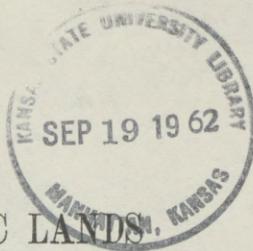


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# RESIDENTIAL USE OF MINING CLAIMS

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## HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

**S. 3451**

A BILL TO PROVIDE RELIEF FOR RESIDENTIAL OCCUPANTS OF UNPATENTED MINING CLAIMS UPON WHICH VALUABLE IMPROVEMENTS HAVE BEEN PLACED, AND FOR OTHER PURPOSES

AUGUST 16, 1962

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Printed for the use of the  
Committee on Interior and Insular Affairs



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## RESIDENTIAL USE OF MINING CLAIMS

THURSDAY, AUGUST 16, 1962

U.S. SENATE,  
SUBCOMMITTEE ON PUBLIC LANDS OF THE  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 11 a.m., in room 3110, New Senate Office Building, Senator Ernest Gruening presiding.

Present: Senators Gruening (presiding), Metcalf, Long of Hawaii, and Senator Church of the full committee.

Senator METCALF (presiding). S. 3451 is the bill under discussion. I will place in the hearing at this point the bill and the reports of the Secretary of the Interior, the Secretary of Agriculture, and the Comptroller General of the United States.

(The documents referred to follow:)

[S. 3451, 87th Cong., 2d sess.]

A BILL To provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary, after due process, to be invalid, an area within the claim of not more than (a) five acres or (b) the acreage actually occupied by him, whichever is less. The Secretary may make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws or who, within two years prior to the date of this Act, relinquished such rights to the United States or had his unpatented mining claim invalidated after due process. Any conveyance authorized by this section, however, shall be made only to a qualified applicant, as that term is defined in section 2 of this Act, who applies therefor within five years from the date of this Act and upon payment of the amount established pursuant to section 5 of this Act.

As used in this section, the term "qualified officer of the United States" means the Secretary of the Interior or an employee of the Department of the Interior so designated by him: *Provided*, That the Secretary of the Interior may delegate his authority to designate qualified officers to the head of any other department or agency of the United States with respect to lands within the administrative jurisdiction of that department or agency.

SEC. 2. For the purposes of this Act a qualified applicant is a seasonal or year-round residential occupant-owner, as of January 10, 1962, of land now or formerly in an unpatented mining claim upon which valuable improvements had been placed.

SEC. 3. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make conveyances under section 1 of this Act, only with the consent of the head of that governmental unit and under such terms and conditions as that unit may deem necessary.

SEC. 4. Where the Secretary of the Interior determines that a disposition under section 1 of this Act is not in the public interest or the consent required by section 3 of this Act is not given, the applicant after arrangements satisfactory to the Secretary of the Interior are made for the termination of his occupancy and for settlement of any liability for unauthorized use, will be granted by the Secretary, under such rules and regulations for procedure as the Secretary may prescribe, a preference right to purchase any other tract of land, five acres or less in area, from those tracts made available for sale under this Act by the Secretary of the Interior, from the unappropriated and unreserved lands and those lands subject to classification under section 7 of the Taylor Grazing Act, upon the payment of the amount determined under section 5 of this Act. Said preference right must be exercised within two years from and after the date of its grant.

SEC. 5. The Secretary of the Interior prior to any conveyance under this Act shall determine the fair market value of the lands involved (exclusive of any improvements placed thereon by the applicant or by his predecessors in interest) or interests in lands as of the date of this Act. In establishing the purchase price to be paid by the claimant to the Government for land, or interests therein, the Secretary shall take into consideration any equities of the claimant and his predecessors in interest, including conditions of prior use and occupancy. In any event, the purchase price to be paid to the Government shall not exceed the fair market value of the land or interest therein to be conveyed as of the effective date of this Act nor be less than 50 per centum of such value.

SEC. 6. The execution of a conveyance authorized by section 1 of this Act shall not relieve any occupant of the land conveyed of any liability, existing on the date of said conveyance, to the United States for unauthorized use of the conveyed lands or interests in lands, except to the extent that the Secretary of the Interior deems equitable in the circumstances. Relief under this section shall be limited to those persons who have filed applications for conveyances pursuant to this Act within five years from the enactment of this Act. Except where a mining claim has been or may be located at a time when the land included therein is withdrawn from or otherwise not subject to such location, or where a mining claim was located after July 23, 1955, no trespass charges shall be sought or collected by the United States based upon occupancy of such mining claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary of the Interior or the voluntary relinquishment of the mining claim, whichever occurs earlier. Nothing in this Act shall be construed as creating any liability for trespass to the United States.

SEC. 7. (a) In any conveyance under this Act there shall be reserved to the United States (1) all minerals and (2) the right of the United States, its lessees, permittees, and licensees to enter upon the land and to prospect for, drill for, mine, treat, store, transport, and remove leasable minerals and mineral materials and to use so much of the surface and subsurface of such lands as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing such minerals on or from other lands.

(b) The leasable minerals and mineral materials so reserved shall be subject to disposal by the United States in accordance with the provisions of the applicable laws in force at the time of such disposal.

(c) Subject to valid existing rights, upon issuance of a patent or other instrument of conveyance under this Act, the locatable minerals reserved by this section shall be withdrawn from all forms of appropriation under the mining laws.

(d) Nothing in this section shall be construed to preclude a grantee, holding any lands conveyed under this Act, from granting to any person or firm the right to prospect or explore for any class of minerals for which mining locations may be made under the United States mining laws on such terms and conditions as may be agreed upon by said grantee and the prospector, but no mining location shall be made thereon so long as the withdrawal directed by this Act is in effect.

(e) A fee owner of the surface of any lands conveyed under this Act may at any time make application to purchase, and the Secretary of the Interior shall sell to such owner, the interests of the United States in any and all locatable minerals within the boundaries of the lands owned by such owner, which lands were patented or otherwise conveyed under this Act with a reservation of such minerals to the United States. All sales of such interests shall be made expressly subject to valid existing rights. Before any such sale is consummated, the surface owner shall pay to the Secretary of the Interior the sum of the fair market value of the interests sold, and the cost of appraisal thereof, but in no event less

than the sum of \$50 per sale and the cost of appraisal of the locatable mineral interests. The Secretary of the Interior shall issue thereupon such instruments of conveyance as he deems appropriate.

SEC. 8. Rights and privileges under this Act shall not be assignable, but may pass through devise or descent.

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., August 15, 1962.

HON. CLINTON P. ANDERSON,  
*Chairman, Committee on Interior and Insular Affairs,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR ANDERSON: This responds to your committee's request for reports on S. 3451, S. 3458, and S. 3564, the latter two of which are identical to each other, bills to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed, and for other purposes.

We recommend that S. 3451 be enacted, subject to consideration of our suggestions and comments below.

S. 3451 would authorize the Secretary of the Interior to convey to any occupant of an unpatented mining claim which is determined by the Secretary after due process to be invalid an area within the claim of not more than (1) 5 acres or (2) the acreage actually occupied by him, whichever is less. The Secretary may make a similar conveyance to any occupant of an unpatented mining claim who, after notice from an appropriate officer of the United States that the claim is believed to be invalid, relinquishes to the United States all rights he may have under the mining laws to such claim or who within 2 years prior to the enactment of the bill relinquished such rights to the United States or had his unpatented mining claim invalidated after due process. Any conveyance could only be made to a seasonal or year-round residential occupant owner as of January 10, 1962, of land now or formerly in an unpatented mining claim upon which valuable improvements had been placed. The application for conveyance would be required to be filed within 5 years from the date of enactment of the bill. The term "qualified officer of the United States" means the Secretary or an employee of the Department of the Interior designated by him. However, the Secretary of the Interior could delegate his authority to designate qualified officers to the head of any other department or agency of the United States with respect to lands within the administrative jurisdiction of that department or agency.

Lands withdrawn for Federal, State, or local governmental units will be disposed of only with the consent of the head thereof and subject to such terms or conditions as that unit deems necessary. If the land embraced in the mining claim is not available for disposition, the Secretary of the Interior, after concluding a satisfactory arrangement for termination of occupancy and settlement of any liabilities for unauthorized use, would grant an applicant a preference right to purchase some other tract of land 5 acres or less in area from those tracts made available for sale under this act by the Secretary of the Interior from the unappropriated and unreserved lands and those lands subject to classification under section 7 of the Taylor Grazing Act, as amended (43 U.S.C. 315f). The right to purchase such lands would have to be exercised within 2 years from the date of the grant of the preference right.

Any conveyance under the bill would be made at no less than 50 percent of the fair market value (exclusive of any improvements placed on the land by the applicant or his predecessors in interest) as of the date of enactment of the bill less any equities possessed by the claimant and his predecessors in interest.

The execution of the conveyance of land occupied as a residential site within a mining claim would not relieve any occupant of the land conveyed of any liability, existing on the date of the conveyance, to the United States for unauthorized use of the conveyed land or interest in the land except to the extent the Secretary of the Interior deems equitable in the circumstances. Relief would be limited to those persons who have filed applications for conveyances under the bill within 5 years from its effective date. Except where a mining claim has been or may be located at a time when the land is withdrawn or otherwise not subject to mining location or where a mining claim was located after July 23, 1955, no trespass charges could be sought or collected by the United States based upon occupancy of the mining claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the

Secretary of the Interior or the voluntary relinquishment of the mining claim, whichever occurs earlier. This provision we construe to be applicable only to those situations where the persons involved are qualified applicants under the bill; it is not intended as a general remission of the right of the United States to collect for unauthorized use on mining claims wherever it has occurred. An appropriate amendment to clarify this matter is set forth below.

Section 7 of S. 3451 provides that any conveyance under the bill shall reserve to the United States all minerals and the right of the United States, its lessees permittees, and licensees to enter upon the land and prospect for, drill for, mine, treat, store, transport, and remove leasable minerals and mineral materials and to use so much of the surface and subsurface of such lands as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing transporting, and removing such minerals on or from other land. The leasable materials and mineral materials so reserved would be subject to disposal by the United States in accordance with the provisions of the applicable laws in force at the time of such disposal. Subject to valid existing rights, upon issuance of a patent or instruments of conveyance under the act, the locatable minerals reserved to the United States would be withdrawn from all forms of appropriation under the mining laws. This action specifically provides that nothing in it is to be construed to preclude a grantee holding any land conveyed under the act from granting to any person or group the right to prospect for or explore for any class of minerals for which mining location may be made under the U.S. mining laws on mutually agreeable terms, but no mining location can be made on the land as long as the withdrawal directed by the bill remains in effect.

A fee owner of the surface of any land conveyed under the act may at any time make application to purchase and the Secretary of the Interior shall sell to such owner the locatable mineral estate within the boundaries of the land. Before such sale is consummated, the surface owner would be required to pay to the Secretary of the Interior the sum of the fair market value of the interest sold and the cost of appraisal, but in no event less than the sum of \$50 per sale and cost of appraisal of the locatable mineral interest. The Secretary would then be authorized to issue such instruments of conveyance as he deems appropriate.

Section 8 of S. 3451 provides that rights and privileges under the act shall not be assignable, but may pass through devise or descent.

S. 3458 and S. 3564 differ from S. 3451 in that the former make no provision for reservation of any mineral estate to the United States and in dealing with the "alternative tracts" provide that the land selected must be situated within an area within a radius of 50 miles from the land on which the mining claim is situated. S. 3458 and S. 3564 also contemplate that the preference right to obtain an alternative tract will be governed by the rule that priority in selection of the tracts by those eligible would be determined by the priority in filing applications therefor. We believe that any legislation on this subject should provide minimally for a reservation of those leaseable minerals for which the lands are deemed valuable or prospectively valuable.

The 50-mile limitation would preclude broad exercise of "alternative tract" selections and would serve no public interest factor. In many situations there might not be any public lands within that radius suitable for designation as alternative sites by the Secretary of the Interior. For these reasons, we prefer the enactment of S. 3451.

Nothing in the mining laws requires a locator to proceed to patent. He may never do so, yet his estate is fully maintained in its integrity so long as the law which is a muniment of his title is complied with. Thus, although many miners obtained patent to their claims, many others, content to enjoy their right of possession to the exclusion of third parties, have not prosecuted their claims to patent. In some cases, claims did not contain quite enough valuable mineral to constitute a discovery within the purview of the mining laws and justify proceeding to patent.

There is, however, no requirement in law that a mining locator proceed to patent. In *Wilbur v. U.S. ex rel. Krucknic* (280 U.S. 306 (1930)) the Supreme Court of the United States stated as follows:

"When the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The right of the owner is taxable by the State, and is 'real property,' subject to the lien of a judgment recovered against the owner in

a State or Territorial court. The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent." (Cf. the act of July 23, 1955 (69 Stat. 367; 30 U.S.C. 601, et seq.).)

However, even though a mining locator may have made a discovery of a valuable mineral on his mining claim, after the land is mined out, his claim is subject to invalidation. In *United States v. Alonzo A. Adams, et al.*, A-27364 (July 1, 1957) the Department held that an application for a mineral patent will be rejected and the mining claim declared null and void where, although the claim may formerly have been valuable for minerals, it is not shown as a present fact that the claim is valuable for minerals. Thus some mining claims which were valid in their inception may no longer be valid because of the virtually complete mining out the valuable ore.

Often, the mining locator established his home upon his claim, and worked his claim from his home. These homes have become, in many instances, permanent residences for the prospector's heirs. Frequently, mining claims embracing residential improvements were conveyed as any other real estate might be conveyed.

Over the years, many claims, once valuable for their mineral content, have been mined out. Other claims, because of the present high cost of operations and the low values, are not presently susceptible to immediate mining and may not now be valuable for their mineral deposits. Yet many of the families of the original locators maintain homes within the limits of the mining claims, while others have sold for value the homes established by their forebears.

A present mineral examination might fail to disclose on many of these claims a valid discovery of a valuable mineral deposit, and thus subject the mining claim to cancellation by a determination of invalidity. Upon such a determination of invalidity, the holders of improvements on the claims would face great hardships in the loss, not only of the monetary value of the improvement, but also of their homes. Some of the families have lived on the mining claims for many years, and have paid taxes for the improvements on the lands. Because of the widespread use of mining claims for homesites and the general practice of transferring them by quitclaim deeds, many people honestly, although mistakenly, have assumed that the mining laws were and are an appropriate means of acquiring possession and ownership of mining claims for general residential purposes unrelated to mining. Hence numerous transactions of this nature have occurred in various portions of the public domain and mining claim occupancy problems have been multiplying for many years. This Department for several years has endeavored to alleviate the situation within the framework of existing law. The program for adjusting occupancy rights under existing law, we now recognize, has not proved to be entirely adequate. Many persons occupying lands in established residential communities have been unable to obtain the needed relief.

The Department cannot properly permit unauthorized use of Federal property. Although our Bureau of Land Management has endeavored to resolve the mining claim residence problem, through the Small Tract Act, as amended (43 U.S.C. 682a et seq.), and other laws, we have not been successful in attaining a total resolution of the problem. Many of the present situations involve year-round occupancy by "senior citizens" and others of limited means. Some of these individuals have purchased from other private parties what they believed to be fee title paying sums on the order of the then fair market value. Many of these individuals do not have the financial resources to pay the full measure of unauthorized use charges and again the full fair market value of the land they occupy. Avoidance of unnecessarily harsh treatment makes desirable additional legislation.

Your committee in Senate Report 1223, 86th Congress, 2d session, pertaining to H.R. 3676, culminating in the act of April 22, 1960 (74 Stat. 80), stated that unauthorized use of public lands interferes with orderly management or disposition and must be promptly and vigorously controlled. Your committee further stated that failure to eliminate unauthorized uses or to transform them into an authorized status leads to the spread of unauthorized use, deprives the Treasury of current revenues, and breeds disrespect for the property rights of the Government. We believe that enactment of S. 3451, as proposed to be amended by this report, would greatly facilitate the termination of unauthorized use.

It is our intention to retain in public ownership those lands needed for public or recreational values. Nor do we intend that the bill should lend itself to disposition of land valuable for minerals locatable under the U.S. mining laws. A proposed amendment below crystallizes this concept.

Our National Park Service endeavors to acquire privately owned lands within national parks. It is not our intent, therefore, to grant under the bill fee simple estates to lands within such parks. However, in order to resolve the mining claim residence problem in national parks, we would in appropriate instances grant life or lesser interests in the occupied lands if authority therefor is granted. The final result would be to remove from national park holdings any residence on mining claims which are invalidated or relinquished. A proposed amendment to effectuate this concept is set forth below.

Certain time limitations contained in the bill seriously impair its effectiveness to remedy the unauthorized occupancy situation. To limit the applicability of the bill to persons who will in the future, or have within the past 2 years from the date of the enactment of the bill, relinquished or had invalidated their unpatented mining claims, deprives the advantages of the bill to persons who through no fault of their own relinquished their claims or had them invalidated at an earlier date. We understand that there are situations where persons have remained on claims, after their relinquishment or invalidation, for many years. The bill should take these situations into consideration, otherwise its utility as remedial legislation would be diminished. Similarly, we believe that the right to select an alternative tract should exist for a period of 5 years from its grant. We are suggesting appropriate amendments below.

Section 7 of S. 3451, setting forth the provisions relating to mineral reservations, appears to be similar to H.R. 10566, an act to provide for the withdrawal and orderly disposition of mineral interests in certain public lands in Pima County, Ariz. H.R. 10566 is directed to a situation where the Federal Government has disposed of the surface but has retained certain mineral interests. The situation involved in S. 3451 and related bills is substantially different in that these bills relate to lands where the United States now owns the surface and subsurface estate in toto.

Section 7 of S. 3451 provides for reservation to the United States of (1) the locatable minerals, (2) leasable minerals, and (3) mineral materials. We believe that the locatable mineral estate should not be reserved to the United States but rather should be conveyed under the bill. If, in fact, the land is valuable for locatable minerals then the mineral locator presumably has a valuable mining claim and relief under the bill would be unnecessary. If, on the other hand, the lands do not contain significant values of locatable minerals then the bill may be applicable and no useful purpose would appear to be served by retention of the locatable mineral estate.

The procedure set forth in section 7 of S. 3451 envisages the issuance of two instruments of conveyance for one piece of land, one for the surface and the other for the locatable mineral estate. This, we believe, would add unnecessarily to the cost of administering the bill. We are unaware of any cogent considerations which would require this procedure.

We believe that it would be appropriate to reserve to the United States in all conveyances the oil and gas and those leasable minerals for which the land is deemed to be valuable or prospectively valuable. Oil and gas have been described as "fugitive" minerals, the occurrence of which is not always readily ascertainable. Moreover, oil and gas have constituted the source of some 95 percent of all income derived from operations under the Mineral Leasing Act, as amended (30 U.S.C. 181 et seq). We, therefore, believe that the automatic reservation of oil and gas to the United States is warranted by considerations of public interest. Appropriate language to carry out this concept is set forth below.

To effectuate our recommendations and to make certain technical changes we suggest that the bill be amended as set forth below:

(1) Amend line 5, page 1 to read as follows: "the Secretary, after due process, to be invalid, any interest in an area, not known to be valuable for minerals locatable under the United States mining laws,".

(2) On line 3, page 2 delete the words "within two years".

(3) On lines 15 and 21, page 3 delete the word "preference".

(4) On line 22, page 3 substitute "five" for "two".

(5) Amend lines 21 and 22, page 4 to read as follows: "this Act. With respect to any mining claim, embracing land applied for under this Act by a qualified applicant, except where such mining claim was located at a time when the land included therein was with-".

(6) Insert on line 25, page 4 after the word "collected" the following: "from any qualified applicant who has filed an application for land in the mining claim pursuant to this Act".

(7) Substitute for section 7 (line 8, page 5 to and including line 2, page 7) the following:

"Sec. 7. There shall be reserved to the United States, in any conveyance under this Act (1) oil and gas, (2) such other minerals for which the land is deemed valuable or prospectively valuable by the Secretary of the Interior and which as of the time of issuance of patent are subject to disposition under the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, as amended and supplemented, and (3) the right of the United States, its lessees, permittees, and licensees to enter upon the land and to prospect for, drill for, mine, treat, store, transport, and remove such minerals and to use so much of the surface and subsurface of such lands as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing such minerals on or from other lands. The deposits so reserved shall be subject to disposal by the United States in accordance with the provisions of the applicable laws in force at the time of such disposal."

We believe that enactment of S. 3451, if amended as suggested in this report, would enable us to resolve substantially the longstanding problem of residency on mining claims which do not meet the requirement of law. Concededly the bill will not always offer a solution entirely satisfactory to the persons affected, but it will afford us a measure of flexibility to enable us to grant substantial relief.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

JOHN A. CARVER, Jr.,  
*Assistant Secretary of the Interior.*

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DEPARTMENT OF AGRICULTURE,  
*Washington, D.C., August 15, 1962.*

HON. CLINTON P. ANDERSON,  
*Chairman, Committee on Interior and Insular Affairs,*  
*U.S. Senate.*

DEAR MR. CHAIRMAN: This is in reply to your request of July 12, 1962, for a report on S. 3451, a bill to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed, and for other purposes.

We have no objection to the enactment of the bill if it is amended as hereinafter recommended.

S. 3451 relates to unpatented mining claims upon which valuable improvements have been placed and which under certain conditions have been or may be relinquished or which within 2 years prior to the act have been or may hereafter be determined to be invalid. The bill would authorize the Secretary of the Interior to convey to the seasonal or year-round residential occupant-owner of such a claim all or any part thereof up to 5 acres upon payment to the Government of a price to be fixed by the Secretary of the Interior which shall be not more than the fair market value (exclusive of improvements) but not less than 50 percent thereof.

The bill would provide that where the lands involved have been withdrawn in aid of a Federal Department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary could make such conveyance only with the consent of the head of that governmental unit and subject to that unit's specified terms and conditions.

S. 3451 would provide that where the Secretary of the Interior determines that the conveyance of such an unpatented mining claim to an occupant-owner is not in the public interest or where the agency having jurisdiction over the lands does not consent to such conveyance, the claimant would be granted a preference right to purchase another tract of 5 acres or less of land made available for sale under this act by the Secretary of the Interior from the unappropriated and unreserved lands and those lands subject to classification under section 7 of the Taylor Grazing Act.

The bill would further provide that the execution of a conveyance would not relieve the occupant of the land conveyed of any liability to the United States existing at the time of conveyance for unauthorized use of the conveyed lands except to the extent the Secretary of the Interior deems equitable. Relief under

this section would be limited to cases where applications for conveyances were made within 5 years of the bill's enactment. No trespass charges would be sought or collected by the United States based upon occupancy of a claim for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary of the Interior or the voluntary relinquishment of the mining claim except under certain conditions.

S. 3451 would require that there be reserved to the United States all minerals with rights for prospecting, development, storage, transportation, and disposal. Leasable minerals could be leased by the United States but locatable minerals would be withdrawn from disposition. The surface owner would be permitted to purchase the locatable mineral interest.

Rights and privileges under the bill would not be assignable, but could pass through devise or descent.

This Department is in agreement with the general intent of the bill—to provide relief for persons who have occupied and have placed valuable improvements on unpatented mining claims which are subsequently determined to be invalid. The use and occupancy of unpatented mining claims in the national forests and elsewhere is a problem of which we are very much aware. Such use and occupancy often has an adverse effect on the administration of the national forests by this Department. We have been working toward a solution to these cases of unauthorized occupancy on the national forests for some time. Progress has been made in resolving these issues without reliance on harsh decisions.

Legislation to assist in solving this problem needs to fill two principal objectives: (1) settle problems of administration of these lands to insure that the lands will serve in the highest public interest, and (2) provide equitable relief to the occupant-owners of invalid mining claims.

Conveyance of land to a claimant must be consistent with the general land management policies and purposes of the Federal Government. Recognition needs to be given to the general undesirability of conveying areas that have been withdrawn for particular purposes or have been withdrawn in aid of a function of a Federal department or agency, State or local governmental unit.

An example of such withdrawn areas are the national forests which were set apart from the public domain. These lands are reserved from appropriation and entry, except under the mining laws. Determination has already been made that these lands generally best serve the public interest as presently classified and managed under principles of multiple use to produce a sustained yield of services and products. It would be inconsistent with these established principles and purposes to provide for general conveyance of all or parts of invalid mining claims within these lands to the occupants of such claims for their personal use.

Conveyance of lands withdrawn for specific purposes, such as the national forests, could best be done on the basis of land use policy, rather than on an individual case basis. Designation by the head of the Federal agency of areas where conveyance would not be detrimental to the purpose of the withdrawal would provide a much more consistent means of handling conveyance applications.

Typical situations within the national forests which would probably call for such designations might include areas where concentrations of mining claim occupants constitute community centers; areas which historically had been important in mining activity, where it was reasonable at the time of location for a claimant to expect a fair economic return from his mining operations and consequently it was reasonable for him to build a permanent home; areas where a significant number of claims in a relatively small gross area predate the establishment of the national forests. Designations would not be made in locations where holdings occur in a scattered pattern or in isolated situations.

We recognize, however, that there might still exist isolated instances where authorized action under the bill would not provide equity to persons who without full knowledge of the invalidity of a claim and in good faith, without any intent or design to violate the mining laws, have invested considerable amounts in improvements. Under existing regulations for the management and administration of the national forests, it is possible to validate such occupancy for a reasonable period of time.

For the foregoing reasons we recommend that section 3 be amended to read as follows:

"SEC. 3. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, the Secretary of the Interior may make conveyances under section 1 of this Act only in those portions of the withdrawn unit which the head of the Federal agency concerned has designated as an area where dispositions under this Act will not be detrimental

to the purpose for which the withdrawal was made, and under such terms and conditions as the head of that agency may deem necessary.

"Where the lands have been withdrawn in aid of a function of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make conveyances under Section 1 of this Act only with the consent of the head of that governmental unit and under such terms and conditions as the head of that unit may deem necessary."

A conforming amendment should also be made in section 4 as follows:

Page 3, line 9, after the word "the" insert the words "designation or".

Page 3, line 10, delete the words "is not" and insert in lieu thereof the words "has not been made or".

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, August 6, 1962.*

B-148623.

HON. CLINTON P. ANDERSON,  
*Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate.*

DEAR MR. CHAIRMAN: By letter dated July 12, 1962, acknowledged July 13, you requested our report on S. 3451, 87th Congress. The stated primary purpose of this bill is to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed.

Section 1 would authorize the Secretary of the Interior to convey up to 5 acres of unpatented mining claims to the occupants of such claims after determination by the Secretary that such claims are invalid or after all rights in and to such claims have been relinquished to the United States.

Section 2 defines a qualified applicant as one who, as of January 10, 1962, is a seasonal or year-round residential occupant-owner of land now or formerly in an unpatented mining claim upon which valuable improvements have been placed. On claims that we reviewed on national forest lands reserved from the public domain, the estimated values of residence structures varied from about \$300 to approximately \$14,000. Accordingly, we believe that it would be desirable to establish some criteria for the Secretary to apply in his determinations of what constitutes valuable improvements. Such criteria should achieve reasonably uniform interpretation and would avoid unnecessary disputes as to who are qualified applicants under this section.

With further regard to section 2, there is some doubt as to whether the term "qualified applicant" would include persons who reside on land now or formerly in an unpatented mining claim but who have no vested interest in the land upon which they reside. For example, in our review of unpatented mining claims located in the national forests we found that of approximately 27 families which made up the population of the town of Atlanta, Idaho, only 1 of those families would be considered as an occupant-owner because it was the only family that had an ownership interest in the claim upon which it resided.

Section 3 provides that where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make conveyances under section 1 only with the consent of that governmental unit and under such terms and conditions as that unit may deem necessary. As previously pointed out, some of the residential structures on unpatented mining claims have been estimated as valued up to \$14,000. Under section 3, assuming that such structures are located on forest lands under the jurisdiction of the Department of Agriculture, it is difficult to see—as a practical matter—how the Secretary of Agriculture could prescribe terms and conditions which would result in anything but an outright conveyance of such lands to the occupant-owner. Such conveyances, as will be discussed later on, could have disruptive effects on forestry programs.

The language of section 5 leaves us in doubt as to the factors to be considered by the Secretary of the Interior in determining the purchase price to be paid to the Government by a claimant. This section states that the Secretary shall determine the fair market value of the lands involved, exclusive of any improve-

ments placed thereon by the applicant or his predecessors in interest or interests in lands, as of the date of the act. Section 5 further states that in establishing the purchase price to be paid by the claimant to the Government for the land or interests therein, the Secretary shall take into consideration any equities of the claimant and his predecessors in interest, including conditions of prior use and occupancy. We do not know what equities a claimant might have in an invalid mining claim other than any improvements placed thereon by him or his predecessors in interest which are excluded from the fair market value. In any event, we believe that this section should be clarified so as to set out more specifically all of the factors to be considered by the Secretary in determining the fair market value.

In addition to the foregoing comments on specific sections of S. 3451, we have some general comments which we believe may be of interest.

Conveyance of land as authorized by the bill would tend to increase private landownership within the public domain. The desirability of such conveyance is a policy matter solely for the determination of the Congress. However, our recently issued report to the Congress on the review of the administration by the Forest Service, Department of Agriculture, of mining claims on national forest lands reserved from the public domain disclosed a number of problem areas in the administration of the national forests which stemmed from either private landownership within the forests or from possession of the type of unpatented mining claims, the ownership of which, under the provisions of the bill, could be conveyed to qualified applicants.

In one of the national forests, the sale of approximately 60 million board feet of timber has been delayed for nearly 5 years because the Forest Service has been unable to acquire the necessary road right-of-way across private land. According to Forest Service records, there was a large volume of over mature timber in the areas above the private land which needed to be harvested at the earliest opportunity. Extensive negotiations to secure a right-of-way across the private land had not been successful and because there was a possibility of a high damage award under condemnation proceedings, the Forest Service was considering the construction of a timber access road over an alternate route. We were advised by Forest Service officials that the alternate road will be less desirable than the proposed road because it will be of lower quality, will contain steeper grades, and will not provide access to all the timber in the area.

In another forest, sales of 12 million board feet of timber with an estimated value of \$220,000 have been held up for a number of years because the Forest Service has been unable to obtain rights-of-way over a concentration of unpatented mining claims on which there are residential-type structures. The Forest Service mineral examiner concluded that a valid mineral discovery did not exist on these claims.

According to the Forest Service records, there are in excess of 1,100,000 unpatented mining claims in the national forest. Forest Service officials estimated that there were at least 10,000 buildings of a residence nature located on unpatented mining claims. When lands are conveyed to private ownership they are no longer subject to Forest Service regulation. Forest Service officials stated that each occupancy of lands that are not subject to Forest Service regulation additionally increases the danger of fires, creates cleanup, sanitation, and pollution problems, and otherwise adversely affects if not directly interferes with the work of forest management.

We have no further comments to make concerning S. 3451.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

Senator METCALF. Senator Church, we are delighted to have you on the other side of the table as a witness before one of your own committees.

#### STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CHURCH. Thank you very much. I feel very much at home here.

I have come this morning to testify in favor of the enactment of S. 3451, as to which there is a companion bill, H.R. 12761, which has

been reported out favorably from the full committee of the House Interior Committee, and on which I understand the House itself may soon take action.

Rather than read a prepared statement, Mr. Chairman, let me refer you to the report on this bill that has been made by the Interior Department, dated August 15, 1962, and signed by the Assistant Secretary of the Interior, John A. Carver.

The third paragraph of that report rather succinctly states the purpose of the bill and covers its principal provisions. It reads:

S. 3451 would authorized the Secretary of the Interior to convey to any occupant of an unpatented mining claim which is determined by the Secretary after due process to be invalid an area within the claim of not more than (1) 5 acres or (2) the acreage actually occupied by him, whichever is less. The Secretary may make a similar conveyance to any occupant of an unpatented mining claim who, after notice from the appropriate officer of the United States that the claim is believed to be invalid, relinquishes to the United States all rights he may have under the mining laws to such claim or who within 2 years prior to the enactment of the bill relinquished such rights to the United States or had his unpatented mining claim invalidated after due process. Any conveyance could only be made with seasonal or year-round residential occupant-owner as of January 10, 1962, of land now or formerly in an unpatented mining claim upon which valuable improvements had been placed. The application for conveyance would be required to be filed within 5 years from the date of enactment of the bill.

I think, Mr. Chairman, that that covers the basic provisions of this bill, though there are many refinements that do need the attention of the committee.

I am not satisfied that the bill as presently drafted fully accomplishes its intended purpose and for this reason I suggest to the committee the desirability of certain amendments.

But as the Senator from Montana knows, in the West, where for many years occupants of unpatented mining claims by custom tended to treat these claims as though they were property and tended to convey their interest in these claims by quitclaim deed, and where, over the years, many people living in the mountains of Montana, Idaho, and other Western States have developed little cabins, little homesites on these claims, a very real hardship has occurred, because in recent years, both the Forest Service and the Bureau of Land Management, since the change in the mining laws which took place in 1955, have undertaken to implement the program and this could require many of these mountain people to vacate their homesites on the grounds that their mining claim is no longer valid for one reason or another.

Senator METCALF. They are doing that under rather a congressional directive. We passed legislation directing them to do so.

Senator CHURCH. That is right, and they are merely attempting to enforce the law.

Nevertheless, the law which they are attempting to enforce has left some of the mountain people who have lived for many years in their cabins in a situation of great hardship and distress, because they find that to contest the Government's claim that the mining claim itself is invalid is very costly and protracted. Many of them are impecunious and thus they are faced, oftentimes in their senior years, with only limited life expectancy, with the rather harsh circumstances of being forced out of their homesite. If they are required to leave their modest home, they have no place to go.

This has caused a great deal of distress. I do not think it was ever the intention of the Congress to cause this to be the result.

So the purpose of this bill is to try to give some relief to these people.

Mr. Chairman, I am not certain that the bill as presently drafted does this. For one thing, I am concerned about the attitude that has been taken by the Forest Service and Bureau of Land Management. For example, the testimony of the Forest Service before the House committee suggests to me that the Forest Service may simply exempt itself from the provisions of this bill and I think we must look into that.

I think also we must look into provisions with respect to the kind of conveyance the Government is to give and the kind of consideration that the Government is to take back.

I am not at all certain, Mr. Chairman, that this bill necessarily need require the Government to convey 5 acres or a patent-in-fee to solve this problem. Quite probably a life estate to some of these people would be sufficient and the land would then revert to the Government where it is in the national forests. But hardship is being caused to a great many people who have lived all their lives in the mountains of your State and mine, and this bill is meant to address itself to that hardship and provide equity for these people who now find the rules were changed, after they had long resided in their homesites, in their cabins in the mountains of our Western States.

With that statement, I would appreciate it if I might sit with you so I might address questions to subsequent witnesses.

Senator METCALF. The Chair was going to ask you if you would participate in the rest of the hearing when we have witnesses from the Forest Service and Bureau of Land Management.

The next witness will be Mr. Edward P. Cliff, Chief of the Forest Service.

**STATEMENT OF EDWARD P. CLIFF, CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY REYNOLDS FLORANCE OF THE FOREST SERVICE**

Mr. CLIFF. Thank you, Mr. Chairman and members of the committee.

I appreciate the opportunity to appear before your committee in connection with S. 3451, a bill to provide relief to residential occupants of unpatented mining claims upon which valuable improvements have been placed, and for other purposes.

Assistant Secretary Baker is unable to be here today and has submitted for the record a brief statement setting forth in general the Department's position.

Senator METCALF. Without objection, Assistant Secretary Baker's statement will be incorporated in the record at this point.

(The statement referred to is as follows:)

**STATEMENT OF JOHN A. BAKER, ASSISTANT SECRETARY OF AGRICULTURE**

Mr. Chairman and members of the committee, S. 3451 is a bill to provide relief for residential occupants of unpatented mining claims. The bill would authorize the Secretary of the Interior to convey up to 5 acres to applicants who on January 10, 1962, were residential occupants of invalid mining claims upon which valuable improvements had been placed. The applicants would be required to pay not more than the fair market value of the land conveyed but not less than 50 percent thereof.

The Department of Agriculture is in general accord with the basic purpose of this bill which will provide equity for people in deserving instances.

Within the national forests administered by the Department of Agriculture there are areas where concentrations of mining claim occupancies constitute community centers. Some were historically important in mining activity where it was reasonable at the time of the initial occupancy for locations to be made in good faith. In the mother lode country of California and in other areas lands are being occupied for residential purposes which once were valuable for locatable minerals but which now have been worked out. These unpatented mining locations would be declared invalid today but some have served as the homesites of the occupants for many years, even into the second and third generations. To evict these persons would create undue hardships and serve no economic or humanitarian purposes. In other instances, lands upon which locations under the mining laws were made in good faith are now serving as residential places while the location may be determined to be actually invalid.

Legislation which would authorize conveyances for the present fair market value of the land in such instances would enable the Department to solve many of the occupancy problems in the national forests.

At the same time the Department believes that solution of these problems should be attained under sound management principles and in such a way that conveyances would not be made of lands which should be retained in public ownership and managed under principles of multiple use along with the surrounding national forest land. Our report recommends amendments which would aid the Department in accomplishing this.

In addition to the residential occupancies on unpatented mining claims which were initiated in good faith, there are occupancies within the national forests based on attempted mining locations supported by little or no effort to make actual discoveries. These have not been made for mining purposes. Rather, the the principal aim of the locator was to obtain rights of possession to valuable national forest lands for summer homes, hunting camps, and other purposes unrelated to mining. National forest lands should not be conveyed in such instances.

If the bill is amended to provide the safeguard needed to protect the public interest, its enactment would enable the Federal Government to afford equitable relief to those that are justly deserving.

Mr. CLIFF. The Department in its report has expressed no objection to the enactment of the bill if it is amended as recommended in the report.

S. 3451 relates to unpatented mining claims upon which valuable improvements have been placed and which under certain conditions have been or may be relinquished or which within certain periods have been or may be determined to be invalid.

The bill would authorize the Secretary of the Interior to convey to qualified applicants not to exceed 5 acres of such claims upon the payment of not more than, nor less than one-half of, the fair market value exclusive of improvements. A qualified applicant would be one who was a seasonal or year-round residential occupant-owner as of January 10, 1962.

There is now in the House of Representatives a similar bill, H.R. 12761. One of the differences between that bill and S. 3451 is that the applicant would have to pay the full fair market value of the land involved exclusive of improvements.

An application for conveyance under S. 3451 would have to be made within 5 years after enactment.

The Department of Agriculture is primarily concerned with those invalid or relinquished unpatented mining claims within the national forests with respect to which applications for conveyances could be made under the bill. Under the terms of the bill, conveyances could be made by the Secretary of the Interior of lands withdrawn in aid of a function of a Federal department or agency other than the Depart-

ment of the Interior, or of State, county, and local agencies only with the consent of the head of that governmental unit and under such terms and conditions as that unit may deem necessary. Thus, national forest lands applied for under the bill could be conveyed by the Secretary of the Interior only with the consent of the Secretary of Agriculture.

Where the consent of the head of the agency for which lands are withdrawn is not given, the bill would provide that the applicant would be granted a preference right to purchase 5 acres or less of other lands made available for sale under the act by the Secretary of the Interior from unappropriated and unreserved lands and those lands subject to classification under section 7 of the Taylor Grazing Act.

The use and occupancy of unpatented mining claims in the national forests is a problem we are very much aware of. Such use and occupancy often has an adverse effect on the administration of the national forests by the Forest Service. We have been working toward a solution to these cases for some time and progress has been made in resolving many of these issues.

Within the national forests there are some areas where concentrations of mining claim occupancies constitute community centers. In these and in some other areas it was reasonable at the time of the initial occupancy for mining locations to be made in good faith. In some instances at the time of location the area was thought to be or was actually valuable for locatable minerals but has subsequently turned out not to be valuable or has been worked out. They would be declared invalid today. Some of them have been occupied as homesites for a long time. Families have been raised on them. In some instances there were concentrations of such claims before the national forest was established. Legislation which would authorize conveyances for the present fair market value of the land in such instances would enable the Department to solve many of the cases which, technically at least, are occupancy trespasses today in the national forests.

We believe, however, that decisions on conveyance applications could best be made on the basis of broad land use classification and policy rather than by a method which would have all of the applications for conveyances of lands in unpatented mining claims resolved on an individual case basis.

National forest lands are valuable public assets in units which have been established and are administered for their multiple values. Inholdings within the national forests often give rise to management problems. Conveyances of national forest land occupied by the owner of an unpatented but invalid mining claim generally would not be consistent with the overall land management policies and purposes of the Federal Government. These lands have been withdrawn for particular purposes and determination has already been made that generally these lands best serve the public interest as presently classified and managed under principles of multiple use and sustained yield.

In the Department's report we recommended that section 3 be amended in such a way as to limit conveyances of lands within the national forests to designated areas.

Under this amendment, applications could be considered under a system based on sound policy principles which would provide equitable relief for persons in deserving instances and at the same time provide safeguards to protect the public interest. Lands should not be conveyed to occupants of invalid mining claims when such conveyances would be detrimental to the purpose for which the withdrawal is made.

Within the national forests there are many cases of occupancies based on purported mining locations supported by little or no effort to make actual mineral discoveries. It is evident that these are not based on legitimate efforts to develop the mineral resources for which the mining laws were enacted. Instead, the primary purpose is to obtain the use and occupancy of oftentimes valuable sites for summer homes, hunting camps, and other purposes unrelated to mining. These national forest lands should not be conveyed to the occupants under such circumstances. Such occupancies are a big problem for us and we are endeavoring to solve them as rapidly as we can.

That concludes my formal statement, Mr. Chairman.

Senator METCALF. Thank you, Mr. Cliff.

Senator Church?

Senator CHURCH. Mr. Cliff, I am in wholehearted agreement with the final paragraph of your statement, where you say that there are, and we both know that there are, numerous unpatented mining claims that are not legitimate and ought not to be recognized.

With respect to those, I think that conveyances ought not to be required. I would want this bill to provide for the full participation of the Secretary of Agriculture and also give the necessary discretion to the Forest Service to make this kind of determination. What concerns me, however, is that under the bill as it is presently constituted, and as you point out on page 2 of your testimony, if the unpatented mining claim is located on any Federal land which has been withdrawn for any special purpose, and if that land is under the jurisdiction of some department other than the Department of the Interior, then no conveyance can be made except with the consent of the department of Government having jurisdiction over the land.

Now, I had thought that that language had meant, when the original drafting of the bill was done, that in a national forest, for example, if land had been withdrawn as a potential powersite for the Bureau of Reclamation, then no conveyance could be made of an unpatented mining claim within that area without the consent of the Department of the Interior and the Bureau of Reclamation, as the case may be. It would obviously be inconsistent with the purpose of the withdrawal to permit a conveyance in that area that might interfere with the later development of a water project.

But from the testimony of the Forest Service, I take it that you construe this language to mean that all the national forests are considered withdrawn and fall within this provision of the bill?

Mr. CLIFF. Yes; that is the way we have interpreted it.

Senator CHURCH. So that any national forest is withdrawn land and therefore no conveyance on it can be made without the consent of the Secretary of Agriculture.

Mr. CLIFF. That is the way we interpreted it.

Senator CHURCH. I think that is the way you have. Your testimony makes that clear.

Then you go on to testify that in your view, we should take a further step and not only require the consent of the Secretary of

Agriculture to the conveyance, but also provide that conveyances can be made only within certain areas within the national forest and not elsewhere.

Now, I think that this could go very far toward totally eliminating the effectiveness of the bill. What we are trying to solve is a human problem, a very real and harsh one for many people who have lived for years in these little homesites and who now find that the Government is taking action to force them off.

In some cases, that action may be justified. In other cases, where valid claims had once been established, where the mineral has now been exhausted or where economic conditions now make it uneconomic to mine the claim or for other similar reason the claim is no longer operational, so to speak, forcing off the person who has long lived on it. This creates a very harsh and arbitrary result, particularly when they are old and impecunious and have no other place to go.

The purpose of this bill is to get at that kind of case and you don't get at that kind of case by taking one sector of the national forest and saying in this sector of the forest the bill can apply, or we will permit it to apply at Atlanta, Idaho, for example, because there is a cluster of claims with homes all together there, but elsewhere in the national forests we will not apply the bill. Elsewhere in the national forests you will also find scores of people in precisely this situation.

Now, if we are going to have a bill, we ought to draw it to reach these people. I should think that if we were to draft it in such a way that the Secretary could give, say, a life estate so these older people could be permitted to live out their lives without being forced out of their cabins or homes, and convey that estate within a reasonable limit of their ability to pay, we could solve the problem and administer it with some compassion for the problem that faces these people and reach the thing we are trying to correct.

But as the bill now stands and as you now interpret it, I am very doubtful that we will get the problem solved.

I would like to have your own response to that.

Mr. CLIFF. Well, we recognize the type of case that you describe and which you are anxious to get a solution for. We are anxious to get a solution for it and we are very sympathetic to this type of situation. It is these people that we would like to see treated equitably and fairly. It is the ones who have come in without visible intent to pursue a mining operation, but to get land under mining laws for other purposes that we would like to have discretion to say "No" to.

Senator CHURCH. May I say just at this point, I concur in that, and the bill is meant to be, Mr. Chairman, discretionary. It says at the very first sentence of the bill that the Secretary of the Interior may convey to any occupant. The purpose of that language was to convey the necessary discretion and not to make it mandatory so that it would be applicable in cases where it is not justified.

Mr. CLIFF. One of the reasons we are recommending that we designate areas is that we think it would simplify administration. There are areas right now which are occupied by some of these invalid claims where the recreation pressure is on us now, where the need for public use is on us right now.

I can visualize the drainage at the canyon bottom, where this situation prevails, where by making a decision that in this area we

will not approve or concur in alienation, it would simplify administration greatly.

In other cases, such as the Atlanta case you mentioned, we could designate that area and similar areas as one where we would approve and give the Secretary of the Interior the affirmative sign to go ahead and make the sales.

Now, within some of the larger units, there may be and are some of these hardship cases, these deserving cases and I think that they could be designated. It would be our intent to designate them, but we would want to be sure that we are dealing with the favorable cases.

I think we see eye to eye on this.

Now, as to life estate proposal, I think it has considerable merit—I am sure it has. There are areas where occupancy of claims at the present time is not in conflict with public use but which may be in the foreseeable future and where it would be equitable and would do no violence to the public interest to allow these people to stay, paying a reasonable rental for the use of the land.

I think that would be all right.

We have authority now and are using it to grant special-use permits to occupants where there is justification to do so, to enable them to remain on their claims. That authority, though, is limited to 30 years.

It might not meet the full needs of what you are striving to accomplish.

Senator CHURCH. I think it does not, for this reason: It is always within the right of the Forest Service to grant a special use permit and the Forest Service quite properly is under direction to make the cost of that use permit commensurate with whatever the market value might be so that the Government is receiving a fair return. I think that the special-use permit does not solve the problem of many of these people, because they find themselves, having once had a claim that for one reason or another has been declared invalid, and having spent considerable money to build a homesite and to make improvements there, they find themselves many times in a difficult financial position. As you know many of these mountain people live off the land to a large extent. They pick the mountain berries and hunt the deer for their food, and they find themselves in a position where the annual charge that a special-use permit places upon them, in many cases, simply beyond their ability to pay. So I would think that in those circumstances where the shoe fits, we ought to have a provision in the law, and this is meant to be the purpose of this bill, to convey to them, let us say, a life estate for a reasonable and equitable consideration, taking into consideration all of the factors in this particular case. They may then have for the remainder of their life at least the continued use and occupancy of their homesite. Following the death, then it could be terminated. If it is man and wife, it could be done in joint tenancy with survivor's rights in the survivor, and then upon the death of the survivor, it all reverts to the Government. This is a compassionate way to solve a problem that the present law and regulations do not adequately cover. That is what I had hoped we could make this bill do.

Mr. CLIFF. I think that your suggestion has a great deal of merit and would apply to many cases that we have on the national forests.

Senator CHURCH. It is for this reason, Mr. Chairman, that I have some amendments to offer.

I think we are really trying to get at the same thing in the same way and therefore we ought to be able to adapt this bill in such form as to accomplish it—that the public interest be protected.

Mr. CLIFF. I hope you can devise it in such a way as to treat the kind of cases you are describing and not open the door to give more favorable treatment to people who are deliberately taking advantage of the mining laws and do not deserve consideration.

Senator CHURCH. I agree wholeheartedly and would want to frame the language of the bill in such a way as to give full discretion there to the Secretary, so that a decision could be made on the facts of each case.

I would like to have the Forest Service furnish a statement outlining the annual charges for regular special use residential permits, and some data which may be readily available on the number of special-use permits issued in various types of cases in Idaho and California.

Mr. CLIFF. This will be done.

(The material referred to follows:)

U.S. DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE,  
Washington, D.C., August 20, 1962.

HON. ALAN BIBLE,  
Chairman, Public Lands Subcommittee,  
Committee on Interior and Insular Affairs, U.S. Senate.

DEAR MR. CHAIRMAN: In accordance with a request made to us at the time of the hearings by the subcommittee on S. 3451, we submit the following information with reference to annual charges for special-use residential or summer home permits within the national forests.

The minimum annual fee for such permits is \$25 per lot. The average fee is estimated to be \$35. The fees for a few especially desirable locations run up to \$95 per year. The usual high would run from \$50 to \$60 per year.

Sincerely yours,

EDWARD P. CLIFF, *Chief.*

#### SPECIAL USES ISSUED FOR RESIDENCES ON MINING CLAIMS

The following tabulation shows the number of special uses issued for residences on mining claims during the past 10 years:

Unit	Number of special uses issued			
	Claims not relinquished	Claims relinquished	Null and void decision	Total
Idaho:				
Bitterroot.....	2	1	0	3
Clearwater.....	2	0	0	2
Coeur d'Alene.....	4	0	0	4
Kaniksu.....	3	0	1	4
Nezperce.....	10	7	1	18
Region 1 total.....	21	8	2	31
Payette.....	1	0	0	1
Salmon.....	6	1	0	7
Sawtooth.....	2	0	0	2
Region 4 total.....	9	1	0	10
Idaho total.....	30	9	2	41
California.....	13	12	0	25
Total.....	43	21	2	66

Senator CHURCH. I have no further questions.

Senator METCALF. My attention has been called to questions raised by the Comptroller General. He specifically raised the question as to the community of Atlanta, Idaho, which you mentioned, Senator Church, where he says there is some doubt as to whether the term "qualified applicant" would include persons who reside on land now or formerly in an unpatented mining claim, but who have no vested interest in the land upon which they reside.

I think that perhaps we can take care of some of these in amendments you propose.

Senator CHURCH. I think so, Mr. Chairman, and I will have other amendments to propose in line with the exchange I have had here with Mr. Cliff. In that respect, I shall be happy to furnish copies of these amendments for your office.

Mr. CLIFF. Thank you.

Senator METCALF. This is a very perplexing question. Let me give you an example that I know about in Montana, where during the time that they were building Hungry Horse Dam, there was very little land that was privately owned. Most of it was Forest Service land. In order, for instance, to get a restaurant, which was prohibited by the Forest Service, people would illegally file on a mining claim. I know of several of those establishments that were there during the Hungry Horse period and are now abandoned. But the people who are living in them now bought them, as Senator Church has suggested, for a consideration in accordance with the usual and normal transaction that we have out West, did not go to an attorney, did not get an abstract, took a quitclaim deed, and in good faith have lived there ever since. Now we recognize that the land was acquired, the mining claim was staked for an illegal purpose, and yet the people who are not connected with the original illegality and who thought, because of the customs of the community, that they had something—and it is about all the money they have and about all the property they have—are trying, as Senator Church says, to live out their lives.

It seems to me that we have to do something that gives a good deal of discretion to the Secretary, and yet the Forest Service has to carry this discretion, exercise it with a good deal more sympathy for the human values that have been talked about than have been shown in the present administration of the law that I agreed on, helped sponsor, and pass to correct the abuses that brought about the illegal locations of mining claims for summer homes and for communities and things that created a situation that had to be curbed.

I just cannot see any way to apply it to a section or to apply it to original trespass or original illegal location, or any of these things, except to go into individual cases and try to exercise a good deal of sympathy.

Now, I understand that in all these governmental departments, pretty soon it becomes a matter of right for people to file for such a claim even if you begin to exercise discretion.

I know the difficulties of administration, but cannot we work out some way to give considerable discretion to the Forest Service and rely on you to exercise that discretion with sympathy and humanity?

Mr. CLIFF. Yes. And I want to assure you we are sympathetic to many of these cases, where there are real equities and where there is a history such as you describe.

As a matter of practice, when we detect that people are getting themselves in a jam of the kind you describe, we try to advise them of the requirements of the mining laws. We find that in some cases they will assure themselves of the requirements and guide themselves accordingly. In other cases, they will go right ahead and disregard the advice. They go ahead and stake claims without meeting the requirements and then they are faced with a problem of enforcement. There are many, many of these cases that have come up in recent years. I think we have more of these that have come up in the last 10 years than any other period. The ones that have a historical background are clear.

Senator CHURCH. What we really are seeking to do here is to place in the hands of the appropriate agencies all of the tools that are needed to handle these cases equitably and we think that there is a gap in the present law. There will be situations where equitable treatment calls for a conveyance, let us say, of a life estate, for a very nominal consideration because the equities call for it. Under present law, there is no way that this can be done, oftentimes. That is the purpose that this bill is meant to serve. I think that we need the legislation, Mr. Chairman; we need it badly. But we want to draft it in such a way as to implement the objective and not open the door for further abuse. This is meant to correct hardship, undue hardship that none of us, I think, ever intended to impose on anyone, but which the law in its present form sometimes does impose.

I should think that that being the common objective, we ought to be able to find suitable language and amend this bill in suitable fashion to get the job done.

Mr. CLIFF. We are in complete agreement with the objectives you describe. We have a big problem here and it is a heart-rending problem in many cases, and we are anxious to handle it in a way that is humane and reasonable. This legislation would help us solve many, many cases that are running into difficulty.

Senator CHURCH. Fine.

Senator METCALF. Thank you very much, Mr. Cliff.

The next witness is Mr. Harold Hochmuth, Associate Director of the Bureau of Land Management.

**STATEMENT OF HAROLD HOCHMUTH, ASSOCIATE DIRECTOR,  
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE  
INTERIOR, ACCOMPANIED BY FREDERICK FISHMAN, ATTOR-  
NEY-ADVISER, OFFICE OF THE SOLICITOR**

Mr. HOCHMUTH. Mr. Chairman, I also have with me Mr. Fred Fishman, an attorney in the Office of the Solicitor of the Department, who is extremely familiar with the legal detail of the bills.

Senator METCALF. We are glad to have you with us again before the committee and look forward to the testimony.

Mr. HOCHMUTH. Mr. Chairman, there has been submitted to the committee staff this morning the Department report on the bill and there has also been submitted remarks by Assistant Secretary Carver.

He is extremely sorry he cannot be here today. He is now in Denver.

Senator METCALF. Without objection, Mr. Carver's statement will be incorporated in the record at this point.

(The statement referred to is as follows:)

STATEMENT OF ASSISTANT SECRETARY JOHN A. CARVER, JR.

Mr. Chairman, members of the committee, S. 3451 deals with a rather aggravated situation arising out of the application of the mining law of 1872 and the local laws and regulations which that act contemplates. We are concerned with the residential use and occupancy of mining claims for nonmining purposes, where the claims have been relinquished or invalidated as mining claims, or where they appear to be subject to invalidation. The basis for invalidation is usually that there has not been a discovery of a valuable mineral or that all the valuable ore has been mined out. Some of this residential use is of long standing.

It is well-settled law that, in order to constitute a valid discovery, there must be found within the limits of the claim a valuable deposit of minerals sufficient in quantity and quality to warrant a prudent man in the further expenditure of labor and means with the reasonable expectation of success in developing a valuable mine (*Chrisman v. Miller*, 197 U.S. 313 (1905)).

Although the greatest number of problem cases is in the mother lode country of northern California, Colorado, Idaho, Oregon, Washington, and South Dakota contribute on the order of an estimated 100 to 200 cases each. The problem exists on both the public lands administered by the Department of the Interior and within the national forests.

In considering the desirability of legislation of this type, we have attempted to see the problem, not just as an administrative headache for a landlord, but also from the affected citizens' point of view. In the mountain West, as the members of this committee well know, there is a strong tradition supporting the right of a private citizen to go upon the public lands, to stake a mining claim, and thereafter to have and retain a property interest immune to interference from all the world.

Lindley on Mines, third edition, section 218, emphatically declares the Federal rule that the right of possession of a mining claim, i.e., the locator's right of *pedis possessio*, comes only from a valid location. However, it is pointed out that the State courts often have espoused a more liberal rule of law in controversies arising between adverse private parties where a miner will be protected to the full extent of his located ground where he is prospecting and complies with the requirements concerning assessment work. Although no rights are initiated against the Government until there has been a location and a valid discovery, nevertheless, during the course of years the miner's asserted right of possession was honored and belief established in the minds of many that the location of a claim and the performance of assessment work grants the exclusive right of possession to the locator who may do within the limits of his claim as he pleases.

The right of the Government to challenge has been recognized, but the Government traditionally has been patient with mining locators, and locators and their successors in interest have felt secure in their ownership and right to possession.

Unpatented mining claims are taxes. The courts and the laws, adapting themselves to the necessity of the case, and governed by rules of commonsense, reason, and necessity, have treated the possessory rights of the miner as real property. Actions for possession, similar to ejectment actions to quiet title, actions in trespass, and bills for partition are constantly maintained. Such interests are held to descend to heirs, to be subject to sale on execution, and to be assets in the hands of executors and administrators for the payment of debts. In some instances, patents probably would have issued at one time if applied for. After occupancy has subsisted on unpatented claims for a generation or more, the citizen tends to regard threatened action by his Government to oust him on the grounds that there has been no discovery of valuable minerals as unreasonably technical and arbitrary.

In addition, of course, hardship situations exist. Unpatented mining claims change hands in pretty much the same way as neighboring patented claims. Subsequent purchasers who have paid value for the land and improvements for subdivided portions of claims may have been on notice—but they may also have been senior citizens of limited means, unable or unwilling to hire lawyers, and financially and emotionally unable to resist Federal ouster proceedings. Particularly is this true if the citizen is given no reasonable assurance that his title can be regularized on terms which appear reasonable to him.

Many persons, not sophisticated about land title matters, have paid large sums of money for their homes on mining claims, believing in good faith that they

were acquiring fee simple absolute to their homes and the lands on which they are situated.

The U.S. Government as a proprietor, of course, has a duty to prevent unauthorized use of public lands and to collect amounts owing to the Government by way of charges for unauthorized use. Local administrators, attempting to find alternatives or relief for the hardship cases, have faced a dilemma—if the premise of ouster is invalidity of the claim, they cannot assure the citizen who signs a relinquishment of the mining claim that the Government will not pursue remedies based on trespass liability. And trespass liability in some cases might exceed the present fair market value of both the land and improvements—for both of which the citizen may himself have paid full value. In the circumstances, such persons are understandably reluctant to attempt to achieve a resolution of the problem between themselves and their Government.

Senator Church has presented a bill which seems to us to be a reasonable legislative approach to solution of the problems presented. The bill in essence would authorize the Secretary to convey for a consideration the Government's interest in 5-acre or smaller portions of the mining claims, and in doing so to take cognizance of various alleviating factors such as the type and duration of the use and occupancy, the fact that a prior purchase was made for full value, and other equitable circumstances. Consideration to be paid could range from the fair market value as of the date of enactment down to 50 percent of such fair market value.

If this should be infeasible, owing, for example, to a countervailing public interest in retaining the land in Federal ownership, the occupant otherwise entitled to such equitable consideration would be afforded the opportunity to obtain a small tract elsewhere, from such tracts as are specifically set aside for that purpose.

Eliminated from consideration would be the most serious stumbling block to settlement under existing legal authorization—the collection of all charges for past use and occupancy. It is administratively infeasible to collect in any event. We will not waive willful violations. Waste or depletion, such as is involved in the removal of timber or other materials not related to mining purposes, cannot and will not be condoned.

We think it appropriate that the Congress recognize that the Government's interest in prudent management of public land be considered satisfied by the procedures which the bill, as proposed to be amended, provides. The Government gets at least 50 percent and up to full market value of the land as of the date of enactment. The land is put into unquestioned ownership, either public or private, removing administrative difficulties to the Government and simplifying title procedures in the States and counties. The often expressed mandate to end trespass on the public lands will be furthered. Lands which ought to be on the tax rolls will go on the tax rolls.

As I have indicated, of course, the countervailing interest in retained public ownership is provided for—for recreational purposes, for wildlife conservation, and for other public purposes. Where such is indicated, the Government makes a bona fide attempt to find other public land for claimants who are entitled to consideration under the standards provided in the bill.

The Department's report recommends an automatic reservation of oil and gas and a reservation of such other leasable minerals for which the land is deemed to be valuable or prospectively valuable. We believe that these provisions, while protecting the substantial economic interests of the Federal Government, would not unduly hamper surface use and financing. We firmly are of the view that unnecessary reservations of minerals tend to preclude or limit maximum utilization of the surface.

The Department is of the view that Senator Church's bill is a considerate and thoughtful approach to the solution of a complex and thorny problem. The procedures outlined in the bill evidence a thorough understanding of the public land laws and their administration.

Enactment of S. 3451, with the proposed amendments, would facilitate the resolution of a longstanding problem. Contest proceedings for all mining claims thought to be invalid would take many years and require manpower in excess of present availability of personnel. On the other hand, there is ample legislative precedent for recognition in land sales of peaceful and long tolerated possession, particularly where such possession commenced under law or color of law. The net result of such enactment would also permit the utilization of personnel, now engaged in dealing with the problem, in more productive labor.

We strongly urge the enactment of S. 3451, as proposed by this Department to be amended.

Mr. HOCHMUTH. I have also some brief remarks, Mr. Chairman, which in the service of time I will not read. They go to some of the amendments I believe the Department is particularly interested in bringing to the attention of the committee. The background information we might give has already been given very thoroughly by Senator Church and Mr. Cliff.

Senator METCALF. Your statement, then, will be incorporated in the record as if read and you will proceed informally to inform the committee of suggestions along the lines that have already been laid out.

Mr. HOCHMUTH. I think one of the things that concerns us greatly in the bill as now drafted is section 7, relating to the minerals.

The Department, in its report, calls the committee's attention to the anomaly that is created by section 7 as now drafted. I would like, with your permission, Mr. Chairman—

Senator CHURCH. Is that section 7 as approved by the House committee?

Mr. FISHMAN. By the House, yes, sir; 10566.

Senator CHURCH. But not as it appears in this bill?

Mr. FISHMAN. Yes; 10566, the act itself, is an exact replica of section 7 of this.

H.R. 10566 was passed by the House of Representatives. It pertains to the reservation of mineral interests in certain lands that were patented, the minerals being reserved to the United States in and around Tucson, Ariz. Section 7 of S. 3451 appears to be identical to H.R. 10566 as passed by the House of Representatives.

Senator METCALF. Thank you.

Mr. HOCHMUTH. Section 7 of Mr. Church's bill indicates certain requirements for the reservation of minerals to the United States. I believe the anomaly that is involved in that is that if these lands that we are talking about are nonmineral in character, because there can be no determination of validity, then there would seem to be no reason why the United States should reserve minerals which have no particular value. This is one of the things that particularly concerns us.

Now, as to the leasable minerals, that is another question. The Department recommends that the leasable minerals be retained, but that certain segments of the leasable minerals, particularly those other than oil and gas, that could be extracted under the prevailing law, but that oil and gas would be reserved.

Senator CHURCH. In other words, you think it would be a mite foolish to, on the one hand, declare the mining claim to be invalid for the lack of minerals and, on the other hand, retain for the United States the minerals?

Mr. HOCHMUTH. Yes, sir.

Senator CHURCH. Would you possibly get a situation, however, where the mining claim might be invalid by virtue, say, of being located illegally in an area that had been withdrawn for a powersite, where there might be minerals but where the location is illegal because the land was not eligible for entry?

Mr. HOCHMUTH. You could—of course, a mining claim could be invalid ab initio because of a powersite or other type of withdrawal.

Senator CHURCH. In which case it is not likely that a conveyance would be made anyway because of the nature of the withdrawal.

Mr. HOCHMUTH. That is right. But if otherwise there were valuable minerals there and other than that it could have been validated under the mining law and patent issue, then probably one would not want to go through this route to pass title to it. It ought to be passed to the provision of the mining law.

Mr. FISHMAN. It would be a necessity. If you postulate a situation where a mining claim is located on lands subject to mineral location at that time and the land contains valuable minerals locatable under the U.S. mining laws, then the locator presumably would have a valid mineral location and there would not be any necessity for relief such as under this bill, sir.

Senator CHURCH. I think that is right.

Therefore, your suggested amendment would merely reserve to the United States in cases where the bill was used—reserve to the United States the leasable mineral rates.

Mr. FISHMAN. To be more explicit, our amendment contemplates that in all cases, oil and gas would be reserved to the United States, and such other leasable minerals for which the land is deemed valuable or prospectively valuable by the Secretary of the Interior.

You may wonder why we have segregated oil and gas. Oil and gas represent high economic values far exceeding the values of other minerals. Our experience under the Mineral Leasing Act has demonstrated that 95 percent of the income derived from that act has resulted from operations pertaining to oil and gas.

There is another fact, too, that you gentlemen might wish to consider. That is this: That oil and gas by their very nature are fugitive minerals whose occurrence or nonoccurrence are in large measure a matter of speculation, even among expert geologists, whereas the other minerals—sodium phosphate, potash, and so forth—their occurrence or nonoccurrence are more readily ascertainable.

Mr. HOCHMUTH. There are one or two other comments, Mr. Chairman, and I will complete my statement.

S. 3451 has an allowable period of 5 years for application and H.R. 12761, which was passed out by the House committee, has a 3-year period. The Department recommends a 5-year period, because it is felt that this is just much too short to get into this, to notify people, to get them into it and get it going and examine the land and so forth. I think that is the principal reason why we feel a 5-year period is better. This, however, is a matter of policy that would have to be determined by the Congress.

Senator METCALF. It would not have to be completed within 5 years; just that application be filed?

Mr. HOCHMUTH. That is right.

One other comment I would make in listening to the previous testimony is that, as we read the bill, it is completely discretionary with the Secretary of the Interior and, in the case of lands in national forests is discretionary with the Secretary of Agriculture, as to what the Secretary of the Interior does and does not do with regard to the lands in these areas.

Senator CHURCH. Under the present act, do you feel that conveyance of the full estate is required, or would the conveyance of a lesser estate such as a life estate be permissible?

Mr. HOCHMUTH. Of course you can lease under the act, because there are various segments of the estate that you might handle. I

think it provides anything from a full estate to something less than that. We read that as a life estate or a lease or something less than that.

Senator CHURCH. But the consideration to be paid would appear in the bill to contemplate a conveyance at least of a higher order than a lease, because a lease normally calls for periodic rental payments and the consideration here takes the form that normally accompanies a transfer in fee or a transfer of some fee estate.

Mr. FISHMAN. This explains the language you are referring to, Senator. In section 5, when we use the term—when the term “fair market value of the land or interest” is used—it can also contemplate, in our judgment, fair rental value. In other words, we are using the term “fair market value” as a generic term.

Senator CHURCH. But you see, what I am trying to reach is this: That under present law it is always open, let us say in the national forests, for the Forest Service to grant a use permit and then to charge rent. Now, the whole purpose of having this bill is to reach those people who cannot afford to pay the rent and who, by reason of long occupancy, are entitled to special consideration. They may have given value in the first instance, or they may have at one time had a valid claim that has since become exhausted, or they may be the grantee in a long series of grants who have taken quite innocent of the fact that originally the claim was fraudulent or invalid. But whatever, due to the equities of the case, we are trying to reach those people who need to have their occupancy safeguarded for, say, the balance of their tenure, the balance of their lives, for a nominal amount of money and who cannot take a use permit and pay the Government so much money every 6 months, you see. That is the purpose of the bill.

We do not want to pass this bill if it is just going to be another way for the Government to lease this land, which is just another way of granting use permits. However, we do want to pass this bill if we can make a conveyance which, as I say, need not be a full estate in fee, might properly be a life estate to solve the problem, but which can be made permanently for the life of the tenant for a nominal amount of money where the equities are such as to call for it. I think the language ought to make it clearer than the present language does that this is what we have in mind.

Mr. HOCHMUTH. Senator, of course, I think one of the situations we find would vary this somewhat. We find that in certain places, whatever the fair market value less the equities—some of these lands are quite valuable—the value they might have to pay even for a life estate is something these people cannot raise, whereas they can raise an annual rental. This is one of the problems we are running into now, where we are trying to convert some of the mining claimants to the small tracts. They can pay us an annual rental, but they cannot pay us the several thousand dollars involved in fair market value of a life estate.

Mr. FISHMAN. This language would also permit, in computing fair rental value, in situations where conveyance of fee simple or life estate was not indicated perhaps because of an impending need of the lands for public purpose—this language would permit consideration of the equities in fixing the rental value to be charged these individuals, so even in that situation, Senator, it would allow flexibility, where the present law, of course, does not.

Senator CHURCH. My only suggestion is that we might make the bill clearer in this respect by simply stipulating that the conveyance can be up to and including the full fee, and there will be cases where there will be no objection to conveying the full fee, but that also it could be a lesser estate than a full fee, including, as you have pointed out, leases in cases where leases would be appropriate.

Mr. HOCHMUTH. I think we would certainly agree with that, Mr. Chairman, because we have situations now where there is perhaps no need for the Government to exercise its desire to occupy the land for 5 years. Particularly again I am thinking of California with the water developments going on.

But we know that in 5 years, because of need for recreational development, the United States will need that land. So if we have to give it a life estate or if we cannot give something less than that, then we would have difficulty in these situations. So I think it should be broad enough to allow discretion to determine the length of the time the occupant might be there or the estate that might be transferred.

I would like to make one other statement, Mr. Chairman. That is that I read in this the discretion for both Secretaries to determine whether that land is needed for programs of the United States, and under those circumstances we could consider the terms of the bill would not be applicable in the sense that the authority is there to require the evacuation of the site where it is needed for Federal programs.

Thank you.

Senator METCALF. Senator Church?

Senator CHURCH. No further questions.

Senator METCALF. I have nothing further, either.

Thank you very much for very helpful and thoughtful testimony.

(The complete prepared statement of Harold Hochmuth is as follows:)

STATEMENT BY ASSOCIATE DIRECTOR HAROLD R. HOCHMUTH, BUREAU OF LAND MANAGEMENT

Mr. Chairman, members of the committee, Assistant Secretary Carver's statement has pointed out the general situation and background involved in the use and occupancy of unpatented mining claims. Further, he has indicated the basic relief to be afforded. S. 3451 deals with but one aspect of this situation, namely, the seasonal or year-round residential occupant-owner of an unpatented mining claim who has placed valuable improvements thereon.

The Department recommends that S. 3451 be enacted, subject to consideration of the following:

1. Certain time limitations contained in the bill seriously impair its effectiveness to remedy the unauthorized occupancy situation. To limit the applicability of the bill to persons who will in the future, or have within the past 2 years from the date of the enactment of the bill, relinquished or had invalidated their unpatented mining claims, deprives the advantages of the bill to persons who through no fault of their own relinquished their claims or had them invalidated at an earlier date. There are situations where this exists, and the bill should take these situations into consideration; otherwise its utility as remedial legislation will be diminished. Similarly, we believe that the right to select an alternative tract should exist for a period of 5 years from its grant. Amendments (2) and (4) on page 8 of the Department's report would effectuate these recommendations as follows:

(2) On line 3, page 2, delete the words "within two years".

(4) On line 22, page 3, substitute "five" for "two".

2. Section 7 as written apparently envisages a situation where the Federal Government has disposed of the surface but has retained certain mineral interests. The situation involved in S. 3451 is substantially different in that these bills relate to lands where the United States now owns the surface and subsurface estate in toto.

Section 7 provides for reservation to the United States of (1) the locatable minerals, (2) leasable minerals, and (3) mineral materials. We believe that the locatable mineral estate should not be reserved to the United States, but rather should be conveyed under the bill. If, in fact, the land is valuable for locatable minerals, then the mineral locator presumably has a valuable mining claim, and relief under the bill would be unnecessary. If, on the other hand, the lands do not contain significant values of locatable minerals, then the bill may be applicable and no useful purpose would appear to be served by retention of the locatable mineral estate.

The procedure set forth in section 7 of S. 3451 envisages the issuance of two instruments of conveyance for one piece of land, one for the surface and the other for the locatable mineral estate. This, we believe, unnecessarily would add to the cost of administering the bill. We are unaware of any cogent considerations which would require this procedure.

We believe it would be appropriate to reserve to the United States in all conveyances the oil and gas and those leasable minerals for which the land is deemed to be valuable or prospectively valuable. Oil and gas have been described as "fugitive" minerals, the occurrence of which is not always readily ascertainable. We, therefore, believe that the automatic reservation of oil and gas to the United States is warranted by considerations of public interest. Appropriate language to carry out this concept is set forth under amendment (7) on pages 8 and 9 of the Department's report as follows:

Substitute for section 7, line 8, page 5 to and including line 2, page 7, the following:

"SEC. 7. There shall be reserved to the United States, in any conveyance under this Act (1) oil and gas, (2) such other minerals for which the land is deemed valuable or prospectively valuable by the Secretary of the Interior and which as of the time of issuance of patent are subject to disposition under the Mineral Leasing Act, 30 U.S.C. 181, *et seq.*, as amended and supplemented, and (3) the right of the United States, its lessees, permittees, and licensees to enter upon the land and to prospect for, drill for, mine, treat, store, transport, and remove such minerals and to use so much of the surface and subsurface of such lands as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing such minerals on or from other lands. The deposits so reserved shall be subject to disposal by the United States in accordance with the provisions of the applicable laws in force at time of such disposal."

3. Other amendments are as follows:

(1) Amendment on page 8 of the Department's report as follows:

Amend line 5, page 1, to read as follows: "the Secretary, after due process, to be invalid, any interest in an area, not known to be valuable for minerals locatable under the United States mining laws." This amendment makes it clear that any interest in the area may be conveyed and that areas upon which a discovery of valuable locatable minerals are found are not within the scope of the act.

Amendment (3) on page 8 of the Department's report as follows:

On lines 15 and 21, page 3, delete the word "preference". The word "preference" is not apropos for we are dealing only with sales under this act wherein an offer will be made to the qualified applicant.

Amendments (5) and (6) on page 8 of the Department's report as follows:

Amend lines 21 and 22, page 4, to read as follows: "this Act. With respect to any mining claim, embracing land applied for under this act by a qualified applicant, except where such mining claim was located at a time when the land included therein was with—"

Insert on line 25, page 4, after the word "collected" the following: "from any qualified applicant who has filed an application for land in the mining claim pursuant to this Act." These amendments make it clear that the special rule of damages is extended to only qualified applicants under this act under certain conditions.

Senator METCALF. The next witness is Mr. Tom Kimball.

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR,  
NATIONAL WILDLIFE FEDERATION

Mr. KIMBALL. Mr. Chairman, may I submit for the record my prepared testimony and then speak on it?

Senator METCALF. Without objection, it will be accepted and admitted at this point in the record.

(The statement referred to is as follows:)

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR, NATIONAL  
WILDLIFE FEDERATION

Mr. Chairman, I represent the National Wildlife Federation, a private organization dedicated to the attainment of conservation goals through educational means. All States and the District of Columbia are represented among the 51 independent affiliates of the National Wildlife Federation. These affiliates are constituted of local groups and individuals who, together with other supporters of the National Wildlife Federation, number an estimated 2 million persons.

These comments are directed toward the principles involved with S. 3451, rather than its specific language. My observations are made from a personal background of having been born and reared in the West, where most of these unpatented mining claims are located, and with experience of having administered State wildlife agencies in Arizona and Colorado.

I am quite familiar with the way in which the West was settled and the manner in which mining claims were filed. I recognize that Federal agencies administering public lands have vexing tasks and many cases exist of individuals or groups or even villages being located illegally upon properties of the Federal Government. Therefore, it is with reluctance that I express opposition to the principles outlined in S. 3451.

Mr. Chairman, to say these persons are "unauthorized occupants" of national properties is a polite manner of saying they are squatters or trespassers. In effect, they are illegally using public properties. Unintentionally or willfully, honestly or dishonestly, these persons have appropriated public property to their own use through mining claims which no longer have any validity. The guise of a mining claim often has been used by individuals who sought a site for a cabin in a choice fishing or hunting location which should remain in public ownership, and had no real intent of ever seeking or developing a mining industry.

Personally, I see no reason to give congressional sanction to what amounts to unlawful acts or to grant these persons preference rights on buying the land or selecting alternate properties. It is true that most of these mining claims could have been patented in the past but were not. In my opinion, Congress should consider very carefully the broad public interest before rewarding the negligence of individuals who lacked the foresight or desire to obtain legal title to these lands by allowing them to pass into private ownership. Such sale of public lands will lead to a patchwork private and public ownership pattern which makes efficient and effective management of public property impossible.

I believe the Federal Government should continue eviction notices against unauthorized occupants of Federal lands, retaining as much land in Federal ownership as is possible under current laws.

Despite what disposition is made of this proposal, we believe it is essential and desirable for the Congress to recognize this squatter problem exists, and to direct Federal officers and administrators to eliminate illegal occupancy and use of our public lands, and to modernize the mining laws to prevent future occurrence of such problems.

I am sure no one wishes to prohibit the discovery and removal of valuable minerals from public lands, but the mining laws should not be used to obtain land owned by the people for almost every conceivable type of private use other than mining.

Finally, Mr. Chairman, if a favorable report is voted by the committee, we hope it can be made clear that this proposal has no bearing whatever as precedent for sanction of squatting along the lower Colorado River where illegal occupancy of public lands occurs in profusion without even the subterfuge of an unpatented mining claim.

If legislation of this nature is given favorable consideration, the illegal squatter will be the next group clamoring for congressional relief.

Thank you for the invitation to make these observations.

Mr. KIMBALL. We sympathize with the hardship cases of individuals who purchased on a quitclaim deed unpatented mining claims and thought they were getting something for long periods of time that they do not have legally.

I realize, Senator Church, that there are many hardship cases of this kind. However, I submit to the committee that it is pretty difficult to enact legislation which will adequately cover the myriad individual cases that you are trying to solve here. It is difficult to do by legislation or to make a judgment where a person's individual equity is involved versus the public interest. It would seem to me that it would almost be necessary for this to be done by the executive branch, by individuals who could actually go out and make an investigation of these individual cases and then use their judgment as to whether or not the public interest needs to be served by a certain action.

Now, while there are a number of these cases that need attention, in my opinion there are quite a number of others who have used this unpatented mining claim approach as a tool to usurp valuable lands that are needed for public recreation purposes. If not now, they will be needed in the future. If they are allowed to go to patent a number of these, it would create a crazy-quilt ownership pattern in some areas which would make it, I would think, almost impossible to administer from the standpoint of multiple-use purposes or other purposes that might be in the public interest.

So I think we are dealing here with an extremely complex problem and I would certainly hope that provisions are written in the bill to make sure that the executive branch can use discretionary judgment to protect the public interest here.

It does not make sense, to me, to have to go back in later years and spend tremendous amounts of money to buy back some of these areas that might be needed for public recreation purposes. This very bill that we talked about this morning, Tocks Island, is going to cost \$60 million to purchase lands here in urban areas which are needed now for public recreation purposes. Out west it is a different proposition now, but 50 years from now, it might be the same thing.

Right now, in my opinion, we ought to be thinking about lands which are needed for public recreation purposes, and if they fall in the category, they certainly should be reserved for this purpose.

Senator CHURCH. It is for this reason, Mr. Kimball, that we are writing this bill in a permissive and discretionary way, to permit the Forest Service or the Bureau of Land Management, as the case might be, to have an appropriate tool to do equity in a given case, but without laying down any mandate upon any bureau that conveyances must be made in all cases.

Furthermore, we have talked about giving them discretion as to the kind of conveyance, whether it be a lease or life estate or full estate. So we do not mean to attempt to solve this problem by legislative mandate. We merely want to be sure that the Forest Service or Bureau of Land Management has the necessary tools to do justice in any given case and that we find the law today does not permit this in these particular cases the way it should.

Mr. KIMBALL. I sympathize with that approach to the problem, but I hesitate to see language inserted there which would tend to indicate that Congress would want these unpatented mining claims

to go into private ownership by transfer of the actual title to individuals, because in my opinion there are certain areas in the western part of the United States which this would not be in the public interest to do. These lands are more valuable for public recreation purposes and maybe for other public purposes, rather than to allow them to pass into private ownership. I would hate to see any language contained in this bill which would imply that the executive agencies responsible for the administration of this land would feel obligated to proceed on that basis.

There are over 1 million unpatented mining claims in the national forests, for example. There are 10,000 of these unpatented claims in northern California alone. A lot of these cabins and domiciles that are constructed thereon, the people live in San Francisco and this is a summer-type recreational type of development. Certainly those should be given a little different approach and consideration in the final judgment than these people who have actually purchased something and they are living there full time and they cannot afford, maybe, even to pay what the actual rent is worth. Now, in these instances, I think the executive agency needs some discretion and certainly we would have no objections to that.

Senator CHURCH. I think we are actually in more agreement than disagreement.

Mr. KIMBALL. Perhaps.

Senator CHURCH. I think that our previous testimony and questions brought out the very fact that you have been making. We do want to leave the departments free to make the proper determinations in any given case. So we have written this in discretionary terms.

I think the testimony in this hearing as a part of the legislative history on this bill will even further clarify that point.

Mr. KIMBALL. I would like to point out for the committee's consideration one other point. That is the fact that in the lower Colorado River area there are a considerable number of illegal occupants on public land. They do not even go through the formality there of getting onto an unpatented mining claim. Now, if you do anything for the unpatented mining claim owner, you had better be prepared to have these people come en masse to Congress again and say, "Now give me some consideration."

I submit for the committee's consideration that this lower Colorado River area is one of tremendous value as a public recreational area. This is one area where, at least in my opinion, we should not submit any type of tenure to these illegal occupants. In fact the executive agencies, in my opinion, ought to proceed immediately to start removing those illegal occupants from public land. They have not even gone through the formality of locating on unpatented mining claims there. They just moved in, built homes, motels, businesses, did the same thing, then sold them on a quitclaim deed. In my opinion, if somebody buys one of those businesses on a quitclaim deed, he ought to be run off.

Senator METCALF. They are not only sold on a quitclaim deed, but sold for substantial amounts of money. Mr. Hochmuth accompanied a subcommittee of the House Interior Committee down there. I was one of the members of the committee and we investigated that a few years ago, and a whole recreation area has been developed by those squatters.

Those are the abuses. That is not a mining claim, but it is an example of the type of abuse that we try to cure by passing a law that is now being enforced. Throughout this hearing, the word "equity" has been used and that is the way the whole law of equity grew up—that the law itself was not quite flexible enough to take care of what Senator Church has talked about, the human values.

I do not think any of us wants to preserve the thing that you are talking about on the lower Colorado, or to sanction the uses that were made in an example I used up in Martin City in the Hungry Horse. But now, because of custom and tradition out in the West, there are hundreds, yes thousands, of people that are involved on things they think they own and had no intent whatsoever of trespassing on the public land. Whole townships, Frank, are located and some of them are ghost towns, but 25, 30, 100 people reside in those communities.

Mr. KIMBALL. But you would agree that there are others where they have knowingly taken advantage of these things and gone in and developed these businesses and homesites, thinking they might get away with it.

Senator METCALF. I want the Forest Service and the Bureau of Land Management to get busier than they are already and get those people off the public domain, the people who have abused these privileges that a very generous Government has given them.

Mr. KIMBALL. These same individuals will also complain to Congress when they start exercising the authorities they have and make them comply with the law. You will receive a multitude of letters from them wanting the same consideration.

Senator METCALF. We have received those letters. You are welcome to see our files.

Mr. KIMBALL. The reason I brought it up is this is a very complex and widespread problem and it indicates to me, at least, the need for considerable discretion on the part of the executive agencies who are responsible for seeing that the public interest is served. If there is some way we can take care of these hardship cases and these people who maybe should be given some sort of life tenure, even if it is in the public interest to have that land remain in public ownership, this is desirable and I am hopeful the committee can work out something that will do that.

Senator METCALF. I think we are substantially in accord.

Thank you very much, Mr. Kimball.

That completes the list of witnesses for this bill.

Do you have anything further, Senator?

Senator CHURCH. No, thank you, I just wish to thank this witness and the other witnesses for their useful and constructive testimony.

Senator METCALF. Thank you very much, Senator Church, for your help.

(Whereupon, at 11:45 a.m., the subcommittee adjourned, subject to the call of the Chair.)

