

BODIE BOWL AND CAVE CREEK PROTECTION

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 843

TO WITHDRAW CERTAIN LANDS LOCATED IN THE CORONADO NATIONAL FOREST FROM THE MINING AND MINERAL LEASING LAWS OF THE UNITED STATES, AND FOR OTHER PURPOSES

H.R. 240

TO PROVIDE FOR THE PROTECTION OF THE BODIE BOWL AREA OF THE STATE OF CALIFORNIA, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC
MARCH 30, 1993

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**H.R. 843, CAVE CREEK PROTECTION ACT
OF 1993, AND
H.R. 240, THE BODIE PROTECTION ACT
OF 1993**

TUESDAY, MARCH 30, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 340, Cannon House Office Building, Hon. Richard H. Lehman (chairman of the subcommittee) presiding.

STATEMENT OF HON. RICHARD H. LEHMAN

Mr. LEHMAN. The subcommittee will come to order.

The subcommittee today is meeting to conduct a hearing on H.R. 240, the Bodie Protection Act of 1993, which I, along with Chairman Miller, introduced; and H.R. 843, the Cave Canyon Protection Act of 1993, introduced by Representative Jim Kolbe of Arizona. I have invited Mr. Kolbe to join us on the dais here today, and we are happy to have him.

Following opening statements, the subcommittee will hear testimony first on the Cave Creek Canyon bill, and then we are going to proceed to the Bodie bill. H.R. 240 and H.R. 843 would withdraw or close public lands to mining in order to protect these areas from the adverse effects normally associated with mining.

[Texts of the bills, H.R. 843 and H.R. 240, follow:]

103D CONGRESS
1ST SESSION

H. R. 843

To withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1993

Mr. KOLBE introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Cave Creek Canyon
5 Protection Act of 1993".

6 **SEC. 2. WITHDRAWAL OF LANDS WITHIN CAVE CREEK CAN-**
7 **YON DRAINAGE.**

8 (a) **WITHDRAWAL.**—Subject to valid existing rights,
9 after the date of enactment of this Act lands within the

1 Cave Creek Canyon Drainage are withdrawn from location
2 under the general mining laws, the operation of the min-
3 eral and geothermal leasing laws and the mineral material
4 disposal laws.

5 (b) DEFINITION.—For the purposes of this Act, the
6 term “Cave Creek Canyon Drainage” means lands and in-
7 terest in lands owned by the United States within the area
8 depicted on the map of record entitled “Cave Creek Min-
9 eral Withdrawal”, dated November 1, 1991. The map
10 shall be on file and available for public inspection in the
11 offices of the Forest Service, Department of Agriculture.

○

103D CONGRESS
1ST SESSION

H. R. 240

To provide for the protection of the Bodie Bowl area of the State of California, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. LEHMAN (for himself and Mr. MILLER of California) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To provide for the protection of the Bodie Bowl area of the State of California, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Bodie Protection Act
5 of 1992".

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the historic Bodie gold mining district in
9 the State of California is the site of the largest and

1 best preserved authentic ghost town in the western
2 United States;

3 (2) the Bodie Bowl area contains important
4 natural, historical, and aesthetic resources;

5 (3) Bodie was designated a National Historical
6 Landmark in 1961 and a California State Historic
7 Park in 1962, is listed on the National Register of
8 Historic Places, and is included in the Federal His-
9 toric American Buildings Survey;

10 (4) nearly 200,000 persons visit Bodie each
11 year, providing the local economy with important an-
12 nual tourism revenues;

13 (5) the town of Bodie is threatened by propos-
14 als to explore and extract minerals: mining in the
15 Bodie Bowl area may have adverse physical and aes-
16 thetic impacts on Bodie's historical integrity, cul-
17 tural values, and ghosttown character as well as on
18 its recreational values and the area's flora and
19 fauna;

20 (6) the California State Legislature, on Septem-
21 ber 4, 1990, requested the President and the Con-
22 gress to direct the Secretary of the Interior to pro-
23 tect the ghosttown character, ambience, historic
24 buildings, and scenic attributes of the town of Bodie
25 and nearby areas;

1 (7) the California State Legislature also re-
2 quested the Secretary, if necessary to protect the
3 Bodie Bowl area, to withdraw the Federal lands
4 within the area from all forms of mineral entry and
5 patent;

6 (8) the National Park Service listed Bodie as a
7 priority one endangered National Historic Landmark
8 in its fiscal year 1990 and 1991 report to Congress
9 entitled "Threatened and Damaged National His-
10 toric Landmarks" and recommended protection of
11 the Bodie area; and

12 (9) it is necessary and appropriate to provide
13 that all Federal lands within the Bodie Bowl area
14 are not subject to location, entry, and patent under
15 the mining laws of the United States, subject to
16 valid existing rights, and to direct the Secretary to
17 consult with the Governor of the State of California
18 before approving any mining activity plan within the
19 Bodie Bowl.

20 **SEC. 3. DEFINITIONS.**

21 For purposes of this Act:

22 (1) The term "Bodie Bowl" means the Federal
23 lands and interests in lands within the area gen-
24 erally depicted on the map referred to in section
25 4(a).

1 (2) The term "mining" means any activity in-
2 volving mineral prospecting, exploration, extraction,
3 milling, beneficiation, processing, and reclamation.

4 (3) The term "Secretary" means the Secretary
5 of the Interior.

6 **SEC. 4. APPLICABILITY OF MINERAL MINING, LEASING AND**
7 **DISPOSAL LAWS.**

8 (a) **RESTRICTION.**—Subject to valid existing rights,
9 after the date of enactment of this Act Federal lands and
10 interests in lands within the area generally depicted on
11 the map entitled "Bodie Bowl" and dated June 12, 1992,
12 shall not be—

13 (1) open to the location of mining and mill site
14 claims under the general mining laws of the United
15 States;

16 (2) subject to any lease under the Mineral
17 Leasing Act (30 U.S.C. 181 and following) or the
18 Geothermal Steam Act of 1970 (30 U.S.C. 100 and
19 following), for lands within the Bodie Bowl; and

20 (3) available for disposal of mineral materials
21 under the Act of July 31, 1947, commonly known as
22 the Materials Act of 1947 (30 U.S.C. 601 and fol-
23 lowing),

24 Such map shall be on file and available for public inspec-
25 tion in the Office of the Secretary, and appropriate offices

1 of the Bureau of Land Management and the National
2 Park Service. As soon as practicable after the date of en-
3 actment of this Act, the Secretary shall publish a legal
4 description of the Bodie Bowl area in the Federal Reg-
5 ister.

6 (b) VALID EXISTING RIGHTS.—As used in this sub-
7 section, the term “valid existing rights” in reference to
8 the general mining laws means that a mining claim located
9 on lands within the Bodie Bowl was properly located and
10 maintained under the general mining laws prior to the
11 date of enactment of this Act, was supported by a discov-
12 ery of a valuable mineral deposit within the meaning of
13 the general mining laws on the date of enactment of this
14 Act, and that such claim continues to be valid.

15 (c) VALIDITY REVIEW.—The Secretary shall under-
16 take an expedited program to determine the validity of all
17 unpatented mining claims located within the Bodie Bowl.
18 The expedited program shall include an examination of all
19 unpatented mining claims, including those for which a pat-
20 ent application has not been filed. If a claim is determined
21 to be invalid, the Secretary shall promptly declare the
22 claim to be null and void, except that the Secretary shall
23 not challenge the validity of any claim located within the
24 Bodie Bowl for the failure to do assessment work for any
25 period after the date of enactment of this Act. The Sec-

1 retary shall make a determination with respect to the va-
2 lidity of each claim referred to under this subsection with-
3 in 2 years after the date of enactment of this Act.

4 (d) LIMITATION ON PATENT ISSUANCE.—

5 (1) MINING CLAIMS.—(A) After January 11,
6 1993, no patent shall be issued by the United States
7 for any mining claim located under the general min-
8 ing laws within the Bodie Bowl unless the Secretary
9 determines that, for the claim concerned—

10 (i) a patent application was filed with the
11 Secretary on or before such date; and

12 (ii) all requirements established under sec-
13 tions 2325 and 2326 of the Revised Statutes
14 (30 U.S.C. 29 and 30) for vein or lode claims
15 and sections 2329, 2330, 2331, and 2333 of
16 the Revised Statutes (30 U.S.C. 35, 36, 37) for
17 placer claims were fully complied with by that
18 date.

19 (B) If the Secretary makes the determinations
20 referred to in subparagraph (A) for any mining
21 claim, the holder of the claim shall be entitled to the
22 issuance of a patent in the same manner and degree
23 to which such claim holder would have been entitled
24 to prior to the enactment of this Act, unless and
25 until such determinations are withdrawn or invali-

1 dated by the Secretary or by a court of the United
2 States.

3 (2) **MILL SITE CLAIMS.**—(A) After January 11,
4 1993, no patent shall be issued by the United States
5 for any mill site claim located under the general
6 mining laws within the Bodie Bowl unless the Sec-
7 retary determines that, for the claim concerned—

8 (i) a patent application was filed with the
9 Secretary on or before January 11, 1993; and

10 (ii) all requirements applicable to such pat-
11 ent application were fully complied with by that
12 date.

13 (B) If the Secretary makes the determinations
14 referred to in subparagraph (A) for any mill site
15 claim, the holder of the claim shall be entitled to the
16 issuance of a patent in the same manner and degree
17 to which such claim holder would have been entitled
18 to prior to the enactment of this Act, unless and
19 until such determinations are withdrawn or invali-
20 dated by the Secretary or by a court of the United
21 States.

22 **SEC. 5. MINERAL ACTIVITIES.**

23 (a) **IN GENERAL.**—Mineral exploration, mining,
24 beneficiation, and processing activities on unpatented min-
25 ing claims within the Bodie Bowl shall be subject to such

1 regulations prescribed by the Secretary, in consultation
2 with the Governor of the State of California, as the Sec-
3 retary deems necessary to ensure that such mineral activi-
4 ties are conducted—

5 (1) in accordance with the rules and regulations
6 promulgated under Public Law 94-429 (16 U.S.C.
7 1901 et seq.) as they relate to plan of operations,
8 reclamation requirements, and bonding; and

9 (2) in a manner that does not cause any ad-
10 verse effect on the historic, cultural, recreational and
11 natural resource values of the Bodie Bowl area.

12 (b) RESTORATION OF EFFECTS OF MINING EXPLO-
13 RATION.—As soon as possible after the date of enactment
14 of this Act, visible evidence or other effects of mining ex-
15 ploration activity within the Bodie Bowl conducted on or
16 after September 1, 1988, shall be reclaimed by the opera-
17 tor in accordance with regulations prescribed pursuant to
18 subsection (a).

19 (c) ANNUAL EXPENDITURES; FILING.—The require-
20 ments for annual expenditures on unpatented mining
21 claims imposed by Revised Statute 2324 (30 U.S.C. 28)
22 shall not apply to any such claim located within the Bodie
23 Bowl. In lieu of filing the affidavit of assessment work
24 referred to under section 314(a)(1) of the Federal Land
25 Policy and Management Act of 1976 (43 U.S.C.

1 1744(a)(1)), the holder of any unpatented mining or mill
2 site claim located within the Bodie Bowl shall only be re-
3 quired to file the notice of intention to hold the mining
4 claim referred to in such section 314(a)(1).

5 (d) REGULATIONS.—The Secretary shall promulgate
6 the regulations referred to in this section within 90 days
7 after the date of enactment of this Act. For the purposes
8 of this Act, the Bureau of Land Management shall pro-
9 mulgate and administer the rules and regulations referred
10 to in section 5(a).

11 **SEC. 6. STUDY.**

12 Beginning as soon as possible after the date of enact-
13 ment of this Act, the Secretary of the Interior, through
14 the Director of the National Park Service, shall review
15 possible actions to preserve the scenic character, historical
16 integrity, cultural and recreational values, flora and fauna,
17 and ghost town characteristics of lands and structures
18 within the Bodie Bowl. No later than 3 years after the
19 date of such enactment, the Secretary shall submit to the
20 Committee on Natural Resources of the United States
21 House of Representatives and the Committee on Energy
22 and Natural Resources of the United States Senate a re-
23 port that discusses the results of such review and makes
24 recommendations as to which steps (including but not lim-

- 1 ited to acquisition of lands or valid mining claims) should
- 2 be undertaken in order to achieve these objectives.

○

Mr. LEHMAN. Both bills were introduced and passed by the House last year, but only the Cave Creek bill passed the Senate prior to adjournment. H.R. 843 would, subject to valid existing rights, withdraw approximately 13,000 acres of public lands from Cave Creek Canyon from general mining laws, mineral leasing, and material sales statutes.

Cave Creek Canyon, located in southeastern Arizona's Coronado National Forest, is a sanctuary to many endangered and threatened plants, birds, and mammals. It is one of the Nation's most popular and cherished birdwatching spots. It is also a favorite research area for national and international scientists.

While the biodiversity of Cave Creek Canyon is appreciated by many Americans, it has also been the subject of some controversy which led Representative Kolbe to develop this bill. This controversy stems from plans by the Newmont Mining Corporation to explore for gold in the area. Newmont has since voluntarily withdrawn its plan, but there is no permanent mechanism, short of legislation, to stop Newmont, or any other mining company for that matter, from locating new claims in order to mine in the canyon.

The West's oldest mining town, Bodie, is a National Historic Landmark and a State Historic Park located in Mono County, California. Today, over 200,000 tourists visit Bodie every year to see the 100-plus buildings, such as the Miners Union Hall, the Methodist Church, and the General Store, and other structures dating back to the early 1800s, which still stand there. H.R. 240 would withdraw approximately 6,000 acres of BLM lands surrounding the State Park from location under the Mining Law of 1872 and from operation under the Mining Leasing Laws and Mineral Materials Act. This legislation allows for mining to proceed on valid claims in the area under rules that seek to protect the State Park's historic resources. Finally, the bill would prohibit the issuance of patents unless the right to a patent had vested as of January 5, 1993.

Not unlike the situation at Cave Creek Canyon, the Bodie Bowl was threatened by the plans of a Canadian mining company which began exploring for gold in a 547-acre area adjacent to the Park. People were concerned that the landscape would be so severely modified by mining that it would lose its historic integrity.

It should be noted that the mining company in question has filed for Chapter 7 bankruptcy protection after causing a costly environmental disaster in Colorado. H.R. 240 remains necessary since under the 1872 Mining Law the claims in question could be sold and remain valid.

Today's hearing will allow us to examine the implications of these two bills while taking into consideration the significance of mining near the Bodie Historic Park in California and Cave Creek Canyon in Arizona as well.

I certainly look forward to today's witnesses, and with that, I will recognize a member of the subcommittee, Mr. Doolittle.

STATEMENT OF HON. JOHN T. DOOLITTLE

Mr. DOOLITTLE. Thank you very much, Mr. Chairman.

I presently represent Bodie, and of course you did prior to this new session of Congress. You and I have differing views as to the desirability of this legislation. I think Bodie is a very interesting

place, and I would encourage people, when they have the opportunity, to go and take a look at it.

I don't think Bodie is threatened by mining. In fact, Bodie is significant because it is the site of mining activity. I think the only place most people have ever seen any mining is probably at Knott's Berry Farm, regrettably. Bodie would provide an opportunity for people to see how mining used to be and compare it with what it is today.

So I am opposed to the legislation. The viewshed is not impaired, from what I could see, by the mining activity, and as you pointed out, this particular company has filed under the bankruptcy provisions. But I have a problem with further and further restrictions on the use of the public lands. In my opinion, this is an unjustified restriction based on the facts.

I suppose this bill will pass and the restrictions will go into effect, and that will make Bodie an interesting example of a ghost town, but we will be denying the people the opportunity to see mining as it exists today, in the 1990s. So I am going to oppose the bill. I appreciate the chance to make this statement, and I'm sure the testimony to be presented will be of use to the committee.

Mr. LEHMAN. Thank you very much.

Mr. Kolbe.

STATEMENT OF HON. JIM KOLBE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. KOLBE. Thank you, Mr. Chairman.

I'm sitting between you and Mr. Doolittle, but I think I won't get into the controversy about Bodie here this morning. The other bill which you are hearing, the first one, is one that I hope will be non-controversial, and I appreciate very much your willingness to hold this early hearing on it.

I want to thank my colleague and the ranking Republican on this subcommittee, Mrs. Vucanovich, for the support that she gave to the bill last year.

Mr. Chairman, I have a full statement. With your indulgence, I will submit that for the record.

Mr. LEHMAN. Without objection.

Mr. KOLBE. Just let me say very quickly, in a few moments, after you hear from the Forest Service, you will hear from two people who live in the area of Cave Creek, and they can tell you in a far more articulate fashion than I can the value of Cave Creek to our State, to our Nation. You will hear from Wade Sherbrooke, who is the director of the Southwestern Research Station, which comes under the umbrella of the American Museum of Natural History, and from Karen Hayes, who is with the Portal Mining Action Coalition.

Cave Creek is a very special area; there is no question about it. It is really an extraordinary place; its natural beauty is apparent and the research station there suggests that it has some extraordinary scientific value. There are species of birds in that area that are found nowhere else and more species of birds than found just about anyplace else in the United States. It has remarkable diversity of plant life and animal species and is remarkably good in terms of a recreation area.

The legislation which we have introduced came about as a result of a claim that was filed, as you suggested, by Newmont Mining Company. While all this area is subject to claims, there had not been any active mineral exploration. The sudden filing of this claim alerted people to the fact of their intention to go ahead with operations, that there might indeed be some real mining activity in the area. As a result of this and discussions with the Forest Service it was my view that we should withdraw this area permanently from mining activity, and hence the legislation which we have introduced.

As you noted, Newmont has, temporarily at least, withdrawn its plan for operations. That could be resubmitted at any time or by some other company that might decide to get those claims. The Forest Service has also withdrawn it administratively, but I think it is important to note that that administrative segregation expires in September of this year, and while they could reimpose this for another length of time—I don't think we should just simply wait for this to keep being done. From an administrative standpoint, we ought to resolve this issue.

There seems to be no opposition to this bill that we have heard of. I am very delighted to have this chance to present this statement and the testimony to you today about this legislation. Thank you, Mr. Chairman, for your indulgence and for permitting me to be up here on the dais with you.

[Prepared statement of Mr. Kolbe follows:]

STATEMENT OF CONGRESSMAN JIM KOLBE
BEFORE THE NATURAL RESOURCES SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES
ON THE CAVE CREEK CANYON PROTECTION ACT OF 1993
MARCH 30, 1993

Good morning, Mr. Chairman, and thank you for holding this hearing on the Cave Creek Canyon Protection Act. Last Congress, a similar bill was favorably reported out of the former Mining and Natural Resources subcommittee. That same bill, traveled a long way through the process, eventually running out of time in the waning hours of the Congress. Both the Senate and the House passed the bill, but, unfortunately, the Senate didn't pass the bill until the final hours of the 102nd Congress, at which time the House had already concluded its business. That was a particularly regrettable outcome because the bill had no known opposition. It was supported at all stages of the legislative process and it is easy to understand why.

To understand the importance of this withdrawal, I only wish members of this subcommittee could visit this magical part of southeastern Arizona. I grew up near this area. For years I have enjoyed the spectacular beauty of the Chiricahua Mountains. Cave Creek and Portal, on the north side of the mountains, have been, until now, one of the best kept secrets among the many natural wonders in this country. This place really is magnificent! But you don't have to take my word for it. Just ask the two guests who have joined us today from Cave creek, Wade Sherbrooke, the Director of the Southwestern Research Station for the American Museum of Natural History, and Karen Hayes, of the Portal Mining Action Coalition. I appreciate their being here.

What makes this area special? Simply put, Cave Creek Canyon is unparalleled in its diversity of species and plant life, its value to scientific researchers and recreational users, and its breathtaking beauty.

There is bio-diversity unlike any other area of comparable size in the U.S. Cave Creek is home to endangered species such as the peregrine falcon, the desert tortoise and the sanborn Long-nosed bat. Javelina, jaguar, and jaguarundi are known to frequent the area. Birds of all stripes and color also call Cave Creek home.

There are 13 species of hummingbirds and 12 species of owls, alone. That's more variety of hummingbirds than found anywhere else in the United States. The 50 trogons that use the canyon for breeding comprise half the U.S. population of this colorful tropic species. Thick-billed parrots, not found anywhere else in the U.S., are flourishing in the friendly confines of the canyon. Over 330 species of birds have been recorded in the area. This area is considered by many to be the single best birding spot in the country.

But we don't have to look to the sky over Cave Creek to find unusual, astonishing animal species. There's the exotic chiricahua leopard frogs, the green rat snakes, the yaacqui black-headed snakes and the

blue-throated hummingbirds that occupy the canyon...and on and on. Studying the area's plant and animal life is like looking in a Who's Who of rare and exotic species.

There is more to the canyon than rare and exotic plants and animals. The scientific value of the region is immeasurable, resulting in almost 1000 disparate scientific publications, many outlining new discoveries in ecology, toxicology, and evolutionary biology. For example, research on scorpion venom is being conducted at Cave Creek to determine its possible use in treating human neurological diseases. The presence of the Southwestern Research Station of the American Museum of Natural History has played a significant role in much of this research. It is not a stretch to say that this region has produced more scientific discovery and achievement than any other area in the world of comparable size.

The scenic values are also spectacular. Perhaps A. B. Gray, a railroad surveyor, summed up the beauty of the canyon in 1854 when he wrote in his journal: "The view of this canon[sic] in the morning, with the sunlight reflected from its deep recesses, and upright wall rising majestically on all sides to a height of several thousand feet, tapering like spires amid the clouds, presented a scene of grandeur and beauty."

Mr. Chairman, as those words, written 140 years ago, suggest these lands truly are magnificent. But a lot of other public lands could fit this description as well. That doesn't mean beautiful scenery should automatically preclude other, productive uses of land. That's why I support multiple use of public lands. I believe that mining, grazing, recreation, among others, are valuable and legitimate uses for public lands. However, we should recognize there are some lands so unique and so special that mining activity, with its physical scarring and ecological disruption, would be inappropriate. Cave Creek is such an area.

The Cave Creek Canyon Protection Act of 1993 is a simple bill. Like its predecessor, it protects lands in Cave Creek from mineral activity. This bill is virtually identical to the one I introduced last Congress and is identical to the one that passed the Senate in the final hours of last Congress. I hope and expect this bill to enjoy the same overwhelming support that the original did.

This is especially true in light of new developments that add urgency to the need to protect the Canyon. The impetus for the original bill stemmed from Forest Service approval of a plan of operations for exploratory drilling in the Cave Creek area. The plan was approved November 23, 1990, and subsequently appealed on January 7, 1991, by the Portal Mining Action Coalition. On December 21, 1990, before the appeal, Newmont decided to defer mineral activity for one year in order to allow interested parties to seek a withdrawal from mining activities of the area.

At the request of local residents and others in southeastern Arizona, as well as hundreds of people from around the country, I introduced the original bill in June of 1991 to accomplish a legislative withdrawal of

the Cave Creek area. The original bill and this bill are the product of extensive discussions with the various interested parties and would prevent only mining activity in the area. Other uses would be unaffected.

Following the introduction of the original bill, the Forest Service announced its own administrative withdrawal of Cave Creek for two years to allow consideration of its proposal to establish a National Recreation Area in the Coronado National Forest. Its proposal had included the area proposed for withdrawal in the original bill. Subsequent to that announcement, Newmont withdrew its request for exploratory drilling operations in the area.

The Forest Service, however, has shelved its National Recreation proposal for the time being. Moreover, the two year withdrawal period is quickly expiring. On September 27, 1993, Forest Service protection will be lost, leaving the land open to development. Whether the Forest Service will attempt to protect this area with future segregation is an open question. But the possibility of Forest Service action is no guarantee of adequate long--or even short term--protection. Only quick Congressional action can assure protection of this irreplaceable gem called Cave Creek Canyon.

If you believe in protecting unique and spectacular areas, this bill deserves your support. I urge your favorable consideration so that this national treasure can be preserved for future generations.

PANEL CONSISTING OF HENRY M. MONTREY, III, ASSOCIATE DEPUTY CHIEF FOR THE NATIONAL FOREST SYSTEM, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE; WADE C. SHERBROOKE, PH.D., DIRECTOR, SOUTHWESTERN RESEARCH STATION, THE AMERICAN MUSEUM OF NATURAL HISTORY, PORTAL, AZ; AND KAREN HAYES, PORTAL MINING ACTION COALITION, PORTAL, AZ

Mr. LEHMAN. Thank you very much, and with that, we will go to the first panel. Let me suggest that we take Mr. Montrey and put him on the panel with Wade Sherbrooke and Karen Hayes. That will expedite things, when you are all three together. So if those three people would come forward, without objection, we will put your entire statements in the record and ask you to summarize, and we will start with our deputy chief for forest systems, Mr. Montrey.

STATEMENT OF HENRY M. MONTREY, III

Mr. MONTREY. Thank you, Mr. Chairman. I appreciate the opportunity to express the views of the Department of Agriculture related to H.R. 843. The views of the Department of Agriculture are straightforward and a pleasure for me to state: We support its enactment.

As indicated by Congressman Kolbe, the Cave Creek Canyon area is an unusual and, we agree, special area. Living within it are plant and animal species that are representative of the Sierra Madres and the Rocky Mountains, and probably the most unique and special attribute of it is the broad range of biological diversity that exists within a relatively small area. It contains elevations that range between 4,000 and 10,000 feet and spectacular scenery and, by any measure to us in the Forest Service, a very special area.

Because of the unique values associated with this area, we suggest and agree that it is appropriate to withdraw the area from mineral entry, leasing, and disposal, and in fact, as was articulated earlier, we are working together with the Bureau of Land Management and have already, albeit temporarily, withdrawn or segregated the area from mineral entry under administrative procedures, and I believe we have submitted to the subcommittee a supplemental statement which provides background information on that, on that existing segregation and the timing for its extension and the procedure for renewing it.

There are a couple of things that we would like to point out, we the Forest Service would like to point out to the subcommittee, in the way of suggestions, and there are just two. One relates to section 2(a) in the bill, and the second relates to section 2(b).

In section 2(a), we would like to point out that that section, as currently worded, would only withdraw the area referred to in the bill from location under the general mining laws but would not withdraw the area from entry in patent. In the way it is currently worded, the bill would permit the patent of claims, we believe, for which valid existing rights have been established. Furthermore, since those lands would remain open to entry, the bill might allow the continued prospecting on invalid claims, and if the prospecting led to discovery, arguably then any such claim could be patented.

What we would like to propose for your consideration is, you may wish to consider revising section 2(a) such that it would withdraw the area from the operation of the general mineral laws subject to valid existing rights, and we have suggested in the written testimony specific wording for that.

The motivation for suggesting this to you is that that revision would not only prevent the future location of claims but would also prohibit two other things: one, the patent of claims for which valid existing rights had not been established prior to the withdrawal date; and, two, any prospecting after the withdrawal date which might lead to discovery.

The second suggestion we have for you I would classify under the heading of "wordsmithing." We suggest in section 2(b) that the lands that are currently described as "lands and interest in lands owned by the United States" would more correctly be identified as "National Forest System lands."

In summary, we in the Forest Service, working with the Bureau of Land Management, as stated earlier, have taken administrative actions to segregate the Cave Creek area. H.R. 843 is consistent with that and would make permanent those segregations, and we support the enactment of H.R. 843.

That concludes my testimony.

[Prepared statement of Mr. Montrey follows:]

STATEMENT OF
HENRY M. MONTREY, III
ASSOCIATE DEPUTY CHIEF FOR THE NATIONAL FOREST SYSTEM
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives

Concerning H.R. 843, Cave Creek Canyon Protection Act of 1993

March 30, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the views of the Department of Agriculture regarding H.R. 843, a bill "To withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes."

The Department of Agriculture supports enactment of H.R. 843.

H.R. 843 would withdraw certain lands referred to as the Cave Creek Canyon drainage from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws.

We should point out that Section 2(a) would only withdraw the area referred to in the bill from location under the general mining laws, but would not withdraw the area from entry and patent. As currently drafted, the bill would permit the patent of claims for which valid existing rights have been

established. Furthermore, since the lands would remain open to entry, the bill might allow the continued prospecting on invalid claims, and if the prospecting led to discovery, arguably the claim could be patented. The Subcommittee may wish to consider revising Section 2(a) to withdraw the area from the "operation of the general mining laws..." subject to valid existing rights. This revision would not only prevent the future location of claims, but would also prohibit (1) the patent of claims for which valid existing rights had not been established prior to the withdrawal date and (2) any prospecting after the withdrawal date which might lead to discovery.

The Cave Creek drainage is an unusual riparian area with plant and animal species represented from the Sierra Madres as well as the Rocky Mountains. The broad range of biological diversity in a relatively small area is perhaps the most unique aspect of the Cave Creek Canyon area. Elevations range from about 4,000 to 10,000 feet, with spectacular scenery, especially in the lower canyon area. A number of vegetative communities are represented from the upper Sonoran grassland to the Spruce-fir forest. Large Sycamore trees, Fremont cottonwood, Arizona cypress, Apache pine, Douglas fir, and other water-dependent plants can be found in this canyon. Additionally, unusual and uncommon animal species, such as the Lucifer, blue-throated, and magnificent hummingbirds, elegant trogon, spotted owl, Apache fox squirrel, and coatimundi can be found in this area.

Because of the unique values, the Department of Agriculture agrees that it is appropriate to withdraw the Cave Creek Canyon

Area from mineral entry, leasing, and disposal. The area is currently temporarily withdrawn (segregated) from mineral entry under administrative procedures. The area depicted on the map referred to in H.R. 843 includes areas outside the Cave Creek Canyon drainage. A map depicting the drainage area has been provided to the Subcommittee. The map depicts the private lands within the drainage. Our Supplemental Statement provides background information on that existing segregation.

Regarding H.R. 843, we note that the lands referenced in Section 2(b) are more correctly identified as "National Forest System Lands," rather than "lands and interest in lands owned by the United States."

In summary, the Forest Service and the Bureau of Land Management have taken administrative actions to segregate the Cave Creek Canyon area from location and entry under the mining laws. Since H.R. 843 is consistent with these actions, we support the bill.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions you or members of the Subcommittee may have.

SUPPLEMENTAL STATEMENT
UNITED STATES DEPARTMENT OF AGRICULTURE
Concerning H.R. 843

Background on the Cave Creek Area

On November 23, 1990, the Forest Service approved a plan of operations for gold exploration submitted by the Newmont Mining Corporation (NMC). The drilling of four exploration holes and reconstruction of 3,000 feet of road were authorized to take place near the mouth of Cave Creek Canyon on the Coronado National Forest, Douglas Ranger District. The District Ranger subsequently received a letter dated December 11, 1990, from the NMC that stated: (1) exploration activities would be deferred for 12 months so that interested parties who would like to see the Cave Creek Area withdrawn would have time to contact their respective Members of Congress about formal withdrawal of the area, 2) a formal withdrawal would not be opposed, and (3) NMC would abandon its mining claims if the area were withdrawn.

The Portal Mining Action Coalition, a local organization, appealed the November 1990 Forest Service decision approving the plan of operations for NMC on January 7, 1991.

On August 21, 1991, the Forest Service filed the appropriate application for segregation (temporary withdrawal) with the Bureau of Land Management (BLM). The segregation request included the area on which Newmont's mining claims were located.

On August 27, 1991, the Forest Service issued a news release stating that NMC had withdrawn its approved plan of operations. As a result of NMC actions, the Portal Mining Action Coalition appeal was dismissed. NMC stated that their action was in response to the segregation request (about 21,000 acres) by the Forest Service to the BLM as part of the consideration of the area for the establishment of a National Recreation Area (NRA). The BLM published a notice in the September 27, 1991, Federal Register which administratively withdrew (segregated) approximately 91,000 acres (including all of the lands identified in H.R. 843) from location and entry under the mining laws for 2 years pending final consideration of the area as a NRA. About half (44,810 acres) of the segregation request was for lands in the vicinity of Cave Creek.

Mr. LEHMAN. Thank you very much.
 Who would like to go next?
 Dr. Sherbrooke.

STATEMENT OF WADE C. SHERBROOKE, PH.D.

Dr. SHERBROOKE. Thank you, Mr. Chairman.

I have a copy of some photographic materials we have prepared and submitted to the committee previously as well as bibliographic and news items, and I thought that you might want to flip through this during some of the testimony to get an image of the area.

I wish today, this morning, I had you on a tour bus and we were coming across the San Simon Valley from the eastern side of the Chiricahua Mountains and you would see the grand entryway into the Chiricahuas that is Cave Creek Canyon and the mouth of Cave Creek Canyon. Indeed, this is the proposed site for the Newmont mining interests which they have subsequently dropped but the site that has given rise to this bill.

If we proceeded up that mountain range, we would pass through Cave Creek Canyon; and I wouldn't have to tell you how spectacular it is in terms of its scenery; that is apparent to anyone. But what I would like to tell you a little bit about this morning is what would be apparent if you stayed there and studied the area as a scientist.

Indeed, the scientists who began coming there in the 1950s from the American Museum of Natural History began to see its unique qualities in terms of biodiversity, the numbers of species that occur, in Cave Creek Canyon and in the surrounding area. Cave Creek Canyon is clearly, if you look at the mountains and canyons in the Chiricahua Mountains, the outstanding canyon. It is on the east side of the mountains, it receives a higher amount of rainfall, and it has a higher amount of biodiversity.

But the area in which Cave Creek Canyon and the Chiricahuas exist is what I have been recently calling the biological Grand Canyon of North America. We are in an archipelago of islands, if you will, in a desert sea. This archipelago of islands stretches between the Sierra Madre Occidental of western Mexico and the Rocky Mountains of the western United States, and it is a rich area of mixing of tropical species elements, things like the elegant trogon, which people come from not only all over the United States but we have tour groups coming in there from Scandinavia to see the birds of Cave Creek Canyon. They come to see these tropical elements coming into the United States here. We also have a mixing of things from the Rocky Mountains, and this is what gives us our species diversity, this mixing of elements in biogeographic terms between north and south biota.

If we look down at the lower elevations, we are at a place that is a juncture, that has been identified as a corridor by biogeographers, of mixing of species between two of the four great North American deserts: the Chihuahuan Desert to our east and the Sonoran Desert to our west. It is this diversity coming out of the mixing of these biogeographical areas that makes southeastern Arizona the outstanding area in North America in terms of biodiversity. The Coronado National Forest is claiming—and I am

in full accord with that—that they have, of all of our National Forests, the highest biodiversity of any place in our system.

The other thing that we find of interest, as scientists in Cave Creek Canyon, is, as you go from Portal itself to the top of the Chiricahua Mountains you go through five of the ecological life zones of North America, providing us, working at the research station at 5,400 feet, a diversity of ecological situations for investigation.

For these reasons, scientists have been coming to the Southwestern Research Station and also just coming to the area on their own for many years since the founding now of the station in 1955 by the American Museum. A community of people congregates here every year, coming from across the country, from universities in California, New York, Michigan, and coming from countries overseas; we have German scientists, French scientists, Italians, South Americans, coming to work at the station every year. We have about 170 scientists working out of the station annually.

This community comes to Cave Creek Canyon up in the canyon about five miles above Portal annually to study this unique and very diverse biota. The results of those investigations over these years have been published in the scientific literature of the world. We have just down at the station about 800 publications. There are at least an additional 200 publications of scientists not working out of the station. We have university classes come; we have a volunteer program of young scientists who are being trained at the station each year.

The development of a mine on mineralized lands at the mouth of Cave Creek Canyon and in Cave Creek Canyon would have a very significant impact on the activities of these people and on the data base that they have built. This is an area now that a scientist can come to and know an incredible amount because of the people who have come before them and studied various aspects of the ecology and biota in this area.

What we are using here is this area as a laboratory to go in and study how the natural world is put together and how it functions so that we as a civilization can better understand how we can interact with that component of the planet that we live on, and I'm glad to hear that the Forest Service is now in favor of Mr. Kolbe's bill. We certainly believe that in terms of the long haul on protecting this area congressional action is the only way to achieve this.

Thank you very much.

[Prepared statement of Dr. Sherbrooke follows:]

Statement
March 30, 1993, Hearing of the
Subcommittee on Energy and Mineral Resources
U. S. House of Representatives

From: Wade C. Sherbrooke, Ph. D.
Director
Southwestern Research Station
The American Museum of Natural History
Portal, Arizona 85632
(602) 558-2396

Cave Creek Canyon Protection Act of 1993

Re: H. R. 843

Since 1869 the American Museum of Natural History has been supporting the exploration and study of biological and cultural diversity on this planet. The contributions of this nonprofit institution to the scientific enterprise in the United States have been enormous. Its leading worldwide role in natural history research and education continues to result in significant advances in our understanding of biodiversity everywhere.

In 1955 the Museum established the Southwestern Research Station in one of the areas of highest biodiversity in North America, Cave Creek Canyon of the Chiricahua Mountains in southeastern Arizona. The research station was made possible through the generosity and foresight of Mr. David Rockefeller. Subsequent investments-- financial, scientific, and intellectual -- have been extraordinarily productive.

The Research Station is located in the Chiricahua Mountains, which rise from broad valleys to heights of nearly 9,800 feet. Within a short drive, five Life-zones of the western United States can be found: Lower Sonoran, Upper Sonoran, Transition, Canadian, and Hudsonian. These Life-zones reflect an ecological variety that contributes to the biodiversity of the area. But another factor, unique to the Chiricahua Mountains, makes them unusually rich. This is their biogeographic location on the North American continent.

The biota of the higher elevations in the Chiricahua Mountains have strong biogeographic connections to the Rocky Mountains of the western United States to the north, and to the Sierra Madre Occidental of northwestern Mexico to the south. The mixture of northern and southern plants and animals produces a uniquely diverse biota. In a similar fashion, the valleys surrounding the Chiricahuas are located in a biogeographical corridor between two great deserts of North America--the Chihuahuan Desert to the east and the warmer Sonoran Desert to the west. Thus the species richness of Cave Creek Canyon results from elevational factors combining with biogeographical factors. Scientists from around the country are drawn to this superb natural laboratory of life.

The Southwestern Research Station has attained national and international preeminence for its outstanding scientific and educational achievements. Yearly the facilities are utilized by over 170 scientists from institutions across the country and around the world. Since its founding, researchers have produced over 800 scientific publications based on their studies at and near the Station. The biota of Cave Creek Canyon and nearby areas is one of the best studied and best documented in North America. One of our significant studies, on the evolution of "altruistic" social behavior in birds, has spanned the last quarter century; many studies have continued for over a decade.

The high quality of the research conducted is attested to by National Science Foundation (NSF), National Geographic Society and other grants received annually by scientists working at the Station. The Station itself has been awarded NSF facilities and equipment improvement grants in 1989 and 1991, signifying NSF's evaluation of the importance of the Southwestern Research Station to the national scientific enterprise.

The Research Station has also served an important educational role. Numerous young scientists have cut their field research teeth doing studies in Cave Creek Canyon, as have undergraduate volunteers (future graduate students and professionals), thirty of whom participate in our program each year.

The Station also serves a public educational role by accommodating naturalist visitors as overnight guests. In 1992, 1,519 people spent 8,280 person days at the Station. These people have come to learn about and enjoy the biotic diversity of Cave Creek Canyon. Many come specifically to seek unusual birds found nowhere else in North America. Cave Creek Canyon is clearly a national treasure in this sense alone.

Three years ago, Newmont Mining Corporation proposed mineral exploration on U.S. Forest Service lands at the mouth of Cave Creek Canyon, directly threatening the future of our scientific and educational goals. The concern felt by the American Museum of Natural History for the future of Cave Creek Canyon was shared by others nationally and internationally. People in the community organized the Portal Mining Action Coalition to bring the issue to the attention of concerned citizens. A national outcry was heard urging that this piece of U.S. Forest Service land be withdrawn from mineral entry. That outcry echoed through the pages of Science, the New York Times, numerous other newspapers, and the newsletters of virtually every environmental and birdwatching group across the country.

In response, Newmont Mining Corporation withdrew its proposed exploration plan for one year "to allow interested parties to approach their respective Congressmen and Senators to request that the area be withdrawn from mineral entry..." The bill before you today, H.R. 843--introduced to the House of Representatives by Congressman Jim Kolbe, 5th District, Arizona--is a direct result of efforts by the American Museum of Natural History, the Portal Mining Action Coalition, concerned scientists, birdwatchers, and others who have worked in Cave Creek

Canyon and have a stake in the future of its biotic integrity. All these parties agree that the scientific, scenic, and recreational values of the Cave Creek Canyon area to the American people far outweigh any potential economic returns that might result from discovery of economically recoverable minerals.

For more than three years now, great efforts have been made to seek other means of securing Cave Creek Canyon from the biological disintegration that mining activities would bring to this unique focal point of biodiversity. At the request of the U.S. Forest Service, the Portal Mining Action Coalition documented the significance of Cave Creek Canyon and asked that it be considered for administrative withdrawal from mineral entry.

The Forest Service chose to deal with the issue in the context of a proposed National Recreation Area (NRA)--Desert Islands NRA--in Coronado National Forest, and under that umbrella segregated the area, including Cave Creek Canyon and its entryway (portions of Silver Creek and the Newmont claims area) for two years. In so doing, the U.S. Forest Service indicated its evaluation that the Cave Creek Canyon Area has greater national significance for its scientific and recreational values than for any potential mineral wealth. Newmont Mining Corporation this time responded by completely withdrawing their operating plan. Earlier approval of Newmont's plan, by the Forest Service, had been appealed by the Portal Mining Action Coalition.

The concept of "Desert Islands National Recreation Area" was poorly conceived by the Coronado National Forest, and following overwhelming public criticism, has been dropped by the U.S. Forest Service. Current segregation expires on September 27, 1993. The future of Cave Creek Canyon's mineral exploration status should not be left in such a precarious situation. It need not be when the bill before this Subcommittee can clearly resolve this single aspect of future management of the Cave Creek Canyon area.

H. R. 843 is a straightforward bill whose single purpose is to protect the biological integrity of the 13,000-acre Cave Creek Canyon Area, with its scientific, educational, recreational, and cultural values, from any detrimental effects of mineral exploration and extraction. The Forest Service seems to have seen the wisdom in this designation by segregating the area in question from mineral entry in their ill-fated NRA proposal. Newmont Mining Corporation has withdrawn, twice now, their exploration plans. To our knowledge, no other mineral concern has voiced opposition to withdrawal. The Portal Mining Action Coalition, individual scientists, naturalists, birdwatchers, outdoor recreation enthusiasts, residents, and others have expressed their support of mineral withdrawal of the Cave Creek Canyon Area.

H. R. 843 would provide long-term, congressional protection for the area. Forest Service administrative efforts, if forthcoming, will be subject to administrative reversal, are of limited duration, and are unlikely to include mineralized areas

of significant research and scenic values, the Newmont claims area and Silver Creek areas, of Cave Creek Canyon and its entryway into the Chiricahua Mountains.

The American Museum of Natural History strongly supports Congressman Kolbe's bill, H.R. 843. Having been instrumental in the investment of decades of scientific accomplishments in an area that has itself become an international biotic database, we can clearly see its significance to the nation as an area needing unusual management care. If a mining operation were to be placed on Forest Service lands in Cave Creek Canyon, or near its entry, the existence of the Southwestern Research Station and its work would be jeopardized.

The intricacies of natural relationships between organisms cannot be studied in an environment where man's industrial activities are intrusive and disruptive. Not only are mining activities a threat to this uniquely diverse biota but they also threaten the continuity of scientific investigations that have been focused on this biota and remain dependent on its ecological integrity. We risk destroying, beyond repair, an outdoor laboratory that has been extremely productive and will serve as a foundation for future generations of studies if properly protected.

Mr. LEHMAN. Thank you very much.
Ms. Hayes.

STATEMENT OF KAREN HAYES

Ms. HAYES. Thank you, Mr. Chairman, for holding this hearing on the Cave Creek Canyon Protection Act.

My name is Karen Hayes, and I am a resident of Portal, Arizona, at the entrance to Cave Creek Canyon in the Chiricahua Mountains of southeast Arizona. Also, I am a member of the Portal Mining Action Coalition, which is a small, local organization formed two years ago for the sole purpose of protecting Cave Creek Canyon from the mining activity.

A description of Portal is appropriate to this issue. About 120 people draw mail at the Portal post office, which is one of only three nonresidential buildings in our tiny town. The other two are a small but active branch of the county library and the Portal Store/Bed and Breakfast. Coming into Portal, however, you would not imagine there were even that many people living in the area. The houses are situated here and there along the creek bottom or amid the mesquite that cover much of the canyon entrance just outside the National Forest boundary. We are remote; the nearest town is 65 miles away.

It is primarily due to this remoteness that the combination of unspoiled beauty and unparalleled biological and botanical diversity makes this an area that is acknowledged nationally and internationally as unique, and I use the word in its most literal sense. As an example, Cave Creek Canyon has the greatest diversity of breeding land birds of any comparable area in the country. "Unique" is also the terms used by the Forest Service in describing this part of the Coronado National Forest as the "jewel in the crown of the National Forest System."

It has long been established that Cave Creek Canyon is of great value not just to the local and regional residents but to the naturalists, hikers, photographers, and birding enthusiasts from across the United States and beyond, and it has been demonstrated that this immediate area is literally of unequalled value in the realm of biological research. All of these qualities continue to exist because the area is undeveloped, uncrowded, and unspoiled.

When word came of the possibility that an open pit gold mine could be established at the entrance to the canyon, we in the Portal region reacted at first with disbelief. Our inquiries to the Forest Service about what could be done to protect the area were met with resolute statements that there was absolutely nothing we could do.

We realized that, by ourselves and given our few numbers, our ability to influence the situation was limited. We formed the Portal Mining Action Coalition based on the conviction that if the many thousands of people State-wide, nationally, and even internationally who know of the area could be made aware of the situation, surely the nonmineral values of Cave Creek Canyon could be put first.

So the Coalition began a publicity and direct mail effort to inform the public. From the very beginning of our efforts, we explained that our interest is in protecting the unique qualities of this area, that we are not opposed to all mining everywhere, and

that we support the concept of multiple use of public lands. We take the reasonable position, however, that some areas are not appropriate to mining activity, and Cave Creek Canyon is one of those areas.

The response to our efforts was overwhelming. Regional newspaper stories about the issue brought interest from other news publications across the country, including the *New York Times*. In addition, *Science* magazine, *National Geographic*, *Defenders*—which is the publication of Defenders of Wildlife—the publication *Wildlife Conservation* of the New York Zoological Society, and many others, including a large number of birding publications, all helped to spread the word.

People responded by contacting us and offering to help. Businesses in Tucson and other regional towns donated materials, copying, and photo reproductions. We heard from many organizations, including the Federation of Western Outdoor Clubs, which represents a quarter-million members primarily in the western States. We received copies of many personal protest letters written to the Forest Service and Newmont Mining Corporation from people across the U.S. and from foreign countries, even from as far away as South Africa.

One letter to the chief of the Forest Service was from an employee of Texas Instruments Corporation, who said, "As one of the largest industrial purchasers of refined gold and silver, I am aware of mining operations . . . There is currently more than enough gold available in the world for commercial, medical, and investment requirements. I submit that the area in its present undisturbed state is more valuable to the public and future public than the potential discovery of a valuable precious metal deposit."

By far, most of the letters are from ordinary citizens, but others are from people like Edward O. Wilson of Harvard University; Karl Krombein of the Smithsonian Institute; Bert Holldobler at the Zoological Institute in Wursburg, Germany; Paul Erlich of Stanford; Tom Eisner and Oliver Hewitt of Cornell. All are renowned scientists who are aware of the area's unique values for research.

In addition, the city of Douglas, Arizona, our nearest town, passed a resolution urging passage of this bill. Our county supervisors support this legislation, as does the Arizona Sonora Desert Museum, which is a fine and respected natural history and education institution in Tucson.

In a House Concurrent Memorial passed last year and conveyed to Congress, our Arizona State Legislature has also urged passage of the Cave Creek Canyon Protection Act, and, significantly, Newmont Mining Corporation has invited this legislative means of protecting the area, and we commend the company for its sensitivity on this issue of appropriate use of public land.

As I appear here today, I speak not just for residents of the Portal area or for a small local organization, I speak for the thousands of people who would share with you these same views about the importance of protecting Cave Creek Canyon. This is evidenced in part by the fact that newspapers continue to publish articles and editorials on the status of this legislation.

An important point in considering congressional withdrawal of the area is the fact that Forest Service administrative withdrawal

may not include the mineralized areas of Newmont's current claims which flank the canyon entrance on the east and within a half mile of Portal, or the mineralized Silver Creek drainage area which immediately flanks the canyon's entrance and Portal on the west. These areas are included in this legislative proposal because they are part of the Cave Creek drainage and anyone seeing the area in question knows they are an integral part of the Cave Creek Canyon. Withdrawal of these segments of forestland does not affect their management under the existing Forest Plan, but mining in those two areas, however, would have a devastating effect on wildlife and biological research, scenic and dispersed recreation values, and an enormous detrimental impact on the Portal community.

Another consideration is that administrative withdrawal can be reversed by the Forest Service, the same agency which initially issued the permit in spite of statements by them that the land was "critical wildlife habitat, particularly for the avian species" and also that the district ranger had never seen this level of controversy.

It is clear that permanent protection can come only in the form of congressional withdrawal, and we greatly appreciate Congressman Kolbe's efforts in this regard and the support of our other Arizona congressional delegation. Permanent protection from mining ought to be afforded not just to Portal's backyard but to a small corner of the world that is treasured by a great many people unwilling to see it unnecessarily altered forever.

I thank you for this opportunity to speak on behalf of Cave Creek Canyon.

[Prepared statement of Ms. Hayes follows.]

STATEMENT OF KAREN HAYES
IN SUPPORT OF H.R. 843
THE CAVE CREEK CANYON PROTECTION ACT OF 1993
BEFORE THE HOUSE SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES
MARCH 30, 1993

Thank you, Mr. Chairman, for holding this hearing on H.R. 843, The Cave Creek Canyon Protection Act. My name is Karen Hayes and I am a resident of Portal, Arizona at the entrance to Cave Creek Canyon in the Chiricahua Mountains of southeast Arizona. Also, I am a member of the Portal Mining Action Coalition, a small local organization formed two years ago for the sole purpose of protecting Cave Creek Canyon from mining activity.

A description of Portal is appropriate to this issue. About 120 people draw mail at the Portal post office, which is one of only three non-residential buildings in our tiny town. The other two are a small but active branch of the county library and the Portal Store/Bed & Breakfast. Coming into Portal, however, you would not imagine there were even that many people living in the area. The houses are situated here and there along the creek bottom or amid the mesquite that cover much of the canyon entrance just outside the National Forest boundary. We are indeed remote . . . the nearest town is 65 miles away.

It is primarily due to this remoteness that the combination of unspoiled beauty and unparalleled biological and botanical diversity makes this an area that is acknowledged nationally and internationally as unique (I use the word in its most literal sense). As an example, Cave Creek Canyon has the greatest diversity of breeding land birds of any comparable area in the country. "Unique" is also the term used by the U.S. Forest Service in describing this part of the Coronado National Forest as the "jewel in the crown of the National Forest system."

It has long been established that Cave Creek Canyon is of great value, not just to local and regional residents, but to naturalists, hikers, photographers, and birding enthusiasts from across the United States and beyond. And it has been demonstrated that this immediate area is literally of unequalled value in the realm of biological research. All of these qualities continue to exist because the area is undeveloped, uncrowded, and unspoiled.

When word came of the possibility that an open pit gold mine could be established at the entrance to Cave Creek Canyon, we in the Portal region reacted at first with disbelief. Our inquiries to the Forest Service about what could be done to protect the area were met with resolute statements that there was absolutely nothing we could do.

We realized that by ourselves, and given our few numbers, our

ability to influence the situation was limited. We formed the Portal Mining Action Coalition based on the conviction that if the many thousands of people statewide, nationally, and even internationally who know of the area could be made aware of the situation, surely the non-mineral values of Cave Creek Canyon could be put first.

So the Coalition began a publicity and direct mail effort to inform the public. From the very beginning of our efforts we have explained that our interest is in protecting the unique qualities of this area, that we are not opposed to all mining everywhere, and that we support the concept of multiple use of public lands. We take the reasonable position, however, that some areas are not appropriate to mining activity, and Cave Creek Canyon is such an area.

The response to our efforts was overwhelming. Regional newspaper stories about the issue brought interest from other news publications across the country, including the New York Times. In addition, Science Magazine, National Geographic, Defenders (the publication of Defenders of Wildlife), Wildlife Conservation (the publication of the New York Zoological Society), and many others, including a large number of birding publications, all helped to spread the word about what was at stake here.

People responded by contacting us and offering to help. Businesses in Tucson and other regional towns donated materials, copying, and photo reproductions. We heard from many organizations, including The Federation of Western Outdoor Clubs, which represents 1/4 million members primarily in the western states. Also, major environmental organizations support these efforts to protect Cave Creek Canyon.

We received copies of many personal protest letters written to the Forest Service and Newmont Mining Corporation from people across the U.S. and from foreign countries, even from as far away as South Africa. One letter to the Chief of the Forest Service was from an employee of Texas Instruments, who said, "As one of the largest industrial purchasers of refined gold and silver, I am aware of mining operations. . . . There is currently more than enough gold available in the world for commercial, medical and investment requirements. I submit that the area in its present undisturbed state is more valuable to the public and future public than the potential discovery of a 'valuable precious metal deposit.'"

Most letters are from ordinary citizens, but others are from people like Edward O. Wilson of Harvard University, Karl Krombein of the Smithsonian Institute, Bert Holldobler at the Zoological Institute in Wursburg, Germany, Paul Ehrlich of Stanford, Tom Eisner and Oliver Hewitt of Cornell; all are renowned scientists who are aware of the area's unique values for research.

In addition, the city of Douglas, Arizona, our nearest town,

passed a resolution urging passage of this bill. Our county supervisors support this legislation, as does the Arizona Sonora Desert Museum, which is a fine and respected natural history and education institution in Tucson.

In a House Concurrent Memorial passed last year and conveyed to Congress our Arizona state legislature has also urged passage of the Cave Creek Canyon Protection Act. And, significantly, Newmont Mining Corporation has invited this legislative means of protecting the area, and we commend the company for its sensitivity on this issue of appropriate use of public land.

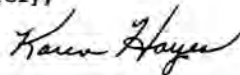
As I appear here today, I speak not just for residents of the Portal area or for a small local organization, I speak for the thousands of people who would share with you these same views about the importance of protecting Cave Creek Canyon. This is evidenced in part by the fact that newspapers continue to publish articles and editorials on the status of this legislation.

An important point in considering Congressional withdrawal of the area is the fact that Forest Service administrative withdrawal of Cave Creek Canyon may not include the mineralized areas of Newmont's current claims which flank the canyon entrance on the east and are within 1/2 mile of Portal, or the mineralized Silver Creek drainage area which immediately flanks the canyon's entrance, and Portal, on the west. These areas are included in this legislative proposal because they are part of the Cave Creek drainage, and anyone seeing the area in question knows they are an integral part of Cave Creek Canyon. Withdrawal of these segments of Forest land does not affect their management under the existing Forest Plan. Mining in those two areas, however, would have a devastating affect on wildlife and biological research, scenic and dispersed recreation values, and an enormous detrimental impact on the Portal community.

Another consideration is that administrative withdrawal can be reversed by the Forest Service, the same agency which initially issued the permit in spite of statements by them that the land was "critical wildlife habitat, particularly for the avian species," and that the District Ranger had never seen this level of controversy.

It is clear that permanent protection can come only in the form of Congressional withdrawal, and we greatly appreciate Congressman Kolbe's efforts in this regard and the support of our other Arizona Congressional delegation. Permanent protection from mining ought to be afforded not just to "Portal's backyard," but to a small corner of the world that is treasured by a great many people unwilling to see it unnecessarily altered forever. I thank you for this opportunity to speak on behalf of Cave Creek Canyon.

Sincerely,



Mr. LEHMAN. Thank you very much.

I will be brief. I want to ask you, Mr. Montrey, to clarify here the statement you make concerning the narrowness of the language. Have you compared the language here which withdraws the land from location under the mining laws in this bill with what we have in the other bill we are hearing today, the Bodie bill?

Mr. MONTREY. No, Mr. Chairman, I have not.

Mr. LEHMAN. What is the practical effect then of withdrawing it only from location and not including the land use under the operation of the general mining laws?

Mr. MONTREY. Well, what I attempted to articulate before, and I will go back through it again for you, is that, as worded—and let me look to section 2(a)—“withdrawn from location under the general mining laws”—that that, at least in our opinion, would not withdraw the area from entry or patent, and so I attempted to lay out for you a couple of—

Mr. LEHMAN. So somebody might go in and attempt to perfect the patent there even though they couldn't locate it?

Mr. MONTREY. Let me just read through a couple of scenarios for you again that I said could possibly be a consequence of our interpretation. It would prevent two things from happening. It would prevent future location of claims, but also it would prevent patenting claims for which valid existing rights had not been established prior to withdrawal date, and it would also prohibit prospecting after the withdrawal date which might lead to discovery. That is our interpretation, and it is blessed to some degree by advice from our legal counsel as well.

We are not advocating to you changing that wording, Mr. Chairman. We are just suggesting this to you as something you ought to consider, and we would be pleased to work with the subcommittee to get into more detail and flesh on that and to make sure we are helping you capture all of what we believe the intent of the bill is, which is protection across the board.

Mr. LEHMAN. Okay. Also, do you have any indication whether Newmont intends to pay its \$200 claiming fee later this year?

Mr. MONTREY. No, I cannot speak authoritatively on that; no, Mr. Chairman, I can't. If I could ask one or more of my colleagues—no, we wouldn't want to speak for them; no, sir.

Mr. LEHMAN. Dr. Sherbrooke, Ms. Hayes, is the potential for mining here the only threat to this area?

Dr. SHERBROOKE. I think there are other potential threats, but that is all that this bill addresses.

Mr. LEHMAN. I understand that.

Dr. SHERBROOKE. One actually was a Forest Service proposal to develop a National Recreation Area in three mountain ranges in Coronado National Forest, which included the Chiricahuas. We opposed that idea, and the Forest Service has dropped it. Pursuing that idea is what led to the current segregation of portions of Cave Creek Canyon and other portions of the Chiricahuas that will end on September 27, and I think that is one thing that puts some immediacy to this bill, that that segregation will be terminated at that time.

We felt that the location of large recreational facilities in Cave Creek Canyon, if that were part of the National Recreation Area

development, which was not spelled out in detail by any means by the Forest Service, would be very detrimental to Cave Creek Canyon. It is a very small canyon and could not take many additional recreational impacts than what they have at the present time.

Mr. LEHMAN. Mr. Montrey, is the Forest Service managing this particular area any differently than the other parts of the Coronado Forest?

Mr. MONTREY. I think we are probably more highly sensitive to these concerns in this area than we are in other areas of the Coronado National Forest.

Could I interject on your original question about the other bill that is being discussed today?

Mr. LEHMAN. Yes.

Mr. MONTREY. I have just taken a look at the language, and I believe, as it is articulated in that bill, it would be consistent with what I have suggested to you for your consideration on this bill.

Mr. LEHMAN. Ms. Hayes.

Ms. HAYES. I just would like to add that the National Recreation Area proposal has been dropped as an idea for that designation for recreation development, but apparently there are other concept plans still being considered for significant recreation development in the area, and we are still concerned about that as well because the same values that need protection from, say, mining activity would need some protection also from overdevelopment in the area as well.

Mr. LEHMAN. Mr. Kolbe.

Mr. KOLBE. The only comment I would make on the language, as Mr. Montrey suggested, I think it is worth looking at, and we certainly would want to do that with your subcommittee and staff.

Mr. LEHMAN. Thank you very much.

Mrs. Vucanovich.

STATEMENT OF HON. BARBARA F. VUCANOVICH

Mrs. VUCANOVICH. Thank you, Mr. Chairman.

I would ask unanimous consent to include my opening statement as part of the record.

Mr. LEHMAN. Without objection.

Mrs. VUCANOVICH. Thank you.

[Prepared statement of Mrs. Vucanovich follows:]

**Opening Statement
of
Congressman Barbara Vucanovich
on
H.R. 843 - The Cave Creek Canyon Protection Act of 1993
&
H.R. 240 - The Bodie Protection Act of 1992 (sic)**

**Committee on Natural Resources
Subcommittee on Energy & Mineral Resources**

March 30, 1992

Mr. Chairman, I will be brief. I have a sense of deja vu about the subject of today's hearing. I supported Mr. Kolbe's Cave Creek bill last year, albeit I had some concerns about an amendment of Mr. Rahall's making which I felt, on principle, infringed upon valid existing rights. Perhaps that is why the other body backed away from the House-passed bill.

Mr. Kolbe's bill this year is again a simple bill which I intend to support. I am satisfied the unique bio-diversity of the canyon, as measured by a field station to a "world-class" museum there, warrants a withdrawal of the area. It is my

understanding the mining company which proposed drilling to the Forest Service has dropped its claims, but others could follow if the land is restored to entry, so I support Mr. Kolbe's effort to protect this limited area.

On the other hand, the Bodie bill of yours Mr. Chairman, gives me some pause. I am not quite convinced that possible mining efforts east of the Bodie ghost town would destroy the visitor's experience to a state park founded because of mining. However, I intend to look to Mr. Doolittle, who now represents the area, for some guidance on my position on H.R. 240. I must reiterate, however, that on principle I am concerned about using Mining-in-the-Parks Act regulations on BLM lands. My understanding is the BLM's recent land use planning document can and will do the job of protecting Bodie ghost town.

Lastly, Mr. Chairman, I commend you for holding this hearing for the reason that it is my strong belief these bills are the proper way to go about setting aside parts of the public domain. I want this Committee to retain the jurisdiction to "Say No" to mining and other activities in the future. I don't wish to hand over this authority to the local land manager to exercise at his or her discretion, especially as may be prompted by citizen suits. The Bodie situation illustrates the tools already available to the BLM to put restrictions on mining activities under current law. If such tools don't do the job, then we can withdraw the area legislatively.

I, too, welcome today's witnesses. For the non-government folks, I appreciate your traveling back to Washington for "Take 2" on these bills. Thank you, Mr. Chairman.

Mrs. VUCANOVICH. I just wanted to comment that Newmont has reported to my staff that they did not do reassessment work for the year ending September 1, 1992, and they didn't pay the FLPMA filing fee due last December 30. So I think there is no question that Newmont's claims are dead and gone.

Mr. Montrey, does the Forest Service have authorities parallel to those of the BLM under FLPMA to require greater restrictions on mineral activities in certain areas?

Mr. MONTREY. Could I request assistance on that question?

Mrs. VUCANOVICH. Certainly.

Mr. MONTREY. No, we don't have any extra authority.

Mrs. VUCANOVICH. I think we talked about this bill last year, and I certainly support it on principle. I think we felt that it did infringe upon valid existing rights. In any event, I think this has changed, and I think the bill is good, and we are certainly supportive.

I have no further questions and thank the panel very much.

Mr. LEHMAN. Mr. Kolbe.

Mr. KOLBE. Thank you, Mr. Chairman, very much, for letting me join you.

Mr. LEHMAN. Thank you, and I thank the panel, and we look forward to marking this bill up soon.

I will call the second panel forward. That will be Mr. Culp from the BLM, Donna Pozzi of the Save Bodie Committee, and Joan Reiss of the Wilderness Society, and we will begin with Mr. Culp.

Again, we will put your full statements in the record and ask you to summarize. Mr. Culp, you may proceed.

PANEL CONSISTING OF CARSON (PETE) CULP, ACTING DIRECTOR, BUREAU OF LAND MANAGEMENT; DONNA POZZI, CHAIR, SAVE BODIE COMMITTEE, CALIFORNIA STATE PARK RANGERS ASSOCIATION, SACRAMENTO, CA; AND JOAN REISS, REGIONAL DIRECTOR, CALIFORNIA/NEVADA REGIONAL OFFICE, THE WILDERNESS SOCIETY, SAN FRANCISCO, CA

STATEMENT OF CARSON (PETE) CULP

Mr. CULP. Thank you, Mr. Chairman. I appreciate the opportunity to appear before the subcommittee today to present the administration's position on H.R. 240, the Bodie bill. As you said, you have my prepared statement, and I will just briefly summarize some of the most important points.

First, the general intent of the bill to preserve Bodie as an historic ghost town has recently been furthered by our completion of the Bishop Resource Area Management Plan. Under the plan, the area designated under H.R. 240 is now designated an area of critical environmental concern, or as we say, an ACEC. One result of this designation is that an approved plan of operation for any mining activity on existing claims will now be required and a visual resource management standard—VRMS—is now applicable, which is another protection for the area.

Second, in accordance with the resource management plan and the ACEC designation, we are initiating the process to petition the

Secretary to withdraw the area from new mineral entries. Again, we are talking about all of the Federal lands in the Bodie Bowl, an area that is synonymous with the area the bill seeks to protect.

We support the intent of H.R. 240 and would like to work with the committee towards its enactment with some technical changes. Our technical concerns include the requirement in the bill that the area be managed in a manner that is in accord with the Mining in the Parks Act. Primarily because of administrative differences and mission differences between the National Park Service and BLM, we believe it would be more appropriate for the bill to specify a specific standard for review of potential mining activity.

Another change we would recommend concerns the requirement for BLM to promulgate regulations for Bodie within 90 days of enactment. We believe this period should be extended if possible to coincide with our ongoing development of a management plan specifically for the designated ACEC and to provide more time for public involvement.

Finally, the three-year study that the bill proposes be conducted by the National Park Service we believe should be assigned at the discretion of the Secretary, and we believe the content could be clarified in the bill.

In conclusion, I will just say that we stand ready to work with you and your staff toward enactment of H.R. 240 and addressing some of these technical concerns that I have mentioned. That concludes my statement.

[Prepared statement of Mr. Culp follows:]

MAR 30 1993

STATEMENT OF CARSON (PETE) CULP, ACTING DIRECTOR, BUREAU OF LAND MANAGEMENT, BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON NATURAL RESOURCES, UNITED STATES HOUSE OF REPRESENTATIVES, ON H.R. 240, A BILL "TO PROVIDE FOR THE PROTECTION OF THE BODIE BOWL AREA OF THE STATE OF CALIFORNIA, AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear here today to present the Administration's position on H.R. 240.

The bill would declare that, subject to valid existing rights, Federal lands and interests in lands within the Bodie Bowl (Bowl) would not be open to mineral activity. The Secretary of the Interior (Secretary) would be required to undertake an expedited 2-year program to determine the validity of all unpatented mining claims located within the Bowl. Mining and millsite claims in the area could not be patented after January 11, 1993, if a patent application had not been filed and the claim holder had not met the patenting requirements of law at that time.

Mineral activities on unpatented mining claims within the Bowl would be subject to regulations prescribed by the Secretary, in consultation with the Governor of the State of California. Reclamation would be required for mining exploration activity within the Bowl conducted on and after September 1, 1988. The holder of any unpatented mining claim or millsite within the Bowl would only be required to file a notice of intention to hold a mining claim in lieu of filing an affidavit of assessment work.

We support the concept of H.R. 240 and encourage Congress to go forward with legislation to protect this important resource.

Bodie was a historic gold mining town in the eastern Sierra Nevada Mountains of California that was designated as a National Historic Landmark by the National Park Service (NPS) in 1961. The NPS has proposed formal boundaries for the landmark that include the ghost town, the elements in the surrounding visual landscape essential to maintaining its historic character, and the remaining ruins, structures, and artifacts that define its mining history. The NPS has circulated a draft boundary study for comments by interested parties; comments will be incorporated into a final boundary recommendation for the district.

The landmark designation triggers a comment and reporting requirement under the National Historic Preservation Act of 1966 and the Mining in the Parks Act of 1976. Under the terms of the 1966 Act, as amended, the Advisory Council on Historic Preservation must be given an opportunity to comment on the effect of federally funded, assisted or licensed undertakings on all historic properties, including landmarks. Under Section 9 of the 1976 Act, the Secretary of the Interior must report to the Advisory Council on any surface mining activity that might irreparably damage a

National Historic Landmark and to request the Council's advice on measures to mitigate or abate that damage.

Since our last appearance before the Congress in May 1992 to discuss H.R. 4370, we have revisited the issues involving Bodie. On March 25, 1993, the BLM California State Director signed the Record of Decision for the Final Resource Management Plan (RMP) for the Bishop Resource Area, California, which includes the Bodie Bowl. The RMP included a recommendation for a 6,000-acre withdrawal, which is the same acreage proposed for the withdrawal in H.R. 240. This recommendation was made after considering public comments on the 1,500-acre withdrawal recommended in the draft RMP, and the strong support for the larger withdrawal.

With the signing of the Record of Decision, the Bodie Bowl area is now an Area of Critical Environmental Concern (ACEC), and we have started the process to petition the Secretary to withdraw the area from mineral entry. H.R. 240 is consistent with our RMP's withdrawal recommendations but goes beyond it in several particulars. We support this broader focus but do have a few technical suggestions for amendment and would welcome the opportunity to work with you to resolve them.

Let me briefly mention a few specific provisions in H.R. 240 that may cause problems in implementation.

First, section 5 of H.R. 240 does not set a clear standard for the Secretary to use in formulating regulations under this Act. The bill provides for mineral activities on Federal lands to be regulated by BLM in a manner which is in accordance with regulations promulgated by the National Park Service (NPS) under the Mining in the Parks Act. The missions of both agencies are fundamentally different, and they have different operating procedures. For instance, BLM is a multiple-use manager whose decisions are appealable to the Interior Board of Land Appeals. The NPS is a single-use manager whose decisions are final agency actions that are appealable in the courts.

To eliminate confusion, we believe the bill should not reference the Mining in the Parks Act regulations but should specify in the bill a distinct standard for review of mining activities on Federal lands. We would be happy to discuss possible language for standards. This would enable the BLM to manage the area under its current organizational framework. We also suggest that the bill give the Secretary the flexibility to adopt existing California State mining and reclamation laws as standards for review of mining activities subject to regulation under the bill in lieu of the bill's standards, where those State laws are more stringent than the standards articulated in H.R. 240.

Section 5(d) of this bill requires the BLM to promulgate regulations for the Bodie Bowl within 90 days after the date of enactment. The BLM, with input and assistance from Mono County and the public, is in the process of completing an activity plan for the Bodie Bowl area and an attendant environmental report. This activity plan will clearly specify the values and sites that warrant protection and will outline the necessary protective measures to be taken. We suggest that it would be better to wait until completion of the activity plan and the companion environmental report so that regulations specific to the area and to the resources could be developed. We, therefore, suggest an extension of the period for rulemaking allowed under the bill.

Moreover, to meet the 90-day deadline, emergency regulations without full opportunity for public notice and comment, in all likelihood, would have to be issued.

Finally, H.R. 240 requires the NPS to conduct a 3-year study on possible actions to be undertaken to preserve the historic, recreational and ghost town characteristics of lands and structures within the Bowl. We suggest that the bill not specify the Interior agency but leave that decision up to the Secretary. That determination would be easier if the purpose and content of the study is clarified in the bill.

We recognize that this proposal has been around for several years, and we want to be helpful in your efforts to get it enacted. We stand ready to work with you and your staffs as soon as possible on these technical amendments that will make implementation of the bill easier and more efficient.

This concludes my prepared statement. I will be pleased to answer questions.

Mr. LEHMAN. Thank you very much.
Ms. Pozzi.

STATEMENT OF DONNA POZZI

Ms. POZZI. Mr. Chairman and members of the subcommittee, my name is Donna Pozzi. I am very pleased to be here today to support the Bodie Protection Act of 1993 on behalf of the California State Park Rangers Association and the people who have joined us from across the country as part of the Save Bodie Committee.

The State Park Rangers Association represents the front-line stewards of the cultural and natural resources of California's State Park System. We feel professionally capable of speaking on issues that threaten the integrity of the State Park System.

It is important to note that Bodie is preserved today as a ghost town, not a living mining town. Bodie is an outdoor museum, and visitors to Bodie have an opportunity to experience an eerie sense of quiet, remoteness, and solitude, qualities that are an integral part of a true ghost town. The setting of Bodie, the ghost town, is integral to the experience that the visitor enjoys. The setting is isolated in the area called the Bodie Bowl, and we feel that preservation of this scenic and natural landscape setting is essential to preservation of the cultural landscape. We now believe that the historic integrity of Bodie would be greatly diminished if incompatible modern activities were allowed to intrude in the Bodie Bowl.

Now I know it has been argued that the juxtaposition of a modern gold mine and the historic one would allow side-by-side comparison and that that would lead to enhanced enjoyment and understanding of Bodie and of mining, but as Park professionals we very strongly disagree with this. We feel that visitors have many other opportunities. On their way over to Bodie, they can come through Tuolumne County, go to Jamestown, and see a modern mine in operation. Should they be coming from Nevada, just over the board, there are several mines very nearby. So a mine doesn't need to be developed at Bodie for the Park visitor to have an opportunity to learn modern mining and then visit the historic mine.

There is only one Bodie. The ghost town experience there is unique, and it should not be jeopardized in order to try to have this historic and modern-day juxtaposition that was suggested by Congressman Doolittle.

Another point to raise is that nobody foresaw back in the 1960's when the Bodie State Historic Park and National Historic Landmark District were created that the silence and setting of Bodie could become so vulnerable, and we now know that additional lands need to be set aside, and we are hoping to rectify that deficiency. There is support for this from the National Park Service. They have been promoting an expanded National Historic Landmark boundary. Additionally, as we heard, the Bureau of Land Management is now supporting a mineral withdrawal for the full nearly 6,000 acres of the Bodie Bowl. So the Bodie Protection Act would further these goals while respecting the rights of any existing valid claims.

If mining were to proceed on these claims, it would be done in accordance with special regulations designed to ensure that Bodie's resources and values would suffer no adverse effects, and we do

feel very comfortable with the model of the Mining and National Parks Act for those regulations that would be especially developed. It is important to note that private properties would not be regulated by H.R. 240.

I want to mention that the reason the Rangers Association has become so concerned about the need to protect Bodie is the activities of a Canadian mining company, Galactic Resources, Limited, which began its exploratory work at Bodie in 1989, and our concerns then and now about the possibility of a modern mine include traffic, fire, vandalism, noise, blasting, dust, toxic chemicals, permanent landscape changes, removal of historic features, wildlife habitat loss, water quality and quantity problems, visual intrusions, as well as decreased revenue from the tourism which contributes so much to the Mono County economy.

There is also the potential for total disaster, and we can look right to Galactic's other project in Summitville, Colorado, for an example of everything that could go wrong at a large scale, open-pit, heap-leach gold mine, particularly one located in a very remote, high elevation area. As you probably heard, they are now estimating that it will cost upwards of \$60 million to clean up Summitville, and that is money that Galactic doesn't have, since they have declared bankruptcy. We feel that the risks of damage to Bodie's fragile resources are far too serious to allow something like that to happen there.

I want to also mention that last year we testified in favor of H.R. 4370, which was the Bodie Protection Act of 1992, and we were in the minority, but we have now been joined by the Mono County Board of Supervisors who voted to support H.R. 240. The Governor of the State of California, Pete Wilson, has recently demonstrated his concern for Bodie's protection by writing a letter to Secretary of the Interior Bruce Babbitt on February 25 in which he stated, "The Federal Government should execute a proclamation directing the public land located around the Bodie State Historic Park be withdrawn from future mineral entry." So we are very encouraged by all of the support for our position and feel that the Federal Government would be exercising its rights and obligations as a responsible manager for our public land if this withdrawal in H.R. 240 were to go forward.

It is also important that the validity study would be expedited and provide the Bureau of Land Management and the State of California with the tools that they need to protect Bodie.

Thank you.

[Prepared statement of Ms. Pozzi follows:]



california state park rangers association

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Testimony of
 Donna Pozzi
 Chair, Save Bodie Committee
 California State Park Rangers Association
 before the
 Committee on Natural Resources
 Subcommittee on Energy and Mineral Resources
 United States House of Representatives
 on the
 Bodie Protection Act of 1993
 March 30, 1993

Mr. Chairman and members of the subcommittee, my name is Donna Pozzi. I am pleased to be here in support of the Bodie Protection Act of 1993, as a representative of the nearly 800 members of the California State Park Rangers Association and 3,000 people from all over the country who have joined our Save Bodie Committee. The Rangers Association is a 29-year old organization of professional employees of the California Department of Parks and Recreation who are the frontline stewards of the State Park System's natural and cultural resources. We also work to protect the park visitors and help them enjoy and learn about their heritage. We are concerned about the future of Bodie State Historic Park, due to the threat posed by the possible development of a modern gold mining operation adjacent to the ghost town.

Today I will be discussing: 1) Why Bodie is special; 2) What the threat is; and 3) Why this bill is needed.

Bodie is a unique, irreplaceable piece of our national heritage. It is without a doubt the most authentic, best preserved ghost town in the American West. From Bodie, we can gain an understanding of our frontier history and the qualities of American national character that shaped our great country. Bodie teaches us about the spirit of adventure, about American ingenuity, and about cultural diversity.

Bodie is preserved today as a ghost town, not a living mining town. In Bodie, the visitor can step back to an earlier time, examining the more than 100 historic buildings in their original setting, with their furnishings as they were left by the last residents. Visitors to this outdoor museum experience an eerie sense of quiet, remoteness, and solitude — the

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qualities that are an integral part of a true ghost town. The setting of the town and old mining district is isolated in an area called the Bodie Bowl. Preservation of this scenic and natural landscape setting is essential to the preservation of the cultural landscape. We believe the historic integrity of Bodie would be greatly diminished if incompatible modern activities were allowed to intrude in the Bodie Bowl.

It has been argued that the juxtaposition of a modern gold mine and the historic one would allow for side-by-side comparison, leading to enhanced enjoyment and understanding of Bodie. As park professionals, we strongly disagree. The visitor has many other opportunities across the West to see modern gold mines. The carefully preserved ghost town experience at Bodie cannot be found elsewhere and must not be jeopardized. HR 240 ensures that extraordinary care would be taken to protect the historic, cultural, recreational, and natural values of the Bodie Bowl area.

Unfortunately nobody foresaw back in the early 1960s, when Bodie State Historic Park and the Bodie National Historic Landmark District were created, that the silence and setting of Bodie would someday become so vulnerable. Additional lands should have been set aside and we are hoping to rectify this deficiency. There is support for this need in the recognition by the National Park Service that an expanded National Historic Landmark boundary is warranted. Additionally, we understand that the Bureau of Land Management now recommends a mineral withdrawal for 6,000 acres of the Bodie Bowl. The Bodie Protection Act would further these goals while respecting the rights of any existing, valid claims. If mining were to proceed on these claims, it would be done in accordance with special regulations designed to ensure that Bodie's resources and values would suffer no adverse effects. Private properties would not be regulated by HR 240.

The Rangers Association is looking for a guarantee that we can continue to offer the same ghost town experience to future generations of park visitors that people have enjoyed for 30 years. Bodie's trademark is that it's been frozen in time, preserved in a state of arrested decay. People expect to find Bodie the same each time they visit. This is a very important function of parks in today's rapidly changing society.

In 1989, the exploratory mining activities of Galactic Resources, Ltd., a Canadian company, sharply disturbed the ambience of the old ghost town. While the noise and commotion adjacent to the park were an irritating disruption, we began to study modern gold mining technology and learned that a mine itself would be far more destructive. Our concerns included: traffic, fire, vandalism, noise, blasting, dust, toxic chemicals, permanent landscape changes, removal of historic features, wildlife habitat loss, water quality and quantity problems, visual intrusions, decreased revenue from tourism. And, potential for total disaster. We need look no further than Galactic's mine at Summitville, Colorado for an example of everything that can go wrong at a large-scale, open-pit heap-leach gold mine in a remote, high elevation area. It is now estimated that this catastrophe will cost \$60 million to clean up, money the bankrupt company doesn't have. The risks of damage to Bodie's fragile resources are far too serious to dismiss. Protecting Bodie from the elements is a daunting task. We must not let human actions accelerate this natural process.

The Bodie Protection Act is critically needed now because the laws and systems that are in place are insufficient to protect Bodie. Without this legislation, the Bureau of Land Management and the State of California will not have the tools they need to provide for the long-term preservation of Bodie. Although no specific mining plan of operations has been submitted, HR 240 is not premature. A permit application for additional exploratory work by Galactic's subsidiary at Bodie is still pending. We are alarmed that a company with such a bad performance record might be allowed to move forward with the ambitious exploration program outlined in the recently released Draft Environmental Impact Report. If bankruptcy prevents them from implementing their plans for Bodie and their claims are allowed to lapse, we do not want to see another mining company file new claims. Speedy passage of HR 240 will prevent that.

When we testified in favor of HR 4370, the Bodie Protection Act of 1992, we were in the minority. We have now been joined by the Mono County Board of Supervisors who have voted to support HR 240. The Governor of the State of California, Pete Wilson, has recently demonstrated his concern for Bodie's protection by requesting, in a February 25th letter to Secretary of the Interior Bruce Babbitt, "that the federal government execute a proclamation directing the public land located around the Bodie State Historic Park be withdrawn from future mineral entry." With all of this support, there is no reason not to act swiftly to pass HR 240.

The federal government would be exercising its rights and obligation as a responsible manager of our publicly-owned lands, by withdrawing property it owns in the Bodie Bowl from future mining claims. Determining the validity of existing claims would resolve whether or not there is potential for mining to proceed. We ask that you take action to protect Bodie **now**. Please support the Bodie Protection Act of 1993 because it affirms our country's commitment to preserving this unique aspect of America's heritage.

Mr. LEHMAN. Thank you.
Ms. Reiss.

STATEMENT OF JOAN REISS

Ms. REISS. Chairman Lehman and members of the subcommittee, I am Joan Reiss of the Wilderness Society, appearing today on behalf of H.R. 240.

Actually, Bodie has a very special place in my heart. Almost 17 years ago, my family went to visit Bodie State Historical Park, and from that day on I was literally haunted by the images of this town where people seemed to have left yesterday. Peering inside the windows, I could see place settings at the table, books on school desks with writing on the blackboard, antiquated gas pumps, kerosene lamps, and dry goods in the store. We had traveled 13 miles of dirt road to reach this relic of a bygone era. The dusty trip was worth every moment of discomfort as we viewed this town maintained in an incredible state of arrested decay.

The setting for the historic town is deep within an untrammelled wild area that is referred to today as the Bodie Bowl. I have returned more recently, and although most of the road is paved, the emotional impact of the place remains. Surely this is the most unusual ghost town in the entire West. It is a small wonder that today more than 200,000 people each year visit Bodie, which makes this a unique tourist attraction, bringing major economic benefits to the regional economy.

Of course, in 1976 I was quite unaware of the conflicted land jurisdictions that existed in Bodie. Here was the Bodie State Historical Park adjacent to private land and surrounded by Federal public land managed by the BLM. Although there is only 500 acres of private land, it is here that the major threats had occurred in the open pit mine by Galactic Resources. Although Bodie was a nineteenth century mining mecca, the technology of that era would be a far cry from a mine in 1993, and, as we have heard, considering their financial difficulties, Galactic Resources of Canada will offer to sell their Bodie properties, and it is our hope that a 1994 California Bond Act will be able to fund the purchase of those properties.

In 1961 when Bodie was declared a National Historic Landmark by the National Park Service, there were years when boundaries were not declared simultaneously with the designation of Historic Landmark. So in 1991—and it took that long—the National Park Service created official boundaries for the Bodie Bowl which are almost coincidental with the BLM area of critical environmental concern.

The support this time is finally fairly solid for what we have been all wanting for a number of years: Governor Wilson's letter to Secretary Babbitt; the vote of the Mono County Board of Supervisors—which, by the way, was 4 to 1, showing incredible support in the local area. In 1991, going back a little further, the California legislature sent a resolution to Congress urging then-Secretary Lujan to withdraw the critical lands around the Bodie Bowl.

Testimony has also been submitted in writing from the Mono County Board of Supervisors as well as the National Trust for Historic Preservation, and, in addition, the bill is also supported by

the Natural Resources Defense Council, Sierra Club, Eastern Sierra Citizens for Protection of Bodie, and the California Association of Museums.

Recently, both California Senators Boxer and Feinstein, who support H.R. 240, also introduced a Senate version, Senate Bill 492. And, Mr. Chairman, a very special thanks to you because I know of your deep concern for this area; this is not just something that is in the district, but it is something that you care about very deeply, and we have appreciated your continuing efforts.

Thank you.

[Prepared statement of Ms. Reiss follows:]



THE WILDERNESS SOCIETY

CALIFORNIA/NEVADA REGIONAL OFFICE

STATEMENT BEFORE THE ENERGY AND MINERAL RESOURCES SUBCOMMITTEE OF THE HOUSE NATURAL RESOURCES COMMITTEE REGARDING H.R. 240, THE BODIE PROTECTION ACT.

MARCH 30, 1993

Chairman Lehman and members of the subcommittee, I am Joan Reiss, Regional Director for the Wilderness Society in California/Nevada speaking on behalf of the 300,000 members of The Wilderness Society in support of H.R. 240, the Bodie Protection Act.

Almost 17 years ago, my family went to visit Bodie State Historical Park. From that day on I was haunted by the images of the town where people seemed to have left yesterday. Peering inside the windows I could see place settings at the table, books on school desks with writing on the blackboard, antiquated gas pumps, kerosene lanterns and dry goods in the stores. We had traveled 13 miles of dirt road to reach this relic of a bygone era. The dusty trip was worth every moment of discomfort as we viewed this town maintained in a state of arrested decay. The setting for the historic town is deep within an untrammelled wild area that is often referred to as the Bodie Bowl. I have returned more recently and although most of the road is paved, the emotional impact of the place remains. Surely this is the most unusual ghost town in the entire west. It is small wonder that today more than 200,000 people each year visit Bodie which makes this a unique tourist attraction that brings major economic benefit to the regional economy.

Of course in 1976 I was unaware of the conflicted land jurisdictions that existed in Bodie. Here was the Bodie State Historical Park adjacent to private land and surrounded by federal public land managed by the Bureau of Land Management (BLM). Although there is only 500 acres of private land, it is here that there are major threats of an open pit gold mine by a Canadian company, Galactic Resources Ltd. Although Bodie was a 19th century mining mecca, the technology of that era is a far cry from an open pit mine in 1993. Faced with financial difficulties, Galactic Resources of Canada will offer

to sell their Bodie properties. It is our hope that a 1994 California Bond Act will be able to fund the purchase of the Galactic properties.

In 1961, Bodie was declared a National Historic Landmark by the National Park Service. However, in those years, boundaries were not declared simultaneously with the designation. In 1991, NPS created official boundaries for the Bodie Bowl which are almost coincidental with the BLM Area of Critical Environmental Concern.

The support for H.R. 240 is solid:

- ▶ The BLM recommends in the final Bishop Resource Management Plan withdrawal of 6,000 acres from mineral entry.
- ▶ Governor Wilson has written to Secretary Babbitt requesting that the BLM be directed to withdraw the public land around the Bodie Bowl (ACEC) from future mineral entry.
- ▶ On March 18th the Mono County Board of Supervisors voted 4-1 in favor of the Bodie Protection Act. A letter from Supervisor Andrea Lawrence has been submitted.
- ▶ In 1991 the California Legislature sent a resolution to Congress urging then Secretary Lujan to withdraw the critical lands around the Bodie Bowl.
- ▶ Testimony has been submitted from the Mono County Board of Supervisors as well as the National Trust for Historic Preservation. In addition this bill is also supported by the Natural Resources Defense Council, Sierra Club, Eastern Sierra Citizens for Protection of Bodie and the California Association of Museums.
- ▶ For the first time both California Senators Boxer and Feinstein support H.R. 240 as indicated by their joint authorship of the Senate version, S. 492.

We urge the members of the committee to join this distinguished list of supporters and approve H.R. 240 which will protect this unique resource in the eastern side of California's Sierra Nevada.

Mr. LEHMAN. Thank you very much, and I want to thank the panel for excellent testimony.

Let me ask Mr. Culp of the BLM a couple of questions.

The BLM has designated this an Area of Critical Environmental Concern and has recommended that 6,000 acres there be withdrawn from mining. Some have argued that that is sufficient protection. Could you respond to that?

Mr. CULP. Mr. Chairman, that is, as I understand it, the entire Bodie Bowl, and as designated in our management plan we feel that that is an adequate area of protection.

Mr. LEHMAN. Ms. Reiss, in your statement, you said that you hoped that the 1994 Bond Act would help us fund acquisition there at Bodie, and I think there was an article recently in the *Sacramento Bee* that the Nature Conservancy might step in. Is that realistic? Are there ongoing discussions?

Ms. REISS. The discussions are ongoing. In California, as you well know, we are all hoping that there might be some reversal in some of our recessionary times so that a Bond Act would really be something that we could put on the ballot with some assurance that the public is open to consideration as opposed to in a negative mode.

We are also looking at other sources for potential purchase, and nothing is firm yet, but we would be certainly looking at something like potentially the Land and Water Conservation Fund as another source. We would have to wait another year on that, but we would be considering that, especially if the Bond Act didn't go through.

Mr. LEHMAN. Mr. Culp, do you have any indication whether or not Galactic intends to pay its \$200 fee on August 30 and keep their valid claim there?

Mr. CULP. No, we don't, Mr. Chairman.

Mr. LEHMAN. Could you specify as to why you object to using the mining and parks regulation as a guide to setting out the management scheme there? You mentioned it, but you didn't really get into it.

Mr. CULP. There are a couple of differences. One difference is in the purposes of the Mining in the Parks Act and our regulations. In the case of the Mining in the Parks Act, the purpose of any mining activity would be to be consistent with the purposes for which the Park unit was established; whereas the requirement under the BLM regulations is more general, to prevent unnecessary and undue degradation. There are also administrative differences, such as appeals. In the case of our procedures, there are administrative appeals to administrative law judges; in the case of appeals of Park Service actions, they have to go to a Federal Court. So there are those kinds of differences.

In a practical sense, as it will impact Bodie, we don't believe that there will be any on-the-ground difference between management under our regulations. Now that that Area of Critical Environmental Concern has been established, the Visual Resource Management Standards apply, and it would be simpler administratively if the BLM regulations applied rather than the Park Service regulations.

Mr. LEHMAN. For the record, I have the letter from Governor Wilson endorsing withdrawal, and I will place that in the record,

without objection. Also, I have a letter from Senator McCorquodale, the chairman of the State Senate Natural Resources Committee, supporting the legislation, and a resolution from the Mono County Board of Supervisors endorsing the legislation. Without objection, we will place them in the record as well.

[The documents follow:]



GOVERNOR'S OFFICE

February 25, 1993

The Honorable Bruce Babbitt
 Secretary
 United States Department of the Interior
 1849 C Street, N.W.
 Washington, D.C. 20240

Dear Mr. Secretary:

As a former Governor of Arizona, you are aware of the mining industry's importance to western States. Anticipation of prosperous mining operations drove many settlers west. Today, one of the historical themes interpreted by our State Park System is the role of mining in California's development.

California's Bodie State Historic Park, one of our most frequently visited state parks, evokes this historical theme. Bodie reflects the essence of the 19th century mining town, complete with dirt roads, creaking wooden storefronts, and a howling wind blowing across a desolate portion of the Sierra Nevada.

Recent events, discussions and proposed exploratory work have raised concerns about the impact modern mining would have on this historic setting. While the State of California supports the responsible extraction of mineral resources, we also recognize that contemporary mining techniques can be intrusive. We must balance these historic and mineral resource management needs.

Many alternatives have been considered in recent years to protect the public lands which surround Bodie State Historic Park. In order to protect the unique values at Bodie, I respectfully request that the federal government execute a proclamation directing the public land located around the Bodie State Historic Park be withdrawn from future mineral entry. The withdrawn area should encompass the Bodie Bowl Area of Critical Environmental Concern, as outlined by the Bureau of Land Management. This mineral withdrawal will provide for long-term protection for Bodie's resources and will ease the burden placed on federal and state land managers to monitor new claims around the Park.

The Honorable Bruce Babbitt
February 25, 1993
Page Two

I want to make clear that this request is not meant to extinguish existing property rights in the area. Before a specific modern mining proposal on private lands is found — detrimental to the Bodie experience, it must be evaluated. If Bodie's values cannot be protected, mining must not occur. However, past experience has proven that California's strict environmental and surface mining laws can in some instances allow for extraction while protecting environmental quality.

Withdrawal of the Bodie Bowl from future mineral entry is warranted and timely. This action would protect public values and provide long-term stability for Bodie State Historic Park. Thank you very much for your time and consideration in this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pete Wilson", with a stylized, cursive script.

PETE WILSON

LEGISLATIVE
CLERK
DARYN HART
FOR CHAIR
MARIAN BERGESON
ED DAVIS
PATRICK KOPPELSON
TIM LESUE
MILTON MARRIS
HEATH MELLO
DON ROGERS
HERSCHEL ROSENTHAL
ART TORRES

LEGISLATIVE
CLERK
PETER SEGO
MARY SHALL ENGELSEN
MAUREN WITTE
COMMITTEE SECRETARY
SHIRLEY SMARGE
ROOM 3001
STATE CAPITOL
SACRAMENTO 95834
(916) 445-5481

California Legislature

Senate Committee
on
Natural Resources and Wildlife

January 12, 1993

DAN MCCORQUODALE
CHAIR

The Honorable Richard Lehman
Member of Congress, 19th District
1319 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Lehman:

The over one hundred remaining structures within Bodie State Historic Park represent part of the largest and most perfectly preserved authentic western ghost town in the United States. The 220,000 people who visited this year and the visitors of future generations expect to experience unaltered the town that was characterized during its heyday as "a sea of sin, lashed by the tempests of lust and passion."

In 1988 a Canadian gold mining company began exploration of this historic district. The resulting public concern, both in California and across our nation, inspired me to introduce the accompanying Joint Resolution to the California Legislature. Passed in August 1990, SJR 60 describes the ghost town qualities and national importance of Bodie and called for the withdrawal of federal public land surrounding the Park if it were threatened. I felt then as I do now that the activities associated with modern day mining threaten the unique environment of Bodie.

Recently, the National Park Service in its annual report to Congress on damaged and threatened National Historic Landmarks listed Bodie as a Priority One threatened landmark citing "the cumulative damage from exploration activities" and predicting that "renewed mining ... would also destroy a number of historic mining-related resources on and around Bodie Bluff and damage the integrity of the district's historic landscape qualities."

The Bodie Protection Act of 1992, introduced by Congressman Lehman last March, was designed to carry out the intent of my resolution but stalled in the Senate during the closing days of Congress. It has now been reintroduced as HR 240. As the 103rd Congress has convened, I again bring the renewed efforts to protect Bodie and its environs by swift passage of HR 240.

-2-

Bodie is the last true ghost town in the west. If ever there was an irreplaceable part of California's and our nation's heritage deserving your interest and protection, Bodie is it.

Cordially,



DAN MCGORQUODALE
Chair

DM/MH:ss

Enclosure

c c: Douglas Wheeler, Resources Agency Secretary
Donald Murphy, Director, Dept. of Parks and Recreation



Nancy Wells
Clerk of the Board
(818) 938-5216
FAX: (818) 932-7145

BOARD OF SUPERVISORS COUNTY OF MONO

P.O. Box 715 • Bridgeport, California 93617

MEMBERS OF THE BOARD

Timothy P. Alpers
Michael T. Jarvis
Andrea Lawrence
Daniel A. Paraniok
William M. Reid

March 18, 1993

The Honorable John T. Doolittle
United States House of Representatives
1524 Longworth Building
Washington, DC 20515

Dear Mr. Doolittle:

On March 18, 1993, the Mono County Board of Supervisors voted to support H.R. 240, the Bodie Protection Act of 1993.

The legislation to protect Bodie has been under serious consideration by this Board for the past few years. It has been a very controversial subject. We have received communications from all over the country and from many parts of the world encouraging the Board to protect Bodie. The Board came to the conclusion that the only way to ensure the preservation of Bodie was to withdraw the lands from mineral entry as proposed by the Bodie Protection Act of 1993.

As our representative, we would appreciate your consideration and support of H. R. 240.

Thank you.

Sincerely,


ANDREA LAWRENCE
Chair, Board of Supervisors
County of Mono

Cc: Senator Patrick Johnston
Assemblyman David Knowles
Congressman Richard H. Lehman
Senator Tim Leslie
Congressman George Miller

Mr. LEHMAN. Mrs. Vucanovich.

Mrs. VUCANOVICH. Thank you, Mr. Chairman.

Mr. Culp, you did talk about the BLM signing off on a land use plan recommending withdrawal of 6,000 acres as an Area of Critical Environmental Concern. Wouldn't such a large withdrawal require affirmative congressional action under Section 204 of FLPMA because it exceeds 5,000 acres?

Mr. CULP. Yes.

Mrs. VUCANOVICH. In other words, can Secretary Babbitt do this administratively?

Mr. CULP. No. You are correct; he has a requirement to notify Congress for over 5,000 acres.

Mrs. VUCANOVICH. I am happy to see in your testimony that BLM supports referencing existing State laws as a standard for permitting and reclamation requirements. This echoes what I have been saying in the debates on mining law reform efforts. But isn't it true that the California Surface Mining and Reclamation Act already applies to miners operating in the Bodie area, and doesn't this law give the Mono County Board of Supervisors the lead role in reviewing proposed mining plans?

Mr. CULP. Yes, it does under agreements that we have with both the State and the county, and as I recall, the standard is any mining activity that would disturb more than one acre; there has to be a plan submitted to the county.

Mrs. VUCANOVICH. And so what role would BLM play under the SMRA Act?

Mr. CULP. We would endorse the proposition that the current agreement with the State and the county continue to be implemented.

Mrs. VUCANOVICH. Well, I have no further questions. I have some concerns about this bill, but I think we can work those things out.

Thank you very much, Mr. Chairman.

Mr. LEHMAN. Thank you very much. I want to thank each member of the panel, and thank you very much for your concern for Bodie.

The hearing is adjourned.

[Whereupon, at 10:57 a.m., the subcommittee was adjourned.]

APPENDIX

MARCH 30, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD



Office of the BOARD OF SUPERVISORS

C O U N T Y O F M O N O

COURTHOUSE - BRIDGEPORT - CALIFORNIA - 93517

ANDREA LAWRENCE
District No. 5

RESIDENCE
P.O. Box 43
Mammoth Lakes, CA 93546
(619) 934-2877

STATEMENT OF ANDREA LAWRENCE

MEMBER, MONO COUNTY BOARD OF SUPERVISORS
on behalf of her constituents and herself
to the
COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON ENERGY and MINERAL RESOURCES

UNITED STATES HOUSE OF REPRESENTATIVES
regarding
Congressman Richard H. Lehman's HR 240

THE BODIE PROTECTION ACT

March 30, 1993

Congressman Richard H. Lehman
Chair, Subcommittee on Energy and Mineral Resources,
Honorable Chairman, Members of the Subcommittee,
As Mr. Lehman and Mr. Doolittle know from their current and recent capacities as representatives of a congressional district which includes the County of Mono, I have been a County Supervisor for over eleven years. The testimony which I submit to you today, is on behalf of my constituents, the people of Mono County as well as from the depths of myself.

Last May I had the honor to appear before the Subcommittee on Mining and Natural Resources and to speak in support of HR 4370, the Bodie Protection Act of 1992. A legislative proposal nearly identical to the one which you will be discussing today. At that time, I presented copies of the over 700 letters from visitors to Bodie expressing their appreciation of the area and showing unanimous concern that the historic value of this special place be preserved. These letters came from historians, biologists, relatives of Bodie-born families, and from travelers from around the world who return again and again to visit Bodie. They recognize that Bodie played an important role in the West's history. It had a notorious reputation for lawlessness and one visitor described it at its peak "as a sea of sin, lashed by the tempests of lust and passion." But Bodie history had its positive side too. Improvements in mining technology such as the early transmission of electricity, and in chemical ore recovery were pioneered here. Bodie also played an important role in the development of the labor movement in California, by focusing State's attention on labor friction. The Bodie Miner's Union was established in 1877, and served the miners well, not only in seeking a living wage, but in protecting their widows and orphans.

In the year since I spoke to that subcommittee, the support, interest, and concern of the public to protect the unique American heritage that Bodie represents has only grown. Each agenda of the Mono County Board of Supervisors contains a list of such letters and communications. A ceaseless litany of voices asking that a place very special in these people's experience be preserved unaltered not only for themselves but for future generations. They recognize that the pursuit of a conditional use permit from Mono County for a much expanded exploration program on public and private lands includes historic sites and cultural remains integral to the historic landscape surrounding the State Historic Park. Exploration and subsequent mining

Statement of Andrea Lawrence
Page 2

could have serious impacts on the resources of Bodie. A dramatic example of the depth of this concern was the publication in June of last year of a full page advertisement in both Mono County newspapers. In banner text across the top were the words "WE THE PEOPLE OF MONO COUNTY SUPPORT THE BODIE PROTECTION ACT OF 1992, HR 4370." Below were nearly 400 names of Mono County citizens, which had been gathered in just two days and which represented nearly 18% of the registered voters of the County. The sponsors of this statement, The Eastern Sierra Citizens for the Protection of Bodie, report that they received numerous complaints from other county residents because they were not given an opportunity to have their names added to the published list.

Bodie and the Historic District which surrounds it is of critical concern to citizens of my county. For instance, last June our State Senator, Patrick Johnston, and his aide, Ross Sargent, who as a child lived at Bodie, convened a workshop at the Mono Lake Visitor Center to discuss how best to protect Bodie and to shape its future. Participants included representatives of Mono County, property owners, California State Department of Parks and Recreation, the Bureau of Land Management, the local Chamber of Commerce as well as numerous local and concerned citizens. This group, meeting throughout the day, while representing a wide range of goals and interests, clearly and quickly found a commonality in their desire to protect Bodie.

Since that meeting, representatives of the Mammoth Lakes Visitors Bureau have come to believe that their recent campaign to interest more people in visiting the Eastern Sierra, has in large measure been successful because of the important place that Bodie has had in their campaign. Their surveys show nearly 28% of the visitors rank Bodie high on their list of reasons to visit this region.

Another example of the importance which Bodie plays in the local community is illustrated by the results of a three month survey conducted by the California Department of Parks and Recreation in 1988, of the State Historic Park's visitors to determine their interests and perceptions of the ghost town. After wending their way thirteen miles back from the main highway into the Bodie Bowl, these visitors overwhelmingly commented that the sense of isolation and remoteness was integral in the trip's value to them and that the preservation of the town's character rated high in their estimation. Visitation topped the 230,000 mark last year, many more than visited the nearby National Mono Lake Scenic Area.

Statement of Andrea Lawrence
Page 3

directly adjacent to Highway 395. Clearly Bodie is not simply an incidental stop along the tourist's way. The public's interest in Bodie is illustrated by the fact that visitation has increased at the Historic Park, according to the California Department of Parks and Recreation which administers it, by 350% over the past decade, compared to a little over 8% for the 275 unit State Park System as a whole for the same period. Converted into raw dollars this is a fiscal benefit to the county of between \$6.1 to \$9.75 million dollars in 1988. Based upon the increase in visitors I would extrapolate this figure to \$13.11 million dollars last year. Bodie represents to the recreation industry of Mono County a positive and dependable support of the local economy.

HR 240 will not wrest local control from County Government. On the contrary, it is consistent with the goals of long-term protection as requested in California State Senate Joint Resolution 60 which passed with overwhelming bipartisan support, and which, according to Mr. Lehman's public statements of last year, served as the catalyst to his introduction of this legislation. It is certainly within the intent of the National Historic Landmark as well. As previously noted it is also within the scope of the wishes of the citizenry of the people of the County of Mono. As early as June 18, 1991 the Eastern Sierra Citizens for the Protection of Bodie requested of Congressman Lehman a "total mineral withdrawal for all Federal lands in the 7325 acre Bodie Bowl." The provisions of HR 240 will satisfy this request and will include all of the area within the boundaries of the proposed National Historic Landmark as drafted by the National Park Service as well as its view shed.

Mono County maintains a critical role in its land use jurisdiction over the more than 500 acres of patented land immediately adjacent to Bodie State Historic Park, which is not subject to the provisions of this Bill. Thus the passage of HR 240 should be viewed as a partnership between the Federal, State and Local governments in attempting to achieve the stated goals of long-term protection of the intrinsic values of Bodie.

The preservation of Bodie goes well beyond the 150 or so buildings in the State Park town site. It includes the historic landscape which surrounds it and the character of the geographic area which in part defines it. This is an area which symbolizes the very spirit of a young, vital and boisterous nation. That vitality comes alive and is rekindled in the imaginations of

Statement of Andrea Lawrence
Page 4

everyone who makes their way to Bodie. It is a place suspended in time and seemingly, in space. The land the traveler passes through on their approach to Bodie and beyond, is essential to the full "Bodie Experience." As one letter writer put it, "Bodie is full of natural history, set in a most unique wilderness, giving visitors a sense of awe..." In preparing the draft landmark district boundary, this area was found by the National Park Service to contain historic resources of national significance with the finding that nowhere else is there a historic landscape containing such extensive and intact remains from various historical periods as exists in Bodie.

The special places in this land we have tried so hard to save have not always been sufficiently protected. We must not make this mistake with Bodie, for there is not another place to rival her. It has been written that "A land without ruins is a land without memory; A land without memory is a land without history." Surely we cannot afford to lose either one.

I hope that you will join with me and the majority of the Board of Supervisors of Mono County who voted on the 16th of this month to support HR 240.

Andrea Lawrence

Mono County Supervisor, District 5

OFFICE OF THE BOARD OF SUPERVISORS
 COUNTY OF MONO
 P. O. BOX 715, BRIDGEPORT, CA 93517
 (619) 932-5215

Nancy Wells
 Clerk of the Board

Nancy Gordon
 Deputy

MINUTE ORDER
93-120

TO: Clerk of the Board

FROM: Board of Supervisors

SUBJECT: H.R. 240 - Bodie Protection Act of 1992

At the regular meeting of the Mono County Board of Supervisors of
 march 16, 1993, it was:

Moved by Supervisor Jarvis, seconded by Supervisor Alpers and
 carried to support HR 240, Bodie Protection Act of 1992 and that the
 Board send letter to various representatives at the State and Federal
 level notifying them of the Board's position on this bill.

Ayes: Supervisors Alpers, Jarvis, Lawrence and Paranick.
 Noes: Supervisor Reid.
 Absent: None.
 Abstain: None.

ATTEST:

Nancy Gordon, Deputy

 Nancy Wells
 Clerk of the Board

Cc: ~~County Counsel~~
 County Administrative Officer
 Scott Burns, Planning Director

Directed to: Clerk of the Board

Response date: n/a

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