR STONE QUARRYING FOM 162

1. Articles 10, 18, 34, 37, and 41 provide for reference of matters by the Bureau Chief to the local mining council. This would be costly, time-consuming, non-representative of agricultural and forest interests, purely advisory, subject to political abuse, and a flagrant violation of SCAP policy.
2. Articles ~~11~~ 11 (2) and 17 (1) flatly require denial of permission to quarry when the land is arable or a forest preserve. Since a quarry may involve only a small percentage of the arable land or forest reserve, denial of such a right might be unjust, particularly if the land is more valuable for quarrying stone than for forest or agriculture use. The language precludes determination of this question of fact.
3. Articles 17 (4) and (5) and 29 (3) and (4) set up very loose standards which do not clearly define rights or obligations for the quarrying stone right owner, by such language as "extremely interferes" and "not proper".
4. Articles 19 and 30 vest in the Bureau Chief a dictatorial power to fix the amount, time and means of payment for the quarrying fee, as well as the price in case of purchase of surface rights or renewal of the quarrying right. The danger of abuse is obvious.
5. Articles 19, 26, 29, 30, 32, 35 and 60 grant wide bureaucratic powers to the Chief of the Bureau of International Trade and Industry to interfere with every phase of the stone quarrying industry with power to grant or deny stone quarrying rights. Such meddling of government in the mining industry is unnecessary and destructive of free enterprise.
6. Article 61 provides penalty for violation of Article 24, which sets up no standards other than "public interest" and "possibility of damage", and therefore is subject to bureaucratic abuse.
7. Article 62 provides penalties in those cases where undue interference of government industry is indicated, and is therefore objectionable.

-----  
*Objections of IS not included  
in above comments as they were  
received too late.*

*Q 9/9*

12



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CH/JN/JW/CFG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

From: Govt Sec

To: LS/L&J

Date: 17 April 1950

1. Immediate introduction of the attached <sup>revised</sup> draft bill in the Diet is proposed by the International Trade & Industry Ministry.
2. Your prompt comment is requested.

1 Incl

Bill for Stone Quarrying

Cy to NRS, ESS

C. W.

P & P DIV

12



Stone Quarrying

From: LS

To: GS

R H Neptune - 2635-479  
Date: 14 June 1950

2

1. Reference Note 2, LS to GS, subject Draft Legislation, Bill for Stone Quarrying, 24 March 1950, in which the Stone Quarrying Law bill was reviewed. Objections were made, principally on the ground that Article 29 of the Constitution (relating to property rights) was violated. LS recommended that the bill not be cleared.

2. The revised draft of the Bill for the Stone Quarrying Law, herewith, essentially eliminates the major objections. The revisions include:

- (a) In the absence of an agreement with the landowner, the authority of the Bureau Chief to establish the Stone Quarrying Right (former Art 13 - now Art 12) has been limited by requiring the advance approval of the Land Coordination Commission, an impartial body. (Art 18)
- (b) When the decision is made to establish a Stone Quarrying Right and the landowner demands expropriation, approval by the Land Coordination Commission is required. (Art 18)
- (c) Chapter IV providing for expropriation by the Bureau Chief has been deleted. The Land Expropriation Law is made applicable, with some exception (Arts. 35-36).

The net effect of the changes mentioned above is to require the approval of an impartial body prior to the taking of private property. While it is extremely doubtful that a taking under these procedures can always be

12

Rec'd 65  
6/17/50



Draft Legislation (cont'd) re: Bill for Stone  
Quarrying

2  
(cont'd)

deemed a taking for a "public use" within the meaning of the Constitution; if a question arises regarding the use, the Japanese courts would have to determine the nature of the use, public or private, since that is ultimately a judicial question. LS therefore resolves this doubt in favor of avoiding objections on this ground.

3. Article 5, paragraph 2, contains the provision that unless a period of duration of the Stone Quarrying Right is stated in the act of establishment (contract) the "period shall be made 10 years". The period is renewable. It is recommended that paragraph 2 be amended to require that the period of duration be stated in the act of establishment. This would be consistent with the general principle that contracts be definite and by mutual agreement. Otherwise, real rights in a person's property could be established for as long as 20 years by operation of law, rather than by mutual consent.

4. Article 29 apparently authorizes renewal of the Stone Quarrying Right even in the case where the Stone Quarrying Right owner is in default of his contract obligations. This error should be corrected.

5. Objection is made to Item 4 in the Supplementary Provisions which purports to amend the Land Coordination Commission Law, a companion proposal to this bill. The result of this technique would be to conceal the real meaning of the LCC bill, or to confuse the issues. This matter should be removed from this bill and be written into the Land Coordination Commission Bill.

6. Regarding Article 46, the objection made in reference check note, para 2c, which concerns punishment of persons for the acts of their employees, is reiterated.

1 Incl:  
w/d

----- C R L -----

12



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CFG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

Note From: Govt Sec

To: NRS

Date: 17 April 1950

revised

1. Immediate introduction of the attached/draft bill in the Diet is proposed by the International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl

Bill for Stone Quarrying

Cy to ESS, LS/L&J

C. W.

A. H. Solomon, 26-6291

HGS/RYG/AHS/de

Date:

25 APR 1950

2 From: NR

To: GS

1. Reference Note 2, NR to GS, subject, Draft Legislation, Mining Bill, 3 March 1950, and attached memoranda, and previous comments on the Stone Quarrying Bill contained in Note 2, NR to GS, subject, Draft Legislation, Stone Quarrying Bill, 20 March 1950.

2. An examination of the Revised Stone Quarrying Bill discloses certain improvements over the original drafts, voluntarily made by those preparing the legislation on the basis of advice and suggestions made by NR. These include the following:

a. Rejection of application for quarrying stone right or ordering cessation of operations is authorized where there is possible injury to the interests of agriculture, forestry or other industries. (Art 16 and 33)

b. A more democratic procedure is set up for giving notice, holding public hearings, and an opportunity for presenting evidence by applicant for the right, cancellation or renewal thereof, and by landowners or other persons having rights in the land. (Art 17, 30 and 33)

c. Prior approval is required by the Land Coordination Commission on land use questions. (Art 18 and 40)

12

Rec'd 65  
4/25/50



C/S, NR to GS, Subject: Draft Legislation (Bill for Stone  
Quarrying) 17 Apr 50

CN # 2  
Con't

d. Security by mortgage from the quarrying right owner to the landowner for payment of periodical fee for quarrying is provided. (Art 24)

e. The Land Expropriation Law is applied to expropriation of land for mining uses. (Art 35)

f. The Mining Council is wholly deleted from the revised draft.

3. In view of Occupation Instructions Number 5, paragraph 3x, 1 April 1950, which requires the return to the Japanese of control over matters affecting their domestic administration, it is the view of NR that GS should clear this Bill for action by the Diet, provided

a. That there is inserted as paragraph (3) in Article 10 of the revised draft, the provision "(3) When the land is protection forest, as defined by the Forest Law, except with approval first obtained from the Ministry of Agriculture and Forestry", and further provided

b. That clearance is also obtained from Legal Section as to certain provisions of the revised draft pertaining to expropriation of land and compensation for damages incurred in stone quarrying operations as they affect rights guaranteed owners of land and surface rights under the Japanese constitution.

1 Incl  
w/d for Stone Quarrying

Copies furnished:

NR/A  
NR/Fo  
LS  
ESS

----- H. G. S. -----



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CRG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

File No. From: Govt Sec

To: ESS

Date: 17 April 1950

revised

1. Immediate introduction of the attached/draft bill in the Diet is proposed by the International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl

Bill for Stone Quarrying

Cy to LS/LAJ, NRS

C. W.

P & P DIV

(12)



Ent Hd + Sub.  
Bill for Stone Quarrying  
Revised text  
4/17/50

From: ESS

To: GS

H. W. 1, 66-6642

WIM/CS/HW/ld

Date: 22 APR 1950

ESS has no objection to the introduction of the subject revised draft law into the Diet.

1 Incl  
w/d

----- W. F. M. -----

Recd GS  
4/22/50

(12)



MEMORANDUM:

This date Mr Solomon, NRS, advised me by telephone that MITI had redrafted the Mining Bill and Stone Quarrying Bill in accordance with suggestions from NRS and LS, and that these two sections no longer objected to the proposed legislation. Further, he requested that efforts be made to expedite clearance on these bills and suggested that instead of sending copies of the bills out, we use the check sheets which were submitted on the original bills.

7/5/50

*W*  
NORRIS



Bill

to be submitted for GS approval  
Legislative Affairs Section, FOM  
(TEL. 57-6010)

March 8, 1950

1. FOM Number: 167
2. Name of Bill: The Compilation of Lost Mining  
Ledgers and Others Temporary Measures  
Bill

3. Competent Ministry: Ministry of International  
Trade and Industry  
(Resources Agency)
4. Date of Cabinet Approval: February 24, 1950
5. SCAP Section concerned:  
Mr. Solomon, Mining and Geology Div., NRS  
Mr. Neptune, Legislation Div. Legal Section.

6. Remarks: (reference:)

.....  
.....  
.....  
.....  
.....

7. G.S. Reviewers:

CS:  
NRS  
WS/KS  
ESS

Received by GS

Date 3/8/50

(13)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) **CS/JN/JN/CHN/va**

Subject: Draft Legislation

Capt. Norris

26-6076

Note No. From: Govt Sec

To: **ESS**

Date: **8 March 1950**

1. Immediate introduction of the attached draft bill in the Diet is proposed by **International Trade & Industry Ministry.**

2. Your prompt comment is requested.

1 Incl  
Compilation of Lost  
Mining Ledgers & Others  
Temporary Measures Bill

cc: **NRS, LS/LAJ**

C. W.



O  
IT&I

Lost Mining ledgers  
3/8/50

3

From: ESS

To: Govt Sec

MMC/HBO/ns JFM  
Capt J.F. Hamilton,  
26-8951

17 APR 1950

ESS has no objection to the proposed bill "The Compilation of  
Lost Mining Ledgers and Others Temporary Measures Bill".

1 Incl  
n/c

-----  
-VM-  
-----

Recd 65  
4/17/50

(13)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet)

CG/JN/JW/GMR/vs

Subject: Draft Legislation

Capt. Morris

Note No.

From: Govt Sec

To:

LS/LAJ

Date:

26 6676  
8 March 1950

1. Immediate introduction of the attached draft bill in the Diet is proposed by International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl  
Compilation of Lost  
Mining Ledgers & Others  
Temporary Measures Bill

cc: HRS, ESS

C. W.

P & P DIV

13



3/8

Compilation of Lost Mining Ledgers  
etc.

J T L

2

From: LS

To: GS

R.H. Neptune 2635-479  
25 March 1950

1. This bill (a) provides for the compilation of ledgers to make clear the registration of mining rights, previous ledgers having been lost due to air raids or other war disasters;

(b) extinguishes mining rights unless applications for registration and confirmation are made "by June 31, 1950 (Apparently it is intended to be "30 June");

(c) provides for administrative appeals to the Minister, according to the proposed new Mining Law which includes notice and hearing.

2. The following objections are made:

a. The provision in the proposed law to extinguish the right in about three months seems unreasonably short. The extinguishment of rights because of the loss of the ledgers should conform to the currently applicable statutes of limitations. The present Mining Law provides that a mining right is a property right and that the provisions of the Civil Code are applicable. (Art. 15). The present Mining Law limits the prospecting right term to four years. However, in the cases where there is no express limit on the right, the general provisions of the Civil Code relating to extinction of rights would govern. Civil Code Articles follow: Article 166: Extinctive pre-

(Cont'd)

Rec'd GS 3/28

13



Compilation of Lost Mining Ledgers & Others, Etc.

LS

GS

25 March 1950

2  
(Cont'd)

scription begins to run from the time when the right is capable of being exercised. Article 167: A property right \* \* shall lapse if it is not exercised for 20 years. Article 239: An immovable which is without an owner shall belong to the National Treasury. Article 240: Ownership of lost article is acquired by finder if owner is not discovered in one year after public notice. The annexed tables of the proposed law list certain prospecting and digging right registration numbers for which the owners are apparently unknown. By applying Article 240, the undiscovered owner should retain his right for one year after public notice is given.

- b. The provisions of Article 6, on automatic extinction or of conclusive presumption that the application has not been filed are objectionable. Such effect should only be provided when the administrative or court disposition has become final (in the sense that it is no longer appealable).
- c. The law fails to mention judicial review and the extent thereof, of any final administrative decision. The minimum provisions should include review and authority to revoke any compilation or entry made or failed to be made, in the ledger unless such compilation or such failure or entry was supported by substantial evidence. A good guide for such judicial review provisions can be found in Chapter IV of the newly proposed Land Coordination Commission Establishment Law.
- d. The purpose and essentials of the requirement of confirmation referred to in Articles 5-7 should be clarified.

Incl w/d

----- A. C. G. -----



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CHN/vs

Subject: Draft Legislation

Capt. Norris  
26-6076

Note No. From: Govt Sec To: NRS Date: 8 March 1950

1. Immediate introduction of the attached draft bill in the Diet is proposed by International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl  
Compilation of Lost  
Mining Ledgers & Others  
Temporary Measures Bill

cc: ESS, LS/L&J

Mr A. H. Solomon 26-6291  
HGS/RYG/AHS/kk

2 From: NR To: GS Date: 1-1 MAR 1950

1. The above Bill proposes to make possible the registration of mining rights, record of which was destroyed by disasters of war. Its general purpose and intent are acceptable, but objection is made to the following provisions for the reasons stated:

a. Article 7 provides the Bureau Chief authority to dismiss a request to register, but lays down no reasonable standards for such action, and leaves the door open for arbitrary decision by him.

b. The same article provides for submission of the matter to the local Mining Industry Council prior to adverse action by the Bureau Chief. NR has already stated its grounds for objection to the local Mining Council, which is created under the terms of the Mining Bill, as being an unnecessary, expensive, and time-consuming device, subject to control by private groups, with a prospect of return of private control agencies in government. See check note 2, NR to GS, subject, Draft Legislation, Mining Bill, 3 March 1950, and par 4 c of Inclosure 2, Memorandum for Record, NR 615 (1 Mar 50)MG, subject, Draft Legislation, Mining Bill, 1 March 1950.

1 Incl  
n/c

H.G.S.

13

Recd GS  
3/17/52



COMPILATION OF LOST MINING LEDGERS AND OTHERS FOM 167

1. The purpose and essentials of the requirement of confirmation referred to in Articles 5-7 should be clarified. Article 7 provides the Bureau Chief authority to dismiss a request to register, but lays down no reasonable standards for such action, and leaves the door open for arbitrary decision by him. The same article provides for submission of the matter to the local Mining Industry Council prior to adverse action by the Bureau Chief. The Local Mining Council, which is created under the terms of the Mining Bill, is objectionable as being unnecessary, expensive, and a time-consuming device, subject to control by private groups, with a prospect of return of private control agencies in the government.
2. The provisions of Article 6, on automatic extinction or of conclusive presumption that the application has not been filed are objectionable. Such effect should only be provided when the administrative or court disposition has become final (in the sense that it is no longer appealable.)
3. The law fails to mention judicial review and the extent thereof, if any final administrative decision. The minimum provisions should include review and authority to revoke any compilation or entry made or failed to be made, in the ledger unless such compilation or such failure or entry was supported by substantial evidence. A good guide for such judicial review provisions can be found in Chapter IV of the newly proposed Land Coordination Commission Establishment Law.
4. The provisions to extinguish the right in about three months seems unreasonably short. The extinguishment of rights because of the loss of the ledger should conform to the currently applicable statutes of limitations. The present Mining Law provides that a mining right is a property right and that the provisions of the Civil Code are applicable. (art 15). The present Mining Law limits the prospecting right term to four years. However, in the case where there is no express limit on the right, the general provisions of the Civil Code relating to extinction of rights would govern. Civil Code Articles follow:  
Article 166: Extinctive prescription begins to run from the time when the right is capable of being exercised. Article 167: A property ~~right~~ right \* \* shall lapse if it is not exercised for 20 years. Article 239: An immovable which is without an owner shall belong to the National Treasury. Article 240: Ownership of lost article is acquired by finder if owner is not discovered in one year after public notice. The annexed tables of the proposed law list certain prospect and digging right registration numbers for which the owners are apparently unknown. By applying Article 240, the undiscovered owner should retain his right for one year after public notice is given.

-----  
*Referred Kanagawa #118*



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) **CW/JX/JX/CFG/sb**

Subject: Draft Legislation

Note No. : From: Govt Sec To: **IS/LAJ** Date: **24 April 1950**  
Capt. Guida  
26-6076

1. Immediate introduction of the attached <sup>revised</sup> draft bill in the Diet is proposed by the Ministry of International Trade and Industry.

2. Your prompt comment is requested.

1 Incl  
Compilation of Lost Mining  
Ledgers and Others Temporary  
Measures Bill

By to NRS

C. W.

P & P DIV

*not by officer 4/26*

(13)



4/24

Compilation of Lost Mining Ledgers  
etc.

MITI

From: LS

To: GS

R H Neptune - 2635-479  
Date: 8 May 1950

2

1. Subject bill was first reviewed in LS checksheet dated 25 March 1950. The objections therein expressed have been essentially eliminated by this revised draft bill. There are no legal objections.

1 Incl:  
w/d

----- A.C.C. -----

Rec'd GS 5/10

(13)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CFG/gb

Subject: Draft Legislation

Site No. \_\_\_\_\_ From: Govt Sec To: NRS Date: 24 April 1950  
Capt. Guida  
23-6076

1. Immediate introduction of the <sup>revised</sup> attached draft bill in the Diet is proposed by the Ministry of International Trade and Industry.
2. Your prompt comment is requested.

1 Incl  
Compilation of Lost Mining  
Ledgers and Others Temporary  
Measures Bill

*Jan* C. W.

From: NR

To: GS

Mr A. H. Solomon 26-6291  
HGS/RYG/AHS/kk  
Date: 25 APR 1950

2

NR has no objection to the introduction of the revised attached draft of the Lost Mining Ledgers Bill into the Japanese Diet.

1 Incl  
w/d

*H.G.S.*

*Rec'd GS 4/25*

(13)



Bill

to be submitted for GS approval  
Legislative Affairs Section, FOM  
(TEL. 67-6010)

April 14, 1950

1. FOM Number: 198
2. Name of Bill: **Commodity Exchange Bill**

3. Competent Ministry: **Ministry of International Trade and Industry**
4. Date of Cabinet Approval: **March 14<sup>12</sup>, 1950**
5. SCAP Section concerned:  
**Finance Division, E.S.S.  
Mr. Adams**

6. Remarks: (reference:)

.....  
*See attached paper.*  
.....  
.....  
.....

7. G.S. Reviewers:

CSX: ESS  
LS/LVT  
GS/CS

Received by GS  
Date 4/14/50



No. fo

Date: Mar 17, 1960

Title of <sup>Law</sup>~~cabinet order~~

Commodities Exchange Bill

This draft <sup>Law</sup>~~cabinet order~~ has been approved by  
the Administrative Management Agency.

*Onogi Katsuhiko*  
Deputy Director ONOGI, Katsuhiko.  
Administrative Management Agency.



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CPG/ed

Subject: Draft Legislation

File No.

From: Govt Sec

To: LS/LAJ

Capt. Guida  
26-6076  
Date: 14 April 1950

1. Immediate introduction of the attached draft bill in the Diet is proposed by the Ministry of International Trade & Industry.
2. Your prompt comment is requested.

1 Incl

Commodity Exchange Bill

Cy to ESS

C. W.

P & P DIV

14



Int'l Trade & Industry

Commodity Exchange Bill

4/14

2

From: LS

To: GS

R. B. Appleton-2635/473

Date: 29 April 1950

1. Subject bill prescribes elaborate requirements for the establishment, supervision and management of Commodity Exchanges for "future transactions" in connection with cotton, silk, wool, rubber and other commodities which may be designated by Cabinet Order.

2. LS is in sympathy with the idea that transactions in commodity futures should be carefully supervised and regulated to avoid corruption and fraud upon the public. However, the provisions concerning ministerial supervision, court prohibition orders and the penal provisions contained in this law, subject persons engaged in such business to virtually complete control at the discretion of the competent minister.

a. The standards prescribed for exercise of the minister's supervisory powers are extremely broad and general in nature and the only apparent check on his discretion is the requirement in Article 138 that he shall obtain the approval of the Commodity Exchange Council established as an attached organ of the Ministry

Rec'd GS  
4/29/50

14



Commodity Exchange Bill

LS

GS

29 April 1950

2  
Cont'd

of International Trade and Industry, before he approves cabinet orders or ministerial ordinances to be issued under this law or carries out any of the provisions for punishment of the exchanges or members or similar acts provided for by the law. However, the council is appointed by the Minister of International Trade and Industry. It consists of a president who must be selected from among officials of the same ministry and 10 commissioners who must be selected from among full time officials "of the Administrative Organs concerned of the Japanese Government". Thus, it is clear that this council is, in no sense, an independent body.

b. Although many of the penal provisions of this law are modelled upon provisions of the Securities and Exchange Act of the United States, there are certain extremely important differences. In the first place, the Securities Exchange Commission is clearly given independent status. In the second place, its orders are subject to court review by the United States Court of Appeals for the District of Columbia upon petition of any person aggrieved by the order and the scope and nature of the review is defined in detail. (See 15 USCA, 78 Y). In the third place, although the United States Commission may order attendance of witnesses, the law specifically provides "but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying." (15 USCA Sec 78 U(d))

c. No such statutory immunity against criminal prosecution is provided in subject bill. Criminal penalties are provided for persons who fail to attend hearings ordered by the Minister or to submit reports or have stated false opinions or submitted false reports, all without any reference to the Constitutional guarantee of immunity against self-incrimination. Criminal penalties are also provided for persons who refuse inspections or audits without any reference to Constitutional guarantees against search and seizure without judicial warrants. Paragraph 4 of Article 120 does state that inspection "shall not be deemed granted for the purpose of investigation of crime" but there is no express immunity from criminal prosecution. The only standard used to guide the discretion of the competent minister in deciding whether to make inspections or take punitive action against exchanges or members or order modifications in their rules or practices is the vague phrase "if he deems necessary and appropriate for the public interest or in the interest of just and equitable principles of trade as defined by cabinet ordinances."



Commodity Exchange Bill

LS

GS

29 April 1950

2  
Cont'd

d. To provide criminal penalties for violating orders or actions of a minister who is given such vaguely defined discretionary power seems to be contrary to Article 73 of the Constitution which provides that the cabinet cannot include penal provisions in cabinet orders unless authorized by law. There is no authorization in Article 73 of the Constitution for including penal provisions in ministerial ordinances. Nevertheless, Article 121 of the subject bill provides that the competent minister may cancel the registration or suspend the business of an exchange "if the exchange concerned has violated this law or cabinet orders or ministerial ordinances issued under this law or actions taken by the competent minister on the basis of the said statutes". Article 151, paragraph 3, provides for a penalty of imprisonment of not more than one year or a fine of not more than 30,000 yen or both for any person who violates the disposition of suspension or prohibition issued under the provisions of Article 121 just referred to. In effect, therefore, the law provides a penal provision for violation of a ministerial ordinance to be issued in the future or an action to be taken by the competent minister in the future without any precise standard to guide him in the issuance of such ministerial ordinance or the taking of such action other than the vague and indefinite requirement that the ordinance be issued "under this law" or the action taken "on the basis of the said statutes".

3. On the basis of a necessarily hasty review, LS therefore strongly suggests:

a. The Commodity Exchange Council provided for in Article 137 should be granted independent status and should not be composed of persons selected from officials of the ministries concerned in administration of the law.

b. The standards prescribed in Chapter XII to guide the discretion of the competent minister in exercising his supervisory functions should be clarified.

c. An express provision should be inserted granting immunity from criminal prosecution to persons who have been compelled to testify or produce evidence tending to incriminate them on order of the competent minister under provisions of this law.

d. A provision should be added for immediate court review of any order of the Minister by a High Court with express power granted to the court to affirm, modify, enforce or set aside such order in whole or in part. The court should be given the power to order the Minister to take additional evidence at a hearing in such manner and on such terms and conditions as the



Commodity Exchange Bill

LS

GS

29 April 1950

2  
Cont'd

court deems proper. The findings of the minister should be deemed conclusive as to the facts, if supported by substantial evidence. The judgment of the court should be final, subject to review by the Supreme Court in its discretion upon proper petition therefor. It should be expressly provided that an appeal of any person aggrieved by an order issued by the Minister under this law shall not, unless specifically ordered by the High Court, operate as a stay of the Minister's order.

1 Incl  
w/d

----- A. C. C. -----



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CFG/gb

Subject: Draft Legislation

Note No. From: Govt Sec To: **ESS** Date: **14 April 1950**  
----- ~~Capt. Guide~~ 26-0076

1. 1. Immediate introduction of the attached draft bill in the Diet is proposed by the Ministry of International Trade and Industry.
2. Your prompt comment is requested.

1 Incl  
Commodity Exchange Bill

Cy to LS/LAJ ----- C. W.

2.

004.21( 4 APR 1950 )ESS/BFE

From: ESS To: Govt Sec

*[Signature]*  
WFM/TRJG/JCS/TJMA/21  
Mr. Adams, 33-7045  
21 APR 1950

ESS takes no objection to the introduction of subject legislation.

1 Incl  
n/c

----- W.F.M. -----



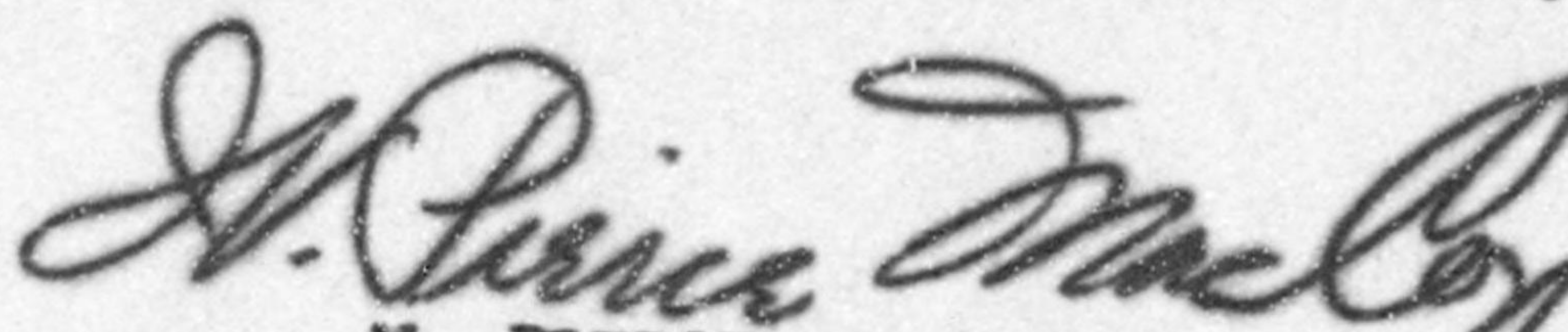
CIVIL SERVICE DIVISION  
Government Section

20 April 1950

MEMORANDUM FOR: Parliamentary and Political Division  
Government Section

SUBJECT : Commodity Exchange Bill

Civil Service Division has no objection to subject bill.



W. FIERCE MacCOY  
Acting Chief  
Civil Service Division

GWP:WPM:vr

*Rec'd CS 4/20*

14



Bill

to be submitted for GS approval  
Legislative Affairs Section, FOM  
(TEL. 57-6010)

April 10, 1950

1. FOM Number: 196
2. Name of Bill: The Public Utilities Bill

3. Competent Ministry: Ministry of International Trade and Industry
4. Date of Cabinet Approval: April 8, 1950
5. SCAP Section concerned:  
Mr. T.O.Kennedy, Director, for Production and Utilities, ESS.  
Mr. G.R.Roames, Chief of Utilities and Fuels Division, ESS.
6. Remarks: (reference:)

.....  
.....*See Attached*.....  
.....  
.....  
.....

7. G.S. Reviewers:

CSX: ESS  
DTS  
LS/LVF

Received by GS

Date 4/10/50

(15)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet)

CW/JN/JW/CFG/vb

Subject: Draft Legislation

Capt. Guida

26-6076

From: Govt Sec

To: ESS

Date: 10 April 1950

1. Immediate introduction of the attached draft bill in the Diet is proposed by the International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl

Public Utilities Bill

Cy to LS/L&J, CTS

C. W.

P & P DIV

15



WFM/ GRR/lf  
Mr. Roames 26-6580

463 (

(ESS/UF

Transmittal of Copies of Drafts of Two Laws

ESS

Govt Sec

12 Apr 50

1

1. References are:

a. C/N #1 from ESS to Govt Sec, subj: Transmittal of Copies of Drafts of Two Laws, 8 April 1950.

b. C/N #1 from Govt Sec to ESS, subject: Draft Legislation, 10 April 1950.

2. The attached copies of the proposed laws are marked in red pencil and/or typed inserts to include all changes previously indicated in reference 1a above, and other changes as deemed desirable by both ESS and Govt Sec (Mr. Cottrell, Public Affairs Division) in their combined screening of these proposals.

1 Incl  
Ref para 1b

----- W. F. M. -----

(15)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CPG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

Note No.

From: Govt Sec

To: CTS

Date: 10 April 1950

1. Immediate introduction of the attached draft bill in the Diet is proposed by the International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl

Public Utilities Bill

Cy to ESS, LS/LAJ

C. W.

P & P DIV

15



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet)

CW/JN/JW/CFG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

From: Govt Sec

To: LS/LAJ

Date: 10 April 1950

1. Immediate introduction of the attached draft bill in the Diet is proposed by the International Trade & Industry Ministry.
2. Your prompt comment is requested.

1 Incl

Public Utilities Bill

Cy to ESS, CTS

C. W.

P & P DIV

15



4/10

Public Utilities  
(MITI)

From: LS

To: GS

A C Oppler - 2635-582

Date: 14 April 1959

2

1. Necessarily hasty review does not reveal legal objections seriously enough to justify a delay in the clearance of subject bill.

2. LS offers the following comments and suggestions:

a. According to Article 44, par 1, the electric utility concerns which supply electricity in order to meet the demand of the general public may conclude agreements between themselves, with the authorization of the Commission, to make and receive payments. The purpose of these payments apparently is to establish a proper balance to enable the thermo-electricity generating plants to supply electricity in certain areas for the same rate as the hydro-electricity generating plants which operate with considerably lower costs than the thermo-electricity plants. The Commission, according to par 2 of Article 44, shall not give the authorization to such agreement unless it is "deemed to contribute to the rehabilitation of industry and the stabilization of people's living by abolishing the conspicuous regional differentials of electricity rates". Such agreements appear legally unobjectionable in accomplishing a socially desirable purpose. However, the provision of Article 45 WHICH empowers the Commission to order the electric utility concerns to conclude such agreements and even authorizes the Commission to make such agreements on its own initiative for the concerns, if the order is not being complied with. This may very well be challenged from a constitutional point of

Rec'd GS 4/17

13



2  
(cont'd) view as taking private property without just compensation. While the provision might possibly be defended as establishing a kind of taxation on the natural advantage which the hydro plants have over the thermo plants, the constitutionality of the compulsory device of Article 45 remains doubtful. It is, therefore, suggested that par 1 and 2 of this Article be deleted.

b. Article 5, item 14, is unclear because it does not indicate what kind of authorization is meant. If the provision is intended to refer to the permission of the competent authorities as required by Article 34 of the Civil Code for the establishment of certain juristic persons, the addition of the local public entities would make no sense.

c. According to Article 7, the commissioners shall be appointed by the Prime Minister with the consent of the House of Representatives. LS invites the attention of GS to the fact that this provision constitutes the first deviation from the customary arrangement according to which members of important commissions are appointed with the consent of both Houses of the Diet (see, for instance, Article 5 of the National Public Service Law and Article 5 of the Police Law). The exclusion in this case of the House of Councillors appears particularly inadvisable in the light of the recent opposition of the Upper House to policies of the Cabinet and may become a politically dangerous precedent.

d. Article 10 provides that the Prime Minister may, with the consent of the House of Representatives, remove a commissioner in certain cases. While the requirement of the consent of the House appears warranted in the instances of item 4 (mental or bodily incapability to execute the duties) and item 5 (commission of undutiful action), no such consent should be necessary regarding items 1 through 3 (incompetence and bankruptcy; condemnation to penalty for violation of subject law; and imprisonment). The Diet should not be in a position to prevent the Prime Minister from removing an incompetent, bankrupt, or criminal commissioner.

e. Article 14 prohibits commissioners from engaging in certain activities, among others, "to make the positive political movement". Since violation of this provision, according to Article 85, is subject to the penalty of imprisonment not exceeding one year or a fine not exceeding 50,000 yen, LS objects to the provision as being so vague and open to arbitrary interpretation that it should not serve a basis for a penal provision.

f. Article 53 states that the public utility concerns shall not refuse to supply electricity or gas to any person "unless there is a proper reason". LS suggests that this all too flexible provision be deleted and the proper reasons for such refusal be spelled out in the law.

g. Article 80 makes punishable a person who has impaired the function



2  
(cont'd)

of electric structures and thereby disturbed the supply or consumption of electricity. It is suggested to clarify in the law that the acts referred to are punishable only if they have been committed intentionally.

b. Article 91 provides that a person shall be punished with a fine not exceeding 5,000 yen who, in violation of Article 67, par 1, has not appeared as witness, failed to testify or made a false statement, etc. LS feels that this penalty is utterly inadequate. It is inconceivable why a person who made a false statement to an inspector shall be punished with imprisonment up to six months or with a fine up to 50,000 yen according to Article 86, whereas a person who refuses to testify to or makes a false statement before the Commission should only be punished with a fine up to 5,000 yen.

i. Article 7 of the Supplementary Provisions reads that disposition proceedings and acts made under the old Electric Enterprise Law, etc., shall be deemed to have been made under this law in case there are corresponding provisions in this law. This strange regulation which would require continuous examination of the question as to whether provisions of the old laws correspond to the new one is legally objectionable and should be deleted.

1 Incl:  
w/d

----- A.C.C. -----

(15)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS  
Government Section

Public  
Affairs Div  
Comment on  
Subject Bill  
12 April 1950 *Me*

MEMORANDUM FOR: Mr. Rizzo

SUBJECT: Public Utilities Bill

1. The Public Utility Law Draft has been checked to determine whether the the executive agency set up thereunder to regulate the gas and electricity industries in Japan conforms to sound principles of an independent regulatory commission. With a small number of changes which are indicated below the bill will establish an independent commission. ESS has been aware that these and other changes should be incorporated in order that legislation conform to SCAP policy. The only general criticism which may be made is that the regulation of utilities may be too severe and, in the long run, defeat the program for fostering a group of independent private business concerns in this field. On this last point, ESS believes that proposed regulatory measures are necessary for the industry, at least during the transitionary period.

2. The following numbered comments contain recommended changes in the bill. Those starred are of particular interest to Government Section and have all been concurred in by ESS, which has sponsored the bill:

- ✓\*(1) Article 2 (page 1) - Add "regardless whether ownership is public or private". The bill, as drafted, would appear to apply only to privately owned gas and electric utilities; no recognition appears to be given to the possibility of utilities owned or operated by local public entities; a trend in this direction may develop as local government becomes stronger and self-supporting under Shoup tax reforms.
- ✓\*(2) Article 5 (Item 14) - Under powers of the commission to the power "to grant permission or authorization to juridical persons (and local public entities) for the public benefit, and other bodies concerning the affairs under control". add: words in parenthesis for same reason as in (1) above.
- ✓(3) Article 7 (page 6) - Change "both Houses of the Diet" to "House of Representatives" in connection with consent for appointment of members to the commission by the Prime Minister. This is conformed to similar consent in the case of removal of members of the commission which was added in (4) below. It was felt that in the case of removal it might be difficult to obtain action by both Houses.
- ✓\*\* (4) Article 10 (page 8) - "The Prime Minister may, (with the consent of the House of Representatives) when a commissioner came under one of the following items or was recognized as not fitted to be a commissioner, remove him:". Without the addition of the phrase in parenthesis the independence of the commission



would be subject to the whim of the Cabinet which could continue to remove independently-minded commissioners until a pliant group was finally selected.

- ✓ \*(5) Article 19 (page 11) -
- a - Change "The commission shall, when ....a decision was passed...the outline thereof shall be reported to the Prime Minister" to read "All commission decisions and orders of the commission shall be made public". A complete disclosure of activities are essential for conduct of business so clearly affected with the public interest, when wide powers are granted to an administrative agency.
- b - Change "The commission shall report annually to the Diet through the Prime Minister" to read "The commission shall report annually to the Diet and to the Prime Minister"; and add "shall publish such report". Direct contact with the legislative branch is essential for the independence of the commission.
- ✓ (6) Article 22 (page 11) - Delete, as it dictates the internal organization of the office of the commission in a manner which if carried through might tend to isolate the five members of the commission from direct supervision and contact with their working force.
- ✓ \*(7) Article 53 (page 28) - In the conduct of investigations re development of water power resources the commission shall "report once a year to the Diet through the Prime Minister" change to "the Diet and the Prime Minister". Same reason as in (5)b above.
- ✓ (8) Article 65 (page 32) - Delete "purport of his opinion and his intention of participation as a party in interest" as a necessary part of an application by a third party to participate in a public hearing as a party in interest. A mere request in which a third party states the basis of his interest should be sufficient. A requirement that he disclose prior to the hearing the details of his case is unnecessary and would hamper the inclusion of proper parties to the issue.
- + × \*(9) Article 69 (page 33) - To the requirement that "the commission shall make a decision on the case on the basis of the result of the hearing", ESS wishes to add "and other relevant data" for the purpose of including special studies made by the commission and not limit the evidence primarily to oral testimony. However, since public hearings are held both for the purpose of developing an issue prior to formulation of commission regulations and also for the review of administrative acts of the commission, the simple addition as suggested by ESS might permit the commission to render its appeal type of review outside of the evidence which was submitted at the hearing. It would be preferable to require that such evidence be made part of the record for the convenience of subsequent



judicial review and to prevent arbitrary action by the commission. Consequently, recommend that the added phrase read "and other relevant data, (which on occasion that the hearing is concerned with protest against a disposition made by the commission, such other relevant data be made a part of the record of the hearing".)

GS suggests  
adding  
(not too much)

- X (10) Article 71 (page 33) - ESS questions the propriety of localizing all appeals from the commission in the Tokyo Higher Court but does not wish to take a strong position. GS feels that it will be unwise as a matter of policy and inconvenient in the administration of the law to make such limitation. Recommend that this Article be deleted.
- ✓ \*(11) Article 75 (page 34) - (Item 3) - Recommend that the phrase "the Minister of Construction or the commission may when the superintendent refused...permit the use or fix the amount of rent" be changed to read "the competent Minister may". This situation refers to the permission to use Government owned property. The monopoly of decision should not be in a single Ministry and as a minor administrative matter should not be directly in the commission.
- X \*(12) Article 78 (page 35) - Although softened by the statement that it shall not be used for purposes of criminal investigation, this Article permits the commission personnel to enter "offices, business places, and other establishments of public utility concerns, interrogate the parties concerned and inspect books, documents, and so forth." This can be construed to amount to a blanket power of search and entry without a warrant, in line with the powers of special judicial police used by the various Ministries. Since GS is opposed to the extension of such police powers outside the regular police, it is recommended this Article be revised to 1) require that utilities cooperate with personnel of the commission; 2) suggest that regular police be used if cooperation is refused; 3) provide for disciplinary rules of the commission to deal with such non-cooperation.
- X (13) Article 91 (page 40) - In view of the fines running from 50 to 200 thousand yen for violations of the law, a fine of only 5,000 yen for perjury, refusal to testify, dishonest appraisals, or refusal to make an appraisal in connection with a public hearing before the commission appears inadequate. Recommend use of such phrase as "punishment shall be to the full extent of the law or by a fine of 50,000 yen".

3. With the exceptions noted above, GS does not have objection to other recommended changes by ESS.

NICKOLAS COTTRELL  
Chief, Local Government Branch

15



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JR/JW/CFG/vs

Subject: Draft Legislation

Capt. Guida

Note No.

From: Govt Sec

To: NRS

26-6076  
Date: 20 April 1950  
revised

1. Immediate introduction of the attached/draft bill in the Diet is proposed by International Trade & Industry Ministry.
2. Your prompt comment is requested.

1 Incl  
Public Utilities Bill

Cy to CTS, LS/LW

C. W.

P & P DIV

(15)



4/20

Public Utilities  
(MITI)

2

From: NR

To: Govt Sec

Lt Col N.P. Barnett 26-6810  
HGS/WG/NPB/dk

Date:

29 APR 1950

NR has no objections to revised draft legislation  
Public Utilities Bill.

1 Incl  
w/d

-----H. G. S.-----

Rec'd GS 4/1

(15)



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JN/JW/CFG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

Note No.

From: Govt Sec

To: CTS

Date: 20 April 1950

revised

1. Immediate introduction of the attached/draft bill in the Diet is proposed by International Trade & Industry Ministry.

2. Your prompt comment is requested.

1 Incl

Public Utilities Bill

Cy to WRS, IS/L&J

C. W.

From: CTS

To: Govt Sec

Mr. Delaney, 26-6124

Date: 26 Apr. 1950

2

1. The Chief of CTS does not concur in subject bill unless provisions hereinafter mentioned are revised to assure opportunity and inducement toward maximum development of cheaper electric power.

2. The right of local entities to grant a term franchise to a utility, usually desirable, was not historically a custom or privilege in Japan, nor likely to be under subject bill.

a. Article 28, paragraph 3, of the bill prohibits the Commission from licensing "two or more public utilities, the supply areas of which are the same district."

b. Under the provisions of Article 3, paragraph 2, of the proposed Electric Enterprise Reorganization Bill, the country is to be divided into nine supply areas in which nine specific companies under the terms of Article 7 of the said Law are to be "regarded as having obtained permission for a public utility under the provisions of Article 26 of the Public Utility Law..." Each may thus effect an exclusive area for an indefinite period.

3. It may be noted that the presently increasing power rates are threatening the continued existence of many of Japan's private railways, and a major factor in curtailing further electrification.

2 Incls

w/d

H. T. M.

15

Recd 65  
4/26/50



GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet) CW/JW/JW/CTG/vs

Subject: Draft Legislation

Capt. Guida

26-6076

Note No.

From: Govt Sec

To: LS/LAJ

Date: 20 April 1950

revised

1. Immediate introduction of the attached/draft bill in the Diet is proposed by International Trade & Industry Ministry.
2. Your prompt comment is requested.

1 Incl

Public Utilities Bill

Cy to GTS, WPS

C. W.

P & P DIV

15



Int'l Trade & Ind.  
Public Utilities (Revised)  
4/20/50

From: LS

To: GS

A C Oppler - 2635-582  
Date: 22 April 1950

2

1. Subject revision takes into consideration the comments made in par 2, items c and d of Legal Section's Check Sheet of April 14, 1950, without, however, following the remaining suggestions. Item a is of major importance among these suggestions because it involves a constitutional issue. Legal Section, however, did not take formal exception to the clearance of the bill, since the constitutional invalidity of the provision which vests the Public Utilities Commission with compulsory powers cannot be established beyond doubt. Still the deletion of this provision should be reconsidered to avoid possible subsequent invalidation by the courts. It may be noted that ESS does not at all insist on such compulsory powers of the Commission.

1 Incl:  
v/d

----- A.C.C. -----

Rec'd 65  
4/24/50

(15)



W. L. Ogden 26-5086

Draft Legislation - (a) Electric Enterprise  
Reorganization Bill (b) Public Utilities Bill

CTS

Govt Sec

1. MAY 1950

1.

1. Reference:

- a. C/N #2 CTS to GS dtd 26 Apr 50 concerning Public Utilities Bill.
- b. C/N #2 CTS to GS dtd 26 Apr 50 concerning Electric Enterprise Reorganization Bill.

2. A conference was held by representatives of CTS and ESS on 29 Apr 50 to consider position of CTS as expressed in ref 1-a above. CTS agreed that the following amendments to subject bills (ref 1-a and 1-b above) will meet the objections as previously expressed by CTS.

3. Proposed amendment to Public Utilities Bill: add to paragraph 5, Article 28, the following:

"This however shall not prevent the Commission from modifying the permit of operating public utility concerns in order to grant a permit to a new applicant whose application conforms to the standards of each item of paragraph 1 of this Article."

4. Proposed amendment to Electric Enterprise Reorganization Bill: change paragraph 2, Article 5, to read as follows:

"Except as may be modified by the National Public Service Commission the areas to which the new companies shall supply electricity (hereinafter referred to as the supply area) shall be as determined in the Annexed Table No. 2."

H. T. M.

Rec'd GS 5/1

15



On the 19th of April, Mr. Roames and Mr. Cash of ESS visited Capt. Guida at his office, seeking immediate clearance of the Public Utilities Bill and Electric Enterprise Reorganization Bill. Capt. Guida asked as to whether the bills had been coordinated within GHQ and was assured by Mr. Roames that it had been coordinated and had the approval of the Chief of Staff. As a precaution, Capt. Guida informed Mr. Roames and Mr. Cash that should some section to which a copy of the bill had been sent, raised any objection that their only recourse would be through a meeting with the Chief of the Legislative Bureau of either House to explain their views. Mr. Roames and Mr. Cash expressed no objection to this procedure, except to reiterate that the bills were essential and approved on a very high level. The bills were cleared on April 19. On April 26, Mr. Delaney of CTS visited this office to submit a check sheet with objections to the Public Utilities Bill. Capt. Guida informed him that the objections were received too late because the bill had already been cleared on the basis of the urgency of the matter and the ESS statement that the bill had been coordinated. Mr. Delaney stated that this bill had not been coordinated with CTS and since the railroads ~~wax~~ are the greatest users of electric power, CTS should have been consulted.

Capt. Guida then, at the request of Mr. Delaney, arranged an appointment for him with Mr. Irie, Chief of the Legislative Bureau of the H. R. (not a Diet member), so that Mr. Delaney could express the CTS views. At 10:00 A.M. on the 27th of April, Mr. Irie visited Mr. Delaney as scheduled. To my knowledge, no member of the H. R. was present at this conference.

Mr. Roames and Mr. Cash again visited Capt. Guida on the 28th of April, protesting "the visit of Diet members" with Mr. Delaney, stating that this action would hold up passage of the bills.

15



Saturday morning, April 29, Mr. Delaney called, informing Capt. Guida that he had been taken to task for discussing these bills with Mr. Irie and at his request called his chief of section, Col. Miller, and explained to him what had taken place. Col. Miller stated that he had known nothing about what had happened until notified by General Fox. Col. Miller informed Capt. Guida that he had given strict instructions to his staff that in the future no member of the section would discuss any phase of legislation with members of the Diet and that any differences of opinion on pending legislation would ~~first~~ be coordinated and a satisfactory settlement accomplished within GHQ, SCAP, before introduction to the Diet.

(15)



June 18, 1950

Dr. J.W. Williams,  
Chief, Legislative Div.,  
Government Sec., GHQ., SCAP.

Dear sir,

It is my eager wish to write this letter to you after long silence, to make a report on the recent development of the reorganization of Japanese power industry, a pending issue of national importance for a long time, simply for the convenience of your detailed understanding of the issue and your deliberate consideration in handling the issue will highly be esteemed.

I am now installed in Chairman of the Economic Stabilization Committee of the House of Councillors, and was the then chairman of the Electric Power Committee when it was in existence in the House. At the time, I had chances to explain my fundamental thinking of the issue to you and I imagine it might be in your remembrance.

The following progress has so far been developed with the reorganization of power industry, in short;

1. In March, 1948, Nippon Hassoden Company and nine Haiden Companies came under the designate companies in compliance with the excessive economic power deconcentration law. No release measures of the designation has so far been given to these ten companies yet.

(15)



2. In October, 1948, Ashida Cabinet established one advisory committee under Minister Mizutani of Commerce and Industry; which members consisted of the representatives of the industrial world, academy, power enterprisers, labor unions and the Diet. The committee was named as 'Oyama' taken from Professor Oyama of Tokyo University, and Chairman of the committee. After careful study and deliberation on the issue for over half a year, it reached to a conclusion. It is my sincere regret that the Government, even though a recommendation by the committee was received, could not exert any effort in making an understanding with GHQ authorities, and the recommendation was just ignored because of en bloc resignation of the Cabinet.
  
3. In October, 1949, the issue was taken up by the present Yoshida Cabinet again, and a five-member-committee was established under former Minister Heitaro Inagaki of International Trade and Industry for another deliberation. Yasuzaemon Matsunaga was Chairman of the committee and five committee members consisted of Mr. Matsunaga, one professor of Keio University and three representatives of the industrial world of the country other than power industry.

This committee arrived at a conclusion in February, 1950. But the Government, instead of taking up the recommendation by the committee, established a bill of the reorganization of power industry of the Government based upon a personal plan of Mr. Matsunaga which was rejected by the committee.

It cannot be denied that general public felt something unsettled in their minds against such an attitude of the Government.

One more thing noteworthy is that, during the committee was working, a tentative plan of the so-called 'ten-bloc-plan' was delivered by Mr. Kennedy, GHQ, to the Committee for reference and further study, but Mr. Matsunaga stood dead against it without making enough study.



From my viewpoint of it, this 'ten-bloc-plan' was, I believe, far more reasonable viewing from the democratization of national economy and from the principle of the decentralization law, comparative to the Government plan derived from Mr. Matsunaga's plan.

4. The Government submitted a bill of the issue based on Mr. Matsunaga's tentative plan at the 7th Diet session near to the end of the session after April 20.

My view of the said bill proposed by the Government was shown on Japan Times, which is enclosed (1) herewith, and your comment on the article will be highly honored.

Proposed bill by the Government suffered scathing criticism and inquiries from both the parties of pre-Government and each opposition, and it was remained as a bill of which deliberation is unfinished.

According to the customary practice of the Diet of this country, the bill of the Government thus became virtually a rejected bill.

An interim report on the progress of the matter at the Diet was submitted by the Government to GHQ, which copy is enclosed (2) herewith.

At the first glance over the names of interpellators and political parties they are belonging to, you will see how the Government proposal is full of weakness.

Main points of the criticism were, in short, those that private monopoly will be much more realized in Japanese power industry following the enforcement of the Government plan, and that the stabilization and recovery of Japanese economy will be impeded if it is enforced.

I made a speech and interpellation at the plenary meeting of the House of Councillars on this issue, which manuscript is attached (3) herewith for your information.

Main points questioned by various members at the plenary meetings and the committee meetings of the House, are almost involved in my speech.

(15)



5. The Government appears to study very discreetly how to treat the issue now. But some of clerical bureaucrats of the Ministry of International Trade and Industry are likely to contemplate to re-submit an amendment to the next Diet session after making partial and formal revision, which is virtually similar to the original bill.

Some of ambitious bureaucrats of the bureaucracy of this country are stubbornly trying, jointly with some of power enterprisers, to accomplish their original ambition in any way availing themselves of such an old-fashioned electric power business man as Mr. Yasuzaemon Matsunaga. Mr. Matsunaga was once installed in a seat of auditor of the North China Electric Co. Ltd. and is enoughly suspicious viewing from the purge directive.

6. Around the end of May, Nippon Hassoden and nine Haiden Companies held general meetings of stockholders at the settling term of accounts, and all the Companies announced non-payment of dividends because it could not be authorized by the Government regardless of the fact that enough profit for the payment had been made for the term.

Japanese papers opined there are likely to be some connection with the reorganization issue. Against these, stock-market circle reflected its voice that there are something unsettled somewhere, immediately upon news papers. Extracts of these papers are attached (4) herewith for your information too.

I maintain my viewpoint that such should never be done by GHQ authorities, and must be one of customary measures plotted by some ambitions Japanese old bureaucrats.

Should the reorganization of power industry be inevitably carried out viewing from general situations, drastic re-examination should be made on the Government proposal and a new bill should urgently be set out from the first step.

15



7. The release of the U.S. Aid Counterpart Fund for power industry is, according to recent papers which extract is attached herewith (5), more likely to be handicapped unless the reorganization of power industry is settled. I would not believe these at all as well as those of dividends issue.

With dividends issue, in case of the existence of any reality in the rumor circulated, I feel personally that serious situation will be aroused, as there are some half a million stockholders scattered over the country.

As above-stated, I described up-to date progress of the reorganization of power industry, together with my viewpoints inserted in between.

Speaking conclusively, I am sure that, in case the reorganization issue is settled following the line of the Government proposal, contrary to the line of my wish as a Socialistic Democrat, it is to bear many weakpoints and faults in itself, even detriment to the present situation to some extent viewing from a point of the stabilization of national economy and of the principle of the deconcentration law.

If the reorganization is needed to be made urgently, an original bill of the Government should thoroughly be re-examined and to draw up a new bill right way is considered to be the proper way, and this is what I would like to stress to you for your future consideration and guidance.

As to this issue, if you could favor me with an appointment of your interview sometime around the arrival of this letter at your office, I should be very much obliged.

I should also be very grateful if you could acquaint Brig. Gen. C. Whitney, Chief G.S., with the purport of my letter.

15



- 6 -

Also, I should be appreciated if you could favor me with your comment on my proposal of interview of Chief Brig. Gen. Whitney with me to make a report to him as this, whether it is too discourteous or not.

Faithfully yours,

*Ryosaku Sasaki*

---

(RYOSAKU SASAKI, Member of  
the House of Councillors)

(15)



DeWitt

21 June 1950

Mr. Rizzo:

The attached papers indicate that the electric power reorganization bills will again face some rather fierce opposition in the Diet, so much so in fact that as of now there can be no assurance of their passage.

If the measures as drafted by Mr. Kennedy are absolutely required in fulfillment of specific occupation objectives and directives, this fact should be made crystal clear before the tug of war gets underway; otherwise an embarrassing situation may develop. The question is, Will Government Section go all out in support of the electric power reorganization bills, refusing to consider amendments which will almost certainly be presented by the opposition parties in both Houses?

On the final page of the letter addressed to me by Mr. SASAKI, there is a request for a conference with General Whitney on the subject of electric power reorganization.

JW

Noted - No action by GS necessary  
FR